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MEMBERSHIP IN CAPITAL COMPANIES
AS A FORM OF EXERCISING THE PROFESSION OF ATTORNEY-AT-LAW

ABSTRACT

The article conducts a legal qualification of attorney's-at-law professional activities performed for the benefit of capital companies conducting legal activities and their clients. It also considers the arguments for and against introducing the possibility of attorney's-at-law legal practice in the form of participation in capital companies authorized to provide legal assistance. In conclusion, the author clearly advocates for the change of the currently binding prohibitions on attorney's-at-law profession.

Keywords: Attorney-at-law, Attorney's-at-law legal activity forms, regulated legal activity, unregulated legal activity, membership in capital companies as an attorney-at-law profession

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1. Introduction

As it is commonly known, an attorney-at-law may practice his profession which is based on providing legal assistance only in statutory organizational forms. Since the Act on attorneys-at-aw[2] among the forms of pursuing the occupation does not mention the participation of an attorney-at-law in capital companies or recognize capital companies as entities authorized to provide legal aid, a series of vital questions arises regarding the assessment of the actual involvement of attorneys-at-law in capital companies, especially companies providing legal services or conducting legal business activities or activities of a similar nature, establishing the legal consequences of undertaking such activities under the Act on Attorneys-at-Law and other applicable regulations, as well as judging the legality of the prohibition to practice the profession of an attorney-at-law in the form of membership in capital companies. The next anniversary of the formation of the self-government of attorneys-at-law is undoubtedly a good opportunity to raise these fundamental issues both from the point of view of the present and the challenges of the future.

2. Restrictions on the freedom of attorney-at-law membership in capital companies

Primarily, it should be emphasized that an attorney-at-law, like any other entity, uses freedoms guaranteed by constitution[3] and treaties[4] both in the field of economic freedom (entrepreneurship) and freedom to practice the profession (provision of services), which – in Polish legislation – is not always connected with running a business activity. Nevertheless, on the basis of the indicated legal guarantees, all freedoms and rights may be limited, if it is necessary, to meet a specific public interest, and such interference is not excessive, i.e. it does not violate the essence of a given guarantee, is not discriminatory and meets the requirements of proportionality (cf. Articles 22, 31 (3) and 32 of

2 Act on Attorneys-at-Law of 6 July 1982 (consolidated text: Dz.U. of 2020, item 75), hereinafter: AAL.

3 See especially Art. 22 and 65 sec. 1 of the Constitution of the Republic of Poland of April 2, 1997 (Dz.U. of 1997, No. 78, item 483), hereinafter: Constitution of the Republic of Poland or CRP.

4 See especially Art. 49 et seq. of the Treaty on the Functioning of the European Union, hereinafter referred to as the Treaty or TFEU (Dz.U. of 2004, No. 90, item 864/2, as amended), as well as the provisions of EU directives: i.e. 77/249/EEC of the Council of March 22, 1977, aimed at facilitating the effective exercise by lawyers of the freedom to provide services (Dz.U. of EU L.1977.78.17, as amended), hereinafter: Directive 77/249/EEC, 98/5/EC of the European Parliament and of the Council of February 16, 1998, aimed at facilitating the practice of a legal profession on a permanent basis in a Member State other than that in which the professional qualifications were obtained (Dz.U. of UE L.1998.77.36, as amended), hereinafter: Directive 98/5/EC, 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Dz.U. of EU L.2005.255.22, as amended), hereinafter: Directive 2005/36/EC and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (Dz.U. of EU L.2006.376.36), hereinafter: Directive 2006/123/EC or the Services Directive.

