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#### ABSTRACT

**of Marzena Świstak's Ph.D. dissertation entitled "Legal Nature of Resolutions of Bodies of Authority of the Self-Government for Legal Advisors<sup>1</sup> in Poland".**

This doctoral dissertation entailed an in-depth analysis of issues relating to passing resolutions of the Self-government for Legal Advisors *sensu largo*, and, in particular, to the legal nature of its decisions. The analysis also included the principles of organisation and of functioning of the Self-government for Legal Advisors which, under the provisions of Article 17.1 of the Polish Constitution of 2 April 1997 (*Dziennik Ustaw* No. 178, item. 483, hereinafter referred to as the Constitution of Poland), is vested with the power to represent professions of public trust – i.e. legal advisors – and to exercise supervision over the proper practice of such professions within the boundaries of public interest and for the protection thereof.

The studies conducted aimed to classify and determine the nature of resolutions issued by the bodies of authority of the Self-government for Legal Advisors as indicated in Article 42. 1 of the Act of 6 July 1982 on Legal Advisors (uniform text published in *Dziennik Ustaw* of 2016, item. 233, as amended, hereinafter referred to as the ALA) - the National Convention of Legal Advisors, the National Council of Legal Advisors, The Higher Audit Commission, the assembly of the District Chamber of Legal Advisors, the Council of the District Chamber of Legal Advisors, the District Audit Commission, and the District Disciplinary Court as well as management bodies not specified in the act as bodies of authority of the Self-Government for Legal Advisors which, in certain matters, perform the tasks indicated, and, therefore, may well be treated as such (the Presidium of the National Council of Legal Advisors). It was

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<sup>1</sup> the Polish term "radca prawny" (English: legal advisor) should be understood as Advocate / Barrister / Solicitor – *translator's note*.

pointed out that the Presidium of the National Council of Legal Advisors may issue resolutions, although it is not a body of authority of the Self-government for Legal Advisors indicated in Article 42.1. of ALA. Nevertheless, the Presidium participates in the making resolutions of the Self-government through issuing resolutions relating to the organisational structure of the professional self-government, and, under the authorisation granted by the Council of the District Chamber of Legal Advisors, through issuing resolutions in civil law matters.

Decisions in disciplinary proceedings are excluded from the study, and, by extension, the activity of the Chief Disciplinary Proceedings Representative, of the District and Higher Professional Conduct Committees, although these bodies are listed in Article 42 of ALA. The study does not include the so called "election deeds" which occur in connection with the application of the Resolution on conducting the election for the bodies of authority of the Self Government for Legal Advisors. They are not resolutions albeit, in reality, they are frequently referred to as such.

The dissertation presents the legal situation today, and any historical solutions are referred to only to show their evolution or to demonstrate historical constructions where there are serious interpretation doubts and where the grammatical construction has not yielded expected results.

The author of the dissertation argues that decisions of the self-government bodies of authority *sensu largo*, are not legally uniform despite being called "resolutions". It follows that such decisions generate different effects with respect to the rights and duties of members of the self-government and third parties outside its structure. Thus, the aim of the research was to find answers to the following questions: (a) What is the legal nature of individual resolutions issued by relevant bodies of authority of the Self-government for Legal Advisors? (b) In taking their resolutions, do such bodies of authority operate in the sphere of *imperium* or *dominium*? (c) In what manner and in what forms is legality of these resolutions exercised by the bodies of authority of the Self-government for Legal Advisers, common courts and administrative courts? (d) What is the manner of internal supervision exercised by the relevant bodies of the Self-government and external supervision exercised by the Minister of Justice over the activity of the Self-government for Legal Advisors?

In this study the formal and dogmatic method was mainly applied. As a result of the analysis of all binding legal regulations of the universally binding law as well as internal regulations an attempt was made to remove unclear areas relating to their

construction and to provide answers to the key research questions. The analysis also included judicial decisions of administrative courts (Voivodship Administrative Courts and the Supreme Administrative Court), the Supreme Court, common courts, and the Constitutional Tribunal. Such an approach helped demonstrate the changes in the jurisprudence and present the currently binding jurisprudence indicating possible inaccuracies and irregularities in the substantiations offered by these bodies of authority and relevant courts. The historical method, when applied, was limited to indicate changes in the binding provisions of the common law and in internally binding regulations.

The Chapter entitled "System of the Self-Government for Legal Advisors" focuses on the essence, legal basis, and tasks of Self-Government for Legal Advisors in Poland with references made to the constitutional solutions in this respect. The notion and features of a profession in which the public repose confidence are highlighted with reference to the profession of a legal advisor. Primary functions of the Self-government for Legal Advisors, as laid down in Article 17.1 of the Polish Constitution are analysed. This chapter also presents the doctrines and judicial decisions relating to such notions as "concern with the proper practice of professions" and "public interest", and the existing doctrinal approach to the Self-government for Legal Advisors with respect to granting the same the status of a public law and private law corporation. The activity of the professional self-government clearly demonstrates the merging of the two spheres: private and public. The author also argues that in order to properly assess the activity of the professional self-government, it is essential to distinguish situations in which the bodies of the Self-government for Legal Advisors act in the spheres of *imperium* and *dominium*. The notion of public tasks that can be executed by professional self-governments was determined. Therefore, this led to some theoretical considerations relating to the functioning of the Self-government for Legal Advisors in order to enable proper assessment of their nature within the structure of the professional self-government.

It is worth bearing in mind that in the case of the Self-government for Legal Advisors the legislator did not apply a model in which the supervision of the state over the self-government is totally removed. External supervision is, in fact, exercised by the Minister of Justice. The author claims that the strict construction concerning the decisions of the Minister of Justice in this matter (e.g. excluding reform-related

decisions from the scope of responsibility of the self-government) is certainly a step in the right direction. Various forms of exercising this supervisions are presented in detail.

Chapter 2 entitled “Resolution as a Form of Activity of the Self-government for Legal Advisors” outlines the forms in which individual bodies of authority of this self-government undertake their activities known as “resolutions”. These include administrative decisions, internal normative decisions, resolutions taken within the organisational framework of the self-government, resolutions that regulate civil law relations, opinions and other joint deeds, supervision and control activities (Chapters 2.1 – 2.7 of the dissertation). These chapters include a thorough presentation of the doctrine, current classifications of such deeds, and their characteristic features. The descriptive part of the dissertation contains an analysis of such deeds on the basis of specific decisions taken by the bodies of authority of the Self-government for Legal Advisors..

Chapters 3 – 10 feature a analysis of the legal nature of resolutions *sensu largo* taken by the Self-government for Legal Advisors. The resolutions that are currently in force are also presented and an attempt at their classification is made in terms of their legal nature and against the analysis and conclusions drawn in Chapter 2. The dissertation is completed with conclusions and proposals *de lege ferenda*.

Following the verification of the research hypotheses, the conclusions drawn confirm the same. The proposals *de lege ferenda*, aim at streamlining the activity of the bodies of authority of the Self-government for Legal Advisors and at achieving a greater uniformity of jurisprudence with a view to ensuring better execution of constitutional rights of the entity and a fuller protection of the guarantees the Self-government for Legal Advisors enjoys in Poland.

Marzena Śmistak