

Wojciech Piątek¹

Adam Mickiewicz University in Poznań
ORCID ID: 0000-0002-3494-1912

REPRESENTATION OF A PARTY BY A PROFESSIONAL COUNSEL IN ADMINISTRATIVE COURT PROCEEDINGS

ABSTRACT

The purpose of this article is to identify challenges that attorneys-at-law face in administrative court proceedings. These include the subjective scope of the obligatory representation provided by advocates or attorneys-at-law and the consequences of the professional counsel's shortcomings for the rights and obligations of the represented party as well as issues relating to the electronization of proceedings, participation of an attorney-at-law in a hearing, and the costs of legal representation. In conclusion, it has been pointed out that there is a need for a dialogue between judges and attorneys-at-law and advocates, in order to develop a more effective and argumentative way of conducting the trial and to discuss current issues that could improve the course of administrative court proceedings. Attention was also drawn to the need to introduce new forms of professional development for attorneys-at-law and the use of new technologies.

Keywords: proceedings before administrative courts, professional attorney, legal representation, costs of legal representation, electronization of proceedings.

¹ Professor Wojciech Piątek, PhD, Adam Mickiewicz University in Poznań. This paper is a part of research project no: UMO-2018/30/E/HS5/00421, financed by the National Science Centre (Poland), devoted to the appealability of administrative courts judgments.

Introduction

As we celebrate the 40th anniversary of the National Bar of Attorneys-at-Law, it is worth reflecting on the challenges that professional counsels currently face in administrative court proceedings. They concern not only the provision of professional legal services to the represented parties but also the participation of attorneys-at-law in the assessment of the legality of a specific manifestation of an act or omission of public administration made by administrative courts. Importantly, professionalism in the administration of justice is also the responsibility of all those who, through their professional knowledge and experience, are called upon to interact with and support its administration process. Undoubtedly, they include professional trial counsels, especially attorneys-at-law, who are the most numerous group of professional trial counsels appearing in administrative court proceedings.²

Bearing in mind the existing studies on the participation of professional counsels in administrative court proceedings, both theoretical³ and practical,⁴ the purpose of this article is not to discuss individual procedural issues, but to look at the mechanisms which determine the performance of the above-mentioned tasks. These include the subjective scope of the obligatory representation provided by advocates or attorneys-at-law, the consequences of the professional counsel's shortcomings for the rights and obligations of the represented party, and the challenges that professional counsels and their self-governing bodies currently face. They are a consequence, inter alia, of the progress in the electronization of administrative justice and the course of proceedings before administrative courts. Probably not without significance for the representation of the parties in court-administrative proceedings is also the remuneration paid to attorneys-at-law acting as legal representatives before courts, which has remained at a low level for several years. The main question accompanying the analysis concerns mechanisms by which participation of attorneys-at-law in administrative court proceedings would promote both the protection of the legal interests of the represented parties and the professionalization of the administration of justice. Due to the topicality and universality of the subject matter, it is hoped that the conclusions drawn from the analysis will be applicable to the participation of professional counsels in other court proceedings.

² In 2020, 6226 attorneys-at-law appeared in proceedings held before voivodeship administrative courts, a significantly higher number compared to 4407 advocates. A similar prevalence occurred in proceedings held before the Supreme Administrative Court (SAC), where there were 865 attorneys-at-law and 572 advocates. See: *Annual Report of the SAC Case Law Bureau for 2020*, Warsaw 2021, p. 13/14, 18.

³ Monographic studies in this regard are worth mentioning, including M. Grego-Hoffmann, *Rola pełnomocnika w postępowaniu sądowoadministracyjnym*, Warsaw 2012, and A. Grosińska, *Pełnomocnik profesjonalny w postępowaniu przed sądem administracyjnym*, typescript of a doctoral dissertation, Łódź 2016. See also: J. Wyporska-Frankiewicz, W. Kulig-Wyporska, *Profesjonalny pełnomocnik w ogólnym postępowaniu administracyjnym i sądowoadministracyjnym*, "Palestra" 2015, v. 7/8, R. Stankiewicz, *Przymus adwokacko-radcowski w postępowaniu przed NSA*, Termidium.pl 2019, https://www.termidium.pl/arttykul/przymus_adwokackoradcowski_w_postepowaniu_przed_naczelnym_sadem_administracyjnym-5534.html (accessed 23.2.2022).