the Polish Constitution and Articles 52, 69 and 72 TFEU in connection with the directives cited in footnote 3). Considering the issue of the possibility of attorney-at-law participation in capital companies, attention should be paid to the distinction between involvement related to non-legal activities of these companies and activities related to legal activities. In the first case, the attorney-at-law is subject only to relative limitations. Taking into account the professional qualifications, they prohibit attorneys-at-law from taking up activities and performing specific activities that are in conflict with the dignity of the profession and the principles of the so-called professional deontology, which consists of both legal and non-legal regulations,[5] in particular in the terms of ethics[6] and professional pragmatics.[7] Despite the fact they usually require an individual balancing of various values, sometimes the provisions directly determine the permissibility of attorneys-at-law to perform specific non-legal activities.[8] While in the second case, the scope of control is much broader. It also includes a ban on providing legal assistance without satisfying certain statutory conditions, a ban on practising the profession of an attorney-at-law in other organizational forms than those provided for in the applicable provisions, and a ban on non-legal activities by companies in which, on an exclusive basis, an attorney-at-law may perform professional activities in accordance with the provisions of law (see Art. 6, 8 and 23 et seq. of AAL). As the concept of providing legal assistance, defined in the Act on Attorneys-at-Law, is separate and specific both in relation to the concept of legal services within the meaning of PKWiU (Classification of Products and Services)[9]as well as the concept of legal activity within the meaning of the PKD (Polish Classification of Activity), which, to a certain extent, may be undertaken by anyone without the need to meet the statutory conditions, only on the basis of guarantees of the right to provide services and economic freedom,[10] then they should be perceived primarily as related to the pursuit of regulated legal economic activity and the performance of legal professional activity (see Art. 7 (1) (4) and Art. 43 of the Entrepreneurs Law and Art. 43^1 of the Civil Code[11]). Thus, while on the basis of general

5 Cf. P. Skuczyński, *Status of legal ethics*, Warsaw 2010, pp. 114 et seq.; P. Kardas, *A few remarks on the function and significance of ethical and deontological standards for the performance of legal professions*, "Palestra" ["The Bar"] 2014, No. 1–2, pp. 42 et seq. and K. Zacharzewski, *The importance of deontological codes in the field of private law*, "Commercial Law Review" 2011, No. 6, pp. 35 et seq.

6 See: The Ethics Code of Attorneys-at-Law, hereinafter: ECAL, http://www.kirp.pl/.

7 See: Regulations for practising the profession of an attorney-at-law, hereinafter: RPPA, http://www.kirp.pl/.

8 This includes, for example, tax advisory activity, which, although partially overlapping with legal activity, is formally a separate activity on the basis of classification regulations. Art. 6 of AAL with Art. 2 and 3 of the Tax Consultancy Act of 5 July 1996 (consolidated text Dz.U. of 2021, item 2117), hereinafter: TCA and section 69 of the Regulation of the Council of Ministers of 24 December 2007 on the Polish Classification of Activities (PKD), Dz.U. No. of 2007, No. 251, item 1885, hereinafter: PKD.

9 See: section 69 regulation of the Council of Ministers of 4 September 2015 on the Polish Classification of Products and Services (PKWiU), Dz.U. of 2015, item 1676, hereinafter: PKWiU.

10 At the statutory level, such guarantees have been regulated in the Act of March 6, 2018 – Entrepreneurs' Law (consolidated text Dz.U. of 2021, item 162), hereinafter: ELA and in the Act of March 6, 2018 on the Rules of Participation of Foreign Entrepreneurs and Other Foreign Persons in the Trade in the Republic of Poland (consolidated text Dz.U. of 2021, item 994), hereinafter: FEPA.

