

Wrocław, 9 April 2018

mgr Aleksander Sikorski

Civil Procedure Departament

Institute of Civil Law

Faculty of Law, Administration and Economics

University of Wrocław

### **Summary of**

**PhD dissertation titled "Legal-counseling compulsory representation as a normative  
guarantee of a reliable lawyer's replacement."**

**written under the guidance of Prof. Post PhD Elwira Marszałkowska – Krześ**

This doctoral thesis is devoted to the problems of legal-counseling compulsory representation in civil procedure from the point of view of practicing the profession of a lawyer.

The authorizations and duties of a lawyer as a procedural attorney appearing on the basis of the procedural mandate granted to him or her, as well as an assigned proxy were analyzed in the dissertation. Thereafter, this analysis provides the basis for a comprehensive discussion of the institution of legal-counseling compulsory representation in civil procedure, both in historical terms and current regulations. It also presents the relations of legal-counseling compulsory representation with regard to the court and procedural postulate of the time of civil procedure. The thesis points out the principles of the lawyer's liability for violation of duties resulting from the provision of legal assistance, both in the field of disciplinary, compensation and criminal responsibility.

The main purpose of this paper is to indicate that the premises of the legal-counseling compulsory representation serve to improve civil procedures. What is more, they are a normative guarantee of a reliable lawyer's replacement.

The decision about the choice of the topic of work was mainly influenced by the analysis and observation of the practical use of the legal representation institution of a party or participant of proceedings in civil procedure, in order to increase both the efficiency of the

procedures itself, as well as to make sure that the party will be provided with proper representation in front of the court.

The conclusions drawn from these observations are put forward both on the basis of conducted studies focusing on the analysis of selected court cases, and on the analysis of the practical use of individual procedural institutions by the parties themselves. These parties, in good or bad faith, cause excessiveness of the proceedings, which undermines the assumptions of, inter alia, the constitutional principle of the right to the court and the delivery of a decision within a reasonable time. The choice of the subject of the thesis was also impacted by the analysis of the literature on the subject, which had not provided a comprehensive discussion of the institution of legal-counseling compulsory representation in civil procedure yet.

Presenting the institution of legal-counseling compulsory representation in this dissertation, three theses were introduced. Firstly, the legal-counseling compulsory representation required by civil procedure does not limit the constitutional right to the court for parties and participants in civil procedure. Secondly, the introduction of legal-counseling compulsory representation, which is an obligatory replacement for a party or participant in the proceedings in front of the court, is a normative guarantee of implementing the postulate of procedure time and reduces the risk of an excessive length of procedure from the point of view of the party's rights in terms of the principle of formal availability. The third thesis points out that the assumptions of mandatory representation of a party in civil proceedings, based on the idea of legal-counseling compulsory representation, provide a normative guarantee of a reliable lawyer's replacement, even if the party is not deprived of postulation ability.

The problems of the legal-counseling compulsory representation are presented in three parts of the dissertation, which is then divided into chapters.

The first part of the work discusses the status of a lawyer as a representative of a party in the proceedings, both in the sphere of his or her authorizations and duties. The first chapter of the first part of the thesis, which is an introduction of the issues related to the profession of a lawyer and activities related to legal-counseling compulsory representation, starts with a historical analysis of selected legal acts. The acts that are mentioned outline the institution of legal representation for parties in proceedings by professional representatives. Aiming at the illustration of the guidelines of the standard attorney's behavioral pattern, the first chapter describes issues concerning the principles of lawyers' ethics as one of the main pillars of practicing this profession. In the second chapter of the first part of the paper, the institution of