⁴ In this matter, it is worth referring to the commentary studies, including in particular Article 175 of the Law on proceedings before administrative courts. Instead of many see H. Knysiak-Sudyka, [in:] *P.p.s.a. Komentarz*, ed. T. Woś, Warsaw 2016, p. 1059–1067.

Material scope of the obligatory representation provided by advocates or attorneys-at-law

When the shape of the two-instance administrative judiciary was under discussion, the introduction of the obligatory representation provided by advocates or attorneys-at-law was taken for granted.⁵ The adopted solution is provided for in Article 175 of the Law on proceedings before administrative courts,⁶ which limits the obligation to draw up a cassation appeal. The legislator referred to this provision four times in the context of drawing up a complaint against a decision of the court of the first instance on the rejection of a cassation appeal,⁷ an action for the reopening of proceedings when the SAC is competent to examine it,⁸ as well as drawing up action for declaring non-compliance of a final judgment with the law.⁹ Article 175 of the Law on proceedings before administrative courts has not changed significantly since it came into force.¹⁰

In the author's opinion, over a dozen years of obligatory legal representation in an unchanged form proves the right balance of goods when designing this solution. The obligation, due to the fact that it limits the parties' ability to independently take procedural actions, is an exception to the general rule expressed in Article 32 of the LPAC, according to which it is the parties to proceedings who have the choice of appearing before an administrative court, either in person or through a counsel. At the same time, this procedure is indispensable in situations where the complexity of a given procedural action is so high that an average citizen would not be able to cope with it. In other words, a lack of support by a professional entity would expose a party to adverse consequences in the field of that party's rights and obligations.¹¹ We are dealing with such a situation in the case of drawing up a cassation appeal, whose constituent elements are provided for in Article 176 of the LPAC. This obligation undoubtedly limits the parties' freedom to take procedural actions. In reality, however, it is in their interest because it protects the parties from serious consequences resulting from improperly taken complex legal actions.

5 R. Hauser, *Reforma sądownictwa administracyjnego – podstawowe założenia*, "Przegląd Podatkowy" 2003, v. 10, p. 56. See also: H. Knysiak-Molczyk, *Skarga kasacyjna w postępowaniu sadowoadministracyjnym*, Warsaw 2009, p. 171–172. See otherwise: T. Szewc, *Konstytucyjność skargi kasacyjnej w postępowaniu sadowoadministracyjnym*, "Przegląd Sejmowy" 2008, p. 26.

6 Act of 30 August 2002 Law on proceedings before administrative courts, Journal of Laws of 2022, item 329, as amended, hereinafter referred to as the LPAC.

7 Article 194 § 4 of the LPAC.

8 Article 276 of the LPAC.

9 Article 285f § 3 of the LPAC.

10 Noteworthy is the addition to Article 175 of the LPAC of a new § 2a, which extends the exception from the obligatory representation provided by advocates or attorneys-at-law to cases in which the President of the State Treasury Solicitor's Office of the Republic of Poland is a party to the proceedings, as well as when actions in the proceedings are taken by the State Treasury Solicitor's Office of the Republic of Poland on behalf of public administration bodies. This provision was added to Article 175 of the LPAC pursuant to Article 1 point 2 letter b of the Act of 8 June 2017 amending the Act – Law on proceedings before administrative courts, Journal of Laws of 2017, item 1370.

11 Besides, as noted by J.P. Tarno, the obligatory professional representation is a barrier to litigious men as it increases litigation costs. See: J.P. Tarno, *Pełnomocnictwo w postępowaniu sadowoadministracyjnym*, [in:] *Ius et lex. Księga jubileuszowa Profesora Andrzeja Kabata*, Olsztyn 2004, p. 405.

