Meeting of the Presidents of the Bars from Central and Eastern Europe

Kranjska Gora 2-3 October 2019

Theme 1

Remuneration for a lawyer's services:

- payments for legal assistance
- types of payments and method of calculating remuneration
- payment for legal services provided by a public defender.

In Poland, pursuant to Art. 16 of the act *Law on the Bar,* "remuneration for an advocates' activities is determined by agreement with the client".

According to the advocates' Code of Conduct an advocate is required to exercise meticulous care in his or her financial relations with the client. An advocate is obliged to inform the client about the amount of remuneration and the way it is calculated. It is unacceptable for the advocate to enter into an agreement with the client whereby the obligation to pay remuneration for running a case would depend only on the final outcome of the case (success fee). However, an advocate and a client may agree on additional remuneration for a positive outcome of the case.
It seems that the main reason for this regulation is that „an advocate may not work for a client for free".

Another applicable provision is the Regulation of the Minister of Justice of 22 October 2015 *on fees for advocates' services.* The Regulation determines the amount of fees due for the activities of advocates undertaken versus the respective bodies of the judicial system. The payments so defined by the Minister of Justice serve as grounds for the courts to award the costs of legal representation and legal services.

The main types of fees making up an advocate's remuneration are as follows:

- a lump-sum fee,
- an hourly rate
- payment for outcome of the case as so called *success fee*

As indicated above it is inadmissible to agree on remuneration in the form of success fee only. Remuneration must also comprise another form of fees apart from the success fee.

From the point of view of an advocate's practice we can say that the following aspects will influence the grounds for determining the fees, that is remuneration for an advocate's activities:

- type and nature of the case and the degree of complexity,
- expected time required,
- the value of the object of the case is of particular significance for establishing the lawyer's fees, particularly in judicial practice,

- sometimes the type of relationship with the client and the nature of the service may also have an effect on how remuneration is calculated (for instance, are there prospects for long term cooperation with the client or does the client only need a one-off service).

Lump-sum remuneration - this is a form usually applied in situations where it is possible to estimate the required work load involved in running a case. The agreed remuneration will be a one-off payment (for the given court instance, for drafting a pleading etc.), and the agreement specifies the scope of activities to be performed by the advocate or law firm that is covered by such lump-sum fee. The amount is independent of the duration of the assignment, it only depends on the work load required by the given case.
Obviously, this method of calculating remuneration also includes payments for one-off legal advice provided to clients by an advocate in the course of his or her daily practice.

An hourly rate is a form of calculating remuneration for the services of an advocate or law firm which require work and involvement that cannot be estimated in advance. In this case the basis for an advocate's remuneration is the time spent working for a given client or on a given case. This form of payment is best suited for entities (most frequently companies) which require an undefined scope of on-going legal assistance. Lawyers' fees depend on the number of working hours spent in an agreed settlement cycle.

The so-called success fee is a fee remuneration that is paid if the advocate wins the case. As mentioned above, this form of settlement may only be used in conjunction with another form of fee, eg. on-off lump-sum or hourly rate. The success fee for an advocate or law firm is determined in the form of a percentage and depends on winning a particular case (eg. a percentage of the amount the court awarded to the client).
As a matter of interest, sometimes the legislator actually takes a view on the matter of establishing a lawyer's remuneration in the form of success fee, indicating the upper threshold of such payments. This is the case in the act *on pursuing class action claims,* where Art. 5 of the act stipulates that *"An agreement regulating a counsel's fees may provide for remuneration in the form of a percentage of the amount awarded to the claimant, but not more that 20% of the amount".*

In legal practice a mixed system, using elements of the abovementioned methods of calculating fees, may of course be applied.

In small law firms an advocate's fee for court cases is in practice established on the basis of the remuneration rates set out in the Regulation of the Minister of Justice of 22 October 2015 *on fees for advocates' services* referred to above. The figures specified therein are „minimum" rates and the actual fee is subject to negotiation between the advocate and the client and may be agreed at a higher level. However, the client must be aware that in the final judgment the court will in principle award the costs of legal counsel according to the minimum rates indicated in the Regulation.

In large law firms the process of calculating remuneration is more complex. It seems however, that the hourly rate is still the basis for the calculation, sometimes using a so-called cap, that is an upper remuneration limit. In transaction work (bank transactions, acquisitions, IPOs etc) the client's budgets allocated for the specific purpose come into play, as well as the previously mentioned capped fees. A success fee element appears in court disputes or as a bonus for closing a transaction. Sometimes in case of mergers& acquisitions the value of remuneration for completing the transaction is agreed, with the stipulation that if the transaction is closed the law firm will receive 120% of the agreed amount and if not, only 80%.

It is also to be noted that the public procurement law applies in relations with state owned companies. In practice this means that the cost of the service must be established in advance, as such we are in fact dealing with a lump-sum remuneration proposal.

As regards payment for the legal services provided by a public defender the Regulation of the Minister of Justice of 3 October 2016 *about payment by the State Treasury of the unpaid costs of legal assistance provided by a public defender.*
According to the provisions of the Regulation the costs of unpaid legal assistance comprise:
- the fee determined in accordance with the regulation,
- necessary and documented out-of-pocket expenses incurred by the appointed public defender.
The Regulation applies to the amount of fees for individual civil and criminal cases and in proceedings before administrative courts as well as other public bodies involved in resolving disputes.

