Prerequisites for the Application of Sanctions in the Form of Removal from the List of Attorneys-at-Law Due to Non-Payment of Membership Fees

Judgement of the Supreme Administrative Court of 10 October 2023, II GSK 815/20[1]

Removal from the list of attorneys-at-law takes place in the event of non-payment of membership fees for a period longer than one year, which is an independent premise subject to examination in the proceedings for removal from the list of attorneys-at-law, regardless of the financial situation of the obligated party. The occurrence of this condition obliges the regional council to adopt a resolution on removal from the list of attorneys-at-law.

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Commentary

1. Facts

The Supreme Administrative Court, in its judgement of 10 October 2023, in case II GSK 815/20,[2] determined that the Council of the Regional Bar of Attorneys-at-law in Wrocław, by the resolution of 19 March 2019, removed an attorney-at-law[3] from the list

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[1] LEX No. 3642966.

[2] Judgement of the Supreme Administrative Court of 10 October 2023, II GSK 815/20, LEX No. 3642966.

[3] For the differences between the professions of attorney-at-law and solicitor in Polish law, see: M. Biliński, H. Wolska, M. Jaś-Nowopolska, "Dopuszczalność posiadania udziałów majątkowych przez osoby niewykonujące zawodów prawniczych w działalności podmiotów świadczących pomoc prawną (adwokatów) w prawie polskim i niemieckim," *Przegląd Ustawodawstwa Gospodarczego* 2024, vol. 77, no. 6; M. Biliński, H. Wolska, "The profession of an advocate as a profession of public trust against the background of Polish jurisprudence," *Franz von Liszt Institute Working Paper* 2021, no. 2: *Legal professions in comparative perspective: Poland–Germany. Part I*, pp. 72–78; M. Jaś-Nowopolska,

of attorneys-at-law for failure to pay membership fees for more than 72 months, that is, for a period longer than one year. The Presidium of the National Council of Attorneys-at-law upheld the above resolution of the Regional Bar of Attorneys-at-law in Wrocław by the resolution of 9 May 2019. As a result of the appellant's appeal to the Minister of Justice, the body did not share the appellant's arguments based on allegations of violation of Article 118 of the Act of 23 April 1964 Civil Code (consolidated text: *Journal of Laws* of 2025, item 1071, as amended) (hereafter: KC [Kodeks cywilny]), as well as Article 29[1] of the Act of 6 July 1982 on Attorneys-at-law (consolidated text: *Journal of Laws* of 2024, item 499, as amended) (hereafter: URP [Ustawa o radcach prawnych]). In view of the above, the appellant filed a complaint against the decision of the authority to the voivodship administrative court, which dismissed the complaint. This was due to the failure of the court of first instance to consider the objections raised against the decision of the Minister of Justice, that is, violation of Article 118 of the KC, as well as Article 29[1] of the URP.

The appellant based his cassation appeal against the decision of the court of first instance on the grounds of violation of: Article 174(2) of the Act of 30 August 2002 Law on Proceedings before Administrative Courts (*Journal of Laws* of 2024, item 935) (hereafter: PPSA [Prawo o postępowaniu przed sądami administracyjnymi]) in connection with Article 7 of the Constitution of the Republic of Poland of 2 April 1997 (*Journal of Laws* of 1997, No. 78, item 483 as amended) and Article 6 of the Act of 14 June 1960 Code of Administrative Procedure (consolidated text: *Journal of Laws* of 2025, item 1691, as amended) by incorrectly recognising that the provisions on limitation (Article 118 of the KC) do not apply in the case; Article 174(2) PPSA in conjunction with Article 10(1) of the Code of Administrative Procedure due to the party's lack of participation in the adoption of resolutions in the first and second instance and failure to notify the party of its rights before the decision was issued by the Minister of Justice, as well as omission of those circumstances affecting the outcome of the proceedings which were essential for the outcome of the proceedings; Article 174(2) PPSA in conjunction with Articles 7 and 77 of the Code of Administrative Proceedings by violating the principle of objective truth and failing to clarify all the aspects of the case relevant to its resolution; Article 174(1) of the PPSA in conjunction with Article 29[1] URP by failing to take the actions provided for by law and exceeding the thirty-day deadline in the event of finding non-payment of contributions after a period of one year, resulting in excessive debt; Article 174(1) of the PPSA, Article 41(2) of the URP by the Council's failure to represent the professional interests of the attorney-at-law, including written notification of arrears in the payment of contributions, and Article 174(1) of the PPSA in conjunction with Article 29(4a) URP by recognising that this article constitutes grounds for removal from the list of attorneys-at-law kept by the Council. Based on the aforementioned charges, the appellant requested that the