When drawing up a cassation appeal, it is of utmost importance to rely upon cassation grounds which, by virtue of Article 183 § 1 *ab initio* of the LPAC, are binding upon the Supreme Administrative Court when examining the case. The court may not take into account any other pleas than those raised in the cassation appeal.¹² Their inaccuracy and imprecision translate directly to the results of the instance control. Importantly, the obligation to provide professional representation applies to both parties to the proceedings and all its participants, thus manifesting the principle of equality of parties.

The obligatory professional representation should not be extended to other procedural actions of the parties during the proceedings, including neither the filing of the appeal nor representation of the party in the proceedings before the Supreme Administrative Court. Such a requirement at the very beginning of the proceedings would quite significantly limit the party's access to judicial verification of a specific manifestation of an act or omission by the public administration. Certainly, it would create an opportunity to raise formal requirements for initiating such proceedings and release administrative courts from the obligation to make a comprehensive assessment of the legality of the challenged manifestation of an act or omission by a public administration body. Nevertheless, a procedure consisting in making judicial reviews dependent on the content of allegations formulated in the appeal could lead to the weakening of one of the basic functions performed by administrative courts, which is the protection of the objective legal order.¹³ In turn, the current mechanism of binding the first-instance court with the boundaries of the case would not relieve the administrative court from a comprehensive analysis of the case as a whole, thus not creating the potential to streamline the pending proceedings. In other words, the mere drawing up of the appeal by a professional, which would likely translate into fewer formal defects and greater precision of this legal remedy, would be beneficial.¹⁴ The author believes this effect would not be proportionate to the limitation of an individual's access to judicial protection against unlawful actions by the public administration.

It is the author's belief that the obligatory representation should not be extended to all proceedings held before the Supreme Administrative Court. If pursuant to Article 183 § 1 of the LPAC, the court remains bound by the grounds of the filed appeal, the course

¹² An exception in this matter is the grounds for invalidity of administrative court proceedings laid down in Article 183 § 2 of the LPAC. See also: the resolution of the Supreme Administrative Court of 7.12.2009, ref. no. I OPS 9/09, ONSAiWSA 2010/2/16, in which the SAC ruled that it is always necessary to take into account the judgment of the Constitutional Tribunal issued after a cassation appeal has been filed if the Tribunal ruled on the unconstitutionality of the normative act on the basis of which the decision being appealed against was issued. In turn, in its resolution of 8.12.2009, ref. no. II GPS 5/09, ONSAiWSA 2010/3/40, the Supreme Administrative Court stated that it is necessary each time to take into account the prerequisite for rejection of an appeal.

¹³ More on the functions of the administrative judiciary, see J.P. Tarno, [in:] J.P. Tarno, E. Frankiewicz, M. Sieniuc, M. Szewczyk, J. Wyporska, *Sądowa kontrola administracji. Podręcznik akademicki*, Warsaw 2006, p. 24–30.

¹⁴ Since an appeal is filed with an administrative court through the agency of the body which issued the challenged act, the obligation to determine the subject matter of the appeal lies first with the authority which, pursuant to Art. 54 § 2 of the LPAC, should forward the appeal along with the response to it and files of the case to the court. However, it does not mean that it is not the duty of the court to review findings made by the authority.

of the proceedings is of no key importance for the final decision in the case taken by the Supreme Administrative Court. Yes, it is a manifestation of the principle of internal and external openness of the judicial process, which in a country with a low level of confidence in public institutions, including the judiciary, plays a significant role.¹⁵ Besides, extending this obligation to the entire proceedings before the Supreme Administrative Court would not be conducive to the protection of this confidence, since individual subjects would not have the opportunity to present their own position before the SAC, including their own feelings and emotions.¹⁶ Contrary to appearances, direct contact with a party to the proceedings, listening to his/her arguments and observing his/her behaviour, may be relevant to making a decision in a particular case, and for this reason, they are pointed out by judges as an important background for the global evaluation of the case under examination.

