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Provision of legal services in Poland – free legal aid and legal expenses insurance as selected objects of the recent regulation¹

The aim of this article is to present two different legal institutions related to the provision of legal services in Poland. At the beginning of 2016 a new act introduced free legal aid scheme.

Whereas the statutory provisions regarding legal expenses insurance were recently extended as a result of implementation of the Solvency II Directive into Polish law. These institutions shall fulfil different functions, but they both contribute to the growth of legal awareness among Polish society.

Keywords: access to justice, legal expenses insurance, free legal aid, lawyers.

Introduction

Legal services are a crucial element of the rule of law. Terms governing the provision of such services are a wide subject that includes a plethora of interesting problems. These problems appear also in the Polish regulation of legal services, whose fundamental purpose is to identify the entities authorised to provide legal services under Polish law. The position of professional counsel (is indisputable. On the other hand, powers of other entities are only partially regulated by the legislator². For instance, according to the provisions of the German *Rechtsdienstleistungsgesetz*³, besides a central entity providing legal services (the *Rechtsanwalt*⁴), also other persons are entitled

1. An extended version of this article in Polish: *Dostęp obywateli do wymiaru sprawiedliwości – wybrane modele*, Rozprawy Ubezpieczeniowe 3/2016 (based on parts of the author's doctoral dissertation *Ubezpieczenie ochrony prawnej w Polsce na tle regulacji niemieckich*, Toruń 2015).

2. Z. Klatka, *Pomoc prawna* [in:] ed. A. Bereza, *Zawód rady prawnego*, Warszawa 2011, p. 48.

3. BGBl. I S. 2840.

4. L. Koch, *Der Rechtsanwalt* [in:] M. Henssler, H. Prütting, *Bundesrechtsanwaltsordnung. Kommentar*, München 1997, p. 37.

to operate in the field (subject to certain limitations), in particular at a pre-litigation stage⁵. Recently, Polish lawmakers have enacted laws on two different frameworks of legal services – **free legal aid** (nieodpłatna pomoc prawna) and **legal expenses insurance** (ubezpieczenie ochrony prawnej). The legislation on legal expenses insurance was extended as a result of the implementation of the Solvency II Directive into Polish law. At the beginning of 2016, a new Act of Parliament introduced a free legal aid scheme. Although the recipients of the two types of services are different, both categories fulfil similar functions and improve the legal awareness of Poles. They also have a significant impact on the provision of legal services in Poland. In both cases, the key objective is to improve the situation of insureds or free legal aid clients in the event of a dispute. This article should be considered all the more useful also due to the fact that the detailed rules relating to the two frameworks have been adopted only recently and as such they are yet to be thoroughly examined.

Provision of legal services is also connected with the essential right of **access to justice**. In German literature, this right is referred to as *der Zugang zur Rechtsgewährung*⁶. One of these models is legal measures used by the state to influence fees of legal services providers. These measures consist of provisions specifying fees in certain cases or introducing a prohibition of particular types of fees, such as a fee for the successful resolution of a dispute (*success fee, Erfolgshonorar*). The second model is based on the state's financial support available for the citizens who are financially unable to cover (in full or part) costs related to a legal dispute (*staatliche Kostenhilfe*). Factors taken into account in the state's support model are a citizen's income and the prospects of a positive outcome of the dispute. Another mechanism that ensures access to justice is legal expenses insurance, which should be understood as a type of commercial insurance. Products of legal expenses insurance are based on free market principles and offered by entities whose primary goal is to achieve a profit⁷. The above remarks about access to justice in Germany reflect the approach of the German scholarship which offers some of the most comprehensive analyses of legal expenses insurance. The results of analyses of the German practice can be very helpful for the further development of legal expenses insurance in Poland.

