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# SUSPENSION OF ACTIVITIES CONDUCTED IN THE FORM OF A LAW FIRM OF ATTORNEY-AT-LAW IN CONNECTION WITH TAKING CARE OF A PERSON WITH DISABILITIES

## ABSTRACT

The article analyzes normative regulations relating to the possibility of establishing the right to a benefit for a caregiver of a person with disabilities in the case of suspension of business activity conducted by an attorney-at-law. It outlines how to practice law as an attorney-at-law, suspend activities conducted in the form of a law firm of attorney-at-law, as well as types of benefits for a caregiver of a person with disabilities, and the premises determining those benefits.

**Keywords:** ways of practicing the profession of an attorney-at-law; suspension of the activities conducted in the form of a law firm of attorney-at-law; types of benefits for a caregiver of a person with disabilities; not taking up or resigning from employment or other gainful activities

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## 1. Introduction

Recently, the need for changes in normative regulations relating to the support provided by the State to caregivers of people with disabilities has been raised. It is pointed out that this care is often provided by individuals who have the competence, education, and potential to perform work or other gainful activities in a manner that does not impede the care of the person with a disability. It is also argued that the changing conditions of work, including the dynamic development of modern technologies enabling professional activities to be carried out at home, are conducive to such organization of the work that makes it possible to combine the duties of a caregiver of a person with disabilities with professional activities.<sup>3</sup>

In the current normative state, the care benefit can only be granted if the caregiver of a person with disabilities is an economically inactive person, as the establishment of the right to this benefit is determined by not taking up or resigning from employment or other gainful activity. In view of the above, it is necessary to analyze whether suspension of professional activities conducted in the form of a law firm of attorney-at-law meets this prerequisite or whether its fulfillment must involve termination of activities conducted in this form. One cannot ignore that taking the care in question is a new and uncertain situation for the caregiver of a person with disabilities, which he/she may not be able to cope with, and that often, the provision of such care is a temporary situation which lasts as long as it can be provided in a home environment. In such cases, it is reasonable for the attorney-at-law to temporarily suspend professional activities conducted in the form of a law firm, rather than to permanently discontinue them.

## 2. Running a law firm of attorney-at-law as one of the ways to practice as an attorney-at-law

Due to its special importance and the necessity to provide an appropriate level of legal assistance, the profession of the attorney-at-law may be practiced in the forms set forth in Article 8 of the Act of 6 July 1982 on attorneys-at-law.<sup>4</sup> Thus, an attorney-at-law may work under an employment relationship, a civil law contract, in a law firm of an attorney-at-law, or in a civil law partnership, registered partnership, or limited partnership, where partners in the civil law partnership, registered partnership, and limited partnership can only be attorneys-at-law or attorneys-at-law and advocates as well as foreign lawyers practicing under the Act of 5 July 2002 on the provision of legal assistance by foreign lawyers in the Republic of Poland,<sup>5</sup> and the sole object of such partnerships is to provide legal assistance. It should be emphasized that an attorney-at-law is obliged to

<sup>3</sup> See the justification for the legislative initiative of the Senate of Tenth Term regarding the draft act amending the Act on family benefits, print no. 273, <https://www.senat.gov.pl/prace/druki/record,11138.html>.

<sup>4</sup> Journal of Laws of 2020, item 75, as amended (hereinafter referred to as the AAL).

<sup>5</sup> Journal of Laws of 2020, item 823 (hereinafter referred to as the AFL).

notify the council of the appropriate bar association of attorneys-at-law about the commencement of his/her professional practice and the forms of this practice, the name and address of the law firm or partnership as well as about any change of this information.

This article addresses activities carried out in the form of a law firm of attorney-at-law. It is defined in the rules of practicing the profession of attorneys-at-law as a form of practice in one's own name and for one's own account by a self-employed attorney-at-law.<sup>6</sup> It should be noted that a business activity is understood as an organized profit-making activity, carried out on one's own behalf and in a continuous manner.<sup>7</sup> An entrepreneur, in turn, is a natural person, a legal person, or an organizational unit not being a legal person, that is granted legal capacity by a separate act of law, conducting business activities.

The legal situation of entrepreneurs, including attorneys-at-law, is regulated by the provisions of the Act of 6 March 2018 – Entrepreneurs' Law.<sup>8</sup> In fact, a person practicing in his/her own name and individually the profession of an attorney-at-law in an organized and continuous manner (by operating a law firm of attorney-at-law) is an entrepreneur within the meaning of the provisions of the aforementioned Act<sup>9</sup> and, consequently, is subject to a number of the obligations set forth in that Act. At the same time, it should be emphasized that in a situation where a provision of a separate act stipulates that a particular type of business is a regulated activity, and the provision of services by an attorney-at-law is such an activity, the entrepreneur may perform it if he/she meets specific prerequisites set forth therein and has been entered in the register of regulated activities.<sup>10</sup> Based on the regulations governing the business activity in question, the authority keeping the register of regulated activities shall make an entry at the request of the entrepreneur after the entrepreneur submits a statement that he/she meets the conditions required to carry out the activity.<sup>11</sup>

Given the subject matter of this article, it should be pointed out that a business conducted in the form of a law firm of an attorney-at-law can be suspended. The suspension

6 See §2.5 of Appendix to Resolution No. 94/IX/2015 of the National Bar Council of Attorneys-at-Law of 13 June 2015, <https://www.oirp.warszawa.pl/wp-content/uploads/2014/06/Uchwa%C5%82a-Nr-94-IX-2015-KRRP-z-13.05.2015-r.-w-spr.-Regulaminu-wykonywania-zawodu-radczy-prawnego.pdf>.