11 Act of 23 April 1964 – Civil Code (consolidated text: Dz.U. of 2020, item 1740), hereinafter: CC.

principles, it can be assumed that the right to provide services and economic freedom constitute a sufficient basis for an attorney-at-law to subscribe for shares or stocks and hold functions in the bodies of capital companies, not excluding companies providing legal services or conducting legal economic activity, but such companies activity of an attorney-at-law and a company cannot be considered a form of practising the profession and a manifestation of regulated legal activity in the field of providing legal aid. In the light of the currently applicable regulations, capital companies, even when controlled by attorneys-at-law, are not entitled to provide legal assistance (i.e. legal regulated activity or legal professional activity). This also applies to the provision of legal services to any clients of such companies directly by attorneys-at-law. Under the procedural regulations, capital companies providing legal services or conducting legal activity solely on the basis of a guarantee of economic freedom, as entities not entitled to provide legal assistance, may not establish a power of attorney in the name and for the account of the serviced entities (see Art. 87 § 2, second sentence of the Code of Civil Procedure[12]). Within the meaning of these provisions, the right of legal persons to provide legal services to specific entities may result only from provisions separate from the Act – Entrepreneurs' Law (cf. Art. 43 (1) of the EL and Art. 87 § 2 of the Code of Civil Procedure). In trade practice, the distinction between the different status of legal professional activity and legal economic activity of a regulated and free nature, which operate within the same classification units for services (PKWiU) and activity (PKD), causes many obstacles. It is also an example of flawed legislation that, to a large extent, can only be rectified through legislative intervention.[13]

3. Legal qualification of attorney-at-law membership in capital companies from the viewpoint of the permissible forms of exercising the profession

Since capital companies are not listed among the forms of practising the profession of an attorney-at-law, nor are they entitled to provide legal assistance,[14]although they are competent to provide legal services and conduct free legal economic activity, it is of great importance to determine the legal significance of the participation of attorneys-at-law

12 The Act of November 17, 1964 – Civil Procedure Code (consolidated text Dz.U. of 2021, item 1805), hereinafter: CPC.

13 See: B. Sołtys, *Separation of the scopes of legal regulated and free activity – de lege lata and de lege ferenda*, "Przegląd Sejmowy" ["The Sejm Review"] 2021, No. 3, p. 127 ff.

14 The issue will be discussed further in the elaboration; the only deviation from the indicated regularity concerns capital companies running patent offices, i.e. regulated activity in the field of industrial property assistance, which, at least in part beyond technical assistance, can be considered as specialized provision of legal assistance in a specific field. See: Art. 4, 5 and 8 on this issue in connection with Art. 2 sec. 1 of the Act of April 11, 2001 on Patent Attorneys (consolidated text Dz.U. of 2021, item 944), hereinafter: PAA Cf. Art. 6 of Patent Attorneys Act and section 69 of PKWiU and PKD. *De delege summer* the mentioned derogation does not in any way however undermine the regulatory prohibition of conducting legal activities regulated by capital companies based solely on the guarantees of economic freedom, but confirms the existence of such a prohibition.

in such companies. In particular, whether individual manifestations of the organizational commitment of attorneys-at-law can be considered a form of practising the profession. Bearing in mind that their participation in capital companies as partners or shareholders may be objectively related to providing the company with personal benefits that fall within the scope of legal aid (e.g. for the so-called additional benefits related to participation rights or for holding certain functions), they should be classified as professional activities. Pursuant to Art. 8 sec. 1 of AAL, an attorney-at-law may practise the profession also on the basis of civil law activities and while remaining in an employment relationship. In the case of providing legal assistance to a capital company by an attorney-at-law participating in its organizational structures, depending on the circumstances, it can be assumed that then we are dealing with one or both of the above-mentioned forms of practising the profession, due to the admissibility of joining them. Nonetheless, the provision of legal services to clients of capital companies cannot be considered as professional activities of an attorney-at-law, even if they constitute an expression of legal aid. On the basis of the control limitations of regulated legal activity and the pursuit of a regulated legal profession, the qualification of a specific service as a professional activity is not therefore sufficient only for a person with professional rights to fulfil it, but it is necessary to implement it within the organizational form permitted by the legislator. Provision of legal services by attorneys-at-law, or other persons with professional qualifications to clients of capital companies, does not affect the character[15] of the activities of these companies. In particular, it does not transform their free legal activity into regulated legal activity.