The legal expenses insurers' organisation RIAD (*Rencontres Internationales des Assureurs Defense*) instructed a group of economists from *SEO Economic Research* to study the relationship between the degree of regulation of legal professions and the possibility to exercise the right of access to justice. The countries with a low level of regulation include, among others, Finland and England, while high levels occur in Germany, France and Italy. The conclusions of the study were that, in principle, the appropriate "access to law" does not necessarily depend on a significant number of regulations concerning legal professions. Moreover, social benefits related to better access to justice should be obviously greater than the costs of regulation. Regulatory measures may restrict access to legal professions, reduce fees or limit access to advertising. The regulation of legal professions was introduced to ensure the high quality of provided services and protect non-professional parties to a dispute, which is a goal worth pursuing. However, a certification of quality

5. K. Franz, *Das neue Rechtsdienstleistungsgesetz. Erläuterungen. Texte. Materialien*, Köln 2008, p. 92.

6. M. Kilian, *Determinanten des europäischen Rechtsschutzversicherungsmarkts. Beratungsmonopole, Anwaltsgebühren und Kostenerstattung*, „Zeitschrift für die gesamte Versicherungswissenschaft“, Vol. 88, No. 1, pp. 24–26.

7. *Ibid.*

should be based on a licensing system, rather than provided under a monopoly. A consequence of licence-based regulation is a limitation of competition, which in the long term can lead to excessively high lawyers' fees and thus restrict access to justice. Authors of SEO Economic Research's report conclude that in order to fully protect interests of the public, regulation must apply not only to professions but also to activities or services⁸.

The above brief analysis provided by foreign authors proves that provision of legal services is an extensive thematic area that should be approached from different angles. Foreign scholars universally recognise the importance of this issue. A description of the new concepts recently incorporated into Polish law may be a pretext for further studies of different aspects of such problems as legal awareness, access to justice or the composition of legal professions.

1. Free legal aid – basic features

The primary purpose of the introduction of the free legal aid scheme was to improve access to legal services at a pre-litigation stage in most popular types of legal proceedings. The aid is available for the persons who are unable to pay for the services of professional lawyers, mainly because of a difficult financial situation.

Article 3§1 of the **Free Legal Aid and Education Act of 5 August 2015**⁹ (hereinafter "FLAEA") determines the **scope of free legal aid**. Firstly, it informs eligible persons of applicable legal provisions on their rights or obligations. Free legal aid services should include a recommendation for an eligible person how to solve their legal problem as well as assistance in drafting pleadings or other official documents, to the exclusion of written submissions in any pending preliminary inquiry or pre-trial criminal proceedings or administrative court proceedings. Eligible persons can ask a legal aid lawyer to draft an application for an exemption from legal costs or appoint a counsel in court proceedings or a counsel, tax advisor or patent attorney in administrative court proceedings. The Polish legislator decided to exclude selected areas of law from the legal aid scheme. Free legal aid is not available in the following categories of matters: tax law cases related to the conduct of a business, cases of customs, foreign exchange and international trade law as well as matters related to business activity, with the exception of preparations for the commencement of such an activity¹⁰.

As a rule, **free legal aid may be provided personally by an attorney** (*adwokat* or *radca prawny*) working under a legal aid contract concluded with the local government unit, a district (*powiat*)¹¹. Only in strictly justified cases, legal aid may be provided by legal trainees (*aplikanci adwokaccy* or *radcowscy*) acting under the authority of their principals¹². In addition, the local government units (*powiaty*) must commission the operation of every second free legal aid centre to non-governmental

8. B. Baarsma, F. Felsö, K. Janssen, *Regulierung Rechtsberufe und der Zugang zum Recht. Eine wirtschaftliche Betrachtung*, SEO Economic Research, Amsterdam, 2008, p. 11, http://www.seo.nl/uploads/media/2008-01_executive_summary_de.pdf [accessed on: 24.11.2016].

9. Ustawa z dnia 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej i edukacji prawnej, uniform text in J.L. 2015 item 1255, as amended.

10. Art. 3 section 2 FLAEA.

11. Art. 5 section 1 and Art. 6 section 1 FLAEA.

12. Art. 5 section 1 FLAEA in fine.

organisations carrying out public benefit activities (*organizacje pozarządowe prowadzące działalność pożytku publicznego*), which are selected in an annual open tender¹³. In these centres, legal aid services can be provided also by tax advisors, who may advise clients on matters of tax law with the exception of the matters related to business activity. Legal aid services may be performed by law graduates of Polish and foreign universities (the latter's diplomas must be recognised by Poland). A graduate should prove at least three years' experience in carrying out activities that require knowledge of the law and are directly related to the provision of legal services, be capable of exercising all public rights, have full legal capacity and have no criminal record for an intentional offence prosecuted by an indictment or a tax offence¹⁴.

