

**Stamp duty for further (substitutive) power  
of attorney and court costs  
(Article 98 § 1 and 3 of the Code of Civil Procedure)**

Opłata skarbową od pełnomocnictwa dalszego (substytucyjnego) a koszty procesu  
(art. 98 § 1 i 3 Kodeksu postępowania cywilnego)

Государственная пошлина за замещающее представительство и судебные  
издержки (ст. 98 § 1 и 3 ГПК)

Гербовий збір за довіреність у порядку передоручення (субституційну) та судові  
витрати (ст. 98 § 1 та 3 Цивільного процесуального кодексу Польщі)

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**Abstract:** The article concerns the costs associated with the stamp duty on a further procedural power of attorney. The publication aims to demonstrate that this expense should be – when additional conditions are met – be recognised as a necessary cost for the effective pursuit or defence of rights, regardless of whether it is paid by the main attorney, the substitutive attorney, or the principal. In this regard, the regulation of Article 98 § 1 and 3 of the Code of Civil Procedure is inappropriate, as on the one hand, it allows, for the awarding of costs related to the payment of stamp duty on power of attorney to the prevailing party when paid by a lawyer, and, at least, ambiguously regulates the situation when this duty is paid by the principal or a substitutive attorney. For this reason, Article 98 of the Code of Civil Procedure should be amended in the discussed part to clearly and without interpretative doubts to enable the awarding of costs related to the stamp duty on power of attorney (whether primary or further) to the winning party, regardless of whether the duty was paid by the principal, the main attorney, or the substitute, provided that this expense was incurred under circumstances indicating that it was a necessary cost for the effective pursuit or defence of rights. The research methods used in this study are the dogmatic-legal and analytical methods. They were used to conduct a thorough analysis of the currently applicable and relevant legal regulations from the perspective of the subject matter discussed.

**Keywords:** costs of the proceedings, stamp duty, further (substitutive) power of attorney, further representative, substitute, principal

**Streszczenie:** Artykuł dotyczy kosztów związanych z opłatą skarbową od dalszego pełnomocnictwa procesowego. W publikacji dąży się do wykazania, że wydatek ten powinien być – przy spełnieniu dodatkowych przesłanek – uznawany za koszt niezbędny do celowego dochodzenia praw lub obrony, niezależnie od tego, czy pokrywa go pełnomocnik główny, substytucyjny, czy mandant. W przedmiotowym zakresie regulacja przepisu art. 98 § 1 i 3 K.p.c. nie jest właściwa, skoro z jednej strony umożliwia zasądzenie na rzecz wygrywającego kosztu uiszczenia opłaty skarbowej od pełnomocnictwa, gdy płaci ją adwokat, a co najmniej w sposób niejasny reguluje sytuację, gdy opłatę tę uiszcza mandant albo pełnomocnik substytucyjny. Z tej przyczyny art. 98 K.p.c. powinien zostać znowelizowany w omawianej części tak, by bez żadnych wątpliwości interpretacyjnych umożliwić zasądzenie co do zasady na rzecz strony wygrywającej postępowanie poniesionych kosztów opłaty skarbowej od pełnomocnictwa (czy to głównego, czy dalszego) nawet bez względu na to, czy płaci ją mocodawca, pełnomocnik główny czy substytut, jeżeli tylko opłata ta została poniesiona w okolicznościach skutkujących przyjęcie, że był to koszt niezbędny do celowego dochodzenia praw lub celowej obrony. Metodami

badawczymi wykorzystanymi w opracowaniu są metoda dogmatyczno-prawna i analityczna. Posłużyły one do tego, by dokonać wnikliwej analizy aktualnie obowiązujących i relevantnych z punktu widzenia omawianej tematyki regulacji prawnych.