At the same time, the obligatory professional representation applicable in the current shape should be maintained as it creates the basis for disputes before the highest instance in administrative court litigations to be content-related, which should ultimately foster the protection of the interests of the party filing the cassation appeal. Since judges of the Supreme Administrative Court are persons with high legal qualifications and knowledge of administrative law,¹⁷ they should work on such material in individual cases that will provide an opportunity to use their skills for the development of the practice and theory of administrative law. In order to achieve this goal, it is also necessary to involve entities that, thanks to their knowledge and experience, when drawing up a cassation appeal, will be able to engage in dialogue with the court, consisting not only of pointing out shortcomings of the court of lower instance but also in ways in which administrative law could be further developed.¹⁸ Putting it differently, and without aiming

¹⁵ Based on the results published annually by CBOS, in 2010 44% of the respondents trusted, while 45% of the respondents did not trust the courts. 12% of respondents were undecided. See: R. Boguszewski, "Zaufanie społeczne. Komunikat z badań" 2010, Nr BS/29/2010, https://www.cbos.pl/SPISKOM.POL/2010/K_029_10.PDF (accessed 23.2.2022). In 2016, the level of confidence in the judiciary in Poland oscillated at 45%. See: M. Omyła-Rudzka, "Zaufanie społeczne. Komunikat z badań" 2016, Nr 18, https://www.cbos.pl/SPISKOM.POL/2016/K_018_16.PDF (accessed 23.2.2022). In 2020, the level of trust in the judiciary oscillated at 42%, and the level of distrust in the judiciary – at 45%. See: M. Omyła-Rudzka, "Zaufanie społeczne. Komunikat z badań" 2020, Nr 43, https://www.cbos.pl/SPISKOM.POL/2020/K_043_20.PDF (accessed 23.2.2022).

¹⁶ It is true, as S. Mateja pointed out, that the obligatory professional representation "fences the court off from direct contact with the interested parties themselves". See: S. Mateja, *Uwagi krytyczne o przymusie adwokackim*, "Głos Sądownictwa" 1933, v. 3, p. 214. This observation confirms the unique nature of the obligatory representation provided by advocates or attorneys-at-law.

¹⁷ This is evidenced by the wording of Articles 6 to 7 of the Act of 25 July 2002 – Law on the system of administrative courts, Journal of Laws of 2021, item 137, as amended.

¹⁸ As noted by R. Stankiewicz, the standard of professionalism of an attorney-at-law is based on the assumption that he/she will fulfill his/her duty in a professional manner thanks to the proper professional preparation, experience, and principles of professional ethics. See: R. Stankiewicz, *Przymus adwokacko-radcowski...* Similarly, R. Hauser, J. Drachal, and E. Mzyk stressed that the main reason for the introduction of the obligatory representation provided by advocates or attorneys-at-law was to guarantee a high level of legal services. See: R. Hauser, J. Drachal, E. Mzyk, *Dwuinstancyjne sądownictwo administracyjne. Omówienie podstawowych zasad i instytucji procesowych*, Warsaw–Zielona Góra 2003, p. 114–115.

to absolutize either the position of the SAC judges or the skills of professional trial counsels, both these professional groups should be required to make progress in interpreting the law, to discover new, effective forms of protecting individuals from unlawful actions by the public administration, and to determine ways it should pursue in order to fully implement the rule of law. For all this, a substantive reflection on the current legal regulations is needed, which can be given by those who are familiar with it and have the proper conditions for action.

Effect of professional shortcomings of counsels on the legal situation of the represented party

Looking back to the recent history of court rulings, it can be said that representation by a professional trial counsel was sometimes perceived only in terms of benefits, excluding the possibility of a negative impact on the rights of the represented party, which was justified by the very essence of the role performed by the counsel.¹⁹ From the outset, the author was opposed to such a position, seeing no reason why the represented party should not bear all sorts of consequences associated with the decision on how to participate in the administrative court proceedings and a particular professional counsel.²⁰ Adopting a contrary view would distort the essence of representation, which boils down to the actions taken by a third party for and on behalf of the represented entity.²¹ In each case, the choice of counsel is an expression of the trust that the principal places in his/her representative. A consequence of this relationship is that the party agrees to all kinds of consequences that may arise from entrusting the conduct of affairs to another person. Adopting the opposite view would raise numerous detailed questions relating to the type of the counsel's errors which the party should not be burdened with, how such errors should be remedied, the procedural situation of parties not represented by a professional counsel or represented by a non-professional entity and, last but not least, how the position of such a party compares to the protections afforded to a party represented by a professional counsel.