Persons eligible for free legal aid are described in Art. 4 FLAEA. Firstly, free legal aid can be provided to a person who during the last 12 months has been obtaining a social support allowance under the Social Support Act of 12 March 2004 provided that within that period the person has not obtained a decision ordering the return of unduly collected benefits. Another group of the eligible persons are the holders of a valid "Large Family" card issued in accordance with the Large Family Card Act of 5 December 2014 as well as the recipients of a certificate referred to in the Act on Combatants and Victims of War and Post-war Period of 24 January 1991. Another category of eligible persons is the holders of a valid certificate referred to in the Overseas Deployment Veterans Act of 19 August 2011 and also the individuals who were exposed to a risk or suffered a loss as a result of a natural disaster or a technical failure. Irrespective of the compliance with any of the above requirements, the FLAEA introduced the age criterion for persons eligible to receive free legal aid: based on this criterion, legal aid can be granted also to persons who are either under 26 or over 65. On 1 January 2017, an additional group of eligible persons (pregnant women) was added to Art. 4 section 1 (as para. 8). This addition was effected by the Pregnant Women and Families Support Act, known as the "Pro-Life Law", adopted on 4 November 2016¹⁵. Pregnant women are entitled to obtain free legal aid in matters of pregnancy and childbirth, in particular those relating to parental and employment rights¹⁶.

The basic features of this new regulation – the objective and subjective scope of free legal aid – are crucial for determining whether the new framework will succeed or fail. For financial reasons, the legislator was forced to limit this scope by singling out the key legal areas in which help is given to the persons who need free legal aid the most. However, even though the establishment of the legal aid scheme is indeed a step in a right direction, an excessive limitation of the scheme's availability may produce the opposite effect and lead to its insufficient effectiveness. Given the above, this issue should be carefully reconsidered based primarily on the empirical data on the functioning of the free legal aid system in the past.

13. Art. 11 section 1 and 2 FLAEA.

14. Art. 11 section 3 FLAEA.

15. Ustawa z dnia 4 listopada 2016 r. o wsparciu kobiet w ciąży i rodzin „Za życiem”, J.L. 2016 item 1860. The Act was adopted after a heated political discussion initiated by a draft abortion law submitted by a conservative association.

16. Art. 4 section 4a FLAEA.

2. Legal expenses insurance – important aspects of the recent regulation

The original Polish statutory regulation of legal expenses insurance, adopted in 2003, has proven to be incomplete and insufficient as compared to the progressive development of this section of the domestic insurance market. Such an important legal loophole could not have been filled by extremely sketchy jurisprudence¹⁷. The only provisions directly applicable to legal expenses insurance were included in Article 14 of the **Insurance Activity Act**. These provisions were adopted by the Polish Parliament as a consequence of the implementation of the requirements of the **Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance**¹⁸. However, the Act failed to regulate essential aspects related to legal expenses insurance: it did not provide its definition or any rules governing the principal performance delivered under a legal expenses insurance contract or loss adjustment principles¹⁹.

Furthermore, the general rules applying to the contract of insurance, established in the Polish Civil Code, still raise doubts about their interpretation. These interpretative problems are mainly associated with the legal definition of the subject-matter of a service delivered under this type of contract as well as the status of professional lawyers as persons entitled to provide legal services. A clear definition of these crucial concepts needs to be developed in order to determine the scope of activities that can be performed by insurers and have an important impact on all participants in the insurance market.

