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## THE SUPERVISING RIGHTS OF THE MINISTRY OF JUSTICE OVER THE PROFESSIONAL SELF-GOVERNMENT OF ATTORNEYS-AT-LAW AS AN EXAMPLE OF PARTICULAR FORMS OF PUBLIC MANAGEMENT

Public management is a discipline of science derived from management, legal, and political sciences. It addresses activities that ensure effective management of organized action of people aimed at creating public value and realizing the public interest in the process of rendering public services. One form of public management is ministry supervision over the professional self-government of attorneys-at-law, ensuring legality and serving the public good. One essential means of supervision in this area is opposition by the Ministry of Justice to a resolution of the council of a district chamber of attorneys-at-law on registration on the list of attorneys. Using the methods of dogmatic analysis and a jurisprudence survey, the author presents the ways of interpreting the legal provisions concerning the subject-matter opposition and the evolution of opinions formulated in this respect over the last few dozen years. The article aims to show how a strict interpretation of the concrete rights of a supervising organ influences the restrictions on supervising interference in the sphere reserved for the competencies of professional self-government – an entity of its essence autonomous and independent.

**Keywords:** public management, supervision over the self-government of attorneys-at-law, opposition to registration on the list of attorneys-at-law, access to practicing the profession of an attorney-at-law, decentralization.

### 1. INTRODUCTION

The institution of the Ministry of Justice's opposition to the resolution of the council of a district chamber of attorneys-at-law on registration on the list of attorneys-at-law or attorneys-at-law trainees provided by art. 31<sup>2</sup> of the statute on attorneys-at-law (Statute, 1982), hereinafter referred to as "the Statute", is one of the means of supervision belonging to the Ministry of Justice, which exercises the supervision over the activity of the professional self-government of attorneys-at-law within the scope and in forms defined by a statute (art. 5 of the Statute). Laying down, by the legislator, of the institution of

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supervision over the performance of certain tasks from the scope of public administration by organs of professional self-government is the consequence of the transfer by the state to the self-government of these tasks as a result of the process of decentralisation (Tabernacka, 2007). The self-government of attorneys-at-law is one of the self-governments provided by art. 17 s. 1 of the Constitution of the Republic of Poland (Constitution, 1997), hereinafter referred to as “the Constitution of the RP”, according to which by means of a statute, professional self-governments may be created, representing persons practising professions of public confidence and concerning themselves with the proper practice of such professions in accordance with, and for the purpose of protecting the public interest. This is one of the forms of material decentralisation, as a result of which certain public tasks are transferred towards entities being outside the structure of the state administration, therefore autonomous and independent from the state. As is underlined in the literature and jurisprudence, decentralised entities, to be able to properly perform the transferred tasks, cannot be yet totally independent and autonomous. This would, on the one hand, lead to the derivation of the self-governmental structures from the state, which is still responsible for the proper performance of the transferred tasks (Tabernacka, 2007), while on the other hand, the self-government could not make use of the state authority while performing the transferred tasks.

The institution of opposition provided by art. 31<sup>2</sup> of the Statute is directly connected with the problem of access to practising the profession of an attorney-at-law, similar to the possibility of making an appeal to the Ministry of Justice from a resolution of the Presidium of the National Chamber of Attorneys-At-Law refusing the registration on the list of attorneys-at-law. Both these institutions concern, therefore, such an essential sphere of the activity of self-government, part of its competencies since the beginning of its existence, such as deciding on membership of a given person to a professional corporation. With reference to both these means of supervision, there have been discrepancies appearing in the jurisprudence of administrative courts and doubts connected with their application in practice. This article refers to one of the indicated means of supervision, that is, to the ministry’s opposition to the resolution on registration, leaving the question of appeal from the resolution and refusing the registration to separate reflections.

The application of means of supervision being the subject matter opposition created several doubts in practice. This article presents a short analysis with the purpose of ordering the problems connected with this. The purpose of the article is, moreover, to show – based on the example of the discussed means of supervision – in which way a strict interpretation of concrete rights of a supervising organ influences the restriction of the supervising interference in the sphere reserved for the competencies of the self-government of attorneys-at-law, as an entity – of its essence – autonomous and independent. By using a method of dogmatic analysis and jurisprudence survey, this article presents the way of interpretation of the legal provisions concerning the subject matter of opposition of the Ministry of Justice and the evolution of opinions formulated in this respect within the space of several dozen recent years. To put things in order, I indicate that all references to the registration on the list of attorneys-at-law only, which are in the further part of the article, will equally refer to the registration on the list of attorneys-at-law trainees, as the analysed art. 31<sup>2</sup> of the Statute contains the legal regulation concerning both these registrations.

