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THE STATUS OF THE SELF-GOVERNMENT OF ATTORNEYS-AT-LAW

IN LIGHT OF THE CODE OF ADMINISTRATIVE PROCEDURE –
FROM THE PERSPECTIVE OF CONSIDERING COMPLAINTS,
REQUESTS AND PETITIONS

ABSTRACT

The subject of this article is the status of the self-government of attorneys-at-law analysed in the light of the Code of Administrative Procedure from the perspective of addressing complaints, requests, and petitions. The analysis leads to the conclusion that based on the Code of Administrative Procedure, the self-government of attorneys-at-law is a social organization. Thus, its bodies are the bodies of a social organization, unless they handle administrative cases. The paper distinguishes four categories of situations connected with the application of the provisions on complaints and petitions as part of the activities of the self-government of attorneys-at-law.

Keywords: professional self-government, attorneys-at-law, complaints, requests, petitions

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I. Introduction

The jubilee of the self-government of attorneys-at-law is an opportunity to reflect on its status, which emerges from the Act of June 14, 1960 – Code of Administrative Procedure.² The findings in this respect are the basis for further detailed conclusions relating to individual procedural issues in which the mentioned local government or its bodies appear. In this regard, this elaboration takes into account the perspective related to the consideration of complaints and requests referred to in the provisions of Section VIII of the indicated Code. Yet, these arguments also apply to petitions as, in accordance with Art. 2 sec. 1 of the Act of 11 July 2014 on petitions,³ they may be submitted to a public authority as well as “to an organization or social institution in connection with its tasks commissioned in the field of public administration”, and pursuant to Art. 15 of this Act, in cases not regulated therein, the provisions of the Code of Administrative Procedure (CAP) shall apply accordingly.

II. The status of the self-government of attorneys-at-law in the CAP

In order to scrutinize the issue highlighted in the title, it is, therefore, crucial to determine whether the self-government of attorneys-at-law is a public administration body as referred to in Art. 5 § 2 point 3 of the Code of Administrative Procedure, or a social organization as referred to in point 5 of this provision, or if it has another legal status.

The relevance of this issue in terms of complaints and requests is demonstrated in the context of Art. 221 of the CAP. Paragraph 1 of this provision stipulates that the right to submit complaints and requests to state bodies, bodies of local government units, local government bodies, organizational units, and to social organizations and institutions, guaranteed by the Constitution of the Republic of Poland, is implemented on the principles set out in the provisions of Section VIII of the CAP. Nevertheless, paragraph 2 of Art. 221 of the CAP, contains a special norm, according to which “complaints and requests may be submitted to social organizations and institutions in connection with the tasks they perform and commissioned in the field of public administration”. *Ergo*, the obligation to consider complaints and requests by social organizations is narrower than in the case of state bodies, and it is limited in terms of type to complaints and requests related to the tasks carried out by them in the field of public administration. Moreover, this qualification is essential for determining the competent authority as according to Art. 230 of the CAP, the competent authority of the higher level of this organization is competent to consider a complaint regarding the tasks and activities of a social organization, and in relation to the supreme body of the organization – the Prime Minister, or the competent ministers supervising the activities of this organization. A special regulation is also contained in Art. 242 § 2 of the CAP, according to which “requests in cases

² I.e. Dz.U. of 2021, item 735 with later amendments, hereinafter referred to as the “CAP”.

³ I.e. Dz.U. of 2018, item 870 with later amendments.

relating to the tasks of social organizations are submitted to the governing bodies of these organizations”, as well as Art. 258 § 2 of the CAP stipulating that “supervision and control over the registration and settlement of complaints and requests in the bodies of social organizations are exercised by the statutory supervisory bodies of these organizations and bodies of a higher level, while in the supreme bodies of these organizations – the government administration body supervising the activities of a given organization”.