H. Wolska, "Women in legal services (as attorneys and legal advisors) in Poland and Germany," *Franz von Liszt Institute Working Paper* 2018, no. 02; H. Wolska, *Obligation of Continuing Legal Education for Lawyers (Advocates and Attorneys-at-Law) under German and Polish Law*, Warszawa 2024.

judgement of the court of first instance, the preceding decision of the Minister of Justice, as well as the resolution of the authorities preceding this decision be repealed and the case be referred for reconsideration.

The Supreme Administrative Court dismissed the attorney-at-law's complaint as unfounded.

2. Prerequisites for Removal from the List of Attorneys-at-Law

Situations in which an attorney-at-law is removed from the list of attorneys-at-law on the basis of a resolution of the council of the regional bar of attorneys-at-law are specified in Article 29 of the URP. According to the wording of the aforementioned provision, the above effect occurs in such situations as: submission of an application by the attorney-at-law; even a partial limitation of legal capacity; loss of public rights by virtue of a court judgement; failure to pay membership fees for a period longer than one year; death of the attorney-at-law; and a disciplinary decision or court judgement depriving the attorney-at-law of the right to practice the legal profession.[4]

The catalogue of the prerequisites listed in the regulation is exhaustive, and the occurrence of any of them constitutes an independent prerequisite for the regional bar of attorneys-at-law to adopt a resolution on the removal from the list of attorneys-at-law.[5] The occurrence of a statutory prerequisite, therefore, obliges the regional council to pass a resolution on removal from the list of attorneys-at-law.[6] One of the prerequisites indicated above is the failure by an attorney-at-law to pay membership fees for a period exceeding one year. This prerequisite was added by the Act of 22 May 1997 amending the Act, the Law on the Bar and the URP as well as certain other acts (*Journal of Laws* of 1997, No. 75, item 471), and it clearly emphasises the legal significance of the obligation of attorneys-at-law to pay membership fees to the self-governing body of attorneys-at-law.

The obligation of an attorney-at-law to belong to a professional association results directly from Article 40(2) of the URP and is connected with the obligation to pay a membership fee, which results from the content of Article 60(11) of the URP, creating the authorisation of the National Bar of Attorneys-at-law to determine the amount of the membership fee and the rules of its distribution, as well as from Article 61(3) of the URP, according to which the professional association is financed, among other things, with contributions from attorneys-at-law and trainee attorneys-at-law. The above allows us to conclude that the legislator has decided that the self-governing

4 In previous legal states, the situations resulting in the adoption of a resolution on removal from the list of attorneys-at-law also included the loss of Polish citizenship, and after the period of political transformation in Poland after 1989, additionally the submission of an untrue vetting statement.

5 Judgement of the Voivodship Administrative Court in Warsaw of 29 November 2019, VI SA/Wa 1828/19, LEX No. 3014276.

6 Judgment of the Provincial Administrative Court in Warsaw of 10 October 2019, VI SA/Wa 700/19, LEX No. 2783624.

organisation should manage its own financial affairs and decide on its own assets, which is in line with the essence of a self-governing body in general.[7] Detailed rules related to membership fees, which, it is worth noting, do not constitute a public levy. Their amount and payment rules are specified in Resolution No. 7/VIII/2010 of the National Council of Attorneys-at-law of 10 December 2010 on the amount of membership and insurance contributions, the rules for their payment and distribution, and the special-purpose funds of the National Council of Attorneys-at-law.[8] The above resolution clearly states that the payment of membership fees to the self-governing body of attorneys-at-law is one of the basic obligations of every person registered on the list of attorneys-at-law. This obligation arises in the month in which the person is entered in the list of attorneys-at-law and expires (as a rule) on the last day of the month in which membership in the professional association of attorneys-at-law ceases, or an event occurs which, in accordance with separate regulations or by virtue of the previously mentioned resolution, results in exemption from the obligation to pay contributions (Section 7), such as, for example, as is specified in Section 8 of the resolution, the attorney-at-law's reaching the age of seventy-five and not practising as an attorney-at-law.[9]

The Supreme Administrative Court, in its judgement of 12 April 2022 (II GSK 1837/18, LEX No. 3338550), emphasises that "the membership fee is a civil-law debt that the bodies of the bodies of attorney self-government can pursue in court proceedings to enforce outstanding debts from an attorney-at-law."