7 See: A. Walaszek-Pyziół, *Swoboda działalności gospodarczej. Studium prawne*, Kraków 1994, p. 30–32; C. Kosikowski, *Publiczne prawo gospodarcze Polski i Unii Europejskiej*, Warsaw 2010, p. 215; S. Koroluk, *Cechy działalności gospodarczej w świetle ustawy o swobodzie działalności gospodarczej* [in:] A. Powałowski, S. Koroluk, *Podjęmowanie działalności gospodarczej w świetle regulacji prawnych*, Bydgoszcz–Gdańsk 2005, p. 33; resolution of the Supreme Court of 30.11.1992, III CZP 134/92, OSNCP 1993, no. 5, item 79.

8 Journal of Laws of 2021, item 162, as amended (hereinafter referred to as the AEL).

9 T. Miłułka, M. Warchoń, *Ustawa – Prawo przedsiębiorców* [in:] *Konstytucja biznesu*, ed. A. Borkowski, addendum to *Dziennik Gazeta Prawna*, Warsaw 2018, p. 17; judgments of the Supreme Administrative Court of 20.09.2007, II FSK 1028/06, LEX no. 377519; of 16.11.2006, II FSK 1375/05, LEX no. 291825, and judgments of the Voivodeship Administrative Court in Kraków of 24.06.2008, I SA/Kr 671/07; Voivodeship Administrative Court in Warsaw of 29.10.2008, III SA/Wa 962/08, Voivodeship Administrative Court in Kielce of 11.03.2010, I SA/Ke 131/10, and Voivodeship Administrative Court in Gdańsk of 27.01.2016, I SA/Gd 1725/15<sup>9</sup> (judgment of the Voivodeship Administrative Court in Wrocław of 4.08.2016, I SA/Wr 483/16, LEX no. 2100254).

10 See: Article 43.1 of the AEL.

11 See: Article 43.2 of the AEL.

should be understood as a temporary stoppage of the entrepreneur's business activities.<sup>12</sup> This is because, as indicated in the AEL, an entrepreneur who does not employ workers may suspend his/her business operations.<sup>13</sup> This right can also be exercised by an entrepreneur who employs only workers on maternity or parental leave.<sup>14</sup>

Business activities may be suspended for an indefinite or fixed period, however, not for less than 30 days.<sup>15</sup> There is also no restriction on the possibility of suspending business operations before the date of application. The period of suspension begins from the date indicated in the application to enter information on the suspension of business activities and continues until the date indicated in this application or in the application for the resumption of business activities, or until the date of establishment of the successor administration.<sup>16</sup>

An entrepreneur who suspends business activities has a special status. On the one hand, during the period of suspension, he/she cannot conduct business activities or earn current income on this account, while on the other hand, he/she retains a number of rights. In particular, such an entrepreneur: may perform all activities necessary to preserve or secure the source of income, including termination of previously concluded contracts; may accept receivables and is obliged to settle liabilities that arose before the date of suspension of business activities; may dispose of his/her own fixed assets and equipment; has the right or obligation to participate in court proceedings, tax proceedings, and administrative proceedings related to business activities performed before the date of suspension; fulfill all obligations prescribed by law; may generate financial income, also from business activities carried out prior to the date of suspension; may be subject to inspection in accordance with the rules provided for entrepreneurs conducting business activities; may appoint or dismiss a successor administrator.<sup>17</sup> This is because the suspension of business activities formally means, as pointed out in case law, the continued existence of the enterprise.<sup>18</sup>

The suspension of business activities carried out in the form of a law firm of attorney-at-law is temporary. Its aim is only to temporarily cease activities and – though it is not excluded that the suspension will result in the termination of such activities and removal from the register of entrepreneurs – indicates that in the future the activities in question will be resumed.<sup>19</sup>

12 A. Powałowski, *Zawieszenie wykonywania działalności gospodarczej* [in:] *Leksykon prawa gospodarczego publicznego*, ed. A. Powałowski, Warsaw 2015, p. 376.

13 See: Article 22.1 of the AEL.

14 See: Article 22.2 of the AEL.

15 See: Article 23.1 of the AEL.

16 See: Article 24.2 of the AEL.

17 See: A. Piszcz, *Zawieszenie i wznowienie wykonywania działalności gospodarczej*, "Przegląd Ustawodawstwa Gospodarczego" 2009, no. 10, p. 27–32; M.A. Waligórski, *Prawo przedsiębiorcy do zawieszania i wznowiania wykonywania działalności gospodarczej*, "Przegląd Ustawodawstwa Gospodarczego" 2009, no. 8, p. 2–10.

18 See: judgment of the Voivodeship Administrative Court in Poznań of 25.05.2017, III SA/Po 150/17, LEX no. 2306735.

19 See: A. Powałowski, *Ocena regulacji prawnej zawieszenia wykonywania działalności gospodarczej*, "Gdańskie Studia Prawnicze" 2010, no. 2, p. 339–348.