Separate consideration should be given to the creation of mechanisms that would protect individual parties from choosing a counsel who by his/her conduct could cause more harm than good in the legal sphere of the represented party. This task, both in

¹⁹ In the judgment of 8.4.2014, ref. no. SK 22/11, the Constitutional Tribunal ruled that in Article 175 of the LPAC, the legislator set a trap for citizens by subjecting the cassation appeal in administrative court proceedings to the obligatory representation provided by advocates or attorneys-at-law and burdening them with the consequences of their shortcomings. According to the Constitutional Tribunal, such a solution cannot be defended in the context of the principle of trust in the state and the law created by it.

²⁰ W. Piątek, *Gloss to the judgment of the CT of 8.4.2014, ref. no. SK 22/11, "Zeszyty Naukowe Sądownictwa Administracyjnego"* 2014, v. 4, p. 177–178.

²¹ As noted by M. Grego, the theory of representation assumes that the actions of a counsel are the actions of a party. Thus, even unethical conduct of a counsel is effective in the administrative court proceedings in which he/she represents a party. See: M. Grego-Hoffmann, *Rola pełnomocnika w postępowaniu sądowoadministracyjnym*, Warsaw 2012, p. 251.

a positive and negative context, rests inter alia with the bodies of the National Bar of Attorneys-at-Law. It is worth noting that a few years ago, a demand was formulated to establish a separate group of professional counsels who would be allowed to represent parties in proceedings before courts of highest instance.²² This solution is known in other jurisdictions.²³ It was not supported in Poland, as evidenced by the absence of any regulations differentiating or limiting the participation of professional counsels before the courts of highest instance or the Supreme Court. The duty to choose a counsel knowing administrative law rests with the individual. Taking into account a progressing specialization in all branches of law, above all the administrative law,²⁴ one of the characteristics of which is the lack of a general part combined with a significant diversity of specific regulations, this choice is fraught with the risk of granting a power of attorney to an attorney-at-law who has no experience of participating in disputes before administrative courts.²⁵ It seems that individuals are not always aware of the consequences of choosing a professional counsel²⁶ and there is room for action to be taken in this matter by professional self-governing bodies, which should make efforts to improve the level of knowledge of counsels in the field of administrative law²⁷ as well as react to glaring examples of improper performance of this role by individual persons.²⁸ It remains an open question as to how far attorneys-at-law could set limits of their professional specialization themselves²⁹ as well as how and by whom it should be reviewed. In my opinion, it is

²² K. Osajda, *Pełnomocnicy uprawnieni do wnoszenia kasacji i występowania przed najwyższymi organami sądowymi*, "Palestra" 2004, v. 11/12, p. 137–139.

²³ In the Polish literature, see E. Stawicka, *Uprawnienie adwokatów do uczestniczenia w cywilnych procedurach kasacyjnych w wybranych państwach europejskich*, "Palestra" 2002, v. 7/8, p. 137–138; K. Osajda, *Pełnomocnicy uprawnieni do wnoszenia kasacji i występowania przed najwyższymi organami sądowymi*, "Palestra" 2004, v. 11/12, p. 133–134.

²⁴ It is also prominent in the administrative judiciary. See more: W. Piątek, *O różnych sposobach dążenia do specjalizacji sędziów orzekających w sprawach administracyjnych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2020, v. 2, p. 63–73.

²⁵ Such a situation does not automatically entail the risk of substantively inadequate representation of a party. However, this risk is greater than in the case of a counsel who has more in-depth knowledge and experience in the area of administrative law.

²⁶ On the other hand, Article 244 § 3 of the LPAC, which in the course of proceedings for granting the right to assistance gives a party the possibility to designate by name and surname the professional counsel whom that party would like to be represented by in the proceedings before the administrative court, deserves a nod of approval. Even if such a designation is not binding on the regional bar association of the attorneys-at-law, it both rewards those parties that make the effort to be represented by a particular, non-accidental counsel and proves the good reputation of the latter.

²⁷ These sorts of activities (training, lectures, workshops) are probably being undertaken. The question is how well they serve the stated goals of increasing the level of expertise of professional counsels.

