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LEGISLATIVE CONCEPTS REGARDING FREE LEGAL AID. DRAFT ACTS OF 17 NOVEMBER 2004, 31 JANUARY 2005 AND 21 FEBRUARY 2005

Abstract. Between 2004 and 2005, the Ministry of Justice drafted three legislative proposals concerning broadly understood free legal aid, civic assistance, and legal education. These drafts were the result of engagement not only by the Ministry but also by non-governmental organisations and the legal community and culminated in the adoption of the Act in 2015. The final Act drew on earlier proposals, particularly the establishment of Legal Aid Offices, support for low-income individuals, and the involvement of professional lawyers.

The aim of this article is to trace the draft legislation prepared by a single entity over a relatively short period.

Keywords: free legal aid, free civic counselling, legal education, Ministry of Justice, legislative drafts.

Introduction

Poland's accession to the structures of the European Union served as a catalyst for the development of advisory frameworks designed to support citizens who could not afford professional legal or civic assistance. Consequently, not only the public debate (media) but also the activities of public bodies and non-governmental organisations brought to light the need for the adoption of statutory regulations defining both the subjective and objective scope of, initially, free legal aid and, subsequently, civic assistance and legal education. The expansion of aid to include legal education was a sign of the times and a step toward enhancing legal awareness within Polish society. The initiatives taken by of the Commissioner for Human Rights, the Patient Rights Ombudsman, the Helsinki Foundation for Human

Rights, the Institute of Law and Society, the Polish Association for Legal Education, non-governmental organisations, university legal clinics and professional self-governments of advocates and legal counsels also significantly accelerated the legislative process. Nonetheless, it was the Ministry of Justice, as a government body, that assumed the responsibility for drafting the relevant legislation, and within a short period (November 2004 – February 2005), several draft bills were brought forward. These drafts – despite only minor differences – reflected, on the one hand, the executive's commitment to introducing systemic solutions promptly, while on the other hand, the accelerated drafting process offered no guarantee of the expected final legislative success.

This study aims to analyse the provisions included in three ministerial drafts dated 17 November 2004, 31 January 2005, and 21 February 2005. Referencing these now historically and legally significant proposals may offer valuable insight into the broader concept of legal aid, as implemented in practice since 2015.

Draft Act of 17 November 2004

On 6 October 2004, a seminar was held at the Office of the Commissioner for Human Rights, co-organized by the University Legal Clinics Foundation, the Helsinki Foundation for Human Rights, the Polish Association for Legal Education and the Union of Citizens' Advice Bureaux. The subject of the conference discussion was the model of a legal aid system that would best respond to the needs of society. Non-governmental organisations developed and presented proposals for systemic solutions aimed at improving citizens' access to legal information, legal aid and civil counselling. During the conference, Minister Andrzej Kalwas declared that establishing institutional conditions enabling the most financially vulnerable members of society to access free legal aid would become a governmental priority. He also announced that the Ministry under his supervision had commenced work on a draft Act on the "Poor Relief," the purpose of which would be to resolve the issue of access to legal assistance and the courts for economically disadvantaged individuals. To this end, the Ministry of Justice established a working group composed of representatives of the legal professions, the Commissioner for Human Rights and non-governmental organisations working to improve access to legal aid. The then Commissioner for Human Rights, Professor Andrzej Zoll once again expressed his support for the efforts to regulate the issue of access to legal aid and civil counselling.

