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Patrycja Lipold*

ASSISTANT OR EMPLOYEE – UNREGULATED CASE OF A DEPUTY’S CO-WORKERS IN POLAND

NIEUREGULOWANA SPRAWA WSPÓŁPRACOWNIKÓW POSELSKICH (PRACOWNIKÓW I ASYSTENTÓW) W POLSCE

Streszczenie

Poseł pobiera wynagrodzenie, dietę poselską oraz pieniądze na funkcjonowanie biura poselskiego. W celu obsługi swojej działalności w terenie oraz na forum parlamentu posłowie tworzą biura poselskie, w których pracują ich współpracownicy. Art. 23 ustawy z dnia 9 maja 1996 r. o wykonywaniu mandatu posła i senatora (DzU 2003, nr 221, poz. 2199 z późn. zm.) głosi w punkcie 4, że poseł lub senator może zatrudniać pracowników w swoich biurach poselskich na czas określony, nie dłuższy niż czas trwania kadencji, na którą został wybrany. Ten sam punkt mówi także, że działalność posła lub senatora może być wspierana przez społecznych współpracowników.

Działalność asystenta społecznego wynika w dużej mierze z uzgodnienia zawartego pomiędzy nim a posłem. Każdy element poczynił asystenta podlega uzgodnieniom między stronami, podobnie jak gratyfikacja finansowa, otrzymywana za wykonywanie przez niego zadań. Jednym z podstawowych czynników rządzących tym stosunkiem jest pełna swoboda zarówno co do formy umowy, okresu jej obowiązywania, zakresu obowiązków oraz sposobu rozwiązania. Jest więc zasadnicza różnica pomiędzy pracą pracownika biura poselskiego a asystenta społecznego.

Słowa kluczowe: asystenci posłów, współpracownicy poselscy, pracownicy biura poselskiego

According to Jacek Żakowski, the head of Collegium Civitas Journalism Department in Warsaw, not many Poles are engaged in public activities as there isn't any natural process of education concerning leaders who have deeply rooted political beliefs and firm values and who are eager to change Poland for the better. Perhaps it is a grandiloquent expression but a politician should be primarily guided by the best interests of his or her country. In reality, however, politicians are often more con-

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cerned about their career which becomes the main subject of their activity. Regrettably, this approach is also reflected in their performance as deputies or senators. A deputy receives basic salary, a lump sum and funds to cover the costs of running a deputy's office. The deputies open their offices and employ co-workers in order to support their activity, both in the field and in Parliament. Article 23 point 4 of the Act of 9 May 1996 on Exercising the Mandate of Deputy and Senator (Journal of Laws, DzU 2003 No. 221, item 2199 as amended) states that a deputy or senator may employ workers in the office in his own name for a specified time, not longer than for the time of exercising the mandate. The same point also states that the deputy's or senator's activity can be supported by volunteer co-workers. The above mentioned article 23 specifies the legal status of deputy's office employees resulting from an employment contract between a deputy and an employee but it does not specify legal status of volunteer co-workers, mentioned in the article 23 item 4 of this Act.

Office worker

During the current 7th term of the Sejm (2011–2015)¹ deputies have employed in their offices 966 people. The additional support is provided by 1178 assistants. Members of Parliament receive a monthly lump sum of PLN 12 150 (EUR 2906)² while a minimum salary received by people employed in their offices is determined by the Sejm. In 2014 this salary amounted to PLN 1680 gross (EUR 390)³. A deputy has the amount of EUR 2906 to cover expenses connected with rent, fuel, telephone bills, cost of expertise and office workers' salaries. Deputies employ people who deal with day-to-day functioning of the office, work as secretaries, coordinate schedule, prepare conferences, debates and meetings, cooperate with different organizations. Some people are employed to work in information hotline, some handle organization of public speeches and other are responsible for the deputy's website. There are also people whose tasks involve maintaining contact with electorate. A deputy has complete freedom to choose employees and organise their work. Pursuant to the 2001 ordinance of the Marshal of the Sejm, the deputy should employ people in his office under an employment contract. Therefore remuneration is the fundamental attribute of the employee working in

¹ Deputies in Poland are elected for four-year-old term in office.

² The rate of eur according to National Bank of Poland from 4th January 2015.

³ The rate according to National Bank of Poland from 4th January 2015.

a deputy's office. Even though the said remuneration is not very high, for many people the opportunity to be included in the deputy's circle is connected with prestige and a chance to start their own political career or handle their private matters, in other words, it is simply profitable.