**Słowa kluczowe:** koszty procesu, opłata skarbową, dalsze pełnomocnictwo, pełnomocnik dalszy, substytut, mocodawca

**Резюме:** Статья касается издержек, связанных с государственной пошлиной за замещающее процессуальное представительство. В публикации автор стремится показать, что этот расход должен – при выполнении дополнительных условий – рассматриваться как необходимый для целесообразного осуществления и защиты прав, независимо от того, оплачивается ли он основным представителем, замещающим представителем или доверителем. В данном аспекте регулирование ст. 98 § 1 и 3 ГПК не является надлежащим, поскольку, с одной стороны, позволяет взыскать в пользу выигравшей стороны расходы по уплате государственной пошлины за представительство, когда ее оплачивает адвокат, а с другой – по меньшей мере неясно регулирует ситуацию, когда эту пошлину уплачивает доверитель или замещающий представитель. По этой причине статья 98 Гражданского процессуального кодекса должна быть пересмотрена в обсуждаемой части, чтобы без каких-либо сомнений в толковании обеспечить возможность присуждения, как правило, в пользу выигравшей стороны судебного разбирательства понесенных расходов по уплате пошлины за представительство (будь то основное или замещающее), даже независимо от того, кто ее уплачивает – доверитель, основной представитель или замещающий представитель, если только эта пошлина была уплачена в обстоятельствах, позволяющих считать, что это были расходы, необходимые для целенаправленного отстаивания прав или целенаправленной защиты. В работе использованы доктринально-правовой и аналитический методы. Они послужили для проведения углубленного анализа действующих и актуальных с точки зрения обсуждаемой темы правовых норм.

**Ключевые слова:** судебные издержки, государственная пошлина, замещающее представительство, замещающий представитель, доверитель

**Анотація:** Стаття присвячена аналізу витрат, пов'язаних зі сплатою гербового збору за судову довіреність у порядку передоручення. У публікації здійснено спробу довести, що такі витрати – за умови дотримання додаткових передумов – мають визнаватися необхідними для цілеспрямованого відстоювання прав або здійснення захисту, незалежно від того, чи покриває їх головний представник, субституційний представник або довіритель. У цьому контексті положення ст. 98 § 1 і 3 ЦПК не є достатньо узгодженими, оскільки, з одного боку, вони дозволяють присудити на користь переможця судові витрати, пов'язані зі сплатою гербового збору за довіреність, коли цей збір сплачує адвокат, а з іншого – нечітко регламентують ситуацію, коли збір сплачує довіритель або субституційний представник. З огляду на це ст. 98 ЦПК слід переглянути у відповідній частині, щоб усунути сумніви щодо тлумачення і забезпечити можливість – як загальне правило – присудження на користь сторони, яка виграла справу, витрат, пов'язаних зі сплатою гербового збору за довіреність (як основну, так і у порядку передоручення), незалежно від того, чи сплатив цей збір довіритель, головний представник чи субституційний представник, за умови, що сплата відбулася за обставин, які дають підстави вважати її необхідною для цілеспрямованого відстоювання прав або здійснення захисту. У роботі застосовано доктринально-правовий та аналітичний методи, які дали змогу здійснити ґрунтовний аналіз чинних і релевантних для теми дослідження правових норм.

**Ключові слова:** судові витрати, гербовий збір, довіреність у порядку передоручення, субституційний представник, заступник, довіритель

## Introduction

This article addresses a pragmatic legal issue arising from the obligation to pay the stamp duty on a further (substitutive) procedural power of attorney. The discussed analysis aims to determine whether, in light of the applicable regulations, this expenditure is regarded as a cost necessary for the effective assertion of rights or for defense (Article 98 § 1 and 3 of the Code of Civil Procedure), and if the answer to the posed question is wholly or partially negative, under what circumstances the expense in the form of a fee for a substitute power of attorney should be deemed a cost necessary for the effective assertion of rights or for defense (Article 98 § 1 and 3 of the Code of Civil Procedure). Answers to these questions can be provided, in particular, after verifying who, under the applicable regulations, is obliged to incur this expenditure, and whether, in practice, there are other entities that pay the stamp duty on a further power of attorney. Such a scope of research would be incomplete without reference to the position of trainees (e.g., in the legal professions, such as advocates or legal advisers). The research method employed in the study is the doctrinal-legal and analytical approach. They have been used to conduct a thorough analysis of the currently applicable and relevant regulations from the perspective of the topics discussed. The efforts involving logical-linguistic analysis of legal and normative statements, combined with an analysis of how the legal provisions are formulated, what their *ratio legis* is, and whether it has been realistically achieved within the defined research area, ultimately enabled the provision of an answer to the questions posed in the text.

Stamp duty, which is neither a tax<sup>1</sup> nor even a levy subject to “taxation” nevertheless constitutes a form of public levy,<sup>2</sup> often significant for civil litigants. Stamp duty is payable upon receipt of notification of the issuance of a power of attorney, including a power of attorney for legal proceedings, or its copy, issuance, or reissue in court proceedings (Article 1 section 1 item 2 of the Act of 16 November 2006 on

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<sup>1</sup> The Provincial Administrative Court in Gliwice, in its judgment of 10 February 2010, stated that until the chargeable nature of stamp duty is questioned, it does not acquire the characteristics of a tax. See more broadly the judgment of the Provincial Administrative Court in Gliwice of 10 February 2010, I SA/GI 661/09, LEX no. 591463.