## 2. THE LEGAL CHARACTER OF THE OPPOSITION IN ART. 31<sup>2</sup> OF THE STATUTE ON ATTORNEYS-AT-LAW

As indicated by the Supreme Administrative Court in the resolution of October 30 2007, II GPS 3/07, in the light of binding law, an opposition is not a uniform institution. It may appear as a procedural remedy of appeal serving a party for directing a matter for recognition by a court or a proper administrative organ (such character has, for example, opposition to a default judgement or opposition to a payment order in the remainder procedure (Code, 1964, respectively art. 344 and art. 505), opposition to instructions and orders of court referendary given within the scope of aid law (Statute, 2002, art. 258–260, hereinafter referred to as “the Law on proceeding before administrative courts”), opposition serving a prosecutor to a final decision (Code, 1960, art. 184, hereinafter referred to as “KPA”). It may also appear in regulations of material law as a measure belonging to an administrative organ within its control or supervision competencies towards entities subordinated to the public administration (such character has, for example, opposition provided by Statute, 1994, art. 30 sec. 5 or by Statute, 2015, art. 90).

As the Supreme Administrative Court has noted in the aforementioned resolution, in the legal literature, an opposition is rated among means of supervision in the system of decentralised administration, in which apart from governmental administration, there are other entities performing administration in an autonomous way (for example Rączka, 1999)<sup>2</sup>. The self-government of attorneys-at-law is such an entity, being under the supervision of the state administration where it has been entrusted with a certain scope of state power to which formation of access to practice the profession of attorney-at-law is traditionally rated. And in this very meaning – as an instrument belonging to the system of supervision exercised by the Ministry of Justice towards organs of the self-government of attorneys-at-law as a result of the process of decentralisation – the opposition acts in art. 31<sup>2</sup> of the Statute:

1. The registration on the list of attorneys-at-law or attorneys-at-law trainees is regarded as done if the Ministry of Justice does not sign the opposition to the registration within the term of 30 days from the day of delivery of the resolution with the personal files of the candidate. In the case mentioned in art. 31<sup>1</sup> sec. 2, the course of this term is then counted since the day of the renewed delivery of the resolution with the personal files. The Ministry of Justice expresses the opposition in the form of an administrative decision. 2. The decision of the Ministry of Justice may be appealed to an administrative court by the interested person or an organ of the self-government within the term of 30 days from the day of delivery of this decision.

The opposition of the Ministry of Justice provided by the above-mentioned regulation is a means of supervision in the system of decentralised administration, which has a form of an administrative decision. As such, this opposition is covered by the property of administrative courts exercising control of the public administration activity through ruling, among others, in the matters of complaints against administrative decisions (on the consequences of a judgement of a provincial administrative court which revokes the opposition of the ministry see Piecha, 2023).

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<sup>2</sup> See also the judgement of the Supreme Administrative Court of 26.04.2012 II GSK 478/11.

The application of this means of supervision is factually possible thanks to an obligation imposed on the council of a district chamber of attorneys-at-law in art. 31<sup>1</sup> s. 1 of the Statute, i.e. sending to the Ministry of Justice each resolution on registration on the list of attorneys-at-law (within the term of 7 days) and attorneys-at-law trainees (within the term of 30 days), whereas the resolutions on registrations are sent to the Ministry of Justice with the personal files of the candidate. The resolution on registration starts to be binding not until the lapse of the term of 30 days defined in art. 31<sup>2</sup> s. 1 of the Statute, unless the supervising organ submits the opposition within this term. While the legislator does not define directly the premises for submitting the opposition, in jurisprudence, it is adopted that the ministry submits the opposition in case of acknowledgement that the resolution on registration is not in accordance with the law (Piecha, 2023)<sup>3</sup>. The opposition is thus an administrative-legal instrument enabling challenging the content of a positive resolution of a proper organ of the professional self-government in the subject matter of registration on the list of attorneys-at-law and registration on the list of attorneys-at-law trainees because submitting the opposition by the Ministry of Justice deprives the resolution on registration of the legal effect<sup>4</sup> (see also Stankiewicz, Scheffler [ed.] 2022). In the jurisprudence of administrative courts, it raises no doubts that the resolution of the council of a district chamber of attorneys-at-law on registration on the list of attorneys-at-law has a character of a resolution taken under the solvable condition, i.e. not submitting the opposition by the Ministry of Justice within the term of 30 days from the day of delivery of this resolution with the personal files. Therefore, the registration is regarded as done if the Ministry of Justice does not oppose this registration within the above-mentioned term of 30 days. In other words, the unsuccessful lapse of this term means that the registration on the list of attorneys-at-law is done on the day of undertaking the proper resolution on the registration while submitting the opposition causes this resolution to be null and void since the day of its undertaking, i.e. *ex tunc*. The result of making use of the right to submit the opposition is abolition, *ex tunc*, not only the resolution on registration, but the proceeding as a result of which it was given as well<sup>5</sup> (see also Stankiewicz, Scheffler [ed.] 2022).