The fundamental recommendation of Polish legal scholars was, therefore, to determine, in a holistic and comprehensive way, the substance of legal expenses insurance, which requires a full implementation of Directive's provisions²⁰. Arguably, this goal may be achieved through the adoption of either of two legislative solutions. The first one is simply an extension of Art. 14 of the Insurance Activity Act. The second solution is to introduce a separate provision to the Polish Civil Code, which would apply exclusively to legal expenses insurance in the same way as Art. 822 governs third party liability insurance. A similar solution was applied in the German Insurance Contract Act²¹. However, such changes have never been implemented in Polish law because of the Polish legislator's decision to adopt a new Insurance Act, which is explained below.

Upon the implementation of the **Directive of the European Parliament and of the Council 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance, known as the "Solvency II" Directive**²², the Polish legislator expanded the regulation of legal expenses insurance, addressing certain legislative problems associated with the original

17. Judgment of the Polish Antitrust Court (Sąd Ochrony Konkurencji i Konsumentów), 30 December 2009, case no. XVII Amc 960/09.

18. Official Journal L 185, 04.07.1987, pp. 77–80.

19. B. Janyga, M. Dittmajer, *Ubezpieczenie ochrony prawnej jako szansa na zwiększenie dostępu obywateli do pomocy prawnej*, „Radca Prawny” 2005, No. 3, pp. 70–78.

20. Ibid.

21. *Gesetz über den Versicherungsvertrag (Versicherungsvertragsgesetz)*, as amended on 23 November 2007, BGBl. I S. 2631, with further changes.

22. Official Journal L 335, 17.12.2009, pp. 1–155.

2003 regulation. Although most of Solvency II provisions establish financial requirements for insurers, the Directive also replaced many other insurance directives, including the 1987 directive on legal expenses insurance²³.

The main reason for the adoption of the new **Insurance and Reinsurance Activity Act of 11 September 2015** [hereinafter "IRAA"]²⁴, which entered into force on 1 January 2016, was the need to implement the provisions of Solvency II. Importantly, the implemented provisions of the Directive do not change legal expenses insurance in a meaningful way, as compared with the original European regulations [1987 Directive], which were not fully implemented in 2003. The new Polish law by and large addresses the points made by the legal scholarship, which should have a substantial impact on the quality of products of legal expenses insurance as a means of effective access to justice.

In Art. 198 para. 1 of Solvency II, the European legislator established a **definition of legal expenses insurance**, which was implemented in Art. 27 section 1 IRAA. The Insurance Activity Act did not define the substance of legal expenses insurance in any way whatsoever, which gave rise to reasonable concerns of legal scholars. According to the newly implemented definition, legal expenses insurance is an insurance line whereby "an insurance undertaking commits, against the payment of a premium, to bear the costs of court proceedings and to provide other services directly linked to insurance cover". The activities performed by the insurer should in particular ensure "the compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings" as well as to "defend or represent the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person"²⁵. Thanks to the legal definition of legal expenses insurance, insurers should be able to maintain uniform standards of such insurance products. This means that under the new law policyholders know about the type, nature and purpose of an insurance contract they are about to conclude, in opposition to the previous Polish regulation, which failed to describe these elements.

Another proposal related to the regulation of the now-repealed Insurance Activity Act was to exclude the **third party liability insurance** from the legal expenses insurance regime²⁶. The Polish legislator directly excluded the application of the specific rules governing legal expenses insurance beyond several categories of this type of insurance. Art. 198 para. 2 of Solvency II was transposed to Polish law as Art. 27 section 7 IRAA. One of the exhaustively listed categories of the excluded types of insurance is the "**passive legal protection**", or the protection provided in relation to civil liability in order to defend or represent an insured person in any civil or criminal proceedings in a situation where the provision of such defence or representation also protects an interest of an insurance undertaking providing such cover²⁷.

23. Sz. Szmak, *Regulacje dyrektywy Solvency II odnoszące się do ubezpieczenia ochrony prawnej – implementacja w nowej ustawie o działalności ubezpieczeniowej i reasekuracyjnej*, „Wiadomości Ubezpieczeniowe”, 2016, No. 1, pp. 35–41.

24. J.L. 2015 item 1844, as amended.

25. Art. 27 section 1 paras. 1 and 2 IRAA.

26. B. Janyga, M. Dittmayer, *Ubezpieczenie ...*, *op. cit.*

27. Bukowska, Art. 27 [Ubezpieczenie ochrony prawnej] [in:] P. Czubłun, *Ustawa o działalności ubezpieczeniowej i reasekuracyjnej. Komentarz*, Warszawa 2016, Legalis 2016.