### 3. Non-taking up of or resignation from employment or other gainful activity as a prerequisite for determining the right to a benefit for a caregiver of a person with disabilities

Currently, there are three types of benefits for caregivers of people with disability certificates. The provisions of the Act of 23 November 2003 on family benefits<sup>20</sup> include two types of such benefits, namely: nursing benefit and special care allowance,<sup>21</sup> while the Act on establishment and payment of caregiver benefits provides for the caregiver allowances.

The first of the benefits intended for caregivers, namely the nursing benefit, was introduced by the legislator in order to provide material support to persons resigning from professional activity and taking care of persons with disabilities, and the regulation in this regard is included in Article 17 of the AFB. In connection with the need to adapt systemic solutions to social needs and the state's financial capabilities, this regulation – by the provisions of the Act of 7 December 2012 amending the Act on family benefits and certain other acts<sup>22</sup> – was significantly amended as of 1 January 2013 by indicating that the benefit in question is due only if the disability of the person requiring care occurred no later than by 18 years of age or during education at school or higher school, however, by no later than 25 years of age.<sup>23</sup> As of 1 January 2013, provisions of the aforementioned act also introduced a new type of care benefit,<sup>24</sup> i.e. special care allowance, and at the same time established a transitional period entitling persons who acquired the right to a care benefit on the basis of regulations in force before 1 January 2013, to receive it for a period of 6 months from the date of its entry into force, i.e., until 30 June 2013.<sup>25</sup> After that date, decisions granting the right to the nursing benefit, issued on the basis of the regulations in force before 1 January 2013, were to expire by virtue of law.<sup>26</sup> The Constitutional Tribunal found the regulations of the Act amending the AFB 2012 as incompatible with the Constitution of the Republic of Poland. The Tribunal pointed to the necessity of restoring the right to the nursing benefit to those who lost it as of 1 July

<sup>20</sup> Journal of Laws of 2022, item 615, as amended (hereinafter referred to as the AFB).

<sup>21</sup> See: Article 2.2 of the AFB. The legislator further distinguishes another type of care benefit, and that is the nursing allowance, but this is a benefit related to the person of the recipient and granted in order to partially cover expenses arising from the need to provide care and assistance of another person in connection with inability to live independently (more on the nursing allowance, see A. Kawecka [in:] K. Małysa-Sulińska, A. Kawecka, J. Sapeta, *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małysa-Sulińska, Warsaw 2015, p. 241 et seq.).

<sup>22</sup> Journal of Laws, item 1548, as amended (hereinafter referred to as the Act amending the AFB 2012).

<sup>23</sup> See: Article 17.1.b of the AFB. It should be noted at the same time that – by the judgment of the Constitutional Tribunal of 21 October 2014, ref. no. K 38/13 – this provision, insofar as it differentiates the right to the nursing benefit for persons taking care of a person with disabilities after the age specified in this provision due to the moment when the disability occurred, was found to be incompatible with Article 32.1 of the Polish Constitution.

<sup>24</sup> Until the end of 2012, Article 2 point 2 of the AFB distinguished between two types of care benefits, namely: nursing allowance and nursing benefit.

<sup>25</sup> See: Article 11.1 of the Act amending the AFB 2012.

<sup>26</sup> See: Article 11.3 of the Act amending the AFB 2012.

2013.<sup>27</sup> As a consequence of the above,<sup>28</sup> the caregiver's allowance was introduced by the Act of 4 April 2014 on the establishment and payment of caregiver benefits, i.e., a new benefit available to persons who lost the right to the caregiver benefit as of the end of the first half of 2013 due to the expiration of the decision granting this right under the law.

In view of the above, it should be pointed out that, in accordance with the current regulations in this area, all the indicated benefits can be granted to the caregiver of a person with disabilities who, in connection with the care taken of a person having a certificate of significant disability or a certificate of disability including indications for: the need for permanent or long-term care or assistance of another person in connection with a significantly limited ability to lead an independent life, and the need for permanent co-participation on a daily basis of the child's caregiver in the process of treatment, rehabilitation, and education, does not take up employment or other gainful activity, or resigns from employment or other gainful activity.<sup>29</sup>

It should be noted that the nursing benefit may be granted, in the absence of negative premises for its determination,<sup>30</sup> to the mother or father, to the child's actual guardian, to a person who is a related foster family within the meaning of the Act of 9 June 2011 on the family support and the system of foster care,<sup>31</sup> to another person who, in accordance with the provisions of the Act of 25 February 1964 – Family and guardianship code,<sup>32</sup> is under an alimony obligation, with the exception of persons with a significant degree of disability.<sup>33</sup> The legislator's assumption was that the granting of the right to nursing benefit as of 1 January 2013 was to be determined by the moment when the disability of the person requiring care occurred, which, as already mentioned above, the Constitutional Tribunal found to be incompatible with the Constitution of the Republic of Poland, and at the same time not conditional upon family income.<sup>34</sup> In addition, the legislator

27 See: judgment of the Constitutional Tribunal of 5 December 2013, K 27/13, Journal of Laws, item 1557, in which provisions of Article 11.1 and 11.3 of the Act amending the AFB 2012 were found to be incompatible with Article 2 of the Polish Constitution.