The importance of correctly determining whether an organ of the self-government of attorneys-at-law is or is not competent to examine complaints and requests is underlined in Art. 223 § 1 of the CAP, according to which state bodies, local government bodies, and other local government bodies and bodies of social organizations – consider and pursue complaints and requests within their competence.

Pursuant to Art. 5 § 2 point 3 of the CAP, whenever the provisions of the CAP refer to public administration bodies, they should be understood as ministers, central government administration bodies, provincial governors, other local government administration bodies acting on their own or on their own behalf (combined and non-combined), bodies of local government units as well as bodies and entities mentioned in Art. 1 point 2 of the Code of Administrative Procedure. The aforementioned Art. 1 point 2 of the CAP indicates entities established by operation of law or on the basis of agreements to deal with individual cases settled by administrative decisions or settled tacitly. In turn, Art. 5 § 2 point 5 of the CAP states that whenever the provisions of the Code of Administrative Procedure refer to social organizations, then this is understood as professional, local government, cooperative, and other social organizations.

It is not difficult to notice that the legislator applied the method of defining the concept of social organization with the use of indeterminate phrases. For this reason – as is pointed out in the literature – this definition is flawed with *ignotum per ignotum* because in *definiendum* and *definiens* appear the same terms. In consequence, the concept introduced in the commented provision is imprecise and cannot be fully used to determine the features that an organizational unit must have in order to be considered a social organization in the administrative process. It should be added that neither the doctrine nor the administrative courts have developed a unified position regarding the criteria for qualifying certain entities to the category of “social organizations”.⁴

When facing the challenge of relating this concept to the self-government of attorneys-at-law, it is advisable to follow the resolution of the Supreme Administrative Court of September 22, 2014 (II GPS 1/14)⁵ stressing that the professional self-government is not a public administration in the sense of the political system. It is not an organ of the state, it does not exercise competences that are accounted towards the state. A characteristic of this self-government is its legal subjectivity, resulting from granting it legal personality, which is associated with the possibility of being the subject of rights and

⁴ K. Klonowski, *Art. 5, [in:] Code of Administrative Procedure. Comment*, ed. H. Knysiak-Molczyk, Warsaw 2015, p. 53. Difficulties in this field are also mentioned by Z. Kmiecik, *Art. 5, [in:] Code of Administrative Procedure. Comment*, ed. Z. Kmiecik, W. Chróścielewski, Warsaw 2019, p. 55.

⁵ ONSAiWSA [Case law of the Supreme Administrative Court and the voivodeship administrative courts] 2015, No. 1, item 4.

obligations. Its legal personality covers the sphere of public and private law. From the subjective point of view, the professional self-government can, therefore, be opposed to the state.⁶

It is worth highlighting that in the judgement of 9 March 1988 (IV SAB 30/87⁷) the Supreme Administrative Court already recognized the admissibility of treating professional self-government as a social organization, therefore, it could participate in administrative proceedings as a party after being admitted pursuant to Art. 31 § 1–3 of the Code of Administrative Procedure. This view was already endorsed by doctrine at that time.⁸

The inclusion of the self-government of attorneys-at-law in the category of social organizations is confirmed by the decision of the Voivodeship Administrative Court in Warsaw of January 16, 2008 (III SA/Wa 1862/07). The court stated directly that the District Bar Association of Attorneys-at-Law meets the criterion of a social organization. As it explained, the definition of the concept of social organizations, developed on the basis of the views of the doctrine, legal solutions adopted in Polish law, and on the basis of judicial decisions, covers all permanent associations of natural and legal persons, i.e., such groups of entities that are bound by a common objective and a permanent organizational bond, and that do not form part of the state apparatus and are not private companies at the same time.