It should be noted, however, that Art. 14 section 1 of the Insurance Activity Act stated that the entire provision applied only to insurance referred to Group 17 of Section II of the Appendix to the Act, i.e. to legal expenses insurance. It thus appears that the construction of Art. 14 of the Insurance Activity Act in accordance with the general rules of interpretation prevented the Article 14 standards from being applied to the other types of insurance, including legal expenses insurance offered as a stand-alone product rather than a component of another type of insurance. Hence, it may reasonably be argued that there was no explicit need for an independent exclusion of third party liability insurance from the scope of this regulation because the legislator's intention was to apply provisions only to legal expenses insurance as a separate type of insurance. However, for the sake of insureds' certainty as to the scope of the contract of legal expenses insurance, one can assume that the exemption limited the application of the standards of legal expenses insurance only to stand-alone products of this line of insurance.

An issue closely related to the above proposal, which has not yet been addressed, is a need to expand the **definition of third party liability insurance** in the Polish Civil Code²⁸. Pursuant to Art. 822 section 1 of the Civil Code, under the contract of third party liability insurance an insurer agrees to indemnify a policyholder against losses caused to third parties by the policyholder, for which the policyholder is liable. It would be highly desirable to expand the scope of the insurer's performance, as defined in the above provision, by adding a reference to the aforementioned passive legal protection. Such an addition would follow the example of the German Insurance Contract Act or that of the Polish Compulsory Insurance Act. Legislatively speaking, the simplest way of making such an amendment is to add the second sentence to Article 822 section 1, phrased as follows: "The performance delivered under this contract may also include the payment of the costs of necessary defence in criminal proceedings and the costs of legal representation in civil proceedings, undertaken or provided at the request or with the consent of the insurer."

As a side note, there are many important *de lege ferenda* proposals based on the analysis of the general provisions of the Civil Code concerning **the contract of insurance**, regardless the type of insurance. Arguably, the Polish legislator should definitively determine the performance delivered under the contract of insurance. This proposal extends to all types of insurance, including legal expenses insurance, in the case of which the interpretational ambiguities resulting from the method of regulation adopted by the Polish legislator are very clearly visible. One should follow the theory of monetary provision and adopt such provisions on the performance delivered under the contract of insurance that would introduce two types of performance: principal and secondary. Such a distinction would not interfere with the practices of insurance as in the case of legal expenses insurance the principal performance would be the payment of costs associated with a legal dispute while the secondary performance would be the provision of legal services, e.g. telephone legal advice.

In the context of legal expenses insurance, the status of **entities providing legal services** is a central (and complex) issue. Many relevant suggestions can be offered in an attempt to introduce a clearer legislative framework in this area. First of all, it seems desirable to identify all the entities authorised to provide legal services, which should include a definitive determination of the status of law graduates. Insureds should be informed what entities are legally authorised to provide legal

28. M. Krajewski, *Ubezpieczenie odpowiedzialności cywilnej według kodeksu cywilnego*, Warszawa 2011, pp. 348–355.

services as part of contracts of legal expenses insurance and whether they may be indemnified against such entities' errors or omissions under mandatory professional indemnity insurance.

With regard to the 2003 regulation, a need appeared to extend a fundamental principle of legal expenses insurance, namely **the free choice of a lawyer**²⁹. In order to align the provisions of the Polish Insurance Activity Act with the original legal expenses insurance directive and the needs of insureds, this principle should have also applied to a pre-litigation stage. A full implementation of the directive would have ascertained the free choice of a lawyer at every stage of any proceedings. According to these proposals, the above right was significantly extended under the new Act of 2015. Pursuant to Art. 27 section 6 IRAA, an insured obtains this right also in the case of a "conflict of interest or disagreement over the settlement of a dispute." However, this provision does not fully correspond to the wording of Art. 204 of Solvency II, read in connection with Art. 201 para. 1 subparagraph (b) f Solvency II, which, differently from the Polish Act, provides that the right to the free choice of a lawyer may be exercised also outside court or administrative proceedings. The above discrepancy effectively limits insured's ability to exercise this right and lowers the effectiveness of this model of access to justice.

