



**HELŚIŃSKA FUNDACJA PRAW CZŁOWIEKA  
HELSINKI FOUNDATION for HUMAN RIGHTS**

00-018 Warszawa, ul. Zgoda 11  
tel./fax: (48 22) 828-10-08, 828-69-96  
e-mail: hfhr@hfhrpol.waw.pl  
konto: PKO BP SA I O/Centrum  
58 1020 1013 0000 0502 0002 9165  
swift: BPKOPLPW

**ZARZĄD FUNDACJI**

Prezes: Marek Antoni Nowicki  
Wiceprezes: Danuta Przywara  
Sekretarz: Andrzej Rzepliński  
Skarbnik: Elżbieta Czyż  
Członek Zarządu: Zbigniew Hołda

Warsaw, 26 July 2005

**1868/KH/2005**

**The Honorable  
Aleksander Kwaśniewski  
President of the  
Republic of Poland**

Dear Mr President,

1. On behalf of the Helsinki Foundation for Human Rights we address you Mr. President to sign, at the earliest possible moment, the act amending the act – The Law on the Advocate's Profession and some other acts, passed by the Polish Sejm on 30 June 2005 and approved without amendments by the Senate of the Republic of Poland on 21 July 2005.
2. We believe – also as attorneys, thus members of one of the corporations interested in the act – that this legislation is of fundamental significance for ensuring the observance of civil rights and liberties that are guaranteed by the Constitution of the Republic of Poland, what you Mr. President as the Chairman of the Constitutional Commission have particularly strived for.
3. Since the beginning of its existence, the Helsinki Foundation for Human Rights has occupied itself with examining and executing human rights observance in Poland. Our long-term experience shows that one of the most urgent issues in our country in this regard is the actual fulfillment of the constitutional right to a trial by jury. In modern democracies this right cannot be exercised without common access to professional legal services. In Poland the statistics concerning access to an attorney or legal advisor per resident are highly disturbing. According to data from the CCBE (*Conseil des barreaux européens*), there are 27.611 attorneys and legal advisors in Poland, which means that there is one attorney or legal advisor per 1.376 residents. In comparison, in Spain there are more than 5 times as many licensed attorneys (over 138.000),

which, considering a comparable population, means significantly greater access to legal services. This brings about a situation in Poland, where only about 3 to 5 percent of the parties involved in court proceedings are represented by an attorney and legal advisor (data based on a comparison of the number of cases handled by legal corporations and the number of cases taking place before the courts, where two sides of the litigation are present). For example, in 2001, at least half of the individuals convicted in the first instance did not benefit from the assistance of an attorney. Furthermore, since 1989 there has been a multiple increase in the number of court cases, which has not been accompanied by an appropriate increase in the number of attorneys and legal advisors (Ł. Bojarski, *Access to cost-free legal assistance (Dostępność nieodpłatnej pomocy prawnej)*, Helsinki Foundation for Human Rights, Warsaw 2003, page 64). So there is no doubt that the nature of this problem is linked with the system and only drastic changes may cause for the right to a trial by jury to actually be guaranteed in Poland.

4. It is worth emphasizing that a lack of common access to professional legal services causes serious consequences in regards to the legitimacy of the system of justice. It is easier for judges to cooperate with attorneys and legal advisors. Thanks to professional representation, it is easier for individuals appearing before the court to explain the complexities of the procedure and to understand the meaning of court decisions. In doing so, it is necessary for citizens to avoid taking actions based on erroneous or false information.
5. Access to legal assistance is also necessary in small every-day life matters, because thanks to this it is possible to decrease the number of misunderstandings and cases of human harm – practice shows that quite often by providing legal advice it is possible to prevent courts from being absorbed by petty cases. At the same time, this contributes to a decrease in courts' workload, because it prevents cases, which could just as successfully be handled by means of an out-of-court compromise or through an administrative course of action, from being referred there.
6. We would also like to point out that in millions of cases, often very important to citizens, apart from courts, decisions are also made by administrative organs. However, during administrative proceedings professional legal assistance is in actuality – unfortunately – provided sporadically.
7. Therefore, common access to legal services strengthens confidence towards the system of justice, a thereby towards the State itself.
8. In our practice, we often come across people, whose rights have been in various ways violated by public authorities or other citizens. However, since these people could not take the liberty of benefiting from the services of an attorney or legal advisor, they are unable to prove their

arguments in court. Therefore, they become double victims of human rights violations, because while attempting to claim their rights they were also let down State, which was supposed to provide them with sufficient access to legal assistance.

