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Principles of ethics and serving in the bodies of the Chamber of Architects of the Republic of Poland conducting disciplinary proceedings – selected practical problems

Introduction

The subject matter of this article encompasses broader issues related to the professional ethics and the professional autonomy of architects in Poland. The architect's ethics embraces deontological elements as well as metaphysical ones, sometimes taking the form – as in the timeless book *'Uczniowie cieśli'* (Carpenter's disciples') by Professor Lech Niemojewski – of a strictly religious reference¹. Closely related to the professional deontology of architects are the practical aspects, to which special attention is paid in this paper. It presents, within the context of ethical principles, a selection of chosen problems and the

risks associated with performing a function in the bodies of the Chamber of Architects of the Republic of Poland (IA RP) conducting disciplinary proceedings.

On the basis of current activity of the professional autonomy – set up in 2002 as the Chamber of Architects of the Republic of Poland – one may notice both the benefits of its functioning as well as certain deficiencies typical of institutions built from scratch. Because of its volume, the paper does not address the full spectrum of problems connected with the subject included in the title. It concentrates on presenting selected questions, resulting from the governing laws and risks hidden behind the degree of law education on the part of architects assuming a function in the Chamber and the resulting nuances. Before discussing the details, let us introduce briefly the role of the Chamber in the field of establishing the principles of ethics and monitoring their observance by architects.

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¹ See: Niemojewski L., *Uczniowie cieśli. Rozważania nad zawodem architekta*. Trzaska, Evert i Michalski, Warszawa 1999. A reprint of the book published for the first time in 1948

The Chamber of Architects' principles of responsibility for the profession of architect

The Act of 15th December 2000 concerning the professional autonomy of architects, building engineers and urban planners, specified, inter alia, the organisation and goals² of the later created IA RP. Working in the field of architecture is associated not only with specialist knowledge, experience or artistic skills or talent, but also with a great responsibility, of which we may speak in a moral sense but also from the point of view of legal regulations.

According to the current law regulations, we deal with four basic regimens of the architect's law responsibility, namely:

- criminal responsibility,
- civil liability (tort and contract),
- professional building responsibility,
- disciplinary responsibility.

The organisation currently supervising the professional activities of architects is the Chamber of Architects of the Republic of Poland. As noted by Prof. Konrad Kucza-Kuczyński in his monograph published in 1985³, it was the Association of Polish Architects (SARP) that was pre-

² Cf.: Act of 15th December 2000 concerning the professional autonomy of architects, building engineers and urban planners, *Diary Acts*, 2001, No 5, item 42 as amended, Art. 1 and 8.

³ Cf.: Kucza-Kuczyński K., *Warsztat architektoniczny jako funkcja etyki zawodowej*. Wydawnictwa Politechniki Białostockiej, Białystok 1985. Ibid.: broader presentation of the role of SARP as a guarantee of observance of ethical rules in mid-1980s, pp. 48–52.

viously ‘the guarantor of obedience to the professional ethics principles’. In 2002 this role was taken over by the Chamber, which, above all, results from the legislation, as mentioned in the appropriate regulations of the *Cooperation Agreement Act* signed by SARP and the Chamber of Architects on 15th November 2002⁴.

According to the Statute of IA RP, *the overriding purpose of the Chamber is the protection of space and architecture as the common good*⁵. Among the obligations taken on by the professional autonomy was *the task of supervising the right and proper way of performing the job by the members of the Chamber*⁶ (mostly connected with professional building responsibility) and the obligation *to establish the principles of professional ethics and supervision of their obedience*⁷ – applying to the issue of disciplinary responsibility.

The legal instrument establishing the ethical principles presently binding the members of the Chamber of Architects is *Kodeks Etyki Zawodowej Architektów (KEZA)* (Architects’ Code of Professional Ethics)⁸. On 18 December 2005 it replaced the previously used *Zasady Etyki Zawodu Architekta*

⁴ Cf.: *Cooperation Agreement Act* between the Association of Polish Architects SARP and the Chamber of Architects dated 15th October 2002, item 1.2, letters: a, e, f.

⁵ Cf.: *Statut Izby Architektów Rzeczypospolitej Polskiej – Uchwała nr 2 I Krajowego Zjazdu Izby Architektów w sprawie Statutu Izby Architektów*, 19th January 2002, as amended, § 6 item 1.

⁶ See: *Act dated 15th December 2000...*, op. cit., art. 8 item 1.

⁷ *Ibid.*, art. 8 item 3.

⁸ *Kodeks Etyki Zawodowej Architektów*. Annex to Resolution 01 III of Chamber of Architects’ Congress passed on 18 June 2005. The Code went into effect on 18th December 2005 i.e. after six month period of *vacatio legis*.

(*ZEZA*) (Ethical Principles of the Profession of Architect)⁹.