A direct outcome of the initiative undertaken by the four non-governmental organisations was the commencement, in late 2004, of work on the first draft Act concerning access to free legal aid. On 17 November 2004, the Ministry of Justice developed the proposed assumptions for the draft legislation referred to as the "Poor Relief" (term conviction-projekt założeń Ministerstwa Sprawiedliwości do ustawy o "prawie ubogich" z 17 listopada 2004 – www.inpris.pl/fileadmin/user_upload/documents/pomoc_prawna/31_MS_projekt_zalozen_do_ustawy_o_prawie_ubogich_17.11.2004.pdf, access: April 21, 2025). In accordance with these assumptions, the Act was to regulate the principles and procedures for granting legal aid ex officio, exemption from court fees, and exemption from notarial fees. The draft distinguished between the so-called basic legal aid, which encompassed the provision of legal advice, preparation of legal opinions, drafting of legal instruments – including pleadings – and legal aid in the form of ex officio appointment of an advocate or legal counsel, or the designation of a court-appointed defence counsel. The drafters envisaged that the entitlement to legal aid ex officio, exemption from court fees, or exemption from notarial fees would be conditional upon meeting a financial threshold – specifically, the applicant's per capita family income in the preceding calendar year not exceeding a level determined annually by regulation. The assistance sought could be granted in situations where the applicant was unable to bear the costs of proceedings or pay an advocate's, legal counsel's or notary's fee without prejudice to the essential subsistence of themselves and their family. In addition, the applicant was required to hold Polish citizenship, or the citizenship of another European Union Member State, or of another country with which the Republic of Poland had concluded a relevant international agreement. Legal aid could be granted solely to applicants residing (or having their habitual residence) in the Republic of Poland, and only in cases where the claim or defence for which legal aid or exemption from court fees was sought was not manifestly inadmissible or unfounded. In cases where the applicant sought exemption from notarial fees, it was a prerequisite that there existed a genuine need to perform a notarial act. The draft provided for both full and partial exemption from court fees or notarial fees, provided that the criteria set out in the proposed legislation were met. Legal aid ex officio was to be granted under the model still in use today i.e. with the applicant either contributing partially to the costs or the full costs being borne by the State Treasury (in which case the applicant, as a party to the proceedings, would neither pay court fees nor bear any procedural expenses). It is worth noting that the very first draft Act on access to legal aid already envisaged the establishment of a Legal Aid Office, an institution to be appointed by the Minister of Justice and responsible for coordinating the entire system (Maranowski, Witkowska, 2012).

With regard to the procedure for submitting an application for legal aid ex officio, exemption from court fees, or exemption from notarial fees, the draft legislation provided for the free availability of an official application form (the detailed content and format of which were to be specified in a relevant regulation).

A characteristic feature of the initial concepts for establishing a system of civil legal aid was that, under the draft, the application was to be submitted to the competent branch of the Legal Aid Office. Jurisdiction was to be determined either on the basis of the applicant's place of residence or the location of the court or authority before which the case was to be, or was already being, conducted (that is, the case in relation to which assistance was sought, and not any other matter, as it was assumed from the outset that the aid would be linked to a specific case and would not automatically extend to other proceedings – either planned or pending – involving the applicant).

At the same time, the draft Act stipulated that the granting of legal aid was to follow an administrative procedure, unless the Act itself provided otherwise. Connections to the administrative structure were also reflected in the possibility for the Legal Aid Office to request a social welfare centre to assess the applicant's personal, family, income and financial situation (by way of a request for a family environmental interview). This solution should be considered adequate, as social welfare centres usually have the best knowledge and resources to carry out such assessments effectively. The drafters rightly considered it unnecessary to establish a new institution from scratch for the purpose of verifying applicants' financial circumstances, while simultaneously recognising that a mere declaration by the applicant of their inability to cover court costs (or notarial fees) could be insufficient and could generate further costs (since the effective operation of the system requires the verification of such declarations) (Florczak, 2012).

It is also worth noting the draft's provision allowing applicants to select a specific advocate or legal counsel who would provide the basic legal assistance or act as their representative or defence counsel. In cases where the applicant did not indicate a particular advocate or legal counsel, the Legal Aid Office was to select one from lists submitted annually by the regional bar associations and regional chambers of legal counsels (as stipulated in point 8 of the draft assumptions). The granting of legal aid in the form of appointment of an advocate or legal counsel, appointment of a defence counsel, and exemption from court fees was to apply throughout the entire proceedings, up to the final judgment becoming legally binding. However, this did not exclude enforcement or execution proceedings, which were explicitly included – thus, the legal aid granted in a given case also covered enforcement and execution stages.

The draft also set out the grounds for revoking the granting of legal aid ex officio, exemption from court fees, or exemption from notarial fees, which would result in the applicant becoming liable for those costs as well as the remuneration of the advocate, legal counsel or notary. Among the grounds for revocation were situations where it was subsequently revealed that the circumstances on the basis of which aid had been granted either had never existed or had ceased to exist. If the aid had been granted justifiably at the time of application (i.e. the requirements were met), but those circumstances later changed, the applicant could be required to partially reimburse the costs incurred by the State Treasury, in proportion to the change in their financial circumstances. However, If the applicant knowingly submitted false information which determined their eligibility for aid, they were to be subject to a fine, in addition to being obliged to reimburse the court costs and the remuneration of the advocate, legal counsel or notary, from which they have been unlawfully exempted. According to the draft assumptions, any change in the applicant's personal, financial, or income situation was to be reported to the Legal Aid Office without delay (under penalty of a fine and the obligation to reimburse the cost of the aid provided) (Klaus, 2012).