### **3. MATERIALLY LEGAL CHARACTER OF THE TERM TO ADOPT THE OPPOSITION BY THE SUPERVISING ORGAN**

One of the questions decided unambiguously by the administrative courts is the character of the 30-day term within which the Ministry of Justice may file the opposition to the registration on the list of attorneys-at-law defined in art. 31<sup>2</sup> s. 1 of the Statute. Two standpoints were presented in practice. According to the first one, this term has a procedural character, which means in the light of art. 103 of KPA that as a result of the ministry

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<sup>3</sup> See also the decision of the Supreme Administrative Court of 24.05.2007 II GSK 8/07, in which it has been stated that the subject matter of the proceeding of the Ministry is setting defects, not defined in the statute, of the final decision on the registration, which justify depriving it of the legal power.

<sup>4</sup> The judgement of the Supreme Administrative Court of 22.05.2015 II GSK 2712/14.

<sup>5</sup> See, for example, the resolution of 7 judges of the Supreme Administrative Court of 30.10.2007 II GPS 3/07, judgement of the Supreme Administrative Court of 26.04.2012 II GSK 478/11, judgement of the Supreme Administrative Court of 20.07.2012 II GSK 2088/11, judgement of the Provincial Administrative Court in Warsaw of 20.09.2006 VI SA/Wa 1150/06; judgement of the Provincial Administrative Court in Warsaw of 7.07.2006 VI SA/Wa 901/06, judgement of the Provincial Administrative Court in Warsaw of 20.03.2014 VI SA/Wa 2661/13.

suspending the proceedings on adopting the opposition, its course was stopped<sup>6</sup>. According to the second standpoint, this term has a materially legal character, and thus, suspending such a proceeding does not stop its course<sup>7</sup> (compare also Rączka, 1999).

Finally, the Supreme Administrative Court, in the resolution of 7 judges of October 30 2007, II GPS 3/07 declared itself in favour of the second of the aforementioned standpoints and decided that the term within which the Ministry of Justice may file the opposition to the registration on the list of attorneys-at-law has a materially legal character. The Supreme Administrative Court, in the aforementioned resolution, stated that the Ministry of Justice has a 30-day term to submit the opposition, which begins from the day of receiving the resolution on registration on the list of attorneys-at-law or attorneys-at-law trainees with the personal files of the registered person. After the lapse of this term, the competencies of the supervising organ expire. This is a term of the material law because it concerns the supervising competencies of the organ. This term is not subject to restoring, breaking, nor suspending.

Similarly, in the judgement of the Supreme Administrative Court of July 20 2012, II GSK 2088/11 it was indicated that both in the jurisprudence of administrative courts (compare, for example, the resolution of 7 judges of the Supreme Administrative Court of 30.10.2007 II GPS 3/07) and in the literature of the subject (compare for example B. Adamiak, J. Borkowski, a gloss to judgement of the Supreme Administrative Court of 26.01.1993 II SA 930/92, "Radca Prawny" 1994, No. 3, p. 76 and subsequent) it is acknowledged consistently and uniformly that the term within which the Ministry of Justice may file the opposition mentioned in art. 31<sup>2</sup> s. 1 of the Statute is a term of the material law. Therefore, the lapse of this term, considering the character of the competencies of the Ministry of Justice therein defined, the procedure of their execution and the purpose of the setting of this term (stabilisation and certainty of the legal situation of a person soliciting the registration and subsequently registered on the list of attorneys-at-law, in relation to competencies of the supervising organ), by force of law results in the expiration of the supervising competencies of the Ministry of Justice to submit the opposition to the resolution of the organ of the professional self-government on registration on the list of attorneys-at-law. After the lapse of the subject-matter term, the legal status of the final conclusion of the case of registration on the list of attorneys-at-law arises spontaneously (judgement of the Supreme Administrative Court of 26.01.1993 r. II SA 930/92). The Ministry of Justice not submitting the opposition within the term of 30 days from the day of delivery of the resolution with the personal files means that the registration is done. In consequence, in case of the opposition expressed after the lapse of this term, the registration should be regarded as done because the term defined in art. 31<sup>2</sup> s. 1 of the Statute has a character of a term of the material law. The right of the Ministry of Justice, stipulated in the Statute, to intrude on the constitutional competencies of the organs of