A more **comprehensive regulation** of legal expenses insurance can contribute to a better delimitation of powers and competences between insurance entities and those involved in the provision of legal services. As an example of such overlapping competencies, one can point to assistance in the assertion of indemnity claims, offered by both insurers, as part of legal expenses insurance schemes, and the so-called "claim firms" (*kancelarie odszkodowawcze*), whose business is not fully regulated by law.

The rising popularity of legal expenses insurance contributes significantly to the improvement of citizens' access to legal services and justice. However, a proper quality of such insurance must be guaranteed by the professionalism of services offered by insurers. Customers whose financial status allows for such an expense are attracted by relatively low premiums, as compared to the potential costs of legal services at an early stage or lawyers' fees for representation in court. In order to improve the insurance awareness of prospective policyholders in Poland, one should streamline the way in which legal expenses insurance operates, first and foremost through a comprehensive and definitive refinement of the relevant legal rules. This would be beneficial for both parties to the insurance contract, as well as for lawyers. As indicated above, the most significant disadvantage of the both regulatory frameworks of legal expenses insurance (the 2003 Act and 2015 Act) is the fact that the relevant provisions were a result of a piecemeal implementation of EU law, made without a broader insight and deliberation.

As it was described above, the specific features of legal expenses insurance make it a multi-dimensional legal concept, which is reflected in the legal provisions of the Insurance and Reinsurance Activity Act and the Civil Code. Construction of the definition of legal expenses insurance, exclusions of legal protection provided as a part of third party liability insurance, the right to the free choice of a lawyer or determination of the performance delivered under a contract of insurance influence the practice of provision of legal services under legal expenses insurance policies. In order to draw a complete picture of this complicated concept, it is important to understand how all these questions have so far been addressed by the Polish legislator. In the case of legal expenses insurance,

29. Sz. Szmak, *Wybór prawnika w ubezpieczeniu ochrony prawnej – regulacje wybranych państw europejskich oraz orzecznictwo Trybunału Sprawiedliwości UE*, „Prawo Asekuracyjne” 2012, No. 2, pp. 75–88.

the availability of clear definitions improves the certainty of rights and obligations of insurers and insureds. In this way, insureds' rights will enjoy equal protection under policies offered by different insurers, also in respect of the provisions of legal services.

Final conclusions

The brief analysis of key statutory provisions on both types of frameworks presented above allows for the formulation of certain recommendations on the future legislative measures.

The most important *de lege ferenda* proposal concerning free legal aid is to expand the group of recipients eligible to obtain such aid by adding such categories of persons as employees facing legal problems at work,³⁰ persons entitled to obtain the "500+" child support allowance, persons with disabilities or unemployed persons³¹. One should also consider the status of legal aid centres operated by non-governmental organisations, which constitute 50% of all providers of free legal aid but provide only about 33% of all legal aid services, mostly through professional lawyers. Representatives of professional associations of lawyers express their concerns over the fact that free legal aid is provided on premises of local government offices, which is why clients combine free legal aid with official activities of public authorities³². Another proposal expressed by Polish lawyers' association is to provide free legal aid in lawyers' chambers (and not at offices of local authorities), as well as to establish fees for actually provided advice, and not only for the "readiness" to provide such advice³³.

As regards legal expenses insurance, this type of insurance should be further promoted, primarily by professional associations of lawyers, which would bring benefits not only for insurers but also for other entities involved in such insurance contracts. The extension of the regulatory framework under the new Insurance and Reinsurance Activities Act can undoubtedly contribute to the development of this line of insurance, dispelling previous uncertainties and effectively addressing the concerns expressed over the previous regulation.