The above statements remain valid also in the case of capital companies running, in accordance with the applicable regulations, patent offices authorized to provide legal activities in the field of assistance in industrial property matters (see Art. 5 sec. 1 point 5 in conjunction with Art. 2 section 1), Art. 4 sec. 1 and Art. 8 sec. 1 of PAA and Section 69 of the PKWiU and PKD). Attorneys-at-law may be minority shareholders or stockholders of such companies, and have the power to hold the functions of minority board members in them. Providing legal services to them, they perform their profession to the full extent of its competence, while providing legal services on behalf of selected clients of a patent office, the professional activities of attorneys-at-law are limited only to cases in the field of industrial property, i.e. the subject of activity of capital companies running patent offices. The confirmation of such correctness is Art. 87 § 2 of the Code of Civil Procedure, according to which a legal person providing legal services to an entrepreneur, legal person or other organizational unit on the basis of separate provisions may grant an attorney-at-law a procedural power of attorney on behalf of the entity which the service is providing, if authorized by this entity. Through the activities of attorneys-at-law, patent offices do not acquire the right to provide clients with legal assistance to a greater extent than matters related to industrial property. Legal services of attorneys-at-law provided to clients of patent offices in matters beyond this scope should therefore be treated as activities not related to practising the profession.

15 See more on this subject: B. Sołtys, *Legal activity in the light of the Act of March 6, 2018 – Entrepreneurs' Law*, "Radca Prawny, Zeszyty Naukowe" ["Attorney-at-law. Law Review"] 2019, No. 4, p. 103 et seq.

4. Legal consequences of violation of the provisions governing the permitted forms of exercising the profession of an attorney-at-law

Activities in the field of providing legal assistance conducted beyond the permitted organizational forms of practising the profession of an attorney-at-law constitute a gross violation of the law and have a series of negative consequences for all trade participants. It may be associated with civil, administrative, disciplinary and even criminal liability. This is not about prohibiting attorneys-at-law and other entities from conducting unregulated legal activities, which they can, like everyone else, undertake on the basis of the guarantee of economic freedom, but about sanctioning various abuses related to the provision of legal services with the participation of attorneys-at-law in the event of violation of the public interest and interests of clients that are worthy of protection. Especially when legal services are provided in such a manner that may undermine public confidence, mislead and expose clients to harm. It should be emphasized that, in the light of settled case law, the effect of violating the regulations on restrictions on the control forms of performing a profession is not to recognize the activities performed as professional activities, which may, in turn, lead to their ineffectiveness.[16] The occurrence of such an effect, especially in the area of various types of procedural activities, may lead to the liability of an attorney-at-law both towards capital companies or other entities not authorized to provide legal regulated activities, as well as clients of these companies who are beneficiaries of services provided by an attorney-at-law. Due to the violation of many professional obligations, an attorney-at-law may also bear disciplinary liability in such a situation (see Art. 64 of AAL). Failure to recognize the activities of an attorney-at-law as providing legal aid may also result in their not being covered by the scope of civil liability insurance (see Art. 22^7 of AAL). All entities operating in the field of legal aid contrary to the provisions of the Act on Attorneys-at-Law, i.e. not only attorneys-at-law and companies with their participation, must also take into account their removal from public registers and records (see Art. 52 sec. 3 item 4 of AAL). Liability may also be borne by capital companies offering services of attorneys-at-law beyond the permitted forms of practising the occupation, i.e. by not being entitled to conduct regulated legal activity, by misleading as to the nature of their activity, they expose both competitors and clients to the detriment. Their actions may bear the features of acts of unfair competition,[17] unfair market practices[18] and acts violating collective consumer interests.[19]

16 See, e.g.: the decision of the Supreme Court of July 20, 2012, II CZ 68/12, LEX No. 1228790, the decision of the Supreme Court of February 28, 2008, III CSK 245/07, LEX No. 475438, and the decision of the Court of Appeal in Katowice of August 25 2004, I ACa 1485/03, LEX No. 193584.

17 See: the Act of April 16, 1993 on Combating Unfair Competition (consolidated text Dz.U. of 2020, item 1913), hereinafter: CUCA.