²⁸ The question worth raising here is how information about this kind of negligence comes to light, and to what extent an administrative court should be involved in this type of activity. The amendment to Article 177 of the LPAC gave an opportunity to discuss this issue. See more: R. Hauser, A. Skoczyła, W. Piątek, *Środki odwoławcze w postępowaniu sądownoadministracyjnym w świetle ustawy nowelizującej z dnia 9 kwietnia 2015 r. – analiza najistotniejszych zmian*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2015, v. 4, p. 12–14.

²⁹ P. Rojek-Socha, *Specjalizacja sposobem na konkurencję – prawnicy widzą konieczność zmian*, prawo.pl of 30.01.2020, <https://www.prawo.pl/prawnicy-sady/czy-prawnik-moze-tytulowac-sie-jako-specjalista-w-danej,497553.html> (accessed 2.3.2022).

worthwhile making efforts in this direction by providing attorneys-at-law with a clear organizational framework for specialization, while giving individual entities a clear signal and thus the right to choose a counsel proficient in a particular category of cases.

Contemporary challenges which the National Bar of Attorneys-at-Law faces in connection with the participation of attorneys-at-law in administrative court proceedings

Electronization of proceedings

Although the process of the electronization of the administrative judiciary is drawn out in time, already in the current legal situation one can easily find regulations that refer to the tasks posed to professional trial counsels.³⁰ The legislator rightly assumes these entities have the potential for greater technological progress, counting on the professionalism of their business activities. At the same time, this progress should translate into easier access to information provided by the court and improved communication between the court and the professional counsel.

The electronization of administrative court proceedings and openness of the courts to technological innovations have gained greater momentum with the outbreak of the COVID-19 pandemic. Currently, some hearings before administrative courts are held remotely³¹; the same form of a public hearing was inscribed in the LPAC.³² Step by step counsels gain access to case files held in electronic form, at all times, contact with current court case law is provided through the judgment finder.³³ However, there is still much to be done in this field because the judiciary does not keep up with global technological progress, as can already be seen in the case of many disputes, both private and public, submitted to arbitration.³⁴ Moreover, there are no detailed technical regulations governing remote hearings.

³⁰ These concern, for instance, the sphere of electronic delivery. Pursuant to Article 9.1.2 of the Act of 18 November 2020 on electronic service (Journal of Laws of 2020, item 2320), a practicing attorney-at-law is obliged to have an address for electronic service entered in the database of electronic addresses, linked to the public service of registered electronic service or qualified service of registered electronic service.

³¹ The basis for this is Article 15zszs⁴.2 and 15zszs⁴.4 of the Act of 2 March 2020 on special solutions relating to the prevention and control of COVID-19, other communicable diseases, and crisis situations caused by them (Journal of Laws of 2021, item 2095, as amended, hereinafter referred to as the Covid Act).

³² See: Article 94 § 2 of the LPAC. The indicated regulation, however, has not been synchronized with the wording of Article 15zszs⁴.2 of the Covid Act, which may lead to practical confusion in the event of a switch from the special to the general mode after the passing of one year from the cancellation of the state of epidemic.

³³ The Central Database of Administrative Court Judgments is available at orzeczenia.nsa.gov.pl. It provides broad access for citizens to almost all court decisions. In other, more technologically developed countries like Norway, work to create such instruments is still ongoing.

³⁴ One should also take into account a decreasing number of cassation appeals filed with the Supreme Administrative Court in the last two years. In 2020, the number of cassation appeals decreased by 2563