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<sup>6</sup> Compare a judgement of the Supreme Administrative Court of 6.03.1992 II SA 1206/91, *Orzecznictwo Naczelnego Sądu Administracyjnego (lata 1987–1993)*, Supplement to No. 6/15 of "Radca Prawny", 1994 (after Rączka, 1999).

<sup>7</sup> Compare a judgement of the Supreme Administrative Court of 26.01.1993 II SA 930/92: "A suspension of the administrative proceeding of the Ministry of Justice concerning a potential opposition to the registration on the list of attorneys-at-law stops the course of procedural terms indicated in the code of administrative proceeding, however has no influence on the course of the term of art. 31 s. 2 of the statute on attorneys-at-law /Journal of Laws Nr 19 item 145; amendment Journal of Laws 1989, Nr 33 item 175/".

a professional self-government to concern themselves with the practice of the profession cannot be interpreted in a broadening way, including enabling the Ministry unjustified extension of the term defined in art. 31<sup>2</sup> s. 1 of the Statute (judgement of the Supreme Administrative Court of 26.10.2017 II GSK 73/16).

#### **4. IS A REQUEST FOR RECONSIDERATION OF THE CASE BY THE MINISTRY NECESSARY?**

In the practice application of art. 31<sup>2</sup> of the Statute, doubts also arose regarding the question of whether a prior submission of a request for reconsideration of the case according to the procedure of art. 127 § 3 KPA is necessary before filing a complaint to the ministry's opposition to an administrative court. The Ministry of Justice's opposition has a form of an administrative decision and, therefore, according to art. 52 § 1 of the Law on proceeding before administrative courts in order to file a complaint regarding such a decision, a prior fulfilment of means of appeal is necessary.

In particular, in the decision of May 24 2007, II GSK 8/07, the Supreme Administrative Court revoked a judgement of the Court of the first instance and rejected the complaint, indicating its unacceptability due to non-fulfilment of the means of appeal in the form of a request for reconsideration of the case<sup>8</sup>. In the justification of this decision, it was indicated that the competencies of the Ministry of Justice do not refer to reconsideration (for the next time) of the case of the registration on the list of attorneys-at-law. Therefore, it should be acknowledged that the administration verification proceeding instituted ex officio by the Ministry of Justice and ending with the issuance of a decision on the opposition is a supervising proceeding in relation to a two-instance proceeding started by the application for registration and carried out by the organs of the self-government of attorneys-at-law. As a result of this, the Ministry of Justice cannot be regarded as the third instance in cases of registration. It was also expressly stated that the provisions of the Statute do not give the basis for acknowledgement that in case of a proceeding started by the Ministry of Justice submitting the opposition, one deals with an exception from the rule of a two-instance administrative proceeding (art. 78 of the Constitution of the RP, art. 15 KPA).

In principle, however, it was not regarded as necessary to make a request to the Ministry of Justice for reconsideration of the case closed by its decision opposing the registration, not only before the date of the aforementioned case but later as well. For example, in a judgment of June 13 2007, VI SA/Wa 651/07, the Provincial Administrative Court in Warsaw stated that the Ministry of Justice's decision opposing the registration on the list of attorneys-at-law is not subject to verification in the administrative course of instances and thus the two instances rule expressed both in the Constitution of the RP (art. 78) and in art. 15 KPA is limited. The method of appealing to the opposition indicated in the provision of art. 31<sup>1</sup> s. 3<sup>9</sup> of the statute on attorneys-at-law is a particular regulation; therefore, art. 127 § 3 KPA (request for reconsideration of the case) is not applicable in this situation. The provision of art. 31<sup>1</sup> s. 3 of the statute is clear, precise and raises no doubts

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<sup>8</sup> Similarly, it was stated by a decision of the Supreme Administrative Court of 24.05.2007 II GSK 26/07 in a case concerning the Ministry of Justice's opposition to registration on the list of advocate trainees.