However, there is another problem connected with deputies' offices. At the end of the previous term (2007–2011) Pro Collegio Association conducted research among 460 deputies' offices. Research workers tried to contact deputies' offices in many different ways, pretending to be citizens who wanted to contact their representatives in the Sejm. Deputies' internet websites and reports concerning expenditure from a lump sum on running offices were also analysed (*Biura*). The researchers sent e-mails, twice to each office, asking for legal advice and information about current status of legislation works on selected acts. Moreover, the researchers used a survey with questions concerning work of a deputy's office and called each office three times. The results of the research show that the offices gained the highest score in the telephone research. In case of 338 offices, two or three attempts to get through were successful. In 85 offices, one from three attempts was successful. And in case of 36 offices, all attempts to get through failed. Communication with a citizen via the Internet looked much worse though. 77 deputies didn't have their official websites at all. Those that had (282) received 5.3 points out of 8 possible. Questions sent by e-mail, regarding legislation works, were answered by 108 offices. 153 offices answered questions concerning selected legal problems. Points were awarded for the fact that the answer was given, even if the factual value of the answer was not very high. The research shows however, that in most cases the quality of answers wasn't very high. While it was fairly easy to contact deputies' offices by phone, contact by traditional mail and e-mail was very difficult. Unfortunately both e-mails and letters are ignored. The worst results were achieved in the part of the research connected with the survey. The Association received back filled in questionnaires from 71 deputies while Poczta Polska didn't manage to deliver questionnaires to 17 offices. The Association also analysed deputies' expenditures from the lump sum for running their offices. In 2010 95% of allocated financial means was spent. The highest amount was spent on salaries for office employees – 33% of the lump sum, followed by expenditures connected with deputies' car travels – 18%, with cost of office rent on the third position – 15%. The researchers could award in total 40 points to one office but in reality the average result was only 13.5 points. There were offices which received 0 points and apparently were completely inaccessible for citizens (Dąbrowska, Zagner 2008).

Another problem is connected with negligence in registration of deputies' co-workers with the Chancellery of the Sejm. It negatively reflects the transparency of their actions. There is possible danger that someone will try to influence a deputy using his or her co-worker as a go-between. Information about previous employment of a co-worker should also be available but it is very difficult to find this data in the Sejm. Despite the 2005 anti-lobbying Act, the deputies underestimate the obligation to register with the Chancellery of the Sejm changes made on the lists of their co-workers. Some members of parliament run their own offices but don't employ any co-workers. No requirements concerning education or age have to be met to become the employee of the Polish parliament member. In the current term of office, the youngest assistant is an 18-year-old secondary school graduate and the oldest is a 78-year-old pensioner. Jerzy Budnik, Chief of the Sejm Committee for Rules, Regulations and Deputy Affairs, says: "We are considering suggesting the Marshall introduction of standardization, at least in the field of education concerning people employed in deputies' offices, as I'm afraid people with secondary education may not turn out to be good heads of these offices." The possibility to employ members of family in deputies' offices is also quite controversial. It is not against the law and all discussions concerning this subject take an ethical approach only and are quite thoroughly covered by media. The above mentioned solution is completely different than in other European countries where employment of family members is strictly forbidden. In Italy, for example, next of kin up to four times removed cannot be employed. Therefore deputies cannot employ their parents, children, siblings, uncles, nephews or cousins. Introduction of similar regulations in Poland would be very welcome as a deputy's office runs its own activity, has its own identification number REGON, is registered with the National Labour Inspectorate and pays contributions to the Social Insurance Institution (ZUS). It is not appropriate then to let the deputy's relatives or friends handle office's finance, as it often happens.

Deputy's assistant

First of all it must be said that a deputy's assistant (parliamentary assistant) is a very vague term. The term is widely used to describe people having different roles in parliament. In many European countries this term is equal to "co-worker" or "advisor" while the legal status of assistants depends mainly on individual contracts (agreements) concluded between them and the deputies or a political group. The term refers ei-

ther to scientific assistants, people gathering data and materials for the deputy (researchers), political advisors or people responsible for public relations. Despite the different roles deputies' assistants play, the following common features can be noticed:

- this person is a deputy's co-worker
- provides personal assistance
- is not an employee of parliamentary administration and is not a regular co-operator of the deputy's office (Karpowicz 2005).

In the statutory level of Polish legislation there is no separate entry of the term "deputy's assistant". The above mentioned Act of May 9 1996 on the Exercise of the Deputy's and Senator's mandate in article 23 item 4 says that "The activity of a deputy or senator may be supported by volunteer co-workers". Internal regulations of the Sejm, issued on the basis of the above mentioned Act, use the term "deputy's volunteer assistant". For example there is the Ordinance No 1 of the Chancellery of the Sejm of January 30 2004 concerning specimen of identity document issued for an employee of a deputy's office and a deputy's volunteer assistant. The Ordinance No 1 of the Marshall of the Sejm of January 27 2004 concerning organizational and technical conditions for setting up, functioning and winding up the deputies offices, mentions "volunteer co-worker (deputy's volunteer assistant)".

The activity of a volunteer assistant is mostly based on an agreement between an assistant and a deputy. Each element of this activity is the subject of the agreement between the parties. This agreement may be written or oral. One of the fundamental factors governing this relation is that the form of the agreement, its duration, scope of duties and method of its termination are at the discretion of the parties. There is then a substantial difference between the job of a deputy's office employee and a volunteer assistant. The former acts under an employment contract, has strictly specified scope of duties and is a part of a structure involving superiors, while the relation between a deputy and his or her parliamentary assistant is regulated by uniformalised, discretionary agreement.