A different view was expressed by the SAC in its decision of April 11, 2011, II FSK 2300/10, arguing that the District Bar Association of Attorneys-at-Law is “an organizational unit of the professional self-government of legal advisers, the organization, basis of operation, and objectives of which were included in the Act on legal advisers. The Chamber is, therefore, not a social organization”. Nevertheless, it is difficult to share the laconic argumentation of the Supreme Administrative Court, as a social organization may have organizational units, and the legislator itself in the Code of Administrative Procedure determines the organs of social organizations. At the same time, the Chamber satisfies the requirements set by the Supreme Administrative Court in order to be recognized as a social organization: it is a permanent association of natural persons established to fulfil specific, socially important goals, having a permanent organizational bond, and not being part of the apparatus of public administration bodies because the Chamber itself never acts as such an authority, but only its organs act as such in certain cases. Thus, the circumstances provided by the SAC do not exclude the recognition of the self-government of attorneys-at-law/legal advisers as a social organization within the meaning of the CAP. Moreover, the cited judgement referred to the concept of social organization under the Law on Proceedings Before Administrative Courts,⁹ and not directly to the CAP.

⁶ K. Klonowski, *The Notary Chamber as a party to the procedure for appointing a notary. Gloss to the resolution of a panel of seven judges of the Supreme Administrative Court of September 22, 2014, II GPS 1/14*, “Przegląd Prawa Publicznych” [“Review of Public Law”] 2017, No. 5, p. 122.

⁷ “Orzecznictwo Sądów Polskich i Komisji Arbitrażowych” [“Jurisprudence of Polish Courts and Arbitration Commissions”] 1989, No. 6, item 133.

⁸ See: T. Woś, *A gloss to the judgement of the Supreme Administrative Court of 9 March 1988, IV SAB 30/87*, “Orzecznictwo Sądów Polskich i Komisji Arbitrażowych” 1989, No. 6, p. 311.

⁹ The Act of August 30, 2002 – Law on Proceedings before Administrative Courts (i.e., Dz.U. of 2022, item 329 with later amendments).

The doctrine indicates that a social organization is an association (corporation) of citizens (units) or legal persons outside the structure of the public administration apparatus – both governmental and local government, which is not of compulsory nature and is established in order to achieve the objectives specified in the Act or internal acts of these organizations.¹⁰ The importance of voluntariness was stressed by the Supreme Court in its judgement of 20 September 2002 (III RN 144/01)¹¹ indicating that a social organization within the meaning of Art. 5 § 2 point 5 of the Code of Administrative Procedure is only a voluntary association of persons who implement narrow statutory objectives in the interest of its members, i.e., a corporate entity.

A. Gronkiewicz, after exhaustively presenting the position of jurisprudence and doctrine in relation to the concept of social organization, finally provides it with the following constitutive features:

- 1) functioning outside the state and economic sector;
- 2) objective of a social nature;
- 3) objective durability;
- 4) voluntary nature of the organization in the sense of the voluntary membership of members in the organization;
- 5) organizational autonomy.¹²

As K. Klonowski believes, this concept also includes professional self-government, associating, by operation of law or on a voluntary basis, persons performing specific professions.¹³

Moreover, the present literature indicates that by the term “self-government organizations” referred to in Art. 5 § 2 point 5 of the CAP, one should understand various forms of special self-government, numerous organizations of which appeared after the political transformation. Special self-government, in theoretical assumptions, is the aforementioned public-law corporation, a form of administrative decentralization, in which membership is obligatory. A. Nędzarek classifies the professional self-government directly in the first place. As he emphasizes, this status of professional corporations may be indicated by their separation from the state administrative apparatus, non-economic nature, and serving the general interest; mainly by ensuring the proper performance of the profession.¹⁴

P. Gołaszewski and K. Wąsowski classify professional self-government as social organizations, stating that the lack of voluntary affiliation in a professional self-government (practising a profession is possible only for a member of a corporation) is sometimes the basis for questioning the recognition of professional self-government as a social

¹⁰ K. Klonowski, *Art. 5...*, p. 54.

¹¹ OSNAPU 2003, No. 15, item 348.

¹² A. Gronkiewicz, *Organizacja społeczna w ogólnym postępowaniu administracyjnym* [Social organization in general administrative proceedings], Warsaw 2012, p. 62.