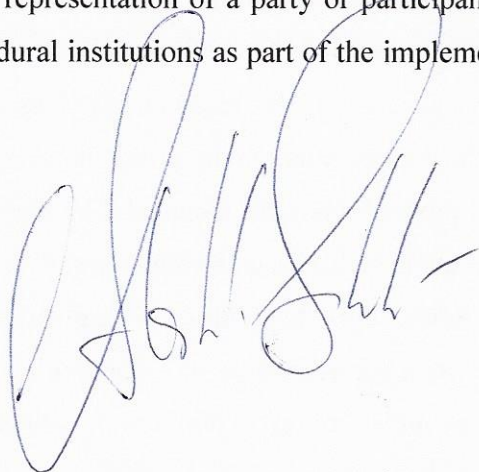
representation is discussed, including statutory representation and representation based on a declaration of the represented will, i.e. the power of attorney. Next, the scope of activities undertaken by a lawyer in civil procedure is described. The situation in which the party chooses his or her lawyer and in which the lawyer is assigned are both taken into consideration. The analysis of both the authorizations and duties of a lawyer as a representation in front of the court, and then as a basis for further introduction of legal-counseling compulsory representation in civil procedure was conducted. In this regard, the issue of power of attorney as the authorization to act on behalf of the party was discussed.

The second part of the work, consisting of two chapters, is strictly devoted to the analysis of the institution of legal-counseling compulsory representation in civil procedure. The first chapter of the second part of the work contains a detailed presentation of the institution of legal-counseling compulsory representation. This chapter presents the discussed issue, starting from the historical analysis, i.e. from the introduction of legal-counseling compulsory representation to the Code of Civil Procedure in 1930, through its subsequent evolving to the currently binding form in the Code of Civil Procedure. The catalogue of activities subjected to legal-counseling compulsory representation was discussed, namely the subject and subjective deregistration of legal-counseling compulsory representation, the issue of the scope of power of attorney to represent the party in proceedings in front of the Supreme Court, the effects of violation of legal-counseling compulsory representation, as well as issues related to refusal to provide legal assistance in the proceedings for the party without postulation capacity. Next, a model of the legal-counseling compulsory representation was introduced. The model was presented with regard to group proceedings and in proceedings connected to the complaint because of the excessive length of the procedure. In the final part of this chapter, the *de lege ferenda* postulates regarding the extension of the use legal-counseling compulsory representation in civil proceedings, inter alia on the basis of statistical data, analysis of court cases, as well as on the basis of solutions adopted for the regulation of legal-counseling compulsory representation in group proceedings, court-administrative proceedings and in criminal proceedings were included. The second part of this part of the dissertation discusses the institution of legal-counseling compulsory representation from the point of view of the assumptions of the constitutional principle of the right to court. In addition, the participation of a lawyer as a representative of a party in civil procedure was analyzed in the aspect of the current postulate of procedure time. Attention was paid to the role of a professional representative in the proceedings, from the point of view of the proper use of the institutions of

procedural law, restrictions of the possibility of abuse of procedural law, as well as from the point of view of proper implementation of the principles of formal availability to counteract the excessiveness of civil procedure. The importance of the legal-counseling compulsory representation was also assessed in the context of the implementation of the postulate of procedure time.

The third part of the thesis is devoted to the presentation and definition of the concept of reliable lawyer's representation and the types of lawyer's liability for legal assistance provided to the parties in civil procedure. The issue of the above-mentioned types of responsibility, which is contained in the first chapter of this part of the paper, is essential in terms of justification of the thesis put forward in this dissertation, namely that the compliance with the principles of lawyers' ethics, acting in accordance with good customs as understood by civil procedural law, is a normative guarantee of a fair representation of a party in court proceedings.

In the second chapter of the last part of this PhD dissertation an attempt to define the concept of "legal-counseling compulsory representation" of a party in civil procedure was made. The formulation of a comprehensive definition of this concept is based on the entirety of the considerations made in this paper, regarding the correct provision of legal assistance by a lawyer based on the understanding of diligence principles. That refers, inter alia, to the principles of lawyer's ethics and to the standard behaviour of a lawyer as part of the legal assistance provided by him or her. These considerations provided the basis for presenting the issue of an institution of legal-counseling compulsory representation as a normative guarantee of a reliable lawyer's replacement in civil procedure. Furthermore, it allowed to present a problem which indicates that the participation of a professional attorney in civil procedure in front of the court guarantees a fair manner of representation of a party or participant in the proceedings with proper use of available procedural institutions as part of the implementation of the right to the court.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end, positioned in the lower right area of the page.