18 See: the Act of 23 August 2007 on Act on Counteracting Unfair Commercial Practices (consolidated text Dz.U. of 2017, item 2070), hereinafter: CUCPA.

19 See: the Act of 16 April 1993 on Competition and Consumer Protection (consolidated text Dz.U. of 2021, item 275), hereinafter: CCPA.

5. Reservations as to the legality of the prohibition to exercise the profession of attorney-at-law in the form of membership in capital companies in the light of the Constitution of the Republic of Poland and EU law

The ban on practising the profession of attorney-at-law in the form of participation in capital companies both from the viewpoint of the Constitution of the Republic of Poland and the law of the European Union (EU), raises various reservations. At this point, however, it is worth drawing attention to two vital issues related to the excessive regulatory limitations and their discriminatory dimension. As per the standards of the rule of law, the restriction of the guaranteed rights and freedoms is permissible only exceptionally; namely when it is necessary to meet a specific public interest, and when it is proportionate. Yet, these requirements are not met by the solution which only indirectly and not fully effectively has an influence on the proper performance of the profession of attorney-at-law, which was the basis for its introduction.[20] Taking into consideration the fact that the profession of an attorney-at-law is always performed on the basis of contracts, there are restrictions on the freedom to shape their content and membership in the self-government of entities that are organizational units authorized to provide legal assistance,[21] and not the limitation of the organizational and legal forms of cooperation of attorneys-at-law should play a leading role in achieving the indicated public objective. The self-government of attorneys-at-law exercising public supervision over the proper performance of the profession of attorneys-at-law, as well as the courts, do not pay sufficient attention to various abuses relating to the forms of practising the profession. A meaningful illustration of this state of affairs is not only the scarce jurisprudence and the lack of statistics in combating such abuses, but also the failure to disclose the form of practising the profession of an attorney-at-law in search engines made available by the local government. Inefficiency of legal regulations and the possibility of implementing the public interest with less restrictive measures objectively indicate failure to meet the conditions of the necessity and proportionality of the regulatory control. Thus, they can testify to both a conflict with the Polish Constitution and a breach of EU law, in particular Directive 2006/123/EC, which aims to protect the freedom to provide services, inter alia, against restrictions on the prohibition of creating a specific legal form in the territory of an EU Member State for the purpose of service activities.

20 See: more on the issue: B. Sołtys, *Unconstitutionality of Art. 8 of the Act on Attorneys-at-Law*, "Radca Prawny, Zeszyty Naukowe" ["Attorney-at-law. Law Review"] 2019, No. 1, p. 9 et seq. and the literature and jurisprudence cited therein.

21 The provision of Art. 17 sec. 1 of the Constitution of the Republic of Poland and its other provisions do not preclude the extension of membership in the self-government of the profession of public trust to organizational units authorized to provide legal assistance and controlled by attorneys-at-law. The indicated solution is necessary to ensure the effectiveness of public supervision over the activities of such entities by the self-government of attorneys-at-law. See more on this subject: B. Sołtys, *The issue of membership of organizational units in the professional self-government of attorneys-at-law*, [in:] *Past-Present-Future of Self-Government of Attorneys-at-Law*, ed. T. Scheffler, A. Zalesińska, K. Mularczyk, M. Pyrz, Warsaw 2022, pp. 313 et seq.