¹³ K. Klonowski, *Art. 5...*, p. 55.

¹⁴ A. Nędzarek, *Organizacje samorządowe* [Local government organizations], [in:] *System Prawa Administracyjnego Procesowego. Zakres przedmiotowy i podmiotowy postępowania administracyjnego ogólnego* [Process Administrative Law System. Objective and subjective scope of general administrative proceedings], vol. II, part 1, ed. W. Chróścielewski, Warsaw 2018, p. 436.

organization in the literature.¹⁵ As A. Gronkiewicz ascertains, only professional self-governments, in relation to which there is no obligation to belong, can be included in the model approach to social organizations.¹⁶

Bearing in mind the above, it has to be noted that the self-government of attorneys-at-law operates outside the state and economic sector (creates its own 'sector'), serves social purposes (not private), the objective is permanent (which is stressed by its statutory regulation), and has organizational autonomy, which is, after all, one of the constitutive characteristics of professional self-government. Thus, a legitimate question remains whether the element of voluntary organization in the sense of the voluntary affiliation of members to it is not essentially fulfilled. One can also assume that this criterion can be considered fulfilled from a certain perspective. The representatives of the doctrine excluding professional self-governments from the category of social organizations seem to miss the difference between the compulsion to be a member of local self-government and the alleged compulsion to be a member of a professional self-government. A resident of Poland has no other option but to be a member of the local government. Therefore, every resident of Poland is a member of the local government and cannot take any action that would deprive him/her of such membership as a resident of Poland. Yet, membership in a professional self-government is secondary to the voluntary decision to practice the profession (applying to perform it), whose representatives compose a corporation in the form of professional self-government. *Ipsa facto*, membership in a professional self-government remains voluntary; and only the legislator limits the scope of this freedom. Indeed, this restriction narrows the scope of choice to membership of a professional self-government by taking up a profession that implies membership of that professional self-government, or not taking up such a profession. Thus, the necessary freedom of membership in the professional self-government as a social organization is preserved, and the binding factor relates to the scope and effects of this voluntary choice of an individual (if s/he is entitled to take it up, i.e., meets the criteria for taking up such a profession). At the same time, the indicated restriction undoubtedly implies state supervision over professional self-government – in particular over access to the profession – as well as the requirement of a proportional delineation of its competences.

A. Nędzarek accentuates that the statutory tasks of professional self-governments include vital social goals, going beyond operations strictly related to the professional activity of the members and the functioning of the local government units. Hence, in the view of this doctrine representative, the most serious argument against the recognition of these corporations as social organizations concerns their performance of decentralized administration in the field of regulating access to the profession.¹⁷ Referring to this view, it should be noted that, in fact, the professional self-government retains the status of a social organization here, and in the case mentioned above, it is the bodies of this self-government – and not the self-government itself – that are treated as public

¹⁵ See: P. Gołaszewski, K. Wąsowski, *Art. 5, [in:] Code of Administrative Procedure. Comment*, ed. R. Hausner, M. Wierzbowski, Warsaw 2021, p. 100.

¹⁶ A. Gronkiewicz, *Social organization...*, p. 105.

¹⁷ A. Nędzarek, *Organizacje samorządowe... [Self-government organizations...]*, p. 436.

administration bodies in a functional sense. Therefore, this does not mean depriving professional self-government of the status of a social organization under the Code of Administrative Procedure but allowing for special situations in which the self-government authorities will be treated as public administration bodies.

