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A professional proxy in administrative court proceedings

SUMMARY

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The Republic of Poland is a democratic country that implements the rules of social justice. The idea of a lawful state requires the functioning of some legal institutions that protect the rights of an individual while any legal procedures. The judicial review of administration is an institution of that kind. According to 184. Article of the Constitution of the Republic of Poland, to extend specified by law, the Supreme Administrative Court and provincial administrative courts bear the responsibility for controlling the activities of public administration. Administrative courts serving a protective function guarantee an individual right to claim the protection of their legal interest in court by controlling the lawfulness of an administrative authority actions what is seen as a basic feature of a democratic state. The right of access to courts in matters of public administration derives from 6. Art. of European Convention on Human Rights 47. Art. of Charter of Fundamental Rights of the European Union and 45. Art. Of the Constitution of the Republic of Poland, which impose upon the State an obligation to provide instruments that make it possible to use the right practically and to establish such a judicial procedure which guarantees the suitor to fully assert its legal rights.

The procedure of administrative courts is governed by the act – Law on proceedings in administrative courts – that specifies rights and responsibilities of the parties in administrative courts proceedings as well as the rules governing those proceedings. Certain characteristic of administrative court proceedings is that there is a conflict between a party – an individual, a civilian– and state authorities which, as might be expected, are in a more advantageous position. In administrative court proceedings procedural roles of the parties are formally equalized since they appear in court on equal rights and having same procedural status. However, one cannot speak about actual equality of the parties while an individual not having any juridical knowledge and unfamiliar with court procedure is one party and a public authority the other. The assumption that a legislator should establish such conditions in which a party (plaintiff) can have not only formal but actual opportunity to defend their rights in administrative court has created the need to investigate whether the rights of the party that is not a public authority. It is a principle in administrative court proceedings that a party is allowed to come before the court in person or by proxy. As a legislator has bestowed on a party the right to appear in court by proxy including a professional one – an attorney, a solicitor, tax advisor or patent agent, a party's right to use the help of a professional proxy in

administrative court procedures in the context of effective implementation of the right to sue has become the subject of interest determining the scope of the research.

The main objective of the dissertation was to find out whether the proxy representing a party in administrative court proceedings may be regarded as a guarantee of adequate defense of the party's rights (interests) in these proceedings.

To achieve the aforementioned objective a research was carried out to answer the following questions: (1) whether the proxy representing a party in administrative court proceedings serves to reinforce the position of the party and implement the principle of equality between the parties., (2) whether the right to the assistance a professional proxy is not restricted and therefore actually works or has merely hypothetical character, (3) whether the legislator ensured that the poor have a real possibility to be represented by a professional proxy, (4) whether a legislator guarantees a respect to the party's right to appoint a proxy, (5) whether the scope of the attorney coercion provided on the basis of the administrative courts proceedings is justified and whether it does not restrict the right to sue.

The research issues stated above required an in-depth analysis and of the juridical text, views of the doctrine as well as the judicature and their mutual comparison.

There are five chapters in the dissertation. In the first one I presented the essence of justice exercised by administrative courts and described administrative courts proceedings in the context of their principles and also subjects of these proceedings. In the second chapter I depicted the proxy institution deriving from the civil law together with its origin and essence. The chapter also comprises the analysis of the proxy institution regulated by the act – the Law on proceedings in administrative courts. I dedicated the third chapter to subjects allowed to act as representatives in administrative courts, with the main emphasis on those providing professional judicial assistance.

This chapter also raises the issue of compulsory representative by a lawyer and a legal representative appointed within the right of legal support. In the fourth chapter I analyzed how the legal representative is modified by the course of the administrative court proceedings. The fifth section covers the issue of the consequences of the breach of a party's right to be represented by a proxy and rules of conduct with their participation, particularly in the context of the basis for invalid proceedings and reopening of proceedings.

In my thesis I tried to prove that to compensate for the lack of actual equality of the parties it is not enough to impose on court an obligation to inform the parties, mentioned in Article 6 of the Act – the Law on proceedings in administrative courts, for it does not protect the party's interest sufficiently enough due to limited scope of the obligation. The parties are not always able to fully understand the content conveyed by the court and therefore use instructions properly. Not only its formal aspect expressed in equal legal measures and a duty to hear the parties is essential to implement the principle of equality between parties but also a real opportunity to use their rights and measures. To draw and justify conclusions professionally is sometimes a prior condition for their positive recognition by the court. To inform the party about the right to submit an application for instance is not sufficient in that case. The principle of not limiting to the complaint might not be enough as well to protect interests of the party throughout the duration of proceedings in the court of first instance, since it applies exclusively to the stage of adjudicating by court. Administrative court proceedings are not merely restricted to making a complaint and giving a verdict but they consist of the whole range of actions taken both by parties and the court that need to meet the requirements, deadlines or react aptly to a court summons, for instance. For this reason the party that wants to use procedural tools granted in administrative court proceedings to assert their violated rights should consider availing themselves of legal assistance of a professional representative, whether by choice or court-appointed. A person with some procedural experience is able to assess the client's situation reasonably and objectively, based on their knowledge and skills. That is why professional representatives play a significant role assuming that the parties have ensured proper implementation of their procedural rights and thus sufficient protection of their interests in administrative court proceedings.

I considered the help of a professional representative to estimate consequence of the verdict the substance of which can be misleading for the plaintiff as crucial. There may be the case that despite the verdict repealing sued law the victory is illusive. The analysis of the legal assessment found in the justification of the decision as well as guidelines for further proceedings may suggest that their application by public authorities will actually cause losing the case at law. A reliable professional proxy after analyzing the justification of the verdict in terms of consequences it has for the situation of the party in administrative court proceedings will be able to presume whether there is a need to bring a cassation appeal against the decision or not. I find this aspect of the assistance provided one of the most important. Professional

representatives' knowledge and experience guarantee effective protection of the party's interest against consequences of delusively beneficial verdict.

In my thesis I indicated the fact that a legislator remembered to secure the interests of the people whose financial status does not allow them to bear the costs of a professional proxy by choice since the institution of the legal aid under which a party can demand a court-assigned attorney has been introduced. Therefore the financial situation is not an obstacle to both access to administrative court and implementing the right to handle a case with an assistance of a professional representative.

In some cases a legislator introduced a compulsory representation by a professional attorney which includes preparation of a different types of written works. In my thesis I tried to prove that the scope of a compulsory representation by a lawyer intended by the legislator does not entail limited access to court nor appeal proceedings, thanks to, inter alia functioning institution of legal aid and the verification of opinions stating that there are no grounds to lodge a cassation appeal.

Naturally, professional procedural representation does not guarantee a satisfying for the party verdict. However, it means that all procedural tools provided by the legislator will be used on behalf of the party which will result in the most effective protection of the party's interest.

The analysis of the issue of a professional proxy in administrative court proceedings made in the course of actions urged me to assume that a professional representative taking part in administrative court proceedings provides the party with real and full opportunity to assert violated rights, therefore the party representation in administrative court proceedings may be treated as a guaranty of sufficient protection of the interests (rights) of the party in these proceedings.

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