<sup>9</sup> Art. 31<sup>1</sup> s. 3 of the statute on attorneys-at-law in the then wording: "The Ministry of Justice's opposition may be appealed by the interested person to an administrative court within the term of 30 days from the day of delivery of the opposition" was the equivalent of the present regulation in art. 31<sup>2</sup> s. 2 of the Statute.

as to the scope of its application. The existence of exceptions from the analysed two instances rule is admitted by the Constitution of the RP (v. art. 78 in fine), the only requirement being that the exception and appealing procedure were defined by a statute. We have such a situation on the grounds of the statute on attorneys-at-law.

The doubt that arose was unambiguously explained in the aforementioned resolution of 7 judges of the Supreme Administrative Court of October 30 2007, II GPS 3/07, in which it was stated that filing a complaint to an administrative court provided by 31<sup>1</sup> s. 3<sup>10</sup> of the statute on attorneys-at-law does not require the fulfilment of the means of appeal in the form of a request for reconsideration of the case according to the procedure of art. 127 § 3 KPA. In the justification of the resolution, it was indicated that the provisions of art. 31<sup>1</sup> s. 2 and 3 of the statute on attorneys-at-law define in a particular way the events which start the terms: of submitting the opposition (s. 2) and filing the complaint to the opposition (s. 3); therefore, these regulations are autonomous and exhaustive. They do not leave the space for supplementary application within this scope of the provisions of KPA regarding the request for reconsideration of the case (art. 127 § 3 KPA). The standpoint that the Ministry of Justice examines the merits of the case of the opposition two times as a result of filing the request for reconsideration of the case cannot be reconciled with the requirement of submitting the opposition (also that one issued according to the procedure of art. 127 § 3 KPA) in the deadline of 30 days from the receipt of the resolution on registration with the personal files of the registered person. On this basis, it may be concluded that the opposition mentioned in art. 31<sup>1</sup> s. 2 of the statute is a decision undertaken in a one-instance proceeding, and one is not entitled to the means provided by art. 127 § 3 KPA with regard to this decision. The Court also indicated that the proceeding of the Ministry of Justice concerning the opposition to registration has a different character than the proceeding concerning an appeal from a resolution of the Presidium of the National Chamber of Attorneys-At-Law refusing the registration on the list of attorneys-at-law. According to the then-adopted line of jurisprudence, in the latter proceeding, the ministry acted as an organ of the third instance of the ordinary administrative proceeding, which prejudged the way of examining the appeal and the content of the decisions possible to be issued by this appeal organ, defined in art. 138 KPA, including the decisions stating the merits of the case<sup>11</sup>. Also, in the proceeding concerning the opposition, the Ministry of Justice acts as an organ protecting the public interest, and the only purpose of its opposition is not admitting to receiving the status of an attorney-at-law by a person who – in this organ's opinion – will not be able to carry out tasks consisting in rendering legal aid. Therefore, because the ministry's opposition will always be unfavourable for the interested person (as it deprives the person of the rights given by a resolution of an organ of the self-government of attorneys-at-law and is contradictory to the evaluation of their qualifications made by this self-government), the concerns of the effectiveness of the proceeding support the transfer, already on this stage, the settling of the case to an administrative court through the complaint filed by the interested person.

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<sup>10</sup> See *ibidem*.

<sup>11</sup> The Supreme Administrative Court departed from this line of jurisprudence in a resolution of 7 judges of 25.03.2013 II GPS 1/13 by stating that while examining the appeals mentioned in art. 31 s. 2a of the Statute, the Ministry of Justice may not apply art. 138 § 1 p. 2 KPA and decide on the merits of the case. A critical analysis of the Supreme Administrative Court's argumentation is presented by Sypniewski, 2015.

In consequence, the Supreme Administrative Court acknowledged that 31<sup>1</sup> s. 3 of the statute on attorneys-at-law is a particular provision which constitutes a justified exception from the rule of a two-instance proceeding expressed in art. 78 of the Constitution and does not stay in conflict with the rule of a two-instance administrative proceeding expressed in art. 15 KPA.