28 Journal of Laws, item 567 (hereinafter referred to as the ACB).

29 It should be noted in this regard that arguments are put forward that making the decision on the granting of a benefit to a caregiver of a person with disabilities conditional on the caregiver's not taking up or giving up employment or other gainful activity is groundless (see the legislative initiative of the Senate of the Tenth Term regarding the draft act amending the Act on family benefits, print no. 273, <https://www.senat.gov.pl/prace/druki/record,11138.html>).

30 Negative prerequisites for determining the right to a special care allowance are set forth in Article 17.5 of the AFB (see: A. Kawecka, K. Małysa-Sulińska [in:] *Ustawa o świadczeniach rodzinnych. Komentarz*, K. Małysa-Sulińska, Warsaw 2015, p. 281 et seq.; B. Chłudziński [in:] *Świadczenia rodzinne. Komentarz*, P. Rączka, Warsaw 2021, p. 438 et seq.).

31 Journal of Laws of 2022, item 447 (hereinafter referred to as the AFS).

32 Journal of Laws of 2012, item 788, as amended (hereinafter referred to as the FGC).

33 See: Article 17.1 of the AFB. See also: Article 17.1a of the AFB, in which prerequisites for granting a nursing benefit to persons other than those related in the first degree to the person in need of care are listed (see A. Kawecka, K. Małysa-Sulińska [in:] *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małysa-Sulińska, Warsaw 2015, p. 272 et seq.).

34 More on the nursing benefit, see A. Kawecka, K. Małysa-Sulińska [in:] K. Małysa-Sulińska, A. Kawecka, J. Sapeta, *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małysa-Sulińska, Warsaw 2015, p. 269 et seq.

established the amount of this benefit at a significantly higher amount than other care benefits. Currently, the nursing benefit amounts to PLN 2119.00 per month<sup>35</sup> and is subject to annual valorization.<sup>36</sup>

On the other hand, the special caregiver allowance is available, in the absence of negative prerequisites for its granting,<sup>37</sup> either to a person who, according to the provisions of the FGC, is under an alimony obligation or to the spouse of a person with disabilities.<sup>38</sup> Granting of the benefit in question, in the amount of PLN 620.00 per month,<sup>39</sup> depends – unlike in the case of the nursing benefit – on the amount of income<sup>40</sup> calculated jointly for the family of the person providing care and the family of the person requiring care.<sup>41</sup>

The caregiver allowance is granted to a person who, due to the expiration, by virtue of law, of the decision granting the right to the caregiver benefit, lost the right to the benefit in question as of 1 July 2013,<sup>42</sup> and who met the prerequisites for receiving it as set forth in the AFB in the wording effective on 31 December 2012.<sup>43</sup> Furthermore, if the caregiver of a person with disabilities is a farmer, farmer's spouse, or farmer's household member within the meaning of the provisions of the Act of 20 December 1990 on the social insurance of farmers,<sup>44</sup> the benefit in question is granted if they cease to run a farm or work on a farm,<sup>45</sup>

35 See: the announcement of the Minister of Family and Social Policy of 27 October 2021 on the amount of nursing benefit in 2022, Official Gazette of 2021, item 1021.

36 Pursuant to Article 17.3a, the amount of the nursing benefit is subject to annual valorization as of 1 January and, as indicated in Article 17.3b of the AFB, the valorization consists of increasing the amount of the nursing benefit by the valorization index. The valorization index is the percentage increase in the minimum wage, as referred to in the Act of 10 October 2002 on the minimum wage (Journal of Laws of 2020, item 2207), effective as of 1 January of the year in which the valorization takes place, in relation to the minimum wage in effect on 1 January of the year preceding the year in which the valorization takes place.

37 Negative prerequisites for granting the right to the special care allowance are listed in Article 16a.8 of the AFB (see: A. Kawecka, K. Małysa-Sulińska [in:] *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małysa-Sulińska, Warsaw 2015, p. 261 et seq.; B. Chłudziński [in:] *Świadczenia rodzinne. Komentarz*, ed. P. Rączka, Warszawa 2021, p. 415 et seq.).

38 See: Article 16a.1 of the AFB (more on this, see A. Kawecka, K. Małysa-Sulińska [in:] *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małysa-Sulińska, Warsaw 2015, p. 255 et seq.).

39 See: § 1.14 of the Regulation of the Council of Ministers of 13 August 2021 on the amount of family income or learner's income constituting the basis for claiming family allowance and special caregiver allowance, the amount of family benefits, and the amount of allowance for caregivers, Journal of Laws, item 1481.

40 Pursuant to Article 16a.2 of the AFB, this income per capita may not exceed the amount referred to in Article 5.2 of the AFB, with the provisions of paragraphs 4 to 9 of this Article applied accordingly.

41 See more on the special care allowance: A. Kawecka, K. Małysa-Sulińska [in:] *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małysa-Sulińska, Warsaw 2015, p. 254 et seq.; B. Chłudziński [in:] *Świadczenia rodzinne. Komentarz*, ed. P. Rączka, Warsaw 2021, p. 400 et seq.