<sup>2</sup> Z. Ofiarski, *Ustawa o opłacie skarbowej. Ustawa o podatku od czynności cywilnoprawnych. Komentarz*, 4th ed., Warszawa 2018, p. 26. See also the judgment of the Provincial Administrative Court in Poznań of 27 January 2010, III SA/Po 608/09, LEX no. 554214.

Stamp Duty).<sup>3</sup> It is the content of the document that matters, not its title alone.<sup>4</sup> The same applies to a substitutive power of attorney. Appointing a substitutive attorney creates a new power of attorney relationship, which also requires filing the substitutive power of attorney document with the court and, furthermore, requires the payment of a stamp duty.<sup>5</sup> This results primarily from the linguistic and purposive interpretation of Article 1 section 1 item 2 of the Stamp Duty Act, in conjunction with Item 3 of Part IV of the Annex to the aforementioned Act.<sup>6</sup> Regardless of the type of power of attorney, the person submitting the document is required to submit proof of payment of the stamp duty of PLN 17<sup>7</sup> within three days of the obligation to pay arising.<sup>8</sup>

As a side note, it is worth adding that while stamp duty is required for a further power of attorney granted by an attorney to another attorney or legal counsel, or by a legal counsel to another attorney or legal counsel, no such duty arises in the case of submitting an authorisation document for a trainee attorney or legal counsel. A person preparing for the professional examination as part of their apprenticeship (as an attorney or legal counsel) may act in court proceedings primarily based on the provisions of Article 77 (1) and (2) of the Act of 26 May 1982 – The Law on the Bar,<sup>9</sup> or Article 35,<sup>1</sup> (1) and (2) of the Act of 6 July 1982 on Legal Counsel, or Article

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<sup>3</sup> Act of 16 November 2006 on Stamp Duty, consolidated text: Journal of Laws 2023 item 2111 as amended. In certain cases, the obligation to pay stamp duty has been excluded, see, for example, Articles 2–3b of the Tax Code.

<sup>4</sup> D. Michta, *Indos pełnomocniczy – wybrane aspekty problemowe*, Palestra 2018, no. 7–8, p. 43.

<sup>5</sup> Podobnie B. Cieślak, *Wybrane zagadnienia uiszczenia opłaty skarbowej od udzielonego pełnomocniczego lub prokury*, Finanse Komunalne 2012, no. 6, p. 35.

<sup>6</sup> Judgment of the Provincial Administrative Court in Białystok of 7 December 2011, I SA/Bk 377/11, ONSAiWSA 2015, no. 3, item 41.

<sup>7</sup> See Article 1 (1) (2) of the Code of Criminal Procedure in connection with Article 4 of the Code of Criminal Procedure in conjunction with Part IV of the Annex to this Act.

<sup>8</sup> See § 3 (1) of the Regulation of the Minister of Finance of 28 September 2007 on the Payment of Stamp Duty, Journal of Laws [Dziennik Ustaw] no. 187, item 1330.

<sup>9</sup> Act of 26 May 1982 – Law on the Bar, consolidated text: Journal of Laws 2024 item 1564. See G. Borkowski, *Aplikant adwokacki w postępowaniu cywilnym – substytut czy zastępca adwokata?*, Palestra 2009, no. 11–12, pp. 101–112; idem, *Glosa do uchwały SN z 28.06.2006 r. III CZP 27/06*, Przegląd Sądowy 2008, no. 6, p. 140–151; K. Lipiński, *Czy aplikant adwokacki, upoważniony przez adwokata do zastąpienia go, może być przez sąd dopuszczony tymczasowo do udziału w rozprawie, gdy nie może na razie przedstawić pełnomocnictwa dla adwokata, który udzielił aplikantowi upoważnienia (art. 89 § 1 k.p.c.)?*, Palestra 1959, no. 7–8, pp. 110–111. See also A. Marciniak, *Upoważnienie aplikanta komorniczego do samodzielnego wykonywania określonych czynności egzekucyjnych*, Przegląd Sądowy 2015, no. 9, pp. 92–99; J. Studzińska, *Uprawnienia aplikanta komorniczego – problemy praktyczne*, Przegląd Prawa Egzekucyjnego 2016, no. 1, pp. 87–109.

