

Przegląd Prawno-Ekonomiczny

REVIEW OF LAW, BUSINESS & ECONOMICS

październik-listopad-grudzień

Nr 45
(4/2018)



WYDZIAŁ ZAMIEJSKOWY
PRAWA I NAUK
O SPOŁECZEŃSTWIE | **KUL**

WYDAWCA

Katolicki Uniwersytet Lubelski Jana Pawła II | Wydział Zamiejscowy Prawa i Nauk o Społeczeństwie
w Stalowej Woli

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e-mail: druk@volumina.pl

ISSN 1898-2166 | Nakład 300 egz.

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Paweł Bucoń

The Forms of Practising as a Legal Adviser

Formy wykonywania zawodu radcy prawnego

I. Introduction

The profession of a legal adviser (in Polish: *radca prawny*) was established on 1 January 1962, by way of distinguishing it from the profession of an attorney at law (*adwokat*), following which the latter was no longer vested with the right to provide services to the social sector. Firstly, attorneys at law were the ones at the heart of the legal adviser profession. The Soviet type was the basis to establish this legal service. Differences between these two professions came down to the scope of activity and forms of practising the profession. Legal advisers, within the framework of their employment relationship or contracts of mandate, provided legal services to state and cooperative organisational units, social organisations, and the companies with state capital. Attorneys at law, appointed primarily to provide legal assistance to natural persons, were allowed to render similar legal services, but on an *ad hoc* basis and subject to a contract of mandate.¹

It should be noted that the possibility of providing legal services by legal advisers to natural persons was not excluded. Article 87 § 1 of the Code of Civil Procedure, which was then in force,² allowed a person remaining with a given party in a permanent mandate relationship to act as that party's representative,

¹ R. Troicka-Sosińska, *Ustawa o radcach prawnych po nowelizacji [The act on Legal Advisers with amendments]*, *Monitor Prawniczy [Legal Monitor]* 1997, No. 8, p. 67.

² The Act of 17 November 1964 – the Code of Civil Procedure, *Journal of Laws* No. 43, item 296 with subsequent amendments

whereas §2 of that Article stipulated that legal advisers could be representatives of business entities or social organisations.³

Using the historical-comparative and legal-dogmatic method, as well as analysing certain legal acts and making reference to literature, judicial comments and decisions, the author would like to present the legal aspects of various forms of practising as a legal adviser, and also to analyse and evaluate *de lege lata*, and to present *de lege ferenda postulates*.

II. Organisational forms of service provision

The profession of a legal adviser started to develop within the government administration system and the so-called social sector. The first legal advisers were employees of such entities, often with the adequate legal training. Legal advisers were responsible for providing advice on business conduction from the legal point of view, and for performing administrative and legal activities. Legal advisers were employees subordinated to the head or manager of the relevant organisational unit within their place of employment, provided that the head or manager was responsible for organisational or administrative-legal actions.⁴

Resolution No. 533 of the Council of Ministers of 13 December 1961⁵ and Order No. 62 of the President of the Council of Ministers of 3 July 1962 on the General Principles of the Organisation of Legal Services for State-Owned Enterprises, Unions and Banks⁶ were the first legal acts containing the rules of practising as a legal adviser. Under the said Resolution of the Council of Ministers, legal advisers performed their profession within state-owned enterprises, banks and unions. Their right to practise the profession was conditional on an employment contract. An entry to the list of legal advisers could only be made for

³ A. Karnicka-Kawczyńska, J. Kawczyński, *Adwokat i radca prawny jako pełnomocnicy procesowi [Attorneys at law and legal advisers as legal representatives for the purposes of litigation]*, *Prawo Spółek [Companies Law]* 1998, No. 6, p. 44.

⁴ J. Kruszewska, *O ustawie o radcach prawnych. Część I [About the Act on Legal Advisers. Part 1]*, "Palestra" [*The Bar*] 1983, Nos. 1–2, p. 16.

⁵ Resolution No. 533 of the Council of Ministers of 13 December, 1961 on Legal Services for State-Owned Enterprises, Unions and Banks, M.P. 1961, No. 96, item 406.