Draft Act of 31 January 2005

The assumptions underpinning the Ministry of Justice's draft Act on the "Poor Relief" dated 17 November 2004 were only partially transposed into the draft Act on Access to Legal Aid of 31 January 2005 (term conviction – projekt ustawy o dostępie do pomocy prawnej z 31 stycznia 2005 z uzasadnieniem – www.inpris.pl/fileadm/user/unpload/documents/pomoc_prawna/73_projekt_ustawy_pomoc_prawna_z_uzasadn_MS-31.01.05.pdf, access: April 29, 2025). A number of the original assumptions were expanded upon and refined. The content of the draft indicates that the division into basic and qualified legal aid, as envisaged in the earlier assumptions, was preserved. Under the draft in question, basic legal aid was to be understood as information regarding the applicable legal framework, including statutes and other normative acts, rights and obligations, as well as the appropriate procedure and competent authority for handling a given matter, alongside the drafting of legal instruments. The explanatory memorandum to the draft indicated that the justification for regulating access to legal aid for indigent citizens stemmed both from an increased demand for such services and from the necessity of fulfilling international obligations enshrining the right of access to a court. This right is expressed in Article 6(2)(c) of the Convention for the Protection of Human Rights and Fundamental Freedoms as well as in Article 47(1) of the Charter of Fundamental Rights of the European Union. Furthermore, the obligation to ensure access to legal aid, arising from Article 47(3) of the Charter, also served as justification for the proposed legislation. The draft clearly underscored the necessity for a fundamental overhaul of the existing legal aid system for the indigent, both in terms of the scope of eligible recipients and the principles governing entitlement. The legislator's primary objective was evidently to alleviate the burden on the courts, which was to be achieved by extending legal aid to the pre-litigation stage. The resolution of disputes at an early stage was intended to lead to the abandonment of judicial proceedings. It was also assumed that, in some instances, information on the relevant legal provisions alone might suffice to resolve a given matter. It is worth emphasising that the concept put forward by the Commissioner for Human Rights regarding the establishment of Legal Aid Offices staffed by salaried lawyers in major cities received endorsement. The establishment of these new public institutions would entail substantial public expenditure. As such, a two-stage approach to their creation was envisaged. The first stage foresaw the establishment of at least ten such offices across the country by 30 June 2006. The entire process was to conclude by 30 June 2007, with the establishment of additional offices in all cities hosting regional courts. The draft of 31 January 2005 introduced an income criterion that would condition eligibility for legal aid. This criterion was defined by reference to the provisions of the Act of 12 March 2004 on Social Assistance specifically Article 8 thereof, which set the income thresholds for entitlement. Simultaneously, the draft provided for an exceptional procedure for obtaining legal aid in cases involving "special circumstances" that prevented the applicant from covering the cost of legal services. The concept of "special circumstances" is broad enough to allow for deviation from the rigid framework imposed by the income threshold. The absence of such a provision would have precluded any – even minimal – departure from the strictly defined criteria, which would be undesirable due to its inflexibility and lack of responsiveness to evolving realities, including unforeseen situations necessitating immediate assistance. The explanatory memorandum to the draft employed the notion of "limitations" on the provision of legal aid. These included: determinations by the social assistance authority that the applicant's assets were sufficient to cover paid legal services, manifest lack of necessity for legal assistance, and requests for aid involving the drafting of contracts or the acquisition of loans or credit. The limitations on legal aid also included legal aid for the purpose of filing a constitutional complaint as well as cases concerning business activities. The establishment and operation of organisations and matters related to taxation and customs (similarly to the aforementioned legal aid connected to business activity) were excluded from the scope of matters covered by legal aid, both under this draft and subsequent statutes governing ex officio legal aid. Due to the link between ex officio legal aid and social assistance institutions, the application for legal aid was to be accompanied by a certificate issued by the competent authority confirming the fulfilment of the condition set out in Article 5(1) of the draft Act.