351 (5) of the same Act,<sup>10</sup> or Article 77 (3) of The Law on the Bar.<sup>11</sup> However, neither they nor the person granting the authorisation (usually their patron) is required to pay stamp duty. This is because the document on the basis of which the applicant acts, i.e. the authorisation – is not a power of attorney within the meaning of the provisions of the Code of Civil Procedure or the Stamp Duty Act.<sup>12</sup>

## 1. Determinant of the obligation to pay stamp duty

The argument that, in the case of submitting a primary power of attorney and a secondary power of attorney, only the submission of the latter document should be subject to a fee is unconvincing, since, according to the information contained in the General Interpretation on Stamp Duty for Submitting a Document Confirming the Grant of a Power of Attorney or Commercial Procuration<sup>13</sup> in the case of multiple powers of attorney, for example, those resulting from a vertical company structure or the granting of substitution, only the submission of the final document confirming the grant of a power of attorney, on the basis of which the attorney will perform

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<sup>10</sup> Act of 6 July 1982 on legal advisers, consolidated text: Journal of Laws 2024 item 499. See also G. Matuisik, M. Śladkowski, *Pozycja prawnego aplikanta radcowskiego w postępowaniu cywilnym*, Przegląd Sądowy 2008, no. 11–12, pp. 91–105; I. Misiejuk, *Czy aplikant na etacie zastąpi obrońcę?*, Radca Prawny 2016, no. 1, pp. 28–29; idem, *Czy aplikant pomoże przy bezpłatnych poradach?*, Radca Prawny 2015, no. 4, pp. 44–45; M. Smyk, *Status prawnego aplikanta radcowskiego w postępowaniu cywilnym (głos w dyskusji)*, Przegląd Sądowy 2010, no. 2, pp. 124–139; P. Olszewski, *Wolność słowa aplikanta*, Radca Prawny 2016, no. 6, pp. 2–3; T. Sobel, *Opinia o możliwości zastępstwa radcy prawnego przed sądami i innymi organami przez aplikantów, którzy otrzymali zaświadczenie o ukończeniu aplikacji*, Radca Prawny 2013, no. 2, pp. 19–21. See K. Dróżdż-Chmiel, *The Legal Status of an Advocate's Articled Clerk in the Polish Civil Court Proceedings – Remarks on a Comparative Background*, Studia Prawnicze KUL 2021, no. 4, pp. 7–26.

<sup>11</sup> See also Article 9 (2) and Article 36 (1) of the Act of 11 April 2001 on Patent Attorneys, consolidated text: Journal of Laws 2024 item 749.

<sup>12</sup> Judgment of the Provincial Administrative Court in Gliwice of 2 April 2008, I SA/Gl 37/08, LEX no. 422225.

<sup>13</sup> Letter dated 13.10.2014, issued by the Ministry of Finance, PL/LM/835/77/EOB/2014/RD-91893, Interpretacja ogólna w sprawie opłaty skarbowej od złożenia dokumentu stwierdzającego udzielenie pełnomocnictwa lub prokury, Dz. Urz. MF 2014 no. 40, <https://sip.lex.pl/#/guideline/184791836/pl-lm-835-77-eob-2014-rd-91893-interpretacja-ogolna-w-sprawie-oplaty-skarbowej-od-zlozenia...?keyword=Ministerstwo%20Finans%C3%B3w,%20PL%-2FLM%2F835%2F77%2FEOB%2F2014%2FRD-91893,%20Interpretacja%20og%C3%B3lna%20w-sprawie%20op%C5%82aty%20skarbowej%20od%20z%C5%82o%C5%82nomocnictwa%20lub%20prokury&cm=SFIRST> [access: 7.07.2025].

actions in the matter on behalf of, and with direct legal effect on, the principal is subject to stamp duty.<sup>14</sup> The number of power-of-attorney relationships resulting from the submitted document or documents – regardless of whether it concerns the primary or secondary power of attorney – determines the amount of stamp duty. It should be noted that this article concerns a secondary power of attorney, which should typically be submitted at the earliest together with the submission of the primary power of attorney.