⁶ Order no. 62 of the President of the Council of Ministers of 3 July, 1962 on General Principles of the Organisation of Legal Services for State-Owned Enterprises, Unions and Banks, M.P. 1962, No. 57, item 270.

a person with whom an employment contract was concluded, with that person acting as a legal adviser for the enterprise in which he or she was employed.⁷

At present, the profession of a legal adviser has the largest range of professional activity forms. The content of Article 8 of the Act on Legal Advisers⁸ indicates the organisational and legal forms within which the profession of a legal adviser can be practised. The initial wording of this provision indicated the employment relationship as the basic form of practising the profession. Currently, the Act equally treats the practice of a legal adviser within the framework of an employment relationship, on the basis of a civil law contract, in the legal adviser's office and in a partnership.⁹

One of the forms of performing the profession of a legal adviser is an employment (or business) relationship. This term is defined in Article 22 §1 of the Labour Code.¹⁰ The employment relationship may be defined as a specific legal relationship between the employer and employees, with the underlying employee's obligation to perform specific types of work for the employer, and the employer's obligation to provide remuneration. The content of the employment relationship consists of various types of rights and obligations of both the employer and employees, which result from diversified labour regulations and legal acts governing employment relationships.¹¹

The Supreme Court, in its judgement of 23 October 2006, indicates the features of an employment relationship that differentiate this form from other relationships. The characteristic features of the employment relationship include a voluntary and personal nature of work, continuous work, work for the employer who bears certain employment-related risks, subordination and payable work.¹²

⁷ D. Salamończyk, *Nowelizacja ustaw: Prawo o adwokaturze i o radcach prawnych [Amendments to the Act on Attorneys at Law and the Act on Legal Advisers]*, *Prawo Spółek [Companies law]* 1997, No. 9, p. 29.

⁸ The Act of 6 July 1982 on Legal Advisers, *Journal of Laws [consolidated text]* 2015, item 507, with subsequent amendments

⁹ K. Kwapisz, *Ustawa o radcach prawnych. Komentarz [The Act on Legal Advisers. A commentary]*, Warsaw 2013, p. 32.

¹⁰ The Act of 26 June 1974 - the Labour Code, *Journal of Laws [consolidated text]* 2014, item 1502, with subsequent amendments

¹¹ T. Niedziński, *Formy wykonywania zawodu radcy prawnego (wybrane zagadnienia) [The forms of practising the profession of a legal adviser (selected issues)]*, [in:] M. Pawelczyk, R. Stankiewicz (ed.), *Publicznoprawny status radcy prawnego [The public and legal status of legal advisers]*, Warsaw 2012, p. 188.

¹² Judgement of the Supreme Court of 9 September 2004, 1 PK 659/03, OSNP 2005, No. 10, item 139; in its judgement of 26 November 1998, I PKN 458/98, OSNAPIUS 2000, No. 3, item 94, the Supreme Court pointed out that it was unacceptable to include a provision in the employment contract allowing a third party to perform the duties of an employee as his/her substitute.

Under Article 2 of the Labour Code, the employee is a natural person who is hired under an employment contract, a co-operative employment contract, an appointment, an election or a nomination. A person employed on the basis of one of these forms remains with the employer in an employment relationship.¹³ This employment relationship form applies to legal advisers who have been appointed to perform managerial functions in political and social organisations, and associations. These are special modes of establishing an employment relationship. Legal advisers can provide legal assistance by remaining in business relations with business entities, legal entities and organisational units.¹⁴

In accordance with the wording of Article 22¹ (1) of the Act on Legal Advisers, the legal adviser who practices the profession on the basis of an employment relationship has the right to receive remuneration and other benefits, as specified in the collective labour agreement or in the remuneration regulations applicable to the organisational unit acting as his/her employer. This is a warranty provision. In its judgement of 13 January 2009, the Supreme Court explained that this provision resulted in limiting the freedom of the parties to the employment relationship, connected with shaping the rules of remuneration for legal advisers, by making the employer unconditionally obliged to provide the legal adviser with remuneration not lower than that provided for main specialists.¹⁵

In the event of termination of an employment contract concluded with a legal adviser, the employer is obliged to consult the council of the Regional Chamber of Legal Advisers. In the justification to its judgement of 14 December 2010, the Supreme Court stated that this obligation did not apply to the circumstances where the employment relationship was terminated by liquidation or workplace reorganisation, and such termination was not connected with a negative assessment of the legal adviser's work.¹⁶

The employment relationship was formerly a dominant form, and it is still significant. This form is increasingly encountered among entrepreneurs,

¹³ T. Liszcz, *Prawo pracy [Labour law]*, Warsaw 2011, p. 125.