In order to obtain payment from the State Treasury an advocate must file with the court before which he or she acted, on behalf of the client, an application for an award of outstanding costs of legal assistance.
The court decides whether fees are to be awarded to an advocate. If the amount of payment is to exceed the minimum rates indicated in the abovementioned Regulation the court also decides the specific amount to be awarded. In this case the court particularly takes into account the advocate's workload related to the given case, the value of the object of dispute, the degree of complexity of the case, the advocate's contribution to clarifying the facts of the case as well as his or her input which the court found useful in explaining and determining material legal issues. The amount awarded by the court is increased by VAT at the applicable rate.

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Chairman of The Higher Audit Committee

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Theme 2

Remuneration for functions in the bodies of the Bar:

- types of remuneration
- methods of establishing remuneration
- types of functions
- professionalisation: yes or no.

The discussion whether work for the advocates' self-government and performing specific functions ought to be remunerated went on for a considerable length of time in the advocates' community. Opinions were divided.

Finally, in November 2007, as a result of the discussions, the most important governing body of the Bar, the National Bar Assembly, passed a resolution on the matter. The following solutions were adopted:

1. The National Bar Assembly obliged the President of the Polish Bar Council to limit his or her own professional activity so that are capable of performing their function with the degree of commitment required to run the affairs of the Bar. The Assembly considered that performing this function ought to be paid for. It authorised the Polish Bar Council to pass a resolution determining the amount of remuneration corresponding to the magnitude of the tasks facing the President of the Polish Bar Council.
2. The Assembly also resolved that members of the bodies of the Bar of whom substantial effort and commitment is required ought to limit their professional activities as appropriate. Thus the Assembly authorised the Polish Bar Council to grant corresponding remuneration to such persons.
3. At the same time, in the same resolution, the National Assembly of the Bar authorised the Polish Bar Council to employ persons with the relevant qualifications to work in the office which assists the Bar in its operations, in order to ensure professional administration in this area of the Bar's activities.

Evidently in 2007 the principle which applied until then, namely that activity in the Bar's self-government was unpaid for and on *pro bono* basis, was waived. A new direction was indicated, that activities in the bodies of the Bar may, in fact sometimes ought to be, remunerated. It was also decided that in principle the purpose of this remuneration was to provide compensation for the need to limit the professional activities of an advocate engaged in performing functions in the Bar's self-government. However, in its resolution the National Assembly of the Bar did not go so far as to require the President or other advocates holding positions in the Bar to suspend their strictly professional work altogether for the duration of their term of office in the Bar.

The solutions adopted in 2007 essentially continue in force today, although perhaps the understanding of the nature and purpose of remuneration has changed somewhat.

In accordance with the above resolution of the National Bar Assembly a team of selected professionals has been employed in the office of the Bar. Cooperation was also started with professional entities in order to assist the President and the Polish Bar Council in the performance of their duties.

The Polish Bar Council also adopted a system of remunerating persons performing specific functions in the bodies of the Bar and self-government.

In the beginning of each year the Polish Bar Council passes a resolution concerning remunerations. This resolution regulates the following issues:

- members of the Bar's self-government who perform functions in its bodies and persons performing specific activities assigned by the bodies of the Bar are granted a so-called self-government allowance;
- the amount of one allowance is established, as well as the overall amount of allowances to be paid to each individual person;
- the specific amounts of allowances are allocated to specific persons. These persons are named on a special list attached to the resolution. This applies primarily to persons performing functions in the Bar's self-government, such as the President of the Polish Bar Council, Members of the Presidium of the Polish Bar Council, the Disciplinary Spokesman of the Bar, the Chairman of the High Disciplinary Court, the Chairman of the High Audit Commission, the Chairman of the Central Inspectors' Team.
Moreover, the Presidium of the Polish Bar Council, on request of the President, may grant allowances to advocates other than those on the list attached to the resolution, on task-related basis or if they perform specific activities for the Bar's self-government.

Generally speaking, the number and total amount of the allowances as well as overall remuneration for work for self-government bodies depend on the scope of the person's tasks and the commitment of the person performing specific functions and other activities assigned to him or her by the bodies of the Bar.

It is to be emphasised that all the information about the abovementioned resolution is public and is available to all members of the Bar's self-government

According to the structure of advocates' self-government in Poland, apart from the „central" bodies there are 24 Bar Chambers which have legal personality and are entirely independent in managing their finances. They also have a separate „structure", similar to that of the central bodies of the Bar.
Essentially remuneration for performing functions in the structures and bodies of the chambers is offered in a vast majority of the chambers.

It seems pertinent to quote the numbers relevant for the Polish Bar:
Generally, at the end of August 2019 there were 23 290 advocates enrolled on the lists of the 24 Bar Chambers (18 923 active advocates and 4 367 not practising). 5 434 trainee advocates are also on the lists.

Of course Warsaw has the highest number of advocates and trainee advocates, the Warsaw list names 6 956 advocates (5 178 practising and 1 778 non-practising). The number of trainee advocates is 1 613.

As regards the questions whether or not to professionalise:

In my opinion: Total commitment is still expected of advocates performing functions in the Bar's self-government, with proper remuneration for such commitment. On the other hand, this "remuneration" is still not viewed simply as pay for work, it is still seen as compensation for the loss suffered by the law firm due to the fact that the advocate devotes his or her time to working for the self-government. The emphasis seems to be actually going in the direction that remuneration is due for a function that is well performed. At the same time, we are not going in the direction of professionalism understood as giving up one's own practice when performing functions for the self-government. Personally, I do not observe such unequivocal expectations in our community.

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Chairman of The Higher Audit Committee