42 See: Article 2.1 of the ACB.

43 See: Article 2.2 of the ACB. As for Article 17.1 of the AFB in the wording effective on 31 December 2012, see K. Małysa-Sulińska, *Wygaśnięcie decyzji o przyznaniu prawa do świadczenia pielęgnacyjnego jako przesłanka ustalenia prawa do zasiłku dla opiekuna*, "Causus" 2015, no. 76, p. 40.

44 Journal of Laws of 2021, item 266, as amended.

45 See: Article 3.1 of the ACB.

and confirm it by submission of an appropriate statement.<sup>46</sup> Currently, the caregiver allowance amounts to PLN 620.00 per month,<sup>47</sup> and this amount corresponds to the amount of the special care allowance.<sup>48</sup>

#### 4. Suspension of business activities conducted in the form of a law firm of attorney-at-law and the possibility of receiving the benefit for the caregiver of a person with disabilities

The above-mentioned benefits for the caregiver of a person with disabilities, as already indicated above, depend upon not taking up or giving up employment or other gainful activity. By design, these benefits have the nature of compensation for the person who, in connection with the care taken of a person having a certificate of significant disability or a certificate of disability including indications for: the need for permanent or long-term care or assistance of another person in connection with significantly limited ability to lead an independent life, and the need for permanent co-participation on a daily basis of the child's caregiver in the process of treatment, rehabilitation, and education, resigns from the professional activity. Thus, it seems indisputable that there should be a cause-and-effect relationship between resigning from the professional activity and taking care of a person with disabilities.<sup>49</sup>

With the above in mind, it should be pointed out that, according to the definition contained in Article 3 point 22 of the AFB, employment or other gainful activity should be understood as, *inter alia*, conducting non-agricultural business operations, and, as indicated above, professional activities of attorneys-at-law carried out in the form of a law firm, should also be seen as such. The question that needs to be answered, therefore, is whether suspension by the attorney-at-law of the business run as a law firm can be considered as meeting the prerequisite for giving the right to the benefit to a caregiver of a person with disabilities. Two opposing views are presented in this regard. According to the first one, the concept of resignation from employment or other gainful activity should be interpreted strictly, because it involves specific legal relations, not factual

<sup>46</sup> Pursuant to Article 3.2 of the ACB, cessation of running a farm or working on a farm is confirmed by an appropriate statement made under penalty of criminal liability for making false statements. The person submitting the statement is obliged to include the following clause: "I am aware of the criminal liability for making a false statement." This clause replaces the authority's instruction on criminal liability for making false statements.

<sup>47</sup> See: § 1.14 of the Regulation of the Council of Ministers of 13 August 2021 on the amount of family income or learner's income constituting the basis for claiming family allowance and special caregiver allowance, the amount of family benefits, and the amount of allowance for caregivers, *Journal of Laws*, item 1481.

<sup>48</sup> More on the caregiver allowance, see: K. Małyśa-Sulińska, *Wygaśnięcie decyzji o przyznaniu prawa do świadczenia pielęgnacyjnego jako przesłanka ustalenia prawa do zasiłku dla opiekuna*, "Casus" 2015, no. 76, p. 36 et seq.

<sup>49</sup> See: A. Kawecka, K. Małyśa-Sulińska [in:] *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małyśa-Sulińska, Warsaw 2015, p. 256–257.



circumstances. When justifying this position, it is argued that a person who merely suspended business activities without deleting his/her entry from the relevant register does not meet the condition of resignation from employment or other gainful activity since he/she continues to be an entrepreneur, submits returns, fulfills the obligations related to the business operations up to the date of the suspension, despite the fact that he/she does not provide his/her services and does not receive remuneration on this account.<sup>50</sup>

According to the second position, suspension of business activities meets the condition of resignation from employment or other gainful activity. In support of this position, it is pointed out that, according to Article 25.1 of AEL, during the period of suspension of business activities the entrepreneur may not carry out business operations and earn current income from non-agricultural business activity. Therefore, as indicated in the case law of the administrative courts, suspension of business activities should be considered a *de facto* abandonment of their performance.<sup>51</sup>

With the above in mind, it should be noted that an attorney-at-law who suspends his/her business activities in the form of a law firm does not lose the right to practice the profession, as this requires submission of a separate application to the competent bar association of attorneys-at-law for deletion from the list of attorneys-at-law.<sup>52</sup> In our opinion, however, this is not a circumstance that would contradict the possibility of considering that the suspension of activities conducted in the form of a law firm of attorney-at-law

<sup>50</sup> See: the position of the local government board of appeals presented, *inter alia*, in the judgment of the Voivodeship Administrative Court in Gliwice of 10 September 2021, II SA/Gl 569/21, LEX no. 3225838, or in the judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 2 September 2021, II SA/Go 568/21, LEX no. 3225411. It is additionally worth pointing out that arguments for this view are also provided by an assessment of the fulfillment of the premise consisting in the resignation from employment under a contract of employment. The Supreme Administrative Court pointed out that systemic considerations do not provide grounds for assuming that the legislator intended to equate the loss of income from employment with the resignation from work. This is contradicted by the fact that the law knows the concept of the income loss. In particular, it is the loss of income caused by becoming eligible for parental leave, and this situation is not the same as the loss of employment or other gainful activity. As regards the interpretation of Article 3.22 of the AFB, the Supreme Administrative Court stressed that the definition of employment or other gainful work serves to define the legal basis on which work can be performed and links the defined concept to certain legal relations, not factual circumstances, in particular to the actual performance of professional activities, provision of services, or the actual conduct of business activity (see judgment of the Supreme Administrative Court of 10 August 2020, I OSK 467/20, LEX no. 3046201).