¹⁴ T. Niedziński, *Formy wykonywania... [The forms of practising...]*, p. 190.

¹⁵ Judgement of the Supreme Court of 13 January 2009, I PK 131/08, OSNP 2010, Nos. 15-16, item 185, in its judgement of 10 January 2003, I PK 58/02, OSNP 2003, No. 16, item 9, the Supreme Court noted that the right of a legal adviser to obtain remuneration not lower than the remuneration provided for main specialists or other equivalent work was also applicable in the cases where a collective agreement or employee remuneration regulations did not include worker classification and payment tables, or there was no collective agreement or other payroll regulations, and the remuneration for the position of the main specialist was determined at the employer's discretion.

¹⁶ Judgement of the Supreme Court of 14 December 2010, I PK 117/10, Lex No. 738390, access on 12 April, 2018.

including mainly large entities, which believe that the legal services rendered by legal advisers employed on a full-time basis guarantee the highest level of professionalism. Legal advisers practising their profession under an employment relationship are subject to double regulation. Firstly, the Act on Legal Advisers, the Ethical Principles of Legal Advisers and other normative acts issued by professional local government authorities are applicable in this respect. Secondly, such legal advisers are bound by employment legislation.¹⁷

The working hours of legal advisers under the employment relationship are regulated in Article 18 (2) of the Act on Legal Advisers. The working time also includes the time necessary to deal with various matters outside the premises of the organisational unit in which the work is normally performed. This, in particular, concerns the time spent in courts and other bodies, including the preparation for such activities. The provision includes a reservation that the working time inside the unit's premises cannot be shorter than two-fifths of the entire working time set in the contract concluded with the legal adviser.¹⁸

The Corporate Act does not contain any restrictions on taking up additional employment-based jobs. Legal advisers can be hired by several employers. Legal advisers do not have to report taking up additional employment, but a limited scope thereof may result from another Act. Regulations of this kind have the official pragmatics of state officials in the civil service and employees of state offices.¹⁹

Amendments to the provisions of the Code of Criminal Procedure,²⁰ which entered into force on 1 July 2015, resulted in amendments to Article 8 of the Act on Legal Advisers. Paragraph 6 was added to the said provision, resulting in the fact that the legal assistance consisting in the appearance of a legal adviser as a defence lawyer in criminal and fiscal cases should be provided on the basis of a civil law contract, or by practising the profession in a legal adviser's office or a company. At the same time, it was stipulated that such legal adviser cannot remain in an employment relationship. This prohibition does not apply to scientific and academic staff. The formal prohibition introduced is not justified. The material guarantees of the legal adviser's independence include the legal adviser's removing from or refusing to accept the case, along with his/her

¹⁷ Z. Klatka, J. Łoziński, *Status prawny radcy prawnego jako pracownika* [The legal status of a legal adviser as an employee], *Monitor Prawa Pracy* [Labour Law Monitor] 2005, No. 3, p. 72.

¹⁸ K. Kwapisz, *Ustawa o radcach...* [The Act on Legal...], p. 42.

¹⁹ T. Niedziński, *Formy wykonywania...* [The forms of practising...], p. 194.