The view that excludes professional self-government from the category of social organizations is minor; the prevailing position is that professional self-government can be treated as a kind of social organization.¹⁸ The leading opinion is that the concept of a self-government organization includes such organizations that perform self-government tasks and functions of a different type than local self-government. It is the professional self-government that is directly indicated here – with the exception of cases of performing commissioned functions of public administration.¹⁹

This broader approach corresponds to the view of J.P. Tarno, that the definition of a social organization gives rise to the assumption that it covers all organizational units that do not constitute a state apparatus, or any form of their extension; all organizational forms, the creation and activity of which cannot be ascribed to the state, but to a certain social group.²⁰ In the past, the scope of the concept of social organizations was limited to associations of corporate citizens, but today it can be assumed that it covers any organizational form permitted by law, functioning outside the state apparatus, by means of which citizens can present their group interest.²¹

In the literature on the subject, it is worth indicating an even more far-reaching view, i.e., recognizing professional self-governments not as social organizations but as social institutions, as referred to in Art. 221 of the Code of Administrative Procedure.²² However, it is a consequence of excluding the recognition of an organizational unit of the self-government of attorneys-at-law from the category of social organization in the decision of the SAC of 11 April 2011, II FSK 2300/10, which – as pointed out above – is not convincing.

In conclusion, all the criteria for recognizing the self-government of attorneys-at-law (professional self-government) as a social organization within the meaning of Art. 5 § 2 point 5 of the Code of Administrative Procedure are met. As a result, the provisions of the CAP on social organizations should apply to the self-government of attorneys-at-law, while the provisions of the CAP on the bodies of social organizations should apply to the bodies of the self-government of attorneys-at-law. The provisions of the CAP on a public administration body refer to the self-government bodies of attorneys-at-law, essentially

¹⁸ Also A. Nędzarek, *Organizacje samorządowe... [Self-government organizations...]*, p. 436.

¹⁹ B. Adamiak, J. Borkowski, *Code of Administrative Procedure. Comment*, Warsaw 2021, p. 58.

²⁰ J.P. Tarno, *A gloss to the resolution of a panel of seven judges of the Supreme Administrative Court of December 12, 2005, file ref. act II OPS 4/05, "Zeszyty Naukowe Sądownictwa Administracyjnego" ["Scientific Journal of the Administrative Judiciary"]* 2006, No. 1, p. 155. This qualification should not be undermined by the regulation of the functioning of a social organization by a state authority, e.g., by means of an act.

²¹ J.P. Tarno, *A gloss...*, p. 156.

²² See: S. Gajewski, [in:] S. Gajewski, A. Jakubowski, *Petycje, skargi i wnioski. Dział VIII Kodeksu postępowania administracyjnego. Ustawa o petycjach. Komentarz [Petitions, complaints and requests. Section VIII of the Code of Administrative Procedure. Act on petitions. Comment]*, Warsaw 2015, p. 10.

only to the extent to which they handle administrative matters in the form of an administrative decision, or a ruling, or issue certificates.

It should be emphasized that as far as complaints and requests are concerned, the self-government of attorneys-at-law or its bodies may not be equated with a separate category specified in Art. 221 and Art. 224 of the CAP, i.e., a state authority.²³

III. Examination of complaints, requests, and petitions by the self-government of attorneys-at-law

Establishing the status of a self-government of attorneys-at-law as a social organization allows specifying the scope of application of the provisions on complaints and requests and on petitions that relate to it.

J. Wegner points out that while adopting the result of the interpretation of Art. 221 § 1 of the CAP – which is favourable to the Constitution – it should be recognized that complaints and requests (as well as petitions) may be submitted to any public authority body within the meaning of Art. 63 of the Constitution of the Republic of Poland, i.e., an entity authorized to act in the sphere of *empire*. The subject of a complaint or request, however, can only be those acts or omissions that exhaust the use of public authority by these entities. The indicated Author specifies that the activity of social organizations may be the subject of a complaint and request procedure, on the condition that it falls within the scope of tasks commissioned.²⁴ Similarly, M. Jaśkowska emphasizes that social organizations and institutions exercise the right to lodge a complaint or request only when they perform functions commissioned in the field of public administration.²⁵ This idea is elaborated on by J. Borkowski and B. Adamiak, stating that “complaints and requests may be submitted to a social organization only when it performs the tasks or functions of public administration assigned to it, and hence the conclusion that they should concern precisely these tasks and functions. The concept of social organization must be understood in line with the legal regulation contained in Art. 5 § 2 point 5 of the CAP, while the concept of commissioned tasks must be considered based on doctrinal provisions, thus taking into account that it is broader than outsourcing public administration functions. Not only will it be about the cases of issuing administrative decisions or other governing acts by the organs of social organizations but also about taking actions in other legal forms, e.g., non-regulatory actions. On the basis of the provisions of Section VIII of the CAP, and the guarantees resulting from these provisions, no complaints and requests may be lodged regarding any other activities of a social organization”.²⁶