Rights and entitlements

The Ordinance No 8 of the Marshall of the Sejm of September 25 2001 concerning organizational and technical conditions for setting up, functioning and winding up the deputies offices, section 20 states: "Upon the authorization of and in the scope set forth by a deputy, the duties connected with the exercising of the mandate in the field may be performed by persons who are not employees of a deputy's office and per-

form these duties free of charge – volunteer co-worker (deputy's volunteer assistant)". There are two prerequisites in the substance of this section: first, that an assistant acts "upon the authorization of and in the scope set forth by a deputy" and the second that assistants "perform duties connected with deputy's work in the field".

The new Ordinance No 1 of the Marshall of the Sejm of 27 January 2004 introduced important changes concerning organizational and technical conditions for setting up, functioning and winding up the deputies' offices. In particular, previous obligation to register assistants with the Chancellery of the Sejm ceased to exist and deputies took complete control over their assistants. A deputy is no longer obliged to hold the register of his or her co-workers, and can freely make decision whether to do so. Moreover, it is a deputy who issues an identification document for a deputy assistant. The Chancellery only sends an empty form. A deputy is not obliged to hold the register of his or her co-workers and can freely chose who will hold the position of a deputy's assistant. The changes has led to some kind of chaos.

Currently every deputy has assistants. These assistants are usually young, energetic people keen to work. Still there are some older, retired people who are eager to help the deputies. Actually the mere fact that someone is a deputy's assistant opens many doors and can help in many occasions, therefore the position has attracted lobbyists – people who wanted to use their position to gain something, or, in some cases, even people prosecuted by law.

In order to regulate this situation various ideas have been presented, among others the most popular proposal by the Law and Justice party to introduce a register of assistants containing name, family name, date of birth, education, profession, information about business activity and whether they are members of management boards or supervisory boards. This data was supposed to be updated annually in order to keep the register of assistants under public control. The project was submitted for consideration by the Sejm in January 2004 but due to formal failures was criticized by the deputies, and what is more, it was recommended for dismissal by the Sejm Committee for Rules, Regulations and Deputy Affairs. The main problematic area was connected with necessity to protect personal data, difficulty of verification submitted data and possible consequences for people who submitted fake data. However, another explanation may be that politicians are not inclined to reveal information concerning their activity and prefer to keep most of it beyond the public control. Nevertheless a deputy's activity is in the public area and therefore should be transparent and be a subject to public acceptance.

Volunteer co-workers don't receive remuneration for their services, (as oppose to employees working in deputies offices who are employed under employment contracts), a deputy, however, may reward his or her assistant in other way. A deputy may employ an assistant under a contract of services or a contract for specific work⁴ and pay for performed duties. What is more, a deputy may cover the costs of assistant's participation in a conference or cost of fuel where the assistant's trip was commissioned by the deputy. A deputy has complete freedom in doing so as he receives financing for running his office which is under control of the Deputies' Service Bureau.

There is one more regulation described in the item 19 of the Act of May 9 1996 on the Exercise of the Deputy's and Senator's mandate and although it regards only deputies is in fact abused by their assistants. The situation is problematic for the deputies themselves, as well as administration offices which are bound to give the deputies and senators information: "In exercising his mandate, a deputy or senator shall have the right, if he does not infringe the interests of other persons, to obtain information and material and to view the activity of central and local government administration bodies as well as companies with State Treasury participation and state and local government establishments and enterprises, with the observance of the regulations on statutorily protected secrecy."

Conclusion

The possibility to employ co-workers under a contract of services or a contract for specific work is a chance for the deputies to pay lower remuneration for the work of their co-workers. The division between co-workers and assistants has become problematic due to abuse of competence by deputy's co-workers. It is probably high time to somehow formalize the work of assistants. Maintaining such a significant degree of freedom will lead to problematic situations and possible abuse. Without any register of assistants there is too much freedom in activity of a deputy who, after all, should be subject to public control.

Above all, is the position of assistant really necessary? Perhaps a co-worker would be enough? Unification of terms describing positions and

⁴ Contract of services and contract for specific work – the form of employment contract, which the object is to perform specified action. Both forms of contracts in Poland are called junk agreement, because of low pay and a desire to reduction of labor costs through the lack of necessity of paying contributions to the Social Insurance Institution in contract for specific work and the lack of necessity to use the minimum wage in contract of services.

introduction of clear rules should be considered. First of all a register of co-workers should be compulsory and subject to obligatory penalties for the deputies who fail to meet their duty. Educational qualification is another matter worth considering. Finally, reduction of co-workers – for a deputy in Finland one assistant is enough and a Belgian deputy can work with one administrative co-worker employed full time and one part-time researcher, so there is no reason for some Polish deputies to have around 20 co-workers.

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