²⁰ The Act of 6 June 1997 - the Code of Criminal Procedure, *Journal of Laws* No. 89, item 555, with subsequent amendments

disciplinary liability in the event of violation of the principle of independence, i.e. is the fundamental value of the profession of a legal adviser.²¹

Legal advisers may also practise their profession in an office or a law firm. The Act does not contain any requirements regarding the name of such office or law firm. In this matter, the Civil Code²² and the Commercial Companies Code²³ are applicable, together with the ethical requirements established for the profession, especially in the area of caring for the dignity of the profession and abiding by the ethical confidentiality of information. By way of a resolution of 7 December 2012, the National Council of Legal Advisers determined the content and form of information boards regarding the practising as a legal adviser,²⁴ the content of which was then transferred to the Rules and Regulations of Practising the Profession.²⁵ The sign “legal adviser’s office” must be placed on the board, and in the case of sole proprietorship – the name and surname of the legal adviser, and in the case of a civil law partnership – the company name and the indication of professions performed within the company. As far as the commercial law company is concerned, the company’s name and professions must be indicated. Additionally, the names of partners, academic titles in the field of legal sciences, other professional titles, the office logo and contact details may be placed.²⁶

A law office is the only form of practising the profession of a legal adviser on his/her own behalf, and on his/her own account. The provisions of the Act on Legal Advisers do not contain any restrictions on the number and location of registration. While making an entry to the list of legal advisers, the Act on Legal Advisers, unlike the Act on Attorneys at Law, does not require providing information on the registered office. Instead, the place of residence must be indicated, which merely serves registration purposes.²⁷

²¹ E. Kwiatkowska-Fałęcka, *Historia legislacji... [The history of the legislation...]*, p. 52.

²² The Act of 23 April 1964 – the Civil Code, Journal of Laws No. 16, item 93, with subsequent amendments,

²³ The Act of 15 September 2000 – the Commercial Companies Code, Journal of Laws [consolidated text] 2013, item 1030, with subsequent amendments

²⁴ Resolution No. 140/VIII/2012 of the National Council of Legal Advisers of 7 December 2012 regarding Information Boards on Practising the Profession of a Legal Adviser, [online] access: <http://bibliotekakirp.pl>, on 12 June 2018.

²⁵ Resolution No. 94/IX/2015 of the National Council of Legal Advisers of 13 June 2015 on the Regulations for Practising the Profession of a Legal Adviser, [online] access: <http://bibliotekakirp.pl>, on 12 May 2018.

²⁶ Z. Klatka, *Pomoc prawna [Legal assistance]* [in:] A. Bereza (ed.), *Zawód radcy prawnego. Historia zawodu i zasady jego wykonywania [The profession of a legal adviser. The history and principles of the profession]*, Warsaw 2015, p. 106.

²⁷ T. Niedziński, *Formy wykonywania... [The forms of practising...]*, p. 194.

The professional activity of a legal adviser does not lose the features of an individual profession if it is done with the assistance of other people. The establishment of a legal relationship based on an employment contract or a civil law contract cannot, however, lead to the transfer of the legal adviser's duties to other persons, while retaining the status of a person performing professional activities. The essence of this profession is that it is performed personally.²⁸

In line with the wording of Article 8 of the Act on Legal Advisers, legal advisers can perform their profession in the following partnerships: a civil law partnership, a general partnership, a professional partnership, a limited partnership and a limited joint-stock partnership. In these entities, legal advisers, attorneys at law, patent agents, tax advisers and foreign lawyers, practising their professions on the basis of the applicable laws, act as shareholders, partners or general partners, respectively, and the provision of legal assistance forms the exclusive subject-matter of their activities.²⁹

A civil law partnership is a form within which legal advisers can practise their profession, provided that the partnership meets additional requirements resulting from Article 8 of the Act on Legal Advisers. Until the entry into force of the Commercial Companies Code, partners to a civil law partnership could practically conduct business of any size, which eventually led to the creation of huge civil law partnerships.³⁰

A general partnership is a partnership which does business under its own name, and is not another commercial company. Each partner is responsible for satisfying the partnership's obligations with all his/her personal property, thus assuming unlimited liability. Unlimited liability binds partners together into a true community of common destiny – *Schicksalgemeinschaft*. This makes general partnerships the most risky form for their partners.³¹ This entity can be considered a model partnership, because it is based, to the greatest extent, on the personal source which is formed by partners. The personal composition of a general partnership is permanent, with each partner having the right to deal

²⁸ M. Szydźiak, *Wykonywanie zawodu radcy prawnego w formie kancelarii [Practising as a legal adviser in a law office]*, *Radca Prawny [Legal Adviser]* 2005, No. 5 (77), p. 79.