In addition, the explanatory memorandum highlighted the shortcomings of the then-existing arrangements, particularly the restriction of ex officio legal aid exclusively to judicial proceedings, and the fragmentation of regulations pertaining to the conditions for its grant, which differed across civil, criminal, and administrative procedures. According to the drafters (who viewed this legislative proposal as the first step towards a comprehensive framework for ex officio legal aid), it would be necessary to establish a distinct public institution responsible solely for the allocation of legal aid by the State, which would also assume responsibility for covering the costs of such assistance (Witkowska, 2012).

In turn, Articles 8 to 19 of the draft regulated the organisation of legal aid. Under the proposed framework, legal aid was to be delivered through state budgetary units (financed from a specific section of the national budget, administered by the Minister of Justice)„ namely the National Legal Aid Centre and the Legal Aid Offices. Pursuant to Article 13(1) and (2) of the draft, Legal Aid Offices were to be established in the cities that served as the seats of regional courts. Given the increasing demand for legal assistance and the need to ensure genuine access to legal aid, such offices could also be established in towns hosting district courts (Article 13(2)). In addition to the National Legal Aid Centre and the Legal Aid Offices, the draft provided for the establishment of a Legal Aid Coordination Council, serving as an advisory body to the Minister of Justice. Its tasks would include issuing opinions on draft legal instruments or the policy directions of the Council of Ministers in the area of legal aid provision (Article 17 of the draft Act). The composition of the Council was particularly noteworthy. The Council was to be co-created by individuals appointed from among candidates nominated by the National Bar Council and the National Council of Legal Counsels, non-governmental organisations whose statutory activities include the provision of free legal aid, the Minister of Justice, the minister responsible for social policy, the minister responsible for public finances, and nationwide associations of local self-government units represented in the Joint Commission of Government and Local Government. This expert-based and fairly extensive Council was to be viewed as the arrangement best suited to fulfil the aims of the proposed legislation. All the aforementioned areas of activity are crucial to the establishment of a comprehensive system of civic legal aid – both at the national and local government levels (Wiaderek, 2017).

Chapter Four of the draft Act was devoted to legal aid personnel, i.e. those employed at the National Centre and the Legal Aid Offices. According to Article 20(1) of the act, these included legal counsels, legal aid employees, and administrative and support staff. Subsequent provisions of Chapter Four specified the qualifications required for employment in the aforementioned institutions as well as the criteria for appointment to the posts of Director of the Centre, Head of the Office, and their deputies. The draft also contained provisions governing the remuneration of such personnel. Article 22(4) of the act referred to the Act of 18 December 1998 on Court and Prosecutor's Office Employees for all matters not regulated by the draft in respect of employees of the National Centre and the Legal Aid Offices, which were to apply mutatis mutandis.

Legal guarantees for applicants arose from the statutory time limit within which the application for legal aid was to be examined. Furthermore, the form in which the matter was resolved also had a guarantee-like nature. Both the grant and the refusal of legal aid were to be effected by way of an administrative decision, which, pursuant to the provisions on administrative procedure, was subject to appeal (the examination of the appeal being limited to a deadline of no more than 14 days). The time limit for lodging a complaint with the provincial administrative court was shortened to 14 days from the date of service of the decision (as opposed to the 30-day period provided for in the general rules on proceedings before administrative courts – Article 53 §1 of the Act of 30 August 2002 on Proceedings Before Administrative Courts. It must also be emphasised that a decision granting legal aid did not constitute an abstract entitlement but rather specified the type of aid to be provided by the State. The draft stipulated that such decisions would be valid for a period of six months from the date of issue.

The proposed amendments set forth in the draft Act were intended to guarantee the availability of free legal aid to all those who, due to financial or personal hardship, were unable to bear its cost. It was assumed that the establishment of legal aid structures would generate approximately 1,200 jobs, which definitely constituted a positive forecast. With regard to the financial implications of the proposed aid system, it was estimated that, on an annual basis, the number of cases involving qualified legal aid would reach 200,000, consuming approximately PLN 500 million from the national budget. In the explanatory memorandum to the draft, it was clearly stated that, in the absence of research, statistics, or standardised reporting on free legal aid and its costs, the above data were purely hypothetical. Therefore, it was only the operation of the intended system that would allow for more precise estimates regarding the number of cases and the legal aid expenditure borne by the State Treasury (Hałub-Kowalczyk, 2019).