The ban on practising the profession of an attorney-at-law in the form of membership in capital companies also appears to be of discriminatory nature. Without appropriately relevant[22] grounds it differentiates the legal situation of attorneys-at-law and patent attorneys, i.e. persons authorized to provide legal services and conduct regulated legal activity within the same classification units of the PKWiU and PKD and within the category of professions of public trust. According to Art. 32 sec. 2 of the Constitution of the Republic of Poland, discrimination may take place, inter alia, in economic life and may be brought about by any cause, including the organizational form of providing services and conducting activity in a specific field (see 16 (2) (c) of the Services Directive). Pursuant to the applicable regulations, patent attorneys may practice in a law firm they control even when it is established by capital companies, while attorneys-at-law do not have such an option. This solution has a negative impact on the competitiveness of law firms operating on the same market, run by attorneys-at-law, including those with the participation of patent attorneys. Legal offices in the form of capital companies may also be established by all other entities based on the legal guarantees of economic freedom. Although these law firms are intended only for the limited scope of unregulated legal activity, however, due to distinguishing them with the use of PKWiU and PKD classifiers identical to legal regulated activity; in practice they often become a tool of unfair competition, and often also deliberately misleading clients. The prohibition to practice the profession of an attorney-at-law in the form of membership in capital companies is also discriminatory in relation to entities conducting regulated legal activity in the EU and European Economic Area (EEA) Member States, in which the organizational form of joint-stock companies is allowed for legal professions such as an attorney-at-law or attorney. This applies in particular to countries such as Germany, France, Austria, the Czech Republic, Slovakia, Italy, Slovenia, Croatia and Hungary.[23] Under the treaty guarantees of the freedom to provide services, foreign capital companies, unlike domestic companies, may therefore conduct regulated legal activities on the territory of Poland.

6. For and against the prohibition of exercising the profession of an attorney-at-law in the form of membership in capital companies

Two arguments are usually raised in favour of maintaining the prohibition in force, which were also the reason for introducing this pattern of regulating the forms of performing the profession of an attorney-at-law on the basis of the Act on Attorneys-at-Law. Namely, it is about taking into account the personal nature of the provision of legal aid

22 See more on the issue of constitutional grounds for designating entities belonging to the same group: W. Borysiak, L. Bosek, *Commentary to Art. 32*, [in:] *Constitution of the Republic of Poland*. Vol. 1: *Commentary to Art. 1–86*, ed. M. Safjan, L. Bosek, C.H. Beck, Warszawa 2016, Nb 103 et seq.

23 See more on this subject: B. Sołtys, *Organizational and legal forms of providing legal services and their limitations in Polish law*, "Prace Naukowe WPAiE Uniwersytetu Wrocławskiego" ["Scientific Papers of the Faculty of Law and Administration of the University of Wrocław"], Series: e-Monographs, No. 100, Wrocław 2017, pp. 193 et seq. and literature referred to therein.

and ensuring unlimited liability of an attorney-at-law in relation to the objective need to protect its recipients. As for the first issue, it should be noted that apart from the regulation of the employment relationship,[24] no statutory provision imposes an obligation to pursue the profession of an attorney-at-law in person, and the employee form of professional activities has long ceased to prevail. Moreover, even in the employee regime, substitution of an attorney-at-law is allowed when performing procedural activities on behalf of the employer. It can therefore be ascertained that the consideration of personal provision of legal aid, although it still plays a certain individualizing and promotional role, differs from the realities of the modern legal services market, and cannot be objectively used as a legitimate reason for maintaining a regulatory prohibition. Yet, when it comes to the issue of unlimited liability, it should be noted that this feature also does not define the provision of legal aid. Attorneys-at-practising their profession based on employment are liable for damages only up to the amount of three times their salary and are not liable for damages resulting from the permissible risk (see Art. 117 § 2 and 119 of the Labour Code[25]), and those exercising their profession in the form of civil law transactions may, in principle, contractually limit their liability, with the exception of not individually agreed activities performed with consumers (see Art. 385^3 item 2 of the Civil Code), and cases of intentional misconduct (see Art. 473 § 2 of the Civil Code; cf. Art. 122 of the Code of Civil Procedure). When assessing the nature of liability, it cannot be ignored that an attorney-at-law performing his duties in partnerships is responsible for the company's obligations only in a subsidiary manner, and although he may not contractually limit this liability with effect towards third parties, he is in fact capable of even making it ineffective. In spite of the fact that in capital companies, partners and shareholders do not bear subsidiary liability, while providing legal aid within the structures of these companies, they can always be unlimitedly liable to its beneficiaries in relation to torts. Thus, bearing in mind that the unlimited liability of an attorney-at-law is not an inherent feature of the provision of legal assistance and varies depending on the form of practising the profession and the specific basis for performing a professional activity, the lack of such liability by partners and shareholders of capital companies cannot be objectively treated as legitimate reason for maintaining the regulatory prohibition under discussion.[26]