²⁹ K. Stoga, D. Szubielska, *Dwugłos radców prawnych dotyczący statusu radcy prawnego [Legal advisers' debate on the status of legal advisers]*, *Radca Prawny. Zeszyty naukowe [Legal Advisor. Scientific Papers]* 2015, No. 3 (4), p. 35.

³⁰ W. J. Katner, *Sytuacja prawna spółki cywilnej na tle nowego prawa działalności gospodarczej [The legal standing of a civil law partnership in light of the new Act on Economic Activity]*, *Przegląd Prawa Handlowego [Commercial Law Review]* 2001, No. 1, p. 16.

³¹ W. Kastner [in:] W. Kastner, P. Dorlat, Ch. Nowotny, *Grundriss des österreichischen Gesellschaftsrechts*, Vienna 1990, p. 110.

with the partnership's matters and represent it. The partnership's name should include the surname or name of at least one partner.³²

Starting with 1 January 2001, following the entry into force of the Commercial Companies Code, a professional partnership appeared among the forms of practising as a legal adviser. This partnership was meant to enable the creation of large law firms and increase their competitive edge in relation to foreign companies.³³ In a professional partnership, only a person entitled to practice a freelance profession, as defined in Article 88 of the Commercial Companies Code, can act as a partner. Simultaneously, the content of Article 87 of the Commercial Companies Code serves to indicate that the mere fact of being entitled to practice as a legal adviser does not allow for creating and joining a partnership. In accordance with Article 8(1)(2) of the Act on Legal Advisers, a legal adviser may be a partner in a professional partnership that provides legal assistance to natural persons only if he/she is not in employment and has not been hired under an employment contract.³⁴

A limited partnership is another form within which legal advisers can conduct their business. It is a partnership that operates under its own name and may only pursue economic activity involving the provision of legal assistance. In the opinion of local authorities, neither legal advisers nor attorneys at law, while practising their professions, can perform the role of limited partners in a limited partnership.³⁵ Legal advisers may be general partners who bear responsibility as partners in a general partnership, i.e. they are personally liable, jointly and severally with the partnership. This form of a partnership always requires two types of partners, i.e. general partners and limited partners. It forms *differentia specifica* of a limited partnership.³⁶

³² L. Moskwa, J. Napierała, *Spółka jawna [A general partnership]* [in:] A. Koch, J. Napierała (ed.), *Prawo spółek handlowych [Commercial companies law]*, Zakamycze 2005, p. 197.

³³ Z. Klatka, *Spółka partnerska nową formą wykonywania zawodu radcy prawnego [A professional partnership as a new form of practising as a legal adviser]*, *Radca Prawny [Legal Adviser]* 1998, No. 4 (37), p. 7.

³⁴ T. Siemiątkowski, R. Potrzezycz (ed.), *Komentarz do kodeksu spółek handlowych [A commentary to the Commercial Companies Code]*, Warsaw 2010, p. 243.

³⁵ P. Magnuski, A. Tomaszek, *Czy zawód adwokata i radcy prawnego może wykonywać komandytariusz? [Can attorneys at law and legal advisers act as limited partners?]*, *Palestra [The Bar]* 2001, Nos. 9–10, p. 9.

³⁶ A. Kidyba, *Kodeks spółek handlowych. Objasnienia [The Commercial Companies Code. Explanatory notes]*, Zakamycze 2004, pp. 181–182.

Before the amendment introduced in 1997, legal advisers could, on the basis of the Act on Economic Activity,³⁷ establish capital companies the subject-matter of which involved the provision of legal services to business entities. Until then, the profession of a legal adviser could be practised in the form of a limited liability company or a joint-stock company. The currently binding regulations do not allow legal advisers to practise within a capital company or a co-operative company.³⁸

