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The legal professions in Poland – an overview

By Roman Poplawski, *Barrister*

Whether you intend to live, work, study or set up a business, in Poland (apart from some family or friend situation), you will at some stage require input from a lawyer of some sort. Poland is not an easy place to navigate at the best of times, and an understanding of the roles of its legal players will make things easier. It may be that an important document or qualification requires certification. Alternatively, a general or specific power of attorney needs to be executed or a more complex transaction needs to be performed. In any event, it would be useful to understand who the main players in the Polish legal environment are, what environment they operate in and what they can do for you.

The first thing to appreciate is that the Polish legal system is a codified system – this means that rules and laws are contained in statutes and regulations passed by the Polish parliament (*Sejm*), by the government or by individual ministers. Important and more specific provisions governing the more important legal areas are to be found in statutes called ‘codes’ - the particular ‘code’ such as the Civil Code, the Commercial Code or the Labour Code will regulate the legal subject covered by the particular ‘code’. Most legal areas (commercial, land, employment, succession, crime) will have a designated code which covers the topics found in practice. For example, the Civil Code contains numerous chapters which regulate legal transactions (obligations), real estate, succession and so on. The result is that contracts such as lease agreements which are inordinately long in the English Common Law system, will be relatively short in Poland as all the main provisions relating to the lease agreement will be contained in the Civil Code. Therefore, lawyers in Poland drafting such agreements usually only incorporate the main commercial terms and leave the remaining provisions (by reference in the agreement) to the determination of the Civil Code.

The main players in this legal arena are advocates, attorneys-at-law, notaries, prosecutors and judges. There are other professionals such as bailiffs, tax advisors, patent attorneys, court appointed guardians and others, but for the purpose of this overview, I shall confine myself to the main players.

There are five main professional limbs to the profession in Poland. At the top of the tree are the **court attorneys** (*adwokat*) whose main role is to advise on the law and to represent

your interests in court. The title is equivalent to that of an English Barrister although the system does not encourage the adversarial approach to advocacy, rather the continental 'judge-led' inquisitorial approach to litigation is applied. There is a perception that these individuals are the best trained lawyers in Poland – they certainly maintain their traditional role as an elitist grouping which operates from a set of chambers (*zespół adwokacki*), from a private office (*kancelaria adwokacka*) or from a larger firm or partnership which may on occasions be a well-known foreign law firm. These individuals would have generally completed a law degree (five years) followed by a period of training (*aplikacja adwokacka*) which historically took four years but has recently been shortened to three.

The alternative legal practitioner is the **attorney-at-law** (*radca prawny*) who is now professionally speaking at the same level as the advocate (*adwokat*). The title is roughly equivalent to that of an English solicitor. Historically, the *radca prawny* was an 'in-house' lawyer working for a state-owned enterprise or other larger organisation. They were not trained or entitled to represent individuals in family or criminal matters and were only required to complete a three-year training period (post university). This has now changed as these professionals can now conduct all matters in all courts and are not fettered by historical prejudice. The main distinction is that 'attorneys-at-law' (official description in English since 2018) wear blue togas in court whereas the advocate wears a green one. There is talk of a merger of the two professions but it appears that there is resistance from the Polish Bar Council and although there is logic in fusion, this is still some way off. In practice, these professionals work together and there is no real distinction between skills and ability save for choice of expertise. Effectively, their status is identical.