##### **5. THE SCOPE OF THE MINISTRY OF JUSTICE'S RIGHTS TO EXAMINE THE CASE**

The proceeding concerning the opposition conducted by the Ministry of Justice is a separate proceeding from the proceeding on registration on the list of attorneys-at-law. The latter proceeding (examining and explaining) is conducted by organs of the self-government of attorneys-at-law with the purpose of settling the merits of the case of registration. Therefore, the administrative case is the case with the subject matter of registration on the list of attorneys-at-law, and the competence to its settling has been given to an organ of the self-government, i.e. the council of a district chamber of attorneys-at-law. The legal effectiveness of this settlement - through giving a person the right to practice the profession of an attorney-at-law - is dependent on the realisation of the supervising competencies by the Ministry of Justice (Stankiewicz, Scheffler [ed.] 2022). In other words, while conducting the supervising proceeding, the Ministry of Justice does not deal with the administrative case initiated by the application for registration on the list of attorneys-at-law for settling this case, which belongs to the statutory competencies of the corporate organ. Acting in the public interest, the ministry, as a supervising organ, controls (evaluates) whether the evidential material collected in the two-instance proceeding conducted before the professional corporation organs, from the point of view of normative premises conditioning the registration on the list of attorneys-at-law, constitutes a sufficient factual basis for making this registration (judgement of the Supreme Administrative Court of 20.07.2012 II GSK 2088/11, similarly the judgement of the Provincial Administrative Court in Warsaw of 20.03.2014 VI SA/Wa 2661/13). Therefore, the Ministry of Justice, considering the legitimacy of submitting the opposition, has the power to establish whether all premises required for registration defined in art. 24 and 25 of the Statute have been fulfilled (judgement of the Supreme Administrative Court of 22.05.2015 II GSK 2712/14). The Ministry of Justice's competence for verifying the correctness of the corporate organ's standpoint on making the registration on the list of attorneys-at-law, from the point of view of the provisions of law defining the conditions the fulfilment of which this registration depends on, is also confirmed by a judgement of the Supreme Administrative Court of April 26 2012, II GSK 478/11.

The Statute clearly limits the scope of the explaining proceeding and, in particular, the evidence proceeding regarding the opposition. According to the provision of art. 31<sup>1</sup> of the Statute, the supervising organ may take into account exclusively materials presented by the council of a district chamber of attorneys-at-law, that is, the resolution on registration sent with the personal files of the registered person. This means, among others, that the ministry, while making a decision on the opposition – together with its justification – may not go beyond the limits of information included in the presented materials (so the Provincial Administrative Court in Warsaw in judgements of 7.07.2006 VI SA/Wa 901/06 and of 20.09.2006 VI SA/Wa 1150/06). This refers also to the course of a proceeding encompassed by the hypothesis of the provision of art. 31<sup>1</sup> s. 2 of the Statute, according to which if the application for registration enclosed in the personal files does not include all



required information or documents, the Ministry of Justice returns the resolution together with the personal files of the candidate to the proper council of a district chamber of attorneys-at-law to make it complete. Since also in the situation encompassed by the hypothesis of this provision, the Ministry of Justice operates on the basis of information and documents (personal files) sent to it – after completing the original (formal) shortages in the personal files of the candidate soliciting the registration – by the district chamber of attorneys-at-law, controlling compliance with the law of the resolution of the organs of the professional self-government on registration on the list of attorneys-at-law, and may not exceed indicated limits (judgement of the Supreme Administrative Court of 20.07.2012 II GSK 2088/11, similarly the judgement of the Provincial Administrative Court in Warsaw of 20.03.2014 VI SA/Wa 2661/13).

On this background, a doubt has arisen with regard to the question of a point of reference for the supervising organ in the proceeding conducted by it, i.e. whether it is the legal and factual state existing in the moment of making the registration by the organ of the self-government, or whether the supervising organ may take into consideration changes of the factual state which took place after the registration and before expressing its opposition. For example, the Provincial Administrative Court in Warsaw, in a judgement of May 31 2007, VI SA/Wa 541/07, stated that the Ministry of Justice is obliged *ex officio* to take into consideration not only the factual state acknowledged at the time of issuance of the resolution by the organ of the self-government but changes of this state which took place between the issuance of the resolution and expressing the opposition as well. In other words, while issuing its decision, the Ministry of Justice not only has the possibility but is obliged to take into consideration new circumstances in the case as well.

