

Summary

The Legal Status of an Assistant to a Judge in the Common Judiciary

The right to a fair trial enshrined in Article 45 of the Constitution of the Republic of Poland requires a multifaceted approach. Perceived as a constitutional rule, it establishes certain rules of drafting and interpreting law, and if seen as a public substantive right, it is manifested by the individuals' entitlement to have their case heard by a competent, independent, and impartial tribunal. Simultaneously, the right to a fair trial constitutes a basic measure to protect the rights and freedoms of individuals. The right encompasses certain elements, and it is the cumulative satisfaction of these elements that determines whether the right to a fair trial has been guaranteed to a subject in a given case. The elements include: the right of access to a court, the right to an adequate procedure, the right to obtain a final court decision on a given case, and the right to have the court system and the position of judicial bodies hearing the case shaped appropriately. To secure the meaningful exercise of the right to a fair trial, state authorities must take actions of both systemic and procedural nature.

According to the provisions of the Constitution of the Republic of Poland, the essential role of the courts of the Republic of Poland, in particular common courts, consists in the administration of justice. It should be noted, however, that the scope of common courts' activities, apart from the administration of justice, also includes other tasks related to ensuring legal protection, either entrusted to them by statutory acts or derived from international law binding on the Republic of Poland or provided for in the law established by an international organisation if an agreement establishing such an organisation, binding on the Republic of Poland, stipulates that the law is directly applicable. Tasks related to the administration of justice have been entrusted by the legislator, first of all, to judges, and to a certain limited extent, to junior judges (assessors) and lay judges. As a rule, activities from the field of legal protection have been transferred to the competence of court referendaries and senior court referendaries. For the purpose of exercising their duties, given their importance, judges and junior judges have been endowed with the attribute of independence, while judicial clerks have been granted independence in shaping the content of certain rulings and orders specified in statutory acts.

The role of an assistant to a judge has been present in the system of the common judiciary in Poland for more than twenty years, and yet its legal nature has never been clearly defined. Neither legal literature, nor case-law, nor the judicial world itself provides a comprehensive answer to the question of who the assistant to a judge really is, whether this role is necessary, and, if so, what tasks should be entrusted to this professional group. The research objective of this dissertation is to analyse the role of the assistant to a judge in the Polish system of common courts from a legal perspective in the context of guaranteeing the constitutional right to a fair trial, with a particular focus on the efficiency of proceedings, and to propose an optimum model of assistants' work, in the opinion of the author.

As a result, the dissertation is divided into four chapters. The first chapter presents the "key figure" of this dissertation, namely the assistant to a judge performing their duties in common courts. This enabled the *ratio legis* behind the introduction of the role of the assistant to a judge in the common judiciary to be established and made it possible for the author to answer the question whether the statutory qualification-related requirements that must be satisfied by the assistant to a judge allow for extending the scope of their duties. The second chapter analyses the functioning of common courts, namely their administration of justice and provision of legal protection, parties involved in the performance of these tasks, and the attributes attached to them. Whenever the assistant to a judge is granted certain competences, in particular autonomous rights within court proceedings, a question must be asked whether a specific action is not a manifestation of the administration of justice or the provision of legal protection *sensu stricto*, and whether the assistant is sufficiently qualified to exercise such rights. The third chapter discusses the statutory position of the assistant to a judge and the scope and nature of its activities *de lege lata*, as well as a quality traditionally linked to the performance of duties by the assistant to a judge, namely autonomy. The differences between the activities of the assistant to a judge and employees of court registries are highlighted. The fourth chapter provides an analysis of whether the role of the assistant to a judge and entrusting certain activities to them may contribute to the exercise of the right to a fair trial, guaranteed to everyone in the Constitution of the Republic of Poland, particularly in the light of the right to have the case heard without undue delay.

The analyses conducted provide evidence to claim that the idea to entrust the assistant to a judge with the task of autonomously issuing the simplest procedural decisions, namely orders, does not affect the essence of the right to a fair trial. Additionally, the role of the assistant to a judge, if regulated properly, may be of paramount importance in supporting the exercise of this right, in particular in the context of ensuring efficiency in the administration

of justice. To this end, however, the model of assistant work in the common judiciary needs to be at least partially modified. Above all, it is necessary: to replace the optional engagement of the assistant to a judge with the mandatory engagement in all common courts, or at least in the divisions that hear civil and criminal cases as first instance courts; to introduce stricter requirements in the recruitment for the assistant to a judge; to specify the number of judges an assistant can work with simultaneously; to change the approach to periodic evaluation; and to establish regulations that may serve as a basis to terminate employment of an assistant to a judge if such a person fails to duly exercise duties entrusted to them. The question should be asked whether the assistant to a judge should not be more involved at the stage of proceedings preceding the issuing of a ruling, and not, as it is now, at the stage of drafting the statement of reasons for the ruling on the substance of the case. Therefore, the conclusions as presented, derived from a theoretical and legal analysis, may have significant implications for the exercise of the right to a fair trial in practice.