23 S. Gajewski, [in:] S. Gajewski, A. Jakubowski, *Petycje, skargi i wnioski...* [Petitions, complaints and requests], p. 8.

24 J. Wegner, *Art. 221*, [in:] *Code of Administrative Procedure. Comment*, ed. Z. Kmiecik. W. Chróścielewski, Warsaw 2019, p. 1043.

25 M. Jaśkowska, [in:] M. Jaśkowska, A. Wróbel, *Code of Administrative Procedure. Comment*, Warsaw 2005, p. 1071.

26 B. Adamiak, J. Borkowski, *Code...*, p. 1174.

Referring these thoughts to the subject of this paper, it should, therefore, be stated that the complaints and requests of the self-government of attorneys-at-law (by their bodies) are obliged to be considered to the extent that they relate to the tasks of public administration imposed on the self-government of attorneys-at-law by legal regulations. Most often these will be activities related to the issuing of administrative decisions, and in such a case, the bodies of the self-government of attorneys-at-law are treated as public administration bodies, also in the aspect of complaints and requests. And, in the remaining scope, since the self-government of attorneys and its bodies are not treated as public administration bodies, Art. 240 of the CAP shall apply. Pursuant to this provision, when a complaint concerns a matter that is not subject to examination in accordance with the provisions of the Code (Article 3 § 1 and 2) or does not fall within the competence of public administration bodies, the provisions of Art. 233–239 of the CAP shall apply accordingly, with the proviso that the regulation of the procedure appropriate for a given case applies in place of other provisions of the Code.

Article 240 of the CAP applies to social organizations, however, as B. Adamiak and J. Borkowski claim, “obviously only in the area in which they perform tasks commissioned in the field of public administration”.²⁷ It can, therefore, be assumed that these are tasks commissioned from the field of public administration, not foreseen to be settled through administrative proceedings in the form of an administrative decision. This may, in particular, apply to disciplinary proceedings.

This viewpoint is also shared by J. Wegner, who indicates that the provisions of Art. 240 of the Code of Administrative Procedure, the concept of a public administration body, should be understood in accordance with the meaning ascribed to it in the provision of Art. 5 § 2 point 3 in connection with Art. 1 point 2 of the CAP, binding the notion of an authority with the competence to deal with individual cases by way of administrative decisions or tacitly. Article 240 of the CAP contains a reference that can be described as ‘return’, as it refers to matters regulated in separate provisions. This solution is dictated by the necessity to respect the priority of separate provisions regulating administrative proceedings in individual categories of cases. It should be assumed that the provisions of Art. 233–239 may be directly applicable, applicable with the necessary modifications, or not applicable – depending on the nature of the case to which the complaint relates.²⁸

Also, H. Knysiak-Molczyk asserts that the complaint procedure cannot compete with any other legally regulated procedure, and in the event of an overlap of provisions, special regulations shall prevail. Only in other respects are the appropriate provisions of Art. 233–39 of the Code of Administrative Procedure applied.²⁹

Importantly, the reference under Art. 240 of the CAP means that if a complaint can be qualified as a request to initiate proceedings not covered by the CAP, or another type of non-code legal remedy, or may be used in non-code proceedings, its lodging should

²⁷ B. Adamiak, J. Borkowski, *Code...*, p. 1204.