30. *Ziobro o darmowej pomocy prawnej: wyniki analizy nie są zachęcające*, „Rzeczpospolita”, 17 November 2016, <http://www.rp.pl/Bezplatna-pomoc-prawna/311179909-Ziobro-o-darmowej-pomocy-prawnej-wyniki-analizy-nie-sa-zachecajace.html#ap-1>, [accessed on: 19.03.2017]. The scholarship also formulated the opposite proposal, suggesting a reduce in this group based on the original purpose of the Act, which was to provide aid only to low-income clients, e.g. see: Art. 4 [in:] B. Paxford, R. Rynkun-Werner, M. Wasylkowska-Michór, *Ustawa o nieodpłatnej pomocy prawnej oraz edukacji prawnej. Komentarz*, Warszawa 2016, Legalis 2016.

31. *MS: Osoby otrzymujące 500+ będą mogły korzystać z bezpłatnej pomocy prawnej*, *Gazeta Prawna*, 23 February 2017, <http://prawo.gazetaprawna.pl/artykuly/1022074,bezpłatna-pomoc-prawna-dla-beneficjentow-500-plus.html> [accessed on 17.03.2017], The 500+ allowance was introduced by the State Support in Children Upbringing Act, *Ustawa z dnia 11 lutego 2016 r. o pomocy państwa w wychowywaniu dzieci*, J.L. 2016, item 195.

32. A. Krzyżanowska, *Bezpłatna pomoc prawna to fikcja. Pośrednicy biorą prowizję za nieodpłatne usługi*, *Gazeta Prawna*, 10 May 2016, <http://prawo.gazetaprawna.pl/artykuly/942141,bezpłatna-pomoc-prawna-to-fikcja-posrednicy-biora-prowizje.html> [accessed on: 07.06.2016].

33. R. Krupa-Dąbrowska, *Prawnicy i powiaty chcą reformy bezpłatnych porad prawnych*, *Rzeczpospolita*, 16 June 2016, <http://www.rp.pl/Bezplatna-pomoc-prawna/306209900-Prawnicy-i-powiaty-chca-reformy-bezpłatnych-porad-prawnych.html#ap-1> [accessed on: 19.03.2017].

Although significant differences between the two methods of ensuring access to justice have been already mentioned in the introduction to this article, it is worth mentioning the common features of the two schemes. The most important of them is the aforementioned shared purpose of legal expenses insurance and free legal aid scheme. Obviously, and differently from the concept introduced by the Act of 5 August 2015, the main function of legal expenses insurance is not to improve access to justice, but here both models seem to complement each other and contribute, although to a varying degree, to the realisation of the right to court. These two mechanisms have appeared in the social reality of Poland only recently and yet the regulation of legal expenses insurance has already substantially been amended (as shown above – for a good cause). Certainly, the Free Legal Aid Act will also be further amended. The proposals put forward by the scholarship, legal practitioners and members of the public, as well as the conclusions of foreign researchers (primarily from Germany, which is a legal system similar to that of Poland), will hopefully be taken into account during the work on such amendments, effectively serving the purpose of improving access to justice.

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Świadczenie pomocy prawnej w Polsce – nieodpłatna pomoc prawna oraz ubezpieczenie ochrony prawnej jako wybrane zagadnienia ostatnich regulacji ustawowych

W artykule zostały omówione wybrane kwestie odnoszące się do świadczenia pomocy prawnej w Polsce na przykładzie dwóch instytucji wprowadzonych do polskiego porządku prawnego w ostatnim czasie. 1 stycznia 2016 r. weszła w życie ustawa wprowadzająca regulacje odnoszące się do nieodpłatnej pomocy prawnej. Natomiast rezultatem implementacji przepisów dyrektywy Wyłącalność II w nowej ustawie o działalności ubezpieczeniowej i reasekuracyjnej było istotne rozwinięcie dotychczasowych ubogich przepisów dotyczących ubezpieczenia ochrony prawnej. Analiza najważniejszych zagadnień wokół obu tych instytucji jest pretekstem do innego spojrzenia na problem świadczenia pomocy prawnej w Polsce.

Słowa kluczowe: świadczenie pomocy prawnej, nieodpłatna pomoc prawna, ubezpieczenie ochrony prawnej, dyrektywa Solwency II, dostęp do wymiaru sprawiedliwości.

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