A different standpoint results from a judgement of the Supreme Administrative Court of October 26 2017, II GSK 73/16, in which, with regard to the supervising character of the Ministry of Justice's competencies in matters concerning registration on the list of attorneys-at-law (the ministry does not conduct the proceeding on the merits of the case of registration on the list of attorneys-at-law as an organ of the next instance but only controls the correctness of the corporate organ's decision issued in this case), it was stated that the point of reference for them is the legal and factual state existing at the moment of issuance of the controlled decision on registration, and not the circumstances on the day of issuance of supervising act (signature of the opposition). The Ministry of Justice does not conduct in its own scope the evidence proceeding aiming to state whether the person registered on the list of attorneys-at-law "still" fulfils the requirements needed for achieving the registration.

In my opinion, the second of the expressed standpoints is a correct one, which may be additionally justified by an argument concerning the very essence of the self-government of attorneys-at-law being one of the self-governments of professions of public confidence mentioned by art. 17 s. 1 of the Constitution RP. As an entity, in its assumption, autonomous and independent from the governmental administration, it is subject only to the supervision of the state within the scope which is strictly defined by statutes. Art. 5 s. 3 of the Statute gives no supervising competencies to the Ministry of Justice and does not have a constituting character but a declaring one; thus, no specific supervising actions may be taken on its basis. The Constitutional Tribunal, in a judgement of December 1 2009, K 4/08, indicated that this provision does not give the Ministry of Justice the right to take over the tasks of the professional self-government of attorneys-at-law. Each interference of this organ in professional self-government matters needs a particular provision of law. Then, since the provisions of the Statute regulating the procedure of making registrations

on the list of attorneys-at-law admit the sole competence within this scope to organs of the self-government, the Ministry of Justice's role is not reconsidering the matter of registration. While controlling the evidence material collected by an organ of the self-government from the point of view of the existence or non-existence of legal defects in the final decision on registration, which would justify deprivation of its legal power, the Ministry of Justice takes the decision on opposition solely and exclusively on the basis of information and documents (personal files) which were sent to them by the council of a district chamber of attorneys-at-law (see the judgement of the Supreme Administrative Court of 20.07.2012 II GSK 2088/11).

The statutory limitation of the recognition scope of the supervising organ in the supervising proceedings conducted by it is also confirmed by rulings of administrative courts concerning the legitimacy of the return of the resolution with personal files for making them complete on the basis of art. 31<sup>1</sup> s. 2 of the Statute. In a judgement of October 26 2017, II GSK 73/16, the Supreme Administrative Court stated that the provision of art. 31<sup>1</sup> s. 2 of the Statute may be applied when the application for registration does not contain all required information or documents. Similarly, in a judgement of February 19 2021, II GSK 596/20,<sup>12</sup> the Supreme Administrative Court stated that the return of the resolution together with personal files for making them complete must have a justified and convincing basis of factual nature. The return, which has no justified basis, may not thus result in the prolongation of the term for signing the opposition. The Court indicated, moreover, that the institution of the return serves and should serve – as this is just its essence and purpose, which are determined by the accepted model, logic and function of the application proceeding – for completing the shortages of the application for registration. It is obvious, thereby, that the shortages which are to be completed must have a real character. In other words, it means that the deficits of the application for registration must really exist and basically concern “the required information or documents”, meaning information or documents enclosed to the application mentioned in art. 24 s. 2a of the Statute.

In the situation in which the Ministry of Justice has no reasons to request for completing information with the effect of prolonging the term for signing the opposition (according to art. 31<sup>2</sup> s. 1 sentence 2 of the Statute<sup>13</sup>), then by issuing the decision on opposition after the lapse of the 30 days term defined in art. 31<sup>2</sup> s. 1 of the Statute, it infringes this legal provision. This means, with regard to the materially legal character of this term, that the opposition does not result then in the legal effect of abolition *ex tunc* of the registration on the list of attorneys-at-law because not submitting by the ministry of the opposition within the term of 30 days from the day of delivery of the resolution together with the personal files means that the registration is done<sup>14</sup>.