²⁸ J. Wegner, *Art. 221...*, pp. 1079–1080.

²⁹ H. Knysiak-Molczyk, *Art. 240*, [in:] *Code of Administrative Procedure. Comment*, ed. H. Knysiak-Molczyk, Warsaw 2015, p. 1205.

have effects in the sphere of appropriate proceedings; it becomes unnecessary to conduct parallel complaint proceedings.³⁰

The reference to separate proceedings by the organs of social organizations also applies to proceedings regulated by acts issued by these organizations on the basis of a statutory authorization.³¹ In this context, it is worth focusing on a certain freedom in regulating cases related to the handling of complaints, requests, and petitions that is vested in the self-government of attorneys-at-law. Regulating their examination by an act of the self-government (body) is permissible, especially in the light of the essence of professional self-government and the purpose of ensuring the proper performance of the profession of attorney-at-law. Pursuant to Art. 60 point 8 letter a of the Act of July 6, 1982 on attorneys-at-law,³² the scope of activities of The National Bar Council of Attorneys-at-Law includes the adoption of regulations for the activities of the self-government and its bodies. There are no obstacles for these regulations to define the manner of dealing with complaints and requests addressed to the self-government of attorneys-at-law (its bodies), while the regulation with regard to complaints and requests subject to consideration in accordance with the provisions of Section VIII of the Code of Administrative Procedure may not restrict or modify the statutory procedure (i.e., a generally applicable act). The regulation of the handling of complaints and requests may be particularly desirable in the cases referred to in Art. 240 of the CAP, as then the regulations will take precedence over Art. 233–239 of the Code of Administrative Procedure. Similarly, the self-government regulation will be the complete regulation for complaints and requests submitted within the scope of tasks of the self-government of attorneys-at-law that are not commissioned tasks in the field of public administration. It should also be indicated that the manner of implementing the provisions on considering complaints and requests may be determined by the guidelines of The National Bar Council of Attorneys-at-Law referred to in Art. 57 point 3 of the Act of 6 July 1982 on attorneys-at-law.³³

With all of the above in mind, in cases involving the performance of public administration tasks, in which the bodies of the self-government of attorneys-at-law do not act as a public administration body (they do not conduct proceedings that end with an administrative decision), Art. 233–239 of the CAP, in so far as the given issues have not been separately regulated in specific provisions, including the procedure regulated by the self-government of attorneys-at-law as a social organization. In cases involving the performance of public administration tasks, in which the bodies of the self-government of attorneys-at-law act as a public administration body, the provisions of Section VIII of the CAP will apply directly, however, it should be noted that often, pursuant to Art. 233–235 of the CAP, the complaint will in fact be treated as a letter regarding an administrative case. The provisions of Section VIII of the CAP, which imply a notification on the manner of addressing a complaint, will directly apply to complaints concerning

30 K. Wojciechowska, *Art. 240*, [in:] *Code of Administrative Procedure. Comment*, ed. R. Hauser, M. Wierzbowski, Warsaw 2021, p. 1505.

31 See: K. Wojciechowska, *Art. 240...*, p. 1505; B. Adamiak, J. Borkowski, *Code...*, p. 1205.

32 I.e. Dz.U. of 2020, item 75 with later amendments.

33 I.e. Dz.U. of 2022, item 1166.

the issues of dealing with administrative matters by the bodies of self-government of attorneys-at-law, in which the complainants have no legal interest (e.g., for bureaucratic handling of a certain category of administrative matters such as entries on the list of attorneys-at-law). In other cases, the provisions of Section VIII of the CAP shall not apply.