It can be noted that the above regulation is inconsistent with the Act on Tax Counselling³⁹ and the Act on Patent Agents.⁴⁰ Legal assistance may be provided only by legal advisers, attorneys at law and foreign lawyers. Tax advisers perform tax counselling activities, and patent agents provide assistance in matters related to industrial property. The rendering of tax adviser or patent agent services is not considered the provision of legal assistance, even if these people are partners in the partnerships listed in Article 8 of the Act on Legal Advisers. The actual scope of corporate activity, with the participation of all the aforementioned professions, is the sum of professional rights vested in the partners, with each partner being only entitled to provide services in the field covered by the act applicable to his/her profession.⁴¹

The legislator's consent for multidisciplinary companies resulted in changes to the regulations in the Act on Tax Counselling and the Act on Patent Agents. These changes were meant to guarantee a relative compatibility of the provisions regarding professional ethics and conflicts of interest, with the provisions concerning legal advisers and attorneys at law.

The current wording of Article 8 of the Act on Legal Advisers was formulated under the Act of 4 March 2010 on the Provision of Services on the Territory of the Republic of Poland. The said Act made it possible for legal advisers to practice the profession also in a limited joint-stock partnership.⁴² This change may raise certain doubts as to whether the introduction of such a company is in the best interest of the entire professional group of legal advisers, or only a specific

³⁷ The Act of 23 December 1988 on Economic Activity, Journal of Laws No. 41, item 324, with subsequent amendments

³⁸ E. J. Krześniak, *Spółka partnerska ze szczególnym uwzględnieniem spółek adwokatów i radców prawnych [A professional partnership with specific consideration of partnerships established by attorneys at law and legal advisers]*, Warsaw 2002, p. 25.

³⁹ The Act of 5 July 1996 on Tax Counselling, Journal of Laws [consolidated text] 2011, No. 41, item 213 with subsequent amendments

⁴⁰ The Act of 11 April 2001 on Patent Agents, Journal of Laws [consolidated text] 2011, no. 155, item 925 with subsequent amendments

⁴¹ Z. Klatka, *Pomoc prawna... [Legal assistance...]*, p. 102.

⁴² K. Kwapisz, *Ustawa o radcach... [The Act on Legal...]*, p. 31.

group of law offices. The discussion on the admission of capital law companies is still going on.⁴³

In accordance with the Act on Legal Advisers, legal advisers can independently choose the form of practising their profession and the type of a partnership in which they wish to participate, and there are no restrictions as to the possibility of simultaneously pursuing the profession in various organizational and legal forms. The Act does not contain restrictions, for example, on providing legal assistance under an employment relationship while simultaneously running a law firm. With respect to practising as a legal adviser within a law firm, it should be noted that there are no provisions in the Act on Legal Advisers that would govern its operational issues, such as the area in which the firm should be established, the scope of activity, or the number of employees or collaborators. The only obligations arising from the Act are of an informational nature and refer to the obligation imposed on legal advisers to notify the competent District Chamber of Legal Advisers of commencing their professional practice and its forms, along with providing the address and name of the law firm, a partnership or a company, and information on any changes to such data.⁴⁴

There are no restrictions relating to running more than one law firm by the same person, or to practising the profession in more than one company or partnership. It should be noted, however, that the Act does not allow the practice of a legal adviser in a capital company or a company in which there are persons performing the professions other than those mentioned.

The forms of practising the profession, as mentioned in the Act on Legal Advisers, should be understood as different modes of a legal organization of this business activity, and not as a legal relationship connecting the legal adviser to the client. The forms mentioned in the Act indicate that the legislator did not apply one specific criterion when determining them, but the following criteria could be distinguished:

1. providing legal assistance as a sole proprietorship, or with other advisers, attorneys at law, foreign lawyers, tax advisers or patent agents,
2. performing a professional activity directly on behalf of an entity procuring legal services, on the basis of a contract concluded with this entity, or indirectly through a corporate body or an office,

⁴³ Z. Klatka, *Pomoc prawna... [Legal Assistance...]*, p. 103.

⁴⁴ K. Kwapisz, *Ustawa o radcach... [The Act on Legal...]*, p. 33.