The next practitioner that an individual and/or corporation is most likely to need or use is the **notary** (*notariusz*). This is a respected profession requiring a law degree and three-year period of professional training. Exams need to be passed. Historically notaries in Poland were state official working at the state notary's office whose role was to check, authenticate and draft documents which were to be used or were required in official transactions. The notary's remit normally extended to drafting wills, verifying a person's identity, attesting signatures and effecting property (land and lease) transactions. With the political changes that commenced in the late 1980s, the role of the notary did not actually change, but their position as a state official did and they became self-employed private practitioners subject to state oversight. In addition, the increase in new company formations and a huge influx of foreign investors, residents and employees, their client base changed incredibly. There are now many more notaries in Poland than ever before, but the competition is stiff and notarial fees have been capped in many instances. The commonly

accepted approach to a notarial document (notarial deed) or a document verified or authenticated by a notary is that the document is on its face 'valid' and 'approved'. Therefore, for example, a power of attorney drafted by and before a notary will most readily be accepted by a bank or other official body (local authorities, tax office and central government) without any real further investigation. If that same document were to be presented without a notary's stamp there is little chance of it having any useful function in Poland. Similarly, with a last will and testament, one executed by a notary will be presumed to be valid and there will be difficulties (in rare cases this can be rebutted) in establishing that the testator lacked mental capacity when executing their last will before a notary.

There is a presumption that a notarial document is beyond reproach; this underpins the popularity of notarial deeds and notarised documents. A notary is not a translator; should the individual be a non-Polish speaking foreigner, then a sworn translation will need to be prepared at the time of execution, or else the sworn translator would need to attend so that the notary is satisfied that the [foreign] individual understood the contents of the document being signed.

In all cases, the notary will retain the original signed document and will provide the client with one or more certified extracts of the original document. This extract has the same legal validity and authority as the original, which is retained by the notary.

From a practical perspective, the notary will most probably be the most useful legal practitioner although their remit does not extend to giving legal advice. They can help with all sorts of legal issues such as registering charges/mortgages, searching land registers, concluding property purchases and sales but they will not get involved in any form of 'advice-requiring' processes, nor will they get involved in litigation. For this you will also require the services of a registered practising lawyer.

It should be noted that there are qualified notaries in the UK (and elsewhere) who may assist an individual intending to come to Poland either to live, work or invest. The Polish authorities *will rarely if ever accept any document (power of attorney, witness statement proof of qualifications) certified by a solicitor or barrister* and I suspect that the same will apply to attorneys in Europe and North America. There are a few Polish speaking notaries in the UK whose certification will be accepted in Poland. In all cases, the relevant document will need to be translated into Polish by a sworn translator.

An important though often ignored limb of the Polish legal profession is the **prosecutor** (*prokurator*). Prosecutors are legal representatives of the state and are predominantly associated with the criminal aspect of the legal system. To an extent this is true although the public prosecutor also gets involved in some administrative law and social security matters when the public interest needs to be protected. The prosecutor does not become involved in actions where the State Treasury is a party. The primary role of the prosecutor is his or her role in prosecuting and supervising police investigations and acting in the public interest in all criminal trials and public prosecutions. The education process can be lengthy. Graduate students of Law will attend the National School for the Judiciary and Public Prosecutors (*Krajowa Szkoła Sądownictwa i Prokuratury*) situated in Kraków for a general introductory course which lasts one year. This is followed by 30 months of specialist training and then finally a 12-month internship at the place of work. On any basis, the period of training is lengthy and I suspect determination to succeed is a must. There are 45 regional prosecutors' offices in Poland with each regional office covering at least two district offices.

The prosecutor's role is also to conduct the following functions which are merely indicative and not exhaustive:

- Running and supervising criminal actions and acting as public prosecutor before the criminal (and sometimes other) courts
- Commencing prosecutions and issuing claims (both criminal and civil) including employment and social security matters where the public interest needs representation or protection
- Taking legal steps aimed at properly and consistently ensuring that the law is observed in court proceedings, proceedings before the administrative courts as well as in criminal matters
- Supervising and ensuring that arrests and temporary incarceration (remand) are properly implemented
- Co-operating with educational establishments in order to ensure that proper investigation is made in the area of criminality and its root causes
- Appealing illegal administrative decisions and participating in court proceedings, the aim of which is to rectify such illegal decisions
- Co-ordinating international criminal enforcement operations

The role of the prosecutor and the prosecutor's office is not limited to the matters listed as there are many other professional and political roles played by the prosecutor which are outside the remit of this overview. However, one can see that there is an important role to be

played by this arm of the legal profession, but it is unlikely that any potential investor (or resident) in Poland will necessarily have contact with the prosecutor's office.