9. An extremely important argument in support of access to the profession of attorney, legal advisor or notary is included under Art. 65 par. 1 of the Constitution of the Republic of Poland, which guarantees “*the freedom to choose and to pursue an occupation and to choose the place of work*”. In our opinion, this regulation requires the creation of control mechanisms concerning access to the profession of attorney, legal advisor or notary similar to those of other European countries. This is especially significant taking into consideration that the system used so far to recruit individuals for professional apprenticeships did not prove useful, since in fact it ended up restricting access to legal assistance and limiting the freedom to choose and pursue an occupation. Furthermore, a delay on the part of the legislator resulted in the obstruction of the right to exercise this freedom, because for two years now new apprentices have not been admitted owing to the constitutional defects in the act - The Law on the Advocate’s Profession and the act on legal advisors - as stated by the Constitutional Tribunal.
10. Each graduate of law should have the opportunity to choose the occupation he wishes to perform, and the only decisive reason for this choice should relate to the candidate’s individual skills.
11. No other considerations (such as family connections, the desire to limit market competition, restrictions in educational opportunities) should be decisive, when it comes to exercising the above-mentioned right of each individual.
12. We believe that both the state-supervised apprenticeship entry examinations, as well as the final examinations, which will be introduced by the act of 30 June 2005, are an appropriate means of ensuring the enforcement of this right.
13. Moreover we believe that transferring the authority to carry out examinations over to the Ministry of Justice does not contradict Art. 17 par. 1 of the Constitution of the Republic of Poland. This regulation guarantees that professional corporations “*shall concern themselves with the proper practice of such professions in accordance with, and for the purpose of, protecting the public interest*”. Recognizing that this regulation provides legal corporations with an exclusive right to regulate access to the profession, contrary to the needs of citizens, is contradictory to the principle of public interest, by which, according to the Constitution of the Republic of Poland, professional self-governments should be governed.
14. The essence of the regulation included under Art. 17 par. 1 of the Constitution of the Republic

of Poland is not to ensure that the boards of legal corporations, or any other professional corporations presented with an appropriate act, have an opportunity to protect corporate privileges without taking account of competition in the area of open access to a particular profession, and the more so of professional egoism realized at the expense of citizens, which is the result of such an approach.

15. It is worth emphasizing that in many professions, in which the public repose confidence, the qualifying examinations are carried out by the state, and the corporations do not question these solutions in respect to consistency with the Constitution of the Republic of Poland (i.e. doctors, dentists, nurses, midwives). We believe that Art. 17 par. 1 of the Constitution of the Republic of Poland should be first and foremost implemented by legal corporations through the establishment of an effective and efficient mechanism ensuring the observance of high ethical standards. It should also be emphasized that the introduced act does not in any way limit the disciplinary authority of the legal organs of professional self-governments over their members; it also does not restrict the right to represent those individuals. In our opinion, the corporations' prior examination of candidates for the post of attorney, legal advisor or public notary is not, by any means, the tool necessary to achieve this objective.
16. The objective of Art. 17 par. 1 of the Constitution of the Republic of Poland may be – we believe that it is – to allow for the existence of statutory regulations for professions, in which the public repose confidence, in order **to protect the public interest**, mainly by means of supervising – from the viewpoint of the interests of a particular profession's clients – the proper performance of a profession, in which the public repose confidence, by individuals already allowed, **under fair competition**, to pursue this profession.
17. We believe that the foregoing arguments are of decisive significance for the assessment of the act of 30 June 2005 on the amendment of the act – The Law on the Advocate's Profession and some other acts. We express hope that they will persuade you Mr. President to sign this act in the name of human rights protection and strengthening of the citizens' confidence in the Republic of Poland.

With kindest regards,

Marek Antoni Nowicki, president of the board of the Helsinki Foundation for Human Rights

Andrzej Rzepliński, secretary of the board of the Helsinki Foundation for Human Rights

Zbigniew Hołda, member of the board of the Helsinki Foundation for Human Rights