## **2. Parties to the relationship of substitutive power of attorney and the obligation to pay stamp duty**

What is particularly significant for further analysis is the fact that granting a substitute power of attorney to another person is a unilateral legal act, performed on behalf of the principal and with direct effect for them. Therefore, the principal, on the one hand, and the substitute attorney, on the other, are parties to the newly created legal relationship. Actions undertaken by the substitute attorney produce direct effects for the principal, as the subordinate attorney acts on behalf of and for the principal, not the principal attorney. Therefore, the principal attorney should not be defined as the principal of the substitute attorney.<sup>15</sup> Having the status of principal of the substitute attorney is one thing; however the relationship between the principal attorney and the substitute attorney, which gives rise to the requirement to continue the principal attorney's legal tactics, is quite another.<sup>16</sup>

The Provincial Administrative Court in Białystok, in its judgment of 7 December 2011,<sup>17</sup> draws further conclusions. According to this court, since Article 5 (1) and (2) of the Administrative Procedure Code, impose a joint and several obligation on the principal and the attorney-in-fact to pay the fee in question, and the subordinate power of attorney relationship itself binds only the principal and the substitute, then,

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<sup>14</sup> See H. Żołnierkiewicz, *Oplata skarbową od pełnomocnictwa substytucyjnego – wątpliwości w praktyce*, Russel Bedford, 13.02.2020, <https://www.russellbedford.pl/aktualnosci/instrukcje-czynnosci-poradniki/item/1692-oplata-skarbowa-od-pelnomocnictwa-substytucyjnego-watpliwosci-w-praktyce.html> [access: 7.07.2025].

<sup>15</sup> See the judgment of the Supreme Court of 21 January 2009, III CSK 195/08, LEX no. 527252.

<sup>16</sup> This issue goes far beyond the scope of this study and is related to the ethics of lawyers and legal advisers, as well as intra-corporate regulations, and for this reason it will only be mentioned here.

<sup>17</sup> Judgment of the Provincial Administrative Court in Białystok of 7 December 2011, I SA/Bk 377/11, ONSAiWSA 2015, no. 3, item 41. See E. Lemańska, *Oplata skarbową od pełnomocnictwa (prokury)*, Zeszyty Naukowe Sądownictwa Administracyjnego 2008, no. 1, p. 53.

in such a case, only the principal and the subordinate attorney-in-fact are obliged to pay the stamp duty. Even the fact that the declaration granting the subordinate power of attorney is submitted by the principle attorney-in-fact is irrelevant in this case. It should also be noted at this point that, in practice, the stamp duty on the subordinate power of attorney is paid by the primary attorney-in-fact. Furthermore, in some circles, it is commonly accepted that the primary attorney-in-fact should pay the stamp duty on the substitutive power of attorney, since they are the one seeking representation for a specific date in the case. This position may cause problems in deciding on the reimbursement of costs necessary for the purposeful pursuit of rights and purposeful defence within the meaning of Article 98 of the Code of Civil Procedure, which is also closely related to the exercise of the right to a court.

### **3. Costs borne by the party to the proceedings and stamp duty for a substitutive power of attorney**

Before discussing the legal regulations regarding cost reimbursement, attention should be drawn to the position expressed by the Supreme Court in its resolution of 12 March 2003.<sup>18</sup> According to the view presented in the cited resolution, the costs necessary for the purposeful pursuit of rights and purposeful defence (Article 98 § 1 of the Code of Civil Procedure) of a party represented, for example, by an attorney, include the expense incurred by that party in connection with the need to pay stamp duty on the document confirming the appointment of an attorney. According to the Court, an analysis of the content of Article 98 § 3 of the Code of Civil Procedure leads to the conclusion that the cost of stamp duty on the power-of-attorney document cannot be included in any of the cost categories listed in that provision, because it is the party's expense, not the attorney's expense. This raises the question of whether the costs included in Article 98 § 3 of the Code of Civil Procedure constitute an exhaustive list of costs necessary for the effective pursuit or defence of rights within the meaning of Article 98 § 3 of the same Act. the indication of the types of costs covered by the statutory presumption that they are necessary for the purposeful pursuit of rights and purposeful defense is an exhaustive list. In the court's opinion, this question must be answered in the negative, because Article 98 § 3 of the Code of Civil Procedure specifies the general principle expressed in Article 98 § 1 of the Code of Civil Procedure, but does not enumerate the costs that should be included

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<sup>18</sup> Resolution of the Supreme Court of 12 March 2003, III CZP 2/03, OSNC 2003, no. 12, item 161.

