The position of lay judges in the Polish justice system

There is no doubt that the participation of citizens who are not professional lawyers in the Polish justice system is one of the main principles of democracy. This is mentioned in Article 182 of the Polish Constitution and detailed regulations are in separate acts, in particular in the Act on the System of Common Courts.

Lay judges are the most visible expression of this participation, although it is also necessary to point out the institution of social probation officers (mainly supervising convicts during the period of conditional release from serving a sentence, conditional suspension of its execution) and the relatively new institution of mediators, whose task is to bring about the resolution of a conflict without the need to refer the case to court.

The role of lay judges

Although lay judges are not professional lawyers, professional judges appreciate the participation of lay judges in adjudicating panels due to their life experience, a kind of "fresh" point of view, which is often very helpful. Sometimes lay judges seem to be more sensitive than professional judges when assessing the situation of both victims and perpetrators. Their participation in the justice system is an element of humane judgment, they also bring specialist knowledge, life experience, thanks to which judges' decisions become more understandable to the participants of the proceedings and society. It is also worth emphasizing that the presence of lay judges increases the transparency of the process. All this is helpful and valuable in the trial process and allows for the preparation and announcement of a fair verdict.

The method of selecting lay judges and the requirements for a candidate

Poland is divided into 16 provinces, and these are divided into smaller units - communes. Commune councils select lay judges from among candidates nominated by 50 residents of the local community, the president of the district court, local associations, social and professional organizations.

A person who intends to become a lay judge must be:

- a Polish citizen,

- of impeccable character,

- between 30 and 70 years of age,

- employed or residing in the local community for at least one year,

- have at least secondary education.

The obstacles to applying for the position of lay judge are:

- employment in a court or prosecutor's office,

- being a police officer, attorney, trainee attorney, legal adviser, clergyman, prison guard, border guard.

Higher legal education is of course not an obstacle to becoming a lay judge. Very often retired police officers are lay judges, which is also permissible, and in criminal cases their professional experience is useful.

Selected lay judges are sworn in by the President of the District Court, receive an ID card and are entered on the list. From that moment on, they have the right to judge.

The period of time for which lay judges are elected

Lay judges are elected for a period of 4 years, but after the expiry of this period their term of office is extended until the end of the trials in which they are a judge.

The mandate of a lay judge expires before the end of the term in the event of a final conviction for a crime or misdemeanour, both common and fiscal,

The mandate of a lay judge may also expire as a result of a decision of the municipal council taken at the request of the President of the District Court in the event of:

- when the lay judge does not perform his duties

- when his behaviour undermines the dignity of the Court

- in the event of the lay judge's inability to perform his duties (e.g. in the event of a physical or mental illness preventing the performance of duties, confirmed by a medical opinion).

Each lay judge is obliged to adjudicate for 12 days a year, however, the President of the Court may increase this number of days for a specific lay judge for important reasons, in particular this applies to pending cases. In practice, lay judges are appointed much more frequently, usually appearing in court once or several times a week.

Qualifications

The assumption is that lay judges are not professional lawyers, so there is no intensive legal training for lay judges. The Ministry of Justice has published a fairly competent guide for lay judges, which describes the Polish justice system in general and also details the requirements for lay judges. Lay judges do not pass an exam in legal knowledge. Court divisions where lay judges adjudicate

Court divisions where lay judges adjudicate

Lay judges participate in court panels in those divisions that seem most sensitive from a social point of view. They adjudicate in the first instance in the criminal divisions of the District Court, in the labour and social insurance court and in family cases.

The participation of the social factor is most visible in criminal cases before the first instance district court:

- in cases of crimes punishable by at least 3 years of imprisonment (robbery with the use of a dangerous weapon, rape with particular cruelty, serious drug offences), the panel of judges is formed by a professional judge and two lay judges,

- in the most serious crime of murder, where the maximum sentence is life imprisonment, the Court is composed of two professional judges and three lay judges,

- in the family court with the participation of lay judges, divorce cases, separation cases, cases related to parental authority and adoption are heard. The court adjudicates in these cases in a panel of one professional judge and two lay judges

- in the labour and social security court, the panel of judges is formed by one professional judge and two lay judges, the court examines the validity and existence of employment contracts, reinstatement to work, working conditions and remuneration, violation of the principle of equal treatment, compensation for mobbing.

The manner of performing duties by lay judges

Lay judges work in the same way as professional judges during a court hearing. They are obliged to familiarize themselves with the files before the hearing, they ask questions of witnesses and parties to the proceedings. However, only a professional judge can preside over the hearing.

During the deliberations on the verdict, lay judges have the same rights as professional judges, their vote has the same value as a professional judge. It happens that the verdict is passed in accordance with the opinion of the lay judges, and against the opinion of the professional judges, because (as mentioned) the panels of judges are composed of two lay judges and one professional judge or three lay judges and two professional judges, respectively.

Compensation

After each court session, lay judges are paid a sum of money as compensation, and the name emphasizes that being a lay judge is a public service, not a way to earn money. It amounts to 2.64% of the basic earnings of a professional judge for a day's work as a lay judge. Currently, after taxation it is PLN 184.95 - the equivalent of about 40 Euro.

Currently, there is a shortage of lay judges in the courts, there is little interest in performing this function. After the last recruitment for the term 2024 - 2027, due to the small number of lay judges, by-elections were called and despite this, there are still shortages. A negotiation team was established at the Ministry of Justice, of which I am a member. The team's task is to negotiate better conditions for performing the function of a lay judge in Poland and to encourage this service. We have submitted several motions that should improve the status of lay judges, including:

- abolition of the upper age limit for candidates for lay judges, a doctor's consent is required,

- increase in the amount of compensation for participation in the session and training,

- introduction of mandatory training for lay judges,

- formal introduction of the Lay Judges' Day in Poland, which has been celebrated since 2014.

Currently, there is a good climate in the Ministry of Justice for conducting negotiations and I hope that the situation of the lay judges' community will be improved.

Krzysztof Bartochowski