Draft Act of 21 February 2005

Shortly thereafter, another draft Act on Access to Free Legal Aid Provided by the State to Natural Persons was prepared, dated 21 February 2005. (term conviction – projekt ustawy o dostępie do nieodpłatnej pomocy prawnej zapewnianej przez państwo osobom fizycznym z 21 lutego 2005 z uzasadnieniem – www.inpris.pl/fileadmin/user/unpload/documents/pomoc_prawna/7-3_projekt_ustawy_pomoc_prawna_z_uzasad_MS-22.02.05.pdf, access: April 19, 2025). The explanatory memorandum to the draft clearly emphasised the repeated initiative of the Commissioner for Human Rights to introduce legislation guaranteeing access to free legal aid for indigent individuals, and, in the longer term, to establish a system of legal protection. This legislative proposal drew upon the same solutions provided for in the January 2005 draft, particularly the division into basic and qualified legal aid. The State was to be obliged to provide free (or, alternatively, symbolically priced) legal assistance both during legal proceedings – through a professional legal representative – and when seeking out-of-court legal advice. Restrictions on access to legal aid based on the poverty of a prospective beneficiary were categorically rejected. The experiences gathered by the Commissioner for Human Rights pointed to an urgent need to organise a system of free legal advice. The areas of life particularly in need of legal support were primarily related to housing, social welfare, and family matters (already at the pre-litigation stage). The data held by the Commissioner for Human Rights unequivocally indicated that a significant portion of the population was unable to navigate the existing legal system. In addition, many were unaware of applicable procedures and incapable of exercising their legal rights. It was assumed that receiving appropriate legal advice at an early stage of a problem would, in a significant number of cases, make it possible to avoid litigation (i.e. refrain from referring the matter to a court and instead use alternative dispute resolution methods). The Commissioner for Human Rights identified what, in his view, was the most effective model for delivering legal aid – namely, through specialised public institutions employing full-time lawyers and contracting specific services from private law firms. In the Commissioner's view, such a system would ensure that legal aid tasks were fulfilled to the broadest possible extent. However, the increasing complexity of cases and the legal provisions applicable to them justified the need to standardise and, at the same time, simplify the procedures for granting legal aid in various types of proceedings. As in the draft Act of 31 January 2005, particular emphasis was placed on the justification for establishing a separate institution responsible exclusively for the provision of legal aid financed by the State. It was also proposed (similarly to the earlier legislative initiatives) that legal aid should be extended to the pre-litigation stage, and that its scope in terms of eligible recipients should be broadened so as to include a larger segment of the population. This draft too envisaged the creation, from the ground up, of an extensive structure requiring considerable financial resources, comprising Legal Aid Offices to be established in stages, both to minimise costs and to allow for the gradual monitoring of the functioning of the legal aid system in its proposed form. In addition to providing legal aid to persons whose income did not exceed the thresholds specified in Article 8 of the Act of 12 March 2004 on Social Assistance, the draft introduced an open-ended catalogue of circumstances which, independently of meeting the income criteria, would entitle an applicant to request legal aid. These circumstances – essentially life situations, often of a fortuitous nature – included: orphanhood, homelessness, unemployment, disability, prolonged or serious illness, domestic violence, applying for refugee status or asylum, detention or placement in a centre for foreigners or in custody for the purpose of expulsion, release from a penal institution, alcoholism or drug addiction, a fortuitous event or crisis situation, and natural or ecological disaster. The condition for granting legal aid in the event of the occurrence of at least one such circumstance (not necessarily included in the catalogue) was the applicant's inability to defend their rights and interests independently due to their personal situation. These life events, forming a non-exhaustive catalogue, were recognised as those most frequently experienced by individuals seeking assistance. At the same time, they were considered sufficiently complex to warrant long-term and comprehensive support – often with regard to the most vulnerable individuals. For this reason, the draft provided for assistance to those who were incapable of acting independently or of drafting an application for legal aid. In these two cases, it was possible for a legal aid worker to draw up the application for the grant of legal aid on the basis of information provided to them by the person seeking legal assistance (Przywora, 2019).