The final arm of the legal profession are the **judges** (**sędziowie**, singular **sędzia**), the products of a specialist and systematic training route. Contrary to the practice in the UK of judges being drawn from the ranks of experienced practitioners, Judges in Poland complete their degrees in law and then proceed to be specifically educated as judges. There are several branches of the law in Poland to which a judge will be affiliated: the criminal courts, the civil courts which include commercial disputes, family judges and administrative ones. Specific practice areas (such as probate and the law of succession) will fall within the civil courts. Judges will preside over matters which fall within their area of expertise. I mention this as a serious point as in the UK for example, a senior chancery practitioner could be appointed to the Bench and sit for many years in the criminal courts. This is not the case in Poland.

The judicial system in Poland has a poor reputation. I do not wish to make excuses or apologies for this but an explanation is in order. There is a lack of judicial experience as historically, judges operated in a quite different reality to the one we find ourselves in now. The development of the law and its implementation has found a new playing field (free market, individualism, private property, unfettered travel etc) and since 2004 Poland has moved into the EU legal arena with extra 'bolt on' complications. This has been and continues to be a huge progressive step and impossible to 'fix' in a speedy manner. Admittedly the changes introduced in 1988 onwards are welcome improvements. However, the fact remains that the Polish judicial system has had to begin from scratch. This has led to some painfully costly litigation where the outcome has been unjust. Although commercial entities often resolve matters through arbitration, the choice-of-law clause (where one of the parties is Polish) will not be of any real comfort to the non-Polish entity. The Polish party will invariably choose Polish law and the non-Polish party will optimistically feel that litigation will never (fingers crossed) happen.

Issuing a claim in Poland can be expensive and any appeal attracts further filing fees which can reach even 5% of the claim value. The issue fee is disproportionate to the claim (5%), the litigation process will without any doubt be lengthy, the costs of litigation will never reward the winner in any meaningful way other than through some award of standard fixed costs and the manner in which judges approach litigation will lead to outcomes which appear random or plainly unfair. The court system and the judges that inhabit it are not paid in the same way as private practitioners. Their social status of course is high but their low salaries

tend to act as demotivators. The result is that talented lawyers go into private practice which in turn deprives the court system of talented and experienced practitioners.

The other main problem is resource (or rather the lack of resources) in the court system. The system is archaic, with paper files being the norm and hearings being held for short sittings and several months apart which leads to a lack of continuity in proceedings and great potential for errors in recall. These failings do not instil confidence in the Polish judicial system. In addition, do not be surprised where years after an action has been issued and progressed, that the presiding judge suddenly and without explanation disappears and a new judge is appointed to continue with the matter. This is a shocking approach to justice in Poland, and is very much the norm.

In summary, I would suggest the following tips for any potential investor, resident or employee in Poland. Remember that a reliable notary is a highly useful asset as you will require their services without any doubt at some stage of your stay in Poland. Always have original documents with you. If you do not speak Polish, it will help to learn some basic phrases but more importantly solicit and retain the services of a good reliable (sworn) translator. They are not overly expensive. Without one, all your efforts at 'legal compliance' may be delayed. Finally, a good practical lawyer will definitely be required at some stage. The big law firms can be expensive for an individual, but a good individual practitioner can be found at competitive rates. Please remember that the way in which Polish lawyers are trained and educated often leads to two-dimensional advice and opinions which do not really fix or resolve a potential problem. Polish lawyers are good at reciting what the law or rule is but often shy away from a legally reasoned approach which actually assists the client in the context of their particular predicament. My experience is that this is a historical problem which is slowly improving but the attitude remains that if the law states that you can or cannot do something, then the role of the lawyer is to confirm or to negate that assumption.

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