## 6. SUMMARY

The issues discussed in this article concern, as mentioned, the problem of access to practising the profession of an attorney-at-law, thus of membership in a professional

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<sup>12</sup> Admittedly, this judgement concerned the registration on the list of advocates; however, with regard to, in this respect, analogous legal regulations relating to the self-government of advocates and of attorneys-at-law, it may also be referred to as the self-government of attorneys-at-law.

<sup>13</sup> Art. 31<sup>2</sup> s. 1 sentence 2 of the Statute: “In the case mentioned in [art. 31<sup>1</sup> sec. 2](#), the course of this term is then counted since the day of the renewed delivery of the resolution with the personal files”.

<sup>14</sup> See the judgement of the Supreme Administrative Court of 26.10.2017 II GSK 73/16.

corporation. From the beginning of the professional self-government's existence, making decisions in this respect was traditionally within its competencies. This was confirmed by the Constitutional Tribunal in a judgement of April 19 2006, K 6/06, which stated that the question of recruitment to legal professions is a public question and, as such, is subject to statutory regulation; however, the right to decide on the matter who is a member of this corporation belongs to the decision of the self-government of attorneys-at-law. This standpoint is reflected by the provisions of the Statute regulating the procedure of making registration on the list of attorneys-at-law, in which the examining proceeding on the matters of registration belongs to competencies of organs of the self-government.

As a decentralised entity, the self-government of attorneys-at-law is subject to the supervision of the state organs, which is exercised within the scope and in forms strictly defined by statutory provisions. One of the means of supervision is, discussed in this article, the institution of the opposition to the resolution of the council of a district chamber of attorneys-at-law on registration on the list of attorneys-at-law or attorneys-at-law trainees. The Ministry of Justice acts here as an organ protecting the public interest, and the justification of the application of the opposition institution is not admitting to receiving the status of an attorney-at-law by a person who will not guarantee to carry out the tasks consisting of rendering legal aid<sup>15</sup>.

The subject matter legal regulations take into consideration the assumptions of the lawmaker concerning the inviolability of the essence of care over the proper practising of the profession in accordance with and for the purpose of protecting the public interest, which was given by art. 17 s. 1 of the Constitution of the RP to self-governments of professions of public confidence as one of their functions. One of the attributes of this care is executing the authoritative acts connected with admitting to the practising of the profession (see for example Izdebski, Legat Lipińska [ed.] 2002; Tabernacka, 2007), for the proper execution of constitutional functions of the professional self-government requires ensuring that it has a possibility to decide on the matter of who can practice the given profession, which was confirmed many times by the Constitutional Tribunal<sup>16</sup>. Moreover, the accepted statutory solutions in this respect and the above-analysed jurisprudence line of administrative courts correspond with the autonomy rule of a professional self-government as a decentralised entity independently deciding, among others, on membership in a self-government. This is confirmed in particular by, many times underlined, the character of the proceedings conducted by the Ministry of Justice on the matter of opposition of art. 31<sup>2</sup> of the Statute as a supervising proceeding within the scope of the legitimacy of the resolution of the self-government organ on registration on the list of attorneys-at-law. Moreover, it is confirmed by the discussed statements of administrative courts concerning not only the scope of the Ministry of Justice's rights to examine the case in the matter of opposition but also the lack of necessity to submit a request for reconsideration of the case by the ministry according to the procedure of art. 127 § 3 KPA as well.

The institution of the opposition of art. 31<sup>2</sup> of the Statute, discussed in this article, as a means of supervision to the organs of the self-government of attorneys-at-law, as well as

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<sup>15</sup> See the resolution of the Supreme Administrative Court of 30.10.2007 II GPS 3/07.

<sup>16</sup> See on this subject and on the subject of model solutions within preparation and admission to practising of legal professions and possibility (and its limits) of restricting the care scope, for example, judgements of the Constitutional Tribunal of 22.05.2001 K 37/00, 19.04.2006 K 6/06, 8.11.2006 K 30/06, 26.03.2008 K 4/07, 14.12.2010 K 20/08, 30.11.2011 K 1/10.

the jurisprudence line accepted in this respect, show the way of restricting supervising interference in the sphere reserved for the professional self-government's competencies as an entity – of its essence – autonomous and independent. Since the legislator, taking into consideration the constitutional function of the professional self-government as for concerning itself with the proper practice of a given profession, has given to it a defined scope of autonomy to decide on the access to its practising, all supervising rights within this respect should therefore be interpreted in a strict way.

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