The draft law provided for a rather broad catalogue of matters excluded from the scope of legal aid financed by the State. The draft envisaged specific exclusions (or limitations) in the provision of legal aid. In addition to the failure to meet eligibility conditions (income threshold, personal circumstances), grounds for exclusion included the applicant's financial capacity to bear the costs of legal assistance – particularly the possession of substantial financial resources, valuables or securities, or immovable property; the manifest lack of need for any form of assistance; as well as instances in which a legal representative or defence counsel had already been appointed by the court in the case concerned. Legal aid was also deemed inapplicable in certain categories of cases, such as those involving the drafting of contracts, conditions for obtaining credit or loans, constitutional complaints, the conduct of business activity, the establishment and functioning of social institutions, as well as tax, customs, and foreign exchange matters.

At the same time, it should be noted that the draft law stipulated a relatively short deadline for processing applications for legal aid – no more than 14 days (similarly to the previous draft), which was intended to guarantee procedural efficiency and instil a sense of security among applicants. The appeals and judicial review procedures remained unchanged with respect to the draft Act of 31 January 2005. However, the rationale accompanying the draft recognised the impracticality of the previously proposed solution whereby complaints against decisions of the Director of the Centre were to be lodged with the Voivodship Administrative Court in Warsaw. At that time, this court was to have exclusive jurisdiction over cases from across the country. As a result, proposals emerged suggesting that such cases should fall under the jurisdiction of the voivodship administrative courts competent for the seats of the Legal Aid Offices. The obligation to report any changes in the circumstances underpinning the granting of legal aid remained in force. If it were to transpire that such circumstances either did not exist or had ceased to exist, the person who had received legal aid would be required to reimburse the costs thereof, pursuant to a decision indicating the amount due. Under the draft, the power to issue decisions regarding the granting or withdrawal of legal aid was vested in the Heads of Legal Aid Offices (Mazurek, 2014).

With regard to the institutional structure of legal aid, the draft maintained the solutions proposed in the previous version, i.e. public legal aid entities were to operate as state budgetary units. However, the requirements for legal aid personnel were formulated differently. Legal aid workers were required to enjoy full civil and public rights, have no criminal record (in particular for intentional offences, fiscal offences, or unintentional offences against economic turnover), and hold a degree in law from a Polish higher education institution (master's degree) or a recognised foreign law degree (the previous draft provided for the requirement to have completed studies either in administration or in law in Poland and to hold a master's degree). Both drafts explicitly addressed the health condition of candidates seeking employment as legal aid staff. The first, dated 31 January 2005, stipulated that the person must not be deemed permanently unfit for work in such a role, whereas the second, dated 21 February 2005, required that the candidate's health condition allow for employment in this capacity.

Both drafts envisaged a maximum period of 30 days for the provision of legal aid. In urgent cases, a shorter period could apply depending on the specific circumstances. Legal Aid Offices retained exclusive competence to determine time limits for resolving individual cases.

Given that the two drafts were produced within a span of less than a month by the same body, it is hardly surprising that their underlying assumptions did not differ fundamentally. The general principles of legal aid, institutional structure, and the anticipated effects of the proposed reforms remained consistent. Likewise, the conditions for granting legal aid showed no essential divergence, save for the second draft's inclusion of a non-exhaustive (illustrative) list of circumstances or life situations that would entitle individuals to apply for legal aid under the proposed regulations. Such a solution made it possible to focus on legal issues arising from areas of life commonly encountered by the vast majority of society and requiring specialised legal assistance (Przywora, Wróbel, 2020).

In principle, the organisation of legal aid nationwide retained the institutional framework described above. The roles of Director of the Centre and Head of the Office could be assigned only to individuals with demonstrable experience – the same experience-related conditions featured in both the 21 February and 31 January 2005 drafts. In addition to general requirements for legal aid staff, Article 21(3) of the draft provided that the Director or Head must hold the professional title of legal counsel, advocate, or notary public and have practised one of these professions for a minimum of three years. Alternatively, the required experience could consist in having served for at least three years as a judge in a common, military, or administrative court, or as a prosecutor, or having been employed for at least ten years in a public institution in a position involving the creation or application of law. The draft of 31 January 2005 stipulated markedly less stringent requirements (and addressed a broader pool of candidates) for the posts of Director and Head of Legal Aid Office. The first criterion i.e. possession of the professional title of legal counsel, advocate, or notary public and having practised that profession for three years was retained; however, no minimum experience was specified for those holding the position of a judge of a common, military or administrative court or the position of a prosecutor. The list of eligible candidates was extended to include trainee judges and prosecutors. Furthermore, the required length of service in a public institution in a position related to the creation or application of law was halved from ten to five years, compared to the previous drafts.