Therefore, the following four categories of situations can be distinguished:

- 1) Firstly: when the complaint concerns the matter in which the bodies of the self-government of attorneys-at-law act as public administration bodies within the meaning of the CAP and issue administrative decisions (e.g., matters related to entry on the list of attorneys-at-law as well as deletion from it), and at the same time concerns the legal interest of the complainant. In such a case, it is not subject to examination pursuant to the provisions of Section VIII of the CAP, but to the provisions of general administrative (jurisdictional) proceedings.
- 2) Secondly: when the complaint concerns the matter in which the bodies of the self-government of attorneys-at-law act as public administration bodies within the meaning of the CAP and issue administrative decisions (e.g., matters related to entry on the list of attorneys-at-law as well as deletion from it), but does not refer to the interest of the complainant, nor does it lead to actions under general administrative proceedings (e.g., the bureaucratization of these proceedings is criticized) – then it is recognized as a complaint under Section VIII of the CAP.
- 3) Thirdly: when the complaint concerns a matter in which the bodies of the self-government of attorneys-at-law do not issue an administrative decision but are the bodies of a social organization implementing public tasks specified in Art. 41 of the Act on Attorneys-at-Law (e.g., it concerns insufficient care over the substantive level of trainees). Then the complaint is examined with the proper application of Art. 233–239 of the Code of Administrative Procedure to the extent that it relates to the performance of this public task, and all other specific provisions – including professional self-government – apply before the code regulation.
- 4) The fourth and final situation relates to a case when the complaint concerns matters that for the bodies of the self-government of attorneys-at-law, do not constitute the performance of a statutory task in the area of public administration (e.g., a complaint about the lack of provision by the self-government of senior care for elderly attorneys-at-law; a complaint against the actions of a corporate member, and not the self-government of attorneys-at-law, its bodies, or employees). In such a case, the complaint is not subject to consideration pursuant to the provisions of the CAP – it is enough to provide information, taking into account, according to the content of the ‘complaint’, relevant generally applicable provisions and provisions established by the relevant bodies of the self-government of attorneys-at-law.

Due to the use by the legislator of fairly general terms in Art. 41 of the Act on Attorneys-at-Law, it is not possible *a priori* to unequivocally distinguish between the cases defined above as the third and fourth types of situation. Thus, it is necessary to make a case-by-case evaluation. In order to facilitate this process, it can be pointed out that in Art. 41 of the Act on Attorneys-at-Law, the legislator used the open clause (“in particular”). In this way, the legislator allows the self-government of attorneys-at-law to carry out tasks other than those specified in this provision.

IV. Conclusions

Recapitulating, the self-government of attorneys-at-law has the status of a social organization under the Code of Administrative Procedure. As a result, the provisions of the CAP on the bodies of these organizations apply to the bodies of this self-government. The provisions of the CAP on a public administration body refer to the self-government bodies of attorneys-at-law, and only to the extent to which they handle administrative matters in the form of an administrative decision, or issue certificates. These findings correspond to the subjectivity of the self-government of attorneys-at-law, separate from the governmental or territorial administration, appropriate for the decentralized model.

With regard to cases involving the performance of public administration tasks, in which the bodies of self-government of attorneys-at-law do not act as a public administration body (they do not conduct proceedings that end with an administrative decision), Art. 233–239 of the Code of Administrative Procedure will be applied accordingly for the consideration of complaints and requests – to the extent that the given issues have not been separately regulated in specific provisions, including the procedure regulated by the self-government of attorneys-at-law as a social organization. In cases involving the performance of public administration tasks, in which the bodies of the self-government of attorneys-at-law act as a public administration body, the provisions of Section VIII of the CAP will apply directly, however, it should be noted that often pursuant to Art. 233–235 of the CAP, the complaint will in fact be treated as a letter regarding an administrative case. The provisions of Section VIII of the CAP, which imply a notification on the manner of addressing a complaint, will directly apply to complaints concerning the issues of dealing with administrative matters by the bodies of self-government of attorneys-at-law, in which the complainants have no legal interest (e.g., for bureaucratic handling of a certain category of administrative matters such as entries on the list of attorneys-at-law). In other cases, the provisions of Section VIII of the CAP shall not apply.

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