<sup>51</sup> See: judgment of the Voivodeship Administrative Court in Warsaw of 27 September 2012, I SA/Wa 1596/12, LEX no. 1232715; judgment of the Voivodeship Administrative Court in Warsaw of 27 February 2019, I SA/Wa 2234/18, LEX no. 3012798; judgment of the Voivodeship Administrative Court in Gliwice of 10 July 2021, II Sa /I 569/21, LEX no. 3225838; judgment of the Voivodeship Administrative Court in Łódź of 29 January 2021, II SA/Łd 337/20, LEX no. 3121137. See also: A. Kawecka, K. Małysa-Sulińska [in:] *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małysa-Sulińska, Warsaw 2015, p. 279.

<sup>52</sup> Deletion from the list of attorneys-at-law – in accordance with Article 29 of the AAL – may also take place in the event of even partial limitation of the legal capacity, loss of public rights by virtue of a court judgment, failure to pay membership fees for more than one year, death of an attorney-at-law, a disciplinary ruling, or a court judgment on deprivation of the right to practice as an attorney-at-law. The council of the district bar association of attorneys-at-law – as set forth in Article 29<sup>1</sup> of the AAL – adopts a resolution on deletion from the list of attorneys-at-law within 30 days of becoming aware of the occurrence of an event justifying this action.

meets the prerequisite of resignation from employment or other gainful activity. This view is supported by several arguments. First of all, it is important to once again note the goal of the care benefits in question, which is to provide material support to persons who give up work in order to take care of persons with disabilities. Thus, the benefits cited above are intended to replace income from gainful activity that the caregiver cannot undertake. Thus, they are compensation for the loss of earning capacity and support for those who take on the fulfillment of the obligations incumbent on the state at the expense of their own opportunities for professional activity.<sup>53</sup> A person who suspends his/her business is in such a situation, that is, he/she loses his/her earning capacity. Thus, suspension of the business activity should be considered as its de facto abandonment. In fact, such a suspension, as indicated in the literature, should be regarded as a break in the conduct of business activity, which was forced by circumstances that prevented it from being conducted in an organized and continuous manner for the achievement of a profit-making goal.<sup>54</sup>

Thus, bearing in mind, in particular, that during the suspension of activities performed in the form of a law firm, the attorney-at-law, though he/she may carry out certain activities typical of an entrepreneur, does not carry out professional activities and does not receive income on this account, it should then be assumed that the prerequisite of resignation from employment or other gainful activity, which determines the possibility of receiving the above-mentioned benefits for the caregiver of a person with disabilities, has been met. At the same time, a caveat should be made that an attorney-at-law who suspends business activities conducted in the form of a law firm is obliged to cease any other gainful activity.

The principle of equality before the law, enshrined in Article 32.1 of the Polish Constitution, also supports the assumption that the suspension of business activities meets the prerequisite for the possibility of receiving the above benefits for the caregiver of a person with disabilities. The Constitutional Tribunal repeatedly argued in its case law that the principle of equality means that all subjects of law (addressees of legal norms), characterized by a given essential (relevant) feature to an equal degree, are to be treated equally, i.e., according to an equal measure, without distinctions that can be both discriminating and favoring.<sup>55</sup> Given the lack of income, an attorney-at-law who suspends

53 See: A. Kawecka, K. Małyśa-Sulińska [in:] *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małyśa-Sulińska, Warsaw 2015, p. 270; B. Chłudziński, *Świadczenia rodzinne. Komentarz*, Warsaw 2021, p. 423. See also: judgment of the Voivodeship Administrative Court in Wrocław of 9.01.2020, IV SA/Wr 445/19, LEX no. 3010895; judgment of the Voivodeship Administrative Court in Łódź of 17.01.2019, II SA/Łd 1058/18, LEX no. 2619142; judgment of the Voivodeship Administrative Court in Białystok of 19.02.2019, II SA/Bk 820/18, LEX no. 2636594; judgment of the Voivodeship Administrative Court in Gliwice of 25.11.2019, II SA/Gl 970/19, LEX no. 2761325.

54 M. Waliński, *Prawo przedsiębiorcy do zawieszania i wznawiania wykonywania działalności gospodarczej*, "Przegląd Ustawodawstwa Gospodarczego" 2009, no. 8.2, Teza nr 1.

55 See: judgment of the Constitutional Tribunal of 9 March 1988, ref. no. U 7/87, OTK 1988, no. 1, item 1. See also: judgment of the Constitutional Tribunal of 6 May 1998, ref. no. K 37/97, OTK 1998, no. 3, item 33; judgment of the Constitutional Tribunal of 20 October 1998, ref. no. K 7/98, OTK 1998, no. 6, item 96; judgment of the Constitutional Tribunal of 17 May 1999, ref. no. P 6/98, OTK 1999, no. 4, item 76; judgment of the Constitutional Tribunal of 4 January 2000, ref. no. K 18/99, OTK 2000, no. 1,

his/her law firm activities finds himself/herself in an identical situation as the entity terminating such activities. Therefore, compensation for the lost earnings is, as already stated above, the *ratio legis* for the determination of the above-mentioned benefits for the caregiver of a person with disabilities. Thus, there is no justification for treating the situations described above differently.