The intended outcome of the proposed measures was to enhance the legal awareness of Polish society and, consequently, reduce social pathologies. Like the earlier drafts, this version also sought to establish administrative and legal foundations for a comprehensive reform of state-funded legal aid. Despite the need to secure substantial budgetary resources that would have been required in the year to come, the reforms were expected to yield long-term savings for the national budget by reducing the number of court proceedings initiated as a result of provision of professional legal aid.

As in the earlier drafts, the anticipated costs of establishing the administrative structure for state-funded legal aid were presented only as a rough estimate. For this reason, any long-term benefits to the national budget proved impossible to quantify, even approximately (Hałub, 2016).

Ultimately, none of the above-mentioned draft Acts on the state-funded legal aid saw a chance of legislative success. The scale of financial outlays required – even with the gradual implementation of the institutional structure over several years – outweighed the potential benefits. Building an entirely new structure from the ground up was not seen as a rational solution. Furthermore, none of the drafts envisaged cooperation with the existing institutions already equipped with the necessary instruments, knowledge and experience in providing legal aid. Such an assumption must be considered not only inefficient and overly costly, but above all, irrational.

Conclusion

The enactment of the Act of 5 August 2015 on Free Legal Aid, Free Legal Advice and Legal Education was the outcome of a certain consolidation of legislative drafts prepared by the Ministry of Justice. The particularly intense legislative phase took place over several months between 2004 and 2005. These efforts allowed for the initial definition of the scope of basic legal aid as well as the clarification of the material scope of the legislation. The establishment of the Legal Aid Office enabled coordinated legal aid provision, thereby fulfilling international obligations, such as those arising under the Charter of Fundamental Rights, and implementing the principle of free legal aid in line with the "Poor Relief" concept as well as providing assistance for the most vulnerable individuals. At the same time, the principal criterion for eligibility was the financial standing of those seeking assistance, although personal circumstances of prospective beneficiaries were also taken into account. In principle, the Act incorporated the key assumptions set out in the previously proposed drafts, including the funding of legal aid by the State Treasury, its provision by professional lawyers and mediators, and the possible substitution of legal counsels and advocates by trainees in these professions. The Act mandated the involvement of professional self-governments (bar associations) as well as voivodes and starosts (province and county executives) in the legal aid system. In particular, counties were obliged to conclude contracts to ensure that half of legal aid provision would be delivered by advocates and legal counsels, and the other half by non-governmental organisations. In each case, however, the services were to be provided exclusively by qualified professionals. Although special requirements were set for NGO representatives, these would not adversely affect the quality of services, which had to remain at a professional standard.

The legislative drafts from 2004 and 2005 authorised the Minister of Justice to issue implementing regulations and manage the IT infrastructure of the legal aid system (the so-called npp). However, the adopted systemic solution – combining significant formalism in the data entry process with the mere requirement of a declaration of indigence by the beneficiary – deserves critical reflection.

Nonetheless, the legislative assumptions proposed and subsequently enacted deserve recognition, as they succeeded in developing a reasonably comprehensive legal aid statute encompassing broadly understood legal assistance. Despite drafting shortcomings and the limited timeframe, the ministerial proposals succeeded in strengthening public legal awareness and enabling wider access to courts, which is considered as a fundamental right.

It is worth emphasizing that the assumptions from the 2004 and 2005 drafts served as a reference point in the development of the Act of August 5, 2015, on Free Legal Aid and Legal Education. The adoption of this act in 2015 did not end the debate on the shape of the legal aid system in Poland. In subsequent years, a regulation was adopted providing not only legal aid but also free citizen counseling and legal education. The need to raise citizens' legal awareness and provide non-legal assistance was also recognized. Opinions regarding the scope of fees continued to clash, although income was considered the primary criterion for granting state aid. Differing views also concerned the issue of submitting declarations entitling to obtain legal aid and the scope of assistance understood in narrow terms (preparing draft documents and providing advice) or broad terms (understood as a power of attorney to appear in the proceedings).

NOTES

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