among the necessary costs when a party is represented by an attorney. An exhaustive list of all necessary costs subject to reimbursement in the event of a party's success in litigation would be impossible for the legislator to formulate. According to the court, Article 98 § 3 of the Code of Civil Procedure should therefore be interpreted as meaning that, when deciding on the costs of the proceedings of the winning party, the court may award to the winning party not only the reimbursement of the costs indicated in this provision, but also the reimbursement of other costs incurred by that party, if they prove necessary for the proper pursuit of rights or proper defence within the meaning of Article 98 § 1 of the Code of Civil Procedure. The prevalence of the above view is evidenced by the fact that similar positions are included in the following judgments, including: resolutions of the Supreme Court of 6 February 2013, 17 June 2011, 24 January 2011, and 6 November 2009; the resolution of the Supreme Court of 12 March 2003, the judgment of the Court of Appeal in Białystok of 7 November 2014, the judgment of the Court of Appeal in Lublin of 30 October 2014, the judgment of the Court of Appeal in Katowice of 17 February 2017, the judgment of the District Court in Kraków of 25 February 2015, the judgment of the District Court in Kraków of 30 October 2013, and the judgment of the District Court in Gdańsk of 10 October 2013.<sup>19</sup>

In an approving commentary on the above-mentioned Supreme Court resolution of 12 March 2003,<sup>20</sup> it was pointed out that it is inadmissible to interpret Article 98 § 3 of the Code of Civil Procedure narrowly and, consequently, to consider it a provision that exhaustively defines all reimbursable costs. According to this author, a party has the right to reimbursement of costs insofar as they are necessary for the purposeful pursuit of rights or for the purposeful defence within the meaning of Article 98 § 1 of the Code of Civil Procedure.<sup>21</sup> Therefore, since the legislature

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<sup>19</sup> See resolution of the Supreme Court of 6 February 2013, V CZ 87/12, LEX no. 1294194; resolution of the Supreme Court of 17 June 2011, II UZ 15/11, LEX no. 1212875; resolution of the Supreme Court of 24 January 2011, IV CSK 486/10, LEX no. 1275007; resolution of the Supreme Court of 6 November 2009, I CZ 61/09, LEX no. 599745; resolution of the Supreme Court of 12 March 2003, III CZP 2/03, LEX no. 76144; judgment of the Court of Appeal in Białystok of 7 November 2014, I Aca 416/14, LEX no. 1554624; judgment of the Court of Appeal in Lublin of 30 October 2014, I Aca 427/14, LEX no. 1552042; judgment of the Court of Appeal in Katowice of 17 February 2017, V Aca 430/16, LEX no. 2249942; judgment of the District Court in Kraków of 25 February 2015, IX GC 697/14, LEX no. 2155293; judgment of the District Court in Kraków of 30 October 2013, IX GC 464/13, LEX no. 1715376; judgment of the District Court in Gdańsk of 10 October 2013, XV C 125/13, LEX no. 1719130.

<sup>20</sup> Resolution of the Supreme Court of 12 March 2003, III CZP 2/03, OSNC 2003, no. 12, item 161.

<sup>21</sup> A. Nowak, *Oplata skarbowia. Glosa do uchwały SN z dnia 12 marca 2003 r.*, III CZP 2/2003, Glosa 2004, no. 10, pp. 38–39.

imposes the obligation to pay a stamp duty on a power of attorney, this cost should, in principle, be awarded by the court from the party that has lost the proceedings.

It is commonly accepted in the legal literature that the costs necessary to properly pursue and properly defend a party represented by an attorney include the expenses incurred by the party in connection with the need to pay stamp duty on the document confirming the appointment of an attorney. Commentaries on the Code of Civil Procedure frequently refer to the Supreme Court resolution of 12 March 2003 (III CZP 2/03), already cited in this article.<sup>22</sup>

#### **4. Conditioning the deduction of stamp duty from a further power of attorney as a cost necessary for the purposeful exercise of rights and purposeful defence from the entity that incurs this type of expenses – false or true?**

It is impossible to disagree with these positions, in that the expense of paying the stamp duty on a power of substitutive attorney should certainly be included among the costs necessary for the purposeful pursuit of rights and purposeful defense within the meaning of Article 98 of the Code of Civil Procedure, regardless of whether it is borne by the attorney or the client. *A maiore ad minus*, since the costs of an attorney's remuneration, not higher than the rates set out in separate regulations, or out-of-pocket expenses of one advocate are included among the necessary costs of proceedings, regardless of the complexity of the case, the cost of paying stamp duty on a power of substitutive attorney should be even more so. When this fee is paid by an attorney, it should certainly be defined as the expense of one attorney within the meaning of Article 98 § 3 of the Code of Civil Procedure. It should be noted at this point that the incurrence of this expense should be proven, most often by presenting a transfer confirmation printed from an electronic banking system.