In view of the ongoing pandemic, it is worth considering whether and how representation of a party by a professional counsel should translate into increased access of the party to the court. This perspective raises specific questions regarding whether it should be incumbent upon a professional counsel to ensure the party's active participation in a remote hearing in a situation in which the party declares an intention to participate, but lacks proper technical capabilities; should the professional counsel himself/herself have the right to refuse to participate in a remote hearing, and should he/she provide the court with reasons for his/her decision? In the author's view, a professional counsel should have no choice about attending a remote hearing. Professionalism is coupled with access to court case law and other legal knowledge resources that are today available in electronic form. It is hard to assume that modern professional counsel remains excluded in this sphere. Moreover, the introduction of the counsel's duty to ensure that the represented party should be technically able to participate in the case should not automatically be rejected.³⁵ Such a solution would weaken the argument for the digital exclusion of individuals, which is usually raised when remote hearings are conducted.³⁶ A similar duty lies with courts in civil proceedings.³⁷ In turn, each court should be obliged to further develop its instruments of electronic communication with the parties and their counsels, so that all information about a pending case could be read on computer screens, e.g., by logging onto a specially created website.³⁸

Participation in the trial

One of the problems with hearings before administrative courts in Poland is their rather formal (ossified) course, which usually boils down to the parties of the trial expressing their standpoints with no wider interaction with either the court or each other. While the duty to improve this rests primarily with the court, it is worth asking how the

cases compared to 2019. In turn, in 2019 the number of filed cassation appeals decreased by 3385 cases compared to the previous year. In the author's opinion, one of the reasons for this is that the period of waiting for the appeal to be examined exceeds two years. See: *Annual Report of the SAC Case Law Bureau for 2020*, Warsaw 2021, p. 17; *Annual Report of the SAC Case Law Bureau for 2019*, Warsaw 2020, p. 17.

35 It is an open question to define the technical requirements for the implementation of this obligation, which should be done in consultation with the professional self-governments.

36 According to the data available in the Consumers Federation report, 4.51 million Poles have never used the Internet. Another 1.82 million use it occasionally. See more in: *Federacja Konsumentów. Wykluczenie cyfrowe podczas pandemii*, January 2021, p. 5.

37 Pursuant to Article 15zsz¹ of the Covid Act, at the request of a party or summoned person, filed at least 5 days before the scheduled date of a remote session, the court should provide that party or person with the opportunity to participate in the remote session in the court building, if he/she indicates in the request that he/she has no technical equipment allowing participation in the remote session outside the court building.

38 Some states have already established such systems for accessing files and all information about cases in the courts. For example, in Lithuania it is called LITEKO (*Lietuvos teismų informacinė sistema*) and can be accessed at www.e.teismas.lt. The system is financed from the state budget and is used for civil, criminal, and administrative court disputes.

participation of an attorney-at-law can help increase the level of courtroom interaction and provide the court with the information necessary to decide the case. The first answer that comes to mind is the sheer level of preparation of the professional counsel for the hearing, including not limiting himself/herself to repeating the contents of the filed pleading. It is necessary for counsel to be open to questions asked by the court, to attempt a dialogue in the courtroom, to not be afraid of presenting his/her point of view, and to not look for signs of bias in the court's behaviour without substantial reasons.³⁹ Clearly, the above comments are general and apply not only to the hearing itself but also to soft skills, including ease of contact and openness to criticism. Perhaps these kinds of abilities should be more widely developed during training conducted by attorneys-at-law who can easily relate to others and have extensive courtroom experience in this field. Lack of reflection on the conduct of the hearing may significantly limit the potential of a public court hearing, including lack of mediation and of creating a conviction among all participating parties about the substantive course of the hearing. In the author's opinion, failure to make changes in this area will result in further allegations about the lack of clarity as to the course of the hearing, and thus a low level of confidence in the judiciary.

No less important is the role of an attorney-at-law outside the courtroom, including explaining the complexities involved with participation in court proceedings to the party. The key in this field is to provide the party with a realistic assessment of the legal situation in the case, rather than conjuring up a vision of an easy win. Just as the court should strengthen the prestige of the professional counsels during the hearing by not leading to situations showing a possible (imagined?) lack of knowledge or orientation of the counsel in the case, the counsel should strengthen the prestige of the court outside the courtroom by not making the court solely responsible (guilty?) for the outcome of the proceedings. Questions that arise on this occasion relate to the training program for trainees as well as the professional training of attorneys-at-law. Do they include the issue of how to contact principals in particularly difficult situations, for example, to talk about losing a case or the lack of a realistic chance of success in an appeal against a judgment? As with the participation of an attorney-at-law in the trial, not everything should depend on his/her soft skills. They can and should be shaped throughout his/her professional career.