Based on Section 10 of the resolution, the council of the regional bar may, by way of a resolution, waive all or part of the membership fee, defer individual payments, or spread them into installments. It is important that in the application for remission, deferral, or payment in installments of the debt, the attorney-at-law indicates the circumstances justifying the application of the provision, including their difficult financial situation, poor health, or other important circumstances preventing the fulfilment of the obligation to pay the membership fee in whole or in part (Section 10).[10]

As the Supreme Administrative Court points out, "in the event that a resolution is adopted by the authority regarding the remission/refusal of the remission of membership fees, such a resolution is not a resolution in the field of public

[7] Judgment of the Supreme Administrative Court of 12 April 2022, II GSK 1209/19, LEX No. 3338914.

[8] As amended by Resolution No. 116/XI/22 of the National Council of Attorneys-at-law, dated 28 October 2022, amending the Resolution on the amount of membership fee and insurance premium, rules for their payment and distribution.

[9] Pursuant to Section 8 of the resolution, the exemption from the obligation to pay membership fees also applies to those attorneys-at-law who are not practicing as attorneys-at-law and are registered at the employment office as unemployed, and to attorneys-at-law who are pensioners, as well as to attorneys-at-law who receive pre-retirement benefits or receive nursing benefits, not practicing as attorneys-at-law. In addition, the regional council of the bar may, by resolution, at the request of an attorney-at-law or trainee attorney-at-law who is on parental leave, exempt him/her from the obligation to pay the membership fee.

[10] K. Kwapisz, "Komentarz do art. 29" [in:] *eadem*, *Ustawa o radcach prawnych. Komentarz*, Warszawa 2011.

administration, but it is a resolution concerning an intra-organisational matter of a professional self-government closely related to membership in the self-government of attorneys-at-law and the duties of a member towards their own corporation."[11]

At this point, it should also be noted that the mere submission of a request, even a justified one, does not in any way oblige the district chamber to release the attorney-at-law from the obligation to pay the contribution, because of the dispositive nature of this provision. The circumstances indicated above are the only ones that justify and constitute the basis for unpenalized non-payment of membership fees by an attorney-at-law. All other situations should therefore result in the application of the consequence of removing the attorney-at-law from the list of attorneys-at-law based on the provision of Article 29(4a) of the URP.

3. Decision on the Non-Payment of Membership Fees by an Attorney-at-Law

Removal of an attorney-at-law from the list of attorneys-at-law due to the non-payment of fees requires both: material actions, consisting of a particularly thorough analysis of the case and a reflection of the facts in the justification of the decisions taken, taking into account all its elements and their significance for the case, including the premises of the decision, as well as formal activities, that is, the adoption of the resolution itself, as referred to in Article 29[1] of the URP within thirty days of receiving information of the occurrence of the event referred to in Article 29 points 1 and 3–5 of the URP. It should be noted that in the event of the non-payment of membership fees for a period of more than one year, which is to be determined as part of the material actions taken by the professional self-government bodies, the implementation of formal actions, that is, the adoption of a resolution on the deletion of an attorney-at-law from the list of attorneys-at-law, is obligatory. This is due to the fact that the body adopting the resolution is bound by its previous decisions. This means that if a specific set of facts arises that corresponds to the content of the provision of Article 29(4a) of the URP, the regional bar of attorneys-at-law is not able to pass a resolution other than to remove the attorney-at-law from the list of attorneys-at-law.[12] The necessity to precisely reflect the factual findings in the justification of the decisions made, with a precise indication of the period for which the alleged failure to pay membership fees is alleged, together with the subsumption of these facts under Article 29(4a) of the URP, results from the fact that resolutions of the self-government of attorneys-at-law which interfere in the sphere of constitutional rights and freedoms of its members (and the decision to remove a person from the list of attorneys-at-law is such an interference) should be treated as administrative decisions within the meaning of the Code of Administrative

[11] Judgment of the Supreme Administrative Court of 12 April 2022, II GSK 1209/19, LEX No. 3338914.
[12] Judgment of the Voivodship Administrative Court in Warsaw of 29 November 2019, VI SA/Wa 1828/19, LEX No. 3014276.