The analysis becomes somewhat more complicated when the principal pays the stamp duty. It should be recalled that the principal, alongside the attorney-in-fact, is jointly and severally liable for the stamp duty on the power of attorney, pursuant to

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<sup>22</sup> See judgment of the Supreme Court of 27 July 1957, 3 CZ 215/57, OSPIKA 1958, no. 5, item 137. See also judgment of the Supreme Court of 5 March 2015, III PK 109/14, LEX no. 1666025; resolution of the Supreme Court of 4 February 2013, I PK 255/12, LEX no. 1554962; resolution of the Supreme Court of 12 September 2012, II UZ 32/12, LEX no. 1619854; resolution of the Supreme Court of 11 September 2012, III PK 16/12, LEX no. 1619863, or resolution of the Court of Appeal in Poznań of 26 August 2015, III AUz 291/15, LEX no. 1798639.

Article 5 (1) of the Stamp Duty Act. The Supreme Court's position that stamp duty is a reimbursable expense to the party, constituting the cost incurred by the party in pursuing its rights or defending itself, is unconvincing. Therefore, the requirements of Article 98 § 1 of the Code of Civil Procedure are met. The view that since the stamp duty on the power of attorney is not included in any of the cost categories contained in Article 98 § 3 of the Code of Civil Procedure, the list of legal costs is not exhaustive, but merely indicative, a guideline to be followed when deciding on the reimbursement of necessary and appropriate costs, seems inappropriate.

Pursuant to Article 98 § 3 of the Code of Civil Procedure, the necessary legal costs of a party represented by an attorney include the elements listed therein, including the fee, which, however, cannot exceed the rates specified in separate provisions, and the expenses of one attorney, court costs and the costs of the party's personal appearance ordered by the court. Furthermore, this provision applies not only to legal costs incurred by the attorney (e.g. attorney's expenses) but also to the party's costs themselves (e.g. the costs of the party's personal appearance ordered by the court), and therefore this regulation is exhaustive. Therefore, a decision to award reimbursement of a cost incurred by the party in the form of a stamp duty on a power of attorney cannot be based on Article 98 § 1 of the Code of Civil Procedure. The regulation of Article 98 of the Code of Civil Procedure is inappropriate, since, on the one hand, it allows the winning party to be awarded the cost of paying the stamp duty on a power of attorney when it is paid by the attorney, and at least unclearly governs the situation when the fee is paid by the client (if it does not exclude such an option at all). One may wonder whether the principal's payment of stamp duty on a principal power of attorney could be considered an "attorney's expense" within the meaning of Article 98 § 3 of the Code of Civil Procedure, in the sense that the attorney, alongside the principal, is also jointly and severally liable to pay the stamp duty on the power of attorney, in accordance with Article 5 (1) of the Stamp Duty Act, although this view nevertheless seems far-fetched. Therefore, under the current legal framework, it seems safer for the attorney to pay the stamp duty and, if reimbursement from the client is desired, to issue an appropriate accounting note to that effect.

As mentioned above, in practice, it may happen that the stamp duty for a subordinate power of attorney is paid by the principal attorney, even though the obligation to pay it rests with the principal and the substitute attorney. It is generally accepted that the principal attorney should bear the cost of the substitutive power of attorney fee. This position can create problems when deciding on the reimbursement of costs necessary for the purposeful pursuit of rights and the purposeful defence within the meaning of Article 98 of the Code of Civil Procedure. Is this not a case of "doubling

expenses" when the stamp duty for the principal power of attorney is paid by the principal attorney, while the stamp duty for the subordinate power of attorney is paid by the substitute attorney, who, not the principal attorney, is obliged to pay it?