Costs of legal representation

Finally, it is worth mentioning the issue of the costs of legal representation in administrative court proceedings, which for many years have remained at the same low level⁴⁰ despite increasing fees linked with the practising of the profession, not to mention

³⁹ The fear of being suspected of bias is one of the primary arguments made by the judicial community in discussions about increasing the level of discourse at trial.

⁴⁰ It follows from § 14.1.1.c of the regulation of the Minister of Justice of 22 October 2015 on fees for activities of attorneys-at-law (Journal of Laws of 2018, item 265) that in cases in which the subject matter is not a monetary amount, the minimum rate in proceedings before administrative courts is only PLN 480. Pursuant to paragraph 2 of the cited § 14 of the regulation, in proceedings before the SAC, it

high inflation. All of this makes the participation of an attorney-at-law in administrative court proceedings unattractive from an economic point of view. Fees should be increased, both in the case of appointing a council of choice and under the legal assistance procedure. Their current level may negatively translate into the degree of the trial counsel's commitment during the case or even a reluctance to participate in administrative court proceedings. The work of professional counsel is undoubtedly undervalued by the legislator, and this should be quickly improved. Administrative courts also have room for action in this regard; they should make more frequent use of the possibility to award higher costs,⁴¹ particularly in those situations where the professional counsel's effort in drawing up the pleading and conducting the case is grossly disproportionate to the minimum rate.

Also worthy of note is the situation in which a counsel appointed under the legal assistance procedure took action in the case which resulted in the party's resignation from initiating administrative court proceedings. In the opinion of the author, that counsel should not be denied in advance the reimbursement of the costs of legal representation,⁴² rather each such case should be individually examined, and a distinction should certainly be made between a situation in which the counsel took no actions at all, or only apparent actions, or that were far more preliminary to substantive involvement, and a situation in which the counsel's activity was real and measurable in the form of specific conduct by the party influenced by the counsel's action.

Summary

Participation of a professional trial counsel in administrative court proceedings undoubtedly affects which how the judiciary functions *in genere*. Attorneys-at-law are part of the judicial apparatus in the broad sense of that term. Their attitude, the motions they file, and the strategies they adopt determine, to a large extent, the effectiveness of the courts' work, understood in terms of the degree of professionalism as well as efficiency and speed of proceedings.

There is a need for a dialogue between judges and attorneys-at-law and advocates on a much larger scale, in order to develop a more effective, argumentative way of conducting the trial and to discuss all current issues that could improve the course of administrative court proceedings. Such a dialogue has been successfully implemented in

is subject to a percentage reduction. This basic rate (480 PLN) set forth in § 21.1.1.c of the regulation of the Minister of Justice of 3 October 2016 on the incurring by the State Treasury of costs of unpaid legal assistance provided *ex officio* by an attorney-at-law (Journal of Laws of 2016, item 68) is only PLN 240.

⁴¹ In the regulation on the incurring by the State Treasury of costs of unpaid legal assistance provided *ex officio* by an attorney-at-law, the basis for setting the fee in the amount of up to 150% of its basic rate is § 4.2 of the regulation of 3 October 2016. In turn, § 15.3 of the regulation of 22 October 2015 on fees for activities of attorneys-at-law provides for an amount that may not exceed six times the minimum rate.

⁴² See otherwise: the decision of the Voivodeship Administrative Court in Wrocław of 6.10.2014, ref. no. I SO/Wr 15/14, CBOSA.

countries of Western culture without any suspicions of bias or other kinds of ill intentions guiding judges or professional counsels. It is about time that elements of such a dialogue, at least in the form of working meetings between representatives of the professional self-government and judges, also become normal practice in Poland.

The jubilee of the National Bar of Attorneys-at-Law, apart from being a legitimate reason to celebrate, should also be an incentive to reflect on new forms of improving the professional skills of attorneys-at-law in the field of administrative law and taking advantage of new technologies. This is the task of professional self-government for decades to come. The more it is undertaken creatively and passionately, the more the professional self-government will play the role of a standard-setting body in the area of professional legal services provided to both private entities and public administration bodies.

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