24 Personal performance of activities is a fundamental feature of an employment relationship – but not of civil law relationships. Instead of many, see e.g. K. Walczak, *Commentary on Art. 22 of the Labour Code*, [in:] *Labour Code Comment*, ed. W. Muszalski, K. Walczak, C.H. Beck, Warszawa 2021, Legalis, Nb 3 et seq.; and the judgement of the Supreme Court of February 4, 2021, II USKP 12/21, Lex No. 3117753; judgement of January 23, 2020, II PK 228/18, Lex No. 3107045; decision of the Supreme Court of November 18, 2020, III UK 427/19, Lex 3080654.

25 Act of 26 June 1974 – Labour Code (consolidated text: Dz.U. of 2020, item 1320), hereinafter: LC.

26 It is worth mentioning at this point that if the unlimited personal liability of an attorney-at-law were to be a determinant of the admissibility of providing legal aid, the obligation to insure against civil liability would be redundant. Nonetheless, paradoxically, it was the existing differentiation in the rules of liability of attorneys-at-law and the image-related issues that ultimately determined the introduction of such an obligation. It is also worth noting that the insurance obligation of attorneys-at-law is standardized, and its scope and conditions are not related to the assessment of individual insurance risk or the risk assigned to a given form of practising the profession.

What is more, a number of other weighty arguments support the admissibility of practising the profession of attorney-at-law in the form of membership in capital companies. They undoubtedly include the objective need for the self-government of attorneys-at-law to be subject to public supervision of all organizational units that conduct regulated legal activities in the area of providing legal services. Currently, as a result of previous legislative omissions, the self-government of attorneys-at-law does not actually exercise supervision over such units – even when they are directly or indirectly controlled by attorneys-at-law. This leads to various abuses related to the violation of the act on attorneys-at-law. Capital companies entitled to provide legal aid could become an attractive form of combining legal (professional) and non-legal (non-professional) capital, which would complement the existing possibilities of combining them with the use of limited partnerships and limited joint-stock partnerships. Nevertheless, unlike partnerships, the possibility of investment involvement offered by capital companies would give an opportunity to meet the challenges of the present day on the regulated market of legal activities, in particular related to the use of modern technologies, or taking up matters requiring co-financing and appropriate organization in general. From today's perspective, unreflective adherence to the original regulatory assumptions regarding the forms of practising the profession of attorney-at-law is not only inadequate to the market realities, but even harmful. Frequently as a result of unfair market practices, and not infrequently with the participation of members of the local government of attorneys-at-law, it only led to an accelerated and uncontrolled development of the unregulated market of legal services. Thus, admitting the profession of attorney-at-law in the form of participation in capital companies should also be perceived as an opportunity to organize this issue and to more clearly distinguish regulated legal activity and unregulated legal activity conducted only on the basis of guarantees of the freedom to provide services and economic freedom.

7. Conclusions

Introducing the possibility of practising the profession of attorney-at-law in the form of membership in capital companies authorized to provide legal assistance is primarily a matter of restoring the rule of law in connection with the allegations of violation of EU law and the unconstitutionality of Art. 8 of the Act on Attorneys-at-Law. The legal normalizations contained in this provision have not yet been subject to judicial verification by both the Court of Justice of the European Union and the Constitutional Tribunal. Still, one should be aware that they were created in completely different legal and market realities, even before the entry into force of the Services Directive and the Polish Constitution, and today they do not comply with EU or constitutional regulatory standards. Nevertheless, apart from this assessment aspect, on the one hand, there is a range of arguments for the enforcement by the professional self-government of attorneys-at-law of abuses related to the conduct of regulated legal activities in violation of the law, and on the other hand, for the immediate commencement of appropriate legislative work.

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