Procedure, which implies the application of the legal norms contained therein.[13] According to the general rules of procedure defined in Articles 6–16 of the Code of Administrative Procedure, one of the main principles of procedure is the principle of investigating the objective truth defined in Article 7 of the Code of Administrative Procedure, which imposes on the bodies conducting the proceedings the obligation to comprehensively examine the case in factual and legal terms. This principle is implemented by a number of specific regulations, in particular the regulations on evidentiary proceedings. They impose an obligation on the authority to exhaustively collect, examine, and evaluate all evidence. Only on the basis of all the evidence collected can the authority assess whether a given circumstance has been proven.[14] Therefore, the adoption of a resolution by the regional council on the removal from the list of attorneys-at-law should in each case be preceded by a thorough determination of the factual and legal circumstances relevant to the case, and the decision itself should be duly justified; this is in accordance with the requirements of Article 107(1) of the Code of Administrative Procedure.

A resolution of the regional chamber of attorneys-at-law on deletion from the list of attorneys-at-law should be adopted within thirty days of obtaining information about the occurrence of the event that is the basis for the deletion. However, the deadline indicated in the law is only instructional. Its purpose is to impose an obligation on the authority to act quickly and to make decisions within a specified period of time, but exceeding this period does not deprive the authority of its competence to issue a decision.[15] As is evident from the established view of case law, the opposite conclusion would lead to the unacceptable conclusion that an attorney-at-law could not be removed from the list of attorneys-at-law despite permanently evading the obligation to pay contributions.[16] The attorney-at-law concerned may appeal against the resolution on removal from the list of attorneys-at-law to the Presidium of the National Council of Attorneys-at-law within fourteen days of the date of delivery of the resolution of the regional bar of attorneys-at-law. The resolution of the Presidium of the National Council of Attorneys-at-law should be adopted within thirty days from the date of delivery of the appeal. An appeal may be lodged against the resolution of the Presidium of the National Council of Attorneys-at-law to the Minister of Justice, and a complaint may be lodged against the decision issued by this minister to a voivodship administrative court.

At this point, it should also be noted that in a situation where Article 29(4a) of the URP is applied to an attorney-at-law, which sanctions the failure to pay membership fees for a period of more than one year, Article 118 of the Civil Code, which concerns the limitation of property claims, cannot be applied. This is due to the completely different nature of the aforementioned provisions. The former regulates the conditions for the

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[13] Judgment of the Supreme Administrative Court in Warsaw of 12 March 2014, VI SA/Wa 1896/13, LEX No. 1468341.

[14] *Ibid.*

[15] *Ibid.*

[16] Judgment of the Supreme Administrative Court of 9 April 2013, II GSK 76/12, LEX No. 1337212.

application of administrative sanctions. The meaning of the latter is contained in the civil law pursuit of order in socio-economic transactions, which prevents the existence of perpetual claims. As indicated in case law, the issue of the statute of limitations of a claim within the meaning of Article 118 of the Civil Code does not affect the issue of determining the manner of fulfilling the obligation to pay membership fees to the self-government of attorneys-at-law.[17] Article 118 of the Civil Code may be applied if the professional association wants to recover unpaid membership fees from the attorney-at-law through civil action.

4. Conclusions

In conclusion, this case is a model example of the course of action in the case of an attorney-at-law's being removed from the list of attorneys-at-law because of the non-payment of membership fees for a period of more than a year. The voted judgement deserves approval as does the judgement of the Voivodship Administrative Court in Warsaw. The ruling made by the Supreme Administrative Court only confirms the correctness of the actions taken by the local government bodies and the Minister of Justice.

In the present case, the attorney-at-law ceased to pay membership fees. The arrears in this respect, as of the date of the regional council's resolution to remove the attorney-at-law from the list of attorneys-at-law, amounted to over 5,000 PLN and the total period of non-payment of membership fees amounted to over seventy-two months. The above precise calculation of arrears leaves no doubt as to the legitimacy of the sanction referred to in Article 29(4a) of the URP. As the established facts of the case show, the attorney-at-law against whom proceedings were initiated to remove him from the list of attorneys-at-law was informed about the actions taken and was also informed about the possibility of making himself familiar with the evidence collected in the case; he was also given the opportunity to make comments if necessary. Despite the above, the appellant did not participate in the proceedings at this stage and only joined them at the appeal stage.