The jurisprudence also argues that a broad understanding of the provisions governing granting of the benefits to caregivers of persons with disabilities is supported by a pro-constitutional interpretation. It should be assumed that the principle of social justice (Article 2 of the Constitution of the Republic of Poland) and the principle of the obligation to provide special assistance to families in a difficult material and social situation (Article 71.1, second sentence of the Constitution of the Republic of Poland) and persons with disabilities (Article 69 of the Constitution of the Republic of Poland) dictate that the provisions governing the granting of these benefits be interpreted so as to support those who undertake to take care of persons with disabilities and, consequently, to not adopt a formalistic understanding of the premise of giving up employment or other gainful activity as a prerequisite for obtaining the analyzed benefits.<sup>56</sup>

## 5. Summary and conclusions

The analysis of the regulations cited above shows that the suspension of professional activities conducted by an attorney-at-law in the form of a law firm meets the premise of resignation from employment or other gainful activity. Thus, if such a person does not engage in other employment or gainful activity, then – subject to the fulfillment of the other statutory prerequisites – it is possible to grant him/her one of the above-described benefits for the caregiver of a person with disabilities. During suspension of the professional activities carried out in the form of a law firm, an attorney-at-law does not carry out professional activities and does not earn income on this account, and the very nature of benefits for caregivers of persons with disabilities boils down to compensation for earnings lost in connection with the care. Therefore, in the context of verifying the premise of resignation from employment or other gainful activity, it is irrelevant that during the suspension of activities conducted in the form of a law firm, an attorney-at-law is obliged to undertake certain activities typical of an entrepreneur. Adoption of a different interpretation of the presented regulations is hard to reconcile with the assumptions of the system of care benefits as well as the aforementioned principles enshrined in the Constitution of the Republic of Poland.

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item. 1; judgment of the Constitutional Tribunal of 18 December 2000, ref. no. K 10/00, OTK 2000, no. 8, item 298; judgment of the Constitutional Tribunal of 21 May 2002, ref. no. K 30/01, OTK-A 2002, no. 3, item 32; judgment of the Constitutional Tribunal of 28 May 2002, ref. no. P 10/01, OTK-A 2002, no. 3, item 35; and judgment of the Constitutional Tribunal of 18 March 2014, ref. no. SK 53/12, OTK-A 2014, no. 3, item 32.

<sup>56</sup> See: judgment of the Supreme Administrative Court of 26 January 2022, I OSK 923/21, LEX no. 3322769.

## Bibliography

### Literature

- Kosikowski C., *Publiczne prawo gospodarcze Polski i Unii Europejskiej*, Warsaw 2010.
- Koroluk S., *Cechy działalności gospodarczej w świetle ustawy o swobodzie działalności gospodarczej* [in:] A. Powalowski, S. Koroluk, *Podjęmowanie działalności gospodarczej w świetle regulacji prawnych*, Bydgoszcz–Gdańsk 2005.
- Małysa-Sulińska K., *Wygaśnięcie decyzji o przyznaniu prawa do świadczenia pielęgnacyjnego jako przesłanka ustalenia prawa do zasiłku dla opiekuna*, “Casus” 2015, no. 76.
- Małysa-Sulińska K., Kawecka A., Sapeta J., *Ustawa o świadczeniach rodzinnych. Komentarz*, ed. K. Małysa-Sulińska, Warsaw 2015.
- Mihułka T., Warchoł M., *Ustawa – Prawo przedsiębiorców* [in:] *Konstytucja biznesu*, ed. A. Borkowski, addendum to “Dziennik Gazeta Prawna”, Warsaw 2018.
- Piszcz A., *Zawieszenie i wznowienie wykonywania działalności gospodarczej*, “Przegląd Ustawodawstwa Gospodarczego” 2009, no. 10.
- Powalowski A., *Ocena regulacji prawnej zawieszenia wykonywania działalności gospodarczej*, “Gdańskie Studia Prawnicze” 2010, no. 2A.
- Powalowski, *Zawieszenie wykonywania działalności gospodarczej* [in:] *Leksykon prawa gospodarczego publicznego*, ed. A. Powalowski, Warsaw 2015.
- Rączka P. (ed.), Brzezicki T., Chludziński B., Główniczewska A., Kuczyński T., Maszewski Ł., Rokicka-Murszewska K., Sylwestrzak D., Zawacka-Klonowska D., *Świadczenia rodzinne. Komentarz*, Warsaw 2021.
- Walaszek-Pyziół A., *Swoboda działalności gospodarczej. Studium prawne*, Kraków 1994.
- Waligórski M.A., *Prawo przedsiębiorcy do zawieszania i wznowiania wykonywania działalności gospodarczej*, “Przegląd Ustawodawstwa Gospodarczego” 2009, no. 8.