## **Summary**

In this situation, we are not dealing with the expenses of a single attorney within the meaning of Article 98 § 3 of the Code of Civil Procedure, since these are the expenses of two attorneys, respectively: the main attorney and the substitute. In such a situation, to constitute an expense of a single attorney (i.e. the main attorney) the substitute attorney could issue an accounting note and charge them PLN 17. However, in this situation, if we assume – following the position of the Provincial Administrative Court in Białystok, expressed in its judgment of 7 December 2011 – that only the principal and the subordinate attorney are obliged to pay the stamp duty, then the expense of the main attorney, who pays for the accounting note from the substitute, is unnecessary, since they are not obliged to pay the stamp duty, and therefore should not be awarded to the prevailing party in the dispute. Therefore, it seems that under the current legal framework there is no basis for awarding the winning party a reimbursement of the stamp duty on the substitute power of attorney. However, such a basis should be introduced because a power of attorney for legal proceedings includes, by law, the authority to grant further power of attorney to an attorney or legal counsel (Article 91 (3) of the Code of Civil Procedure), and this rule should be reflected in the possibility of awarding the prevailing party a stamp duty for a substitute power of attorney. The court cannot, after all, adjourn a hearing due to a potential conflict of court hearings in cases conducted by one attorney. It is the attorney's responsibility to ensure the personal presence or that of their substitute so as to provide proper legal services, including ensuring that conflicting dates do not result in negative consequences for the client, i.e. consequences in the form of the need to set a new date in the case solely due to the conflict of the attorney's duties, as the latter also has no legal basis (in this case, it is justified). There is no rational justification for distinguishing between situations where stamp duty is paid by the principal or by the substitute attorney from the situation in which that duty is covered by the principal attorney. These entities should be treated uniformly regarding the possibility of including the expense in the form of the stamp duty on a substitute power of attorney within the costs necessary to effectively pursue rights and to effectively defend, within the meaning of Article 98 of the Code of Civil Procedure.

Moreover, the principal attorney, in principle, has the greatest interest in ensuring suitable representation for himself, so omitting the expense paid by him in the form of the stamp duty on a substitute power of attorney within the settlements under Article 98 of the Code of Civil Procedure is even more entirely incomprehensible.

Finally, it should be added that although *de lege lata* there should be a proposal to amend Article 98 of the Code of Civil Procedure, allowing the award of stamp duty costs incurred on a power of attorney – whether principal or secondary, regardless of whether it is paid by the principal, principal attorney, or substitute – to the prevailing party in the proceedings, such costs should still be awarded only in circumstances in which incurring these costs was necessary. Therefore, an entity that unnecessarily paid stamp duty on a power of attorney, despite being entitled to an exemption from this fee (e.g. in connection with an exemption from court costs), cannot demand reimbursement of that fee from the losing party.<sup>23</sup> It is necessary, in this context, to determine whether every expenditure in the form of paying the stamp duty on a substitute power of attorney should be regarded as necessary. The answer to this question should, in principle, be positive, since – firstly – Article 91 (3) of the Code of Civil Procedure by its very force grants authority to appoint further procedural power of attorney to a solicitor or advocate. Secondly, as emphasised above, the court is not obliged to adjourn a hearing under Article 214 of the Code of Civil Procedure due to a clash of the representative's deadlines, which is entirely understandable. From this perspective, there is a strong and rational link between Article 91, point 3 of the Code of Civil Procedure and Article 214 of the Code of Civil Procedure. Thirdly, it is worth recalling the practice whereby the principal, as a rule, pays the stamp duty on a substitute power of attorney, since they are the one seeking substitution for a specific date in the case. It seems that a rational consequence of these provisions should be to ensure a legal possibility to include within the costs awarded the expenditure incurred on the stamp duty for each expenditure in the form of stamp duty on the power of attorney, which indeed is not high, amounting to PLN 17. The necessity to ensure the coherence discussed above between the procedural provisions (Article 91 (3) and 214 of the Code of Civil Procedure) and the cost settlement possibilities under Article 98 of the Code of Civil Procedure appears to be obvious. Thus, the expenditure in the form of stamp duty for a further power

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<sup>23</sup> See judgment of the Supreme Court of 27 July 1957, 3 CZ 215/57, OSPIKA 1958, no. 5, item 137. See also judgment of the Supreme Court of 5 March 2015, III PK 109/14, LEX no. 1666025; resolution of the Supreme Court of 4 February 2013, I PK 255/12, LEX no. 1554962; resolution of the Supreme Court of 12 September 2012, II UZ 32/12, LEX no. 1619854; resolution of the Supreme Court of 11 September 2012, III PK 16/12, LEX no. 1619863, or resolution of the Court of Appeal in Poznań of 26 August 2015, III AUz 291/15, LEX no. 1798639.

of attorney should be recognised, in principle and in each case, as a necessary cost within the meaning of Article 98 of the Code of Civil Procedure. An exception may arise if, for example, the entity unjustifiably paid the stamp duty on a substitute power of attorney despite being entitled to an exemption from this obligation (for instance, in connection with exemption from court costs). In such a situation, the entity could not reasonably expect reimbursement of this expenditure from the opposing party. It is worth adding that the foregoing issue does not concern authorisation for a trainee advocate or trainee legal advisor, since, given that they do not operate on the basis of a power of attorney document, there is no legal obligation to pay the stamp duty on the authorisation granted to a trainee solicitor or trainee legal adviser.

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