In the judgement that was voted on, the Supreme Administrative Court, analysing the conditions for the application of the provision of Article 29(4a) of the URP, referred both to the evidence collected in the case and to the findings made in the case by the court of first instance, and pointed to the comprehensive examination of the case by the Regional Bar of Attorneys-at-law in Wrocław. The Supreme Administrative Court also noted the necessity to consider the case based on the relevant provisions of the Act of 14 June 1960, the Code of Administrative Procedure, because of its administrative and legal nature, that is, one that concerns the constitutional rights and obligations of a member of a legal corporation subject to the authority of local government bodies.

[17] Judgment of the Supreme Administrative Court in Warsaw of 29 November 2019, VI SA/Wa 1828/19, LEX No. 3014276.

The judgement also clearly determined the time limit for adopting the resolution referred to in Article 29[1] of the URP.[18]

To summarise the above, it should be noted that the issue of removing an attorney-at-law from the list of attorneys-at-law based on the premise set out in Article 29(4a) of the URP is not a frequent subject of consideration by administrative courts. Nevertheless, an analysis of the available case law shows a growing line of case law on this subject.

Literature

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Summary

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Prerequisites for the Application of Sanctions in the Form of Removal from the List of Attorneys-at-Law Due to Non-Payment of Membership Fees

Payment of membership fees is an obligation resulting from membership in a professional self-governing body of attorneys-at-law. According to the content of Article 29 of the URP, a regional bar of attorneys-at-law may remove an attorney-at-law from the list, among other reasons, for failure to pay membership fees for more than a year (Article 29(4) of the Act).

Deleting an attorney-at-law from the list based on Article 29(4a) of the URP requires a detailed analysis of the factual and legal situation, and the resolution in this case is binding. If the premise from the aforementioned provision exists, a self-governing body cannot make a decision other than deletion. The resolution must be justified and the deadline for its adoption is thirty days, although this deadline is of an instructive character. The proceedings must take into account the principles set out in the Act of 14 June 1960, the Code of Administrative Procedure,

[18] Judgment of the Supreme Administrative Court of 9 April 2013, II GSK 76/12, LEX No. 1337212.

and the attorney-at-law has the right to appeal to the Presidium of the National Council of Attorneys-at-law, the Minister of Justice, and an administrative court.

The case of an attorney-at-law's being removed from the list of attorneys-at-law for the failure to pay membership fees for more than a year is an example of a standard administrative procedure. The judgement of the Supreme Administrative Court confirms the correctness of the decision of the professional self-government bodies and the Minister of Justice. In the case described above, the arrears justified the application of sanctions.

Keywords: attorneys-at-law, the right to practise as an attorney-at-law, removal from the register of attorneys-at-law, membership fee.

Streszczenie

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Warunki zastosowania sankcji w postaci skreślenia z listy adwokatów z powodu nieuiszczenia składek członkowskich

Opłacanie składek członkowskich jest obowiązkiem wynikającym z członkostwa w samorządzie zawodowym radców prawnych. Zgodnie z treścią art. 29 URP rada okręgowej izby radców prawnych może skreślić radcę prawnego z listy, m.in. z powodu nieopłacenia składek członkowskich przez okres dłuższy niż rok (art. 29 ust. 4 URP).

Skreślenie radcy prawnego z listy na podstawie art. 29 ust. 4a URP wymaga szczegółowej analizy stanu faktycznego i prawnego, a uchwała w tej sprawie jest wiążąca. Jeżeli przesłanki wynikające z powyższego przepisu są spełnione, organ samorządowy nie może podjąć innej decyzji niż skreślenie. Uchwała musi być uzasadniona, a termin jej podjęcia wynosi 30 dni, przy czym termin ten ma charakter wskazujący. Postępowanie musi uwzględniać zasady określone w ustawie z dnia 14 czerwca 1960 r. – Kodeksie postępowania administracyjnego, a radca prawny ma prawo odwołać się do Prezydium Krajowej Rady Radców Prawnych, Ministra Sprawiedliwości i sądu administracyjnego.

Przypadek skreślenia radcy prawnego z listy radców prawnych z powodu nieuiszczenia składek członkowskich przez ponad rok jest przykładem standardowej procedury administracyjnej. Wyrok Naczelnego Sądu Administracyjnego potwierdza słuszność decyzji organów samorządu zawodowego i Ministra Sprawiedliwości. W opisanej powyżej sprawie zaległości uzasadniały zastosowanie sankcji.

Słowa kluczowe: radcowie prawni, prawo do wykonywania zawodu radcy prawnego, skreślenie z listy radców prawnych, składka członkowska.