3. a direct legal relationship between the legal adviser and the entity to whom legal assistance is provided, or a relation of this entity with the organizational structure mentioned in Article 8 of the Act on Legal Advisers.⁴⁵

A legal adviser who is employed in a law firm on the basis of an employment contract practises his/her profession as part of an employment relationship, not in a company. On the other hand, a legal adviser who runs an office in his/her own name, cooperating with a law firm, incidentally accepts the orders and performs the profession at the office, rather than at the law firm and the company.⁴⁶

In the case where a legal adviser practises his/her profession under an employment relationship, as an employee of a capital company, he/she can provide legal assistance only to his/her employer. However, he/she cannot provide legal assistance to the clients of this employer, even if the subject-matter of the activities pursued by the latter is legal assistance. According to the Supreme Court,⁴⁷ a limited liability company may not provide its clients, with the assistance of a legal adviser hired in that company under an employment contract or a contract of mandate, with legal services reserved for attorneys at law or legal advisers.

It is also possible to have a permanent mandate relationship, and conclude cooperation agreements in various areas, between legal advisers who practice in individual offices and law firms. The so-called office community, i.e. using a shared place and technical equipment, without establishing a company or a partnership, is yet another form of practising the profession. As part of this solution, legal advisers, while entering into a contract, agree to specify the terms and conditions of settling costs and expenses.⁴⁸

III. Conclusions

The Supreme Administrative Court, in the justification to its judgement of 27 January 2011, stated that the forms of practising the profession define the manner in which legal advisers operate on the legal services market. By providing a guarantee of freedom to choose the desirable form, from among those considered admissible, the legislator has recognised that legal advisers will have

⁴⁵ Z. Klatka, *Pomoc prawna... [Legal assistance...]*, p. 104.

⁴⁶ *Ibidem*, p. 105.

⁴⁷ Judgement of the Supreme Court of 28 February 2008, III CSK 245/07, OSNC 2009, No. 5, item 73.

⁴⁸ Z. Klatka, *Pomoc prawna... [Legal assistance...]*, p. 105.

an influence on their status in the legal and tax domain.⁴⁹ The legal adviser profession can, therefore, take the form of an individual practice of a legal adviser, or a complex organisational and legal form.⁵⁰

The above considerations justify the thesis that the organisational forms of practising the profession of a legal adviser are so broadly regulated that they enable this group of legal professionals to provide services in line with their individual preferences. By analysing the currently binding provisions concerning the forms of practising as legal advisers, it can be concluded that the applicable legal regulations are sufficient.

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⁵⁰ T. Niedziński, *Formy wykonywania... [The forms of practising...]*, p. 188.

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Summary

At present, the profession of a legal adviser has the largest range of professional activity forms. The content of Article 8 of the Act on Legal Advisers indicates the organisational and legal forms within which the profession of a legal adviser can be performed. The initial wording of this provision indicated the employment relationship as the basic form of practising the profession. Currently, the Act equally treats the practice of a legal adviser within the framework of an employment relationship, on the basis of a civil law contract, in the legal adviser's office and in the following partnerships: a civil law partnership, a general partnership, a professional partnership, a limited partnership and a limited joint-stock partnership, which enables this group of lawyers to provide services in line with their individual preferences and the actual social needs.

KEY WORDS: legal adviser, lawyer, legal professions, law firms, legal advisers' offices

Streszczenie

Obecnie spośród zawodów prawniczych radca prawny ma największy zakres wyboru form aktywności zawodowej. Treść art. 8 ustawy o radcach prawnych wskazuje formy organizacyjno-prawne, w których może być wykonywany zawód radcy prawnego. Początkowe brzmienie tego przepisu wskazywało stosunek pracy jako podstawową formę wykonywania zawodu. Aktualnie, ustawa o radcach prawnych na równi traktuje wykonywanie zawodu radcy prawnego w ramach stosunku pracy, na podstawie umowy cywilnoprawnej, w kancelarii radcy prawnego oraz w spółkach: cywilnej, jawnej, partnerskiej, komandytowej, komandytowo-akcyjnej, co umożliwia tej grupie prawników, świadczenie usług w sposób odpowiadający ich indywidualnym preferencjom i potrzebom społeczeństwa.

SŁOWA KLUCZOWE: radca prawny, prawnik, zawody prawnicze, spółki prawnicze, kancelarie radcowskie

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