### Legal acts

- Act of 23 November 2003 on family benefits (Journal of Laws of 2022, item 615, as amended).
- Act of 25 February 1964 – Family and guardianship code (Journal of Laws of 2012, item 788, as amended).
- Act of 4 April 2014 on the establishment and payment of caregiver benefits (Journal of Laws of 2014, item 567).
- Act of 5 July 2002 on the provision of legal assistance by foreign lawyers in the Republic of Poland (Journal of Laws of 2020, item 823, as amended).
- Act of 6 July 1982 on attorneys-at-law (Journal of Laws of 2020, item 75, as amended).
- Act of 6 March 2018 – Entrepreneurs’ law (Journal of Laws of 2021, item 162, as amended).
- Act of 7 December 2012 amending the Act on family benefits and certain other acts (Journal of Laws of 2012, item 1548, as amended).
- Act of 9 June 2011 on the family support and foster care system (Journal of Laws of 2022, item 447).

Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, no. 78, item 483).

Regulation of the Council of Ministers of 13 August 2021 on the amount of family income or learner's income constituting the basis for claiming family allowance and special caregiver allowance, the amount of family benefits, and the amount of allowance for caregivers (Journal of Laws of 2021, item 1481).

## Judgements

Judgment of the Constitutional Tribunal of 17 May 1999, ref. no. P 6/98, OTK 1999, no. 4, item 76.

Judgment of the Constitutional Tribunal of 18 December 2000, ref. no. K 10/00, OTK 2000, no. 8, item 298.

Judgment of the Constitutional Tribunal of 18 March 2014, ref. no. SK 53/12, OTK-A 2014, no. 3, item 32.

Judgment of the Constitutional Tribunal of 20 October 1998, ref. no. K 7/98, OTK 1998, no. 6, item 96.

Judgment of the Constitutional Tribunal of 21 May 2002, ref. no. K 30/01, OTK-A 2002, no. 3, item 32.

Judgment of the Constitutional Tribunal of 21 October 2014, ref. no. K 38/13, OTK-A 2014, no. 9, item 104.

Judgment of the Constitutional Tribunal of 28 May 2002, ref. no. P 10/01, OTK-A 2002, no. 3, item 35.

Judgment of the Constitutional Tribunal of 4 January 2000, ref. no. K 18/99, OTK 2000, no. 1, item 1.

Judgment of the Constitutional Tribunal of 5 December 2013, ref. no. K 27/13, Journal of Laws, item 1557.

Judgment of the Constitutional Tribunal of 6 May 1998, ref. no. K 37/97, OTK 1998, no. 3, item 33.

Judgment of the Constitutional Tribunal of 9 March 1988, ref. no. U 7/87, OTK 1988, no. 1, item 1.

Judgment of the Supreme Administrative Court of 10 August 2020, I OSK 467/20, LEX no. 3046201.

Judgment of the Supreme Administrative Court of 16 November 2006, II FSK 1375/05, LEX no. 291825.

Judgment of the Supreme Administrative Court of 20 September 2007, II FSK 1028/06, LEX no. 377519.

Judgment of the Supreme Administrative Court of 26 January 2022, I OSK 923/21, LEX no. 332276.

Judgment of the Voivodeship Administrative Court in Białystok of 19 February 2019, II SA/Bk 820/18, LEX no. 2636594.

Judgment of the Voivodeship Administrative Court in Gdańsk of 27 January 2016, I SA/Gd 1725/15.

- Judgment of the Voivodeship Administrative Court in Gliwice of 10 November 2021, II SA/GI 569/21, LEX no. 3225838.
- Judgment of the Voivodeship Administrative Court in Gliwice of 10 September 2021, II SA/GI 569/21, LEX no. 3225838.
- Judgment of the Voivodeship Administrative Court in Gliwice of 25 November 2019, II SA/GI 970/19, LEX no. 2761325.
- Judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 2 September 2021, II SA/Go 568/21, LEX no. 3225411.
- Judgment of the Voivodeship Administrative Court in Kielce of 11 March 2010, I SA/Ke 131/10.
- Judgment of the Voivodeship Administrative Court in Kraków of 24 June 2008, I SA/Kr 671/07.
- Judgment of the Voivodeship Administrative Court in Poznań of 25 May 2017, III SA/Po 150/17, LEX no. 2306735.
- Judgment of the Voivodeship Administrative Court in Warsaw of 27 February 2019, I SA/Wa 2234/18, LEX no. 3012798.
- Judgment of the Voivodeship Administrative Court in Warsaw of 27 September 2012, I SA/Wa 1596/12, LEX no. 1232715.
- Judgment of the Voivodeship Administrative Court in Warsaw of 29 October 2008, III SA/Wa 962/08.
- Judgment of the Voivodeship Administrative Court in Wrocław of 4 August 2016, I SA/Wr 483/16, LEX no. 2100254.
- Judgment of the Voivodeship Administrative Court in Wrocław of 9 January 2020, IV SA/Wr 445/19, LEX no. 3010895.
- Judgment of the Voivodeship Administrative Court in Łódź of 17 January 2019, II SA/Łd 1058/18, LEX no. 2619142.
- Judgment of the Voivodeship Administrative Court in Łódź of 29 January 2021, II SA/Łd 337/20, LEX no. 3121137.