Thus, it is in the competence of the architects’ professional autonomy to run proceedings involving its members on account of professional building responsibility and disciplinary responsibility. However, proceedings on account of criminal or civil responsibility are conducted, just as before IA RP, by courts of general jurisdiction.

Each member of the Chamber of Architects of the Republic of Poland is obliged to abide by ethical rules formally approved by the organisation. In the case of their violation, they may be liable to disciplinary action. The duties connected with disciplinary proceedings have been entrusted to spokesmen for professional responsibility (mostly at the preliminary investigation stage), disciplinary judges (disciplinary court proceedings) and members of the Chamber’s district councils (executive proceedings). For each phase of disciplinary proceedings, i.e. preliminary investigation, disciplinary court proceeding and execution of verdict, the tasks of the professional autonomies are regulated in detail by the *Directive of the Minister of Infrastructure of 31st October, 2002 concerning detailed regulations and disciplinary actions against members of the professional autonomies of architects, building engineers and urban planners*¹⁰.

⁹ *Zasady Etyki Zawodu Architekta* – Resolution No 19 of Extraordinary Congress of Chamber of Architects that took place on 23–24 November 2002 on Architects’ Professional Ethics.

¹⁰ See: *Directive of the Minister of Infrastructure of 31st October, 2002, concerning detailed regulations and disciplinary actions against members of the professional autonomies of architects, building engineers and urban planners*, *Diary Acts*, 2002, No 194, item 1635, chapters: 2, 3 and 4.

Issues resulting from the established law

Principles of ethics, when they are passed and gain legal status, become a part of corporate law. At this point, the freedom to accept or reject them comes to an end. All members of the Chamber of Architects of the Republic of Poland are obliged to abide by *KEZA* regulations; however, it seems that for this professional group creative independence and freedom of action occupy a very high place in the hierarchy of values. Yet, the intention of limiting this freedom is to provide safety. Finding out the optimum solution is an extremely difficult task, which has been proved by previous experience in attempting to codify ethical principles of the architect’s profession.

The currently binding code is constructed in a much better way than the previous *ZEZA*, however, as part of the inner circle discussions, changes have already been proposed¹¹. Should the Chamber of Architects plan to amend it, it is worth remembering that the new regulations ought to be in conformity with general law and should not require from the

members behaviour against their ethical viewpoints. Dr Dawid Bunikowski, in his publication *Podstawowe kontrowersje dotyczące ingerencji prawa w sferę moralności* (Basic controversies concerning legal intervention in the realm of morality) observes that in the case of incorporating certain ethically perfectionist regulations into professional codes of ethics such decisions are ‘interference of law in the sphere of professional ethics and morality’¹².

The arising problems are certainly not only associated with corporate law. Certain acts and directives also contain such regulations, which cause difficulties and lead to complications during proceedings on account of disciplinary matters and professional responsibility in the building industry. One such problem concerns the extremely short period of prescription with cases at the preliminary investigation stage¹³. Only because of not meeting the deadline to carry out the preliminary investigation by the

¹¹ The Chief Spokesman for Professional Responsibility, together with a group of local spokesmen, prepared, by the end of 2009, an amendment of *KEZA*, which, after criticism from other members of the autonomy, was not approved for legislation.

¹² Cf.: Bunikowski D., *Podstawowe kontrowersje dotyczące ingerencji prawa w sferę moralności*. Wydawnictwo Naukowe UMK, Toruń 2010, p. 351.

¹³ Cf.: *Directive of Minister of Infrastructure, 31st October 2002...*, op. cit., § 15. 1, 2 and 3.

spokesmen, a great number of cases have never been brought to disciplinary courts for consideration.

At this stage, it is worth pointing to the parallel and independent existence of disciplinary responsibility and professional building responsibility as two separate regimens of responsibility. Combining them would eliminate the negative consequences of this duality.

Another problem is the fact that cases on account of professional responsibility have to be run by means of administrative law, which serves completely different purposes and does not seem very adequate to the specificity of professional cases run by IA RP courts. Application of administrative law procedures implies, among other things, a situation, in which the defendant is a litigant party in a lawsuit while the injured party is not¹⁴. As a consequence, the injured

party has no rights as the party in litigation, e.g. it has no access to court records, cannot appeal against a court decision nor even receives such a decision. On the other hand, in disciplinary proceedings, the wronged, similar to the accused, is a litigant party, but as opposed to the accused cannot appeal the decision of the court¹⁵. Why do not the defendants and the injured parties have the same rights in the Chamber's proceedings? Was this inequality intentional on the part of the legislator or are we dealing with a *lapsus iudicii*?

The above examples are only a part of the real problems associated with law and encountered by the spokespersons for professional responsibility and disciplinary judges in their work.

¹⁴ Cf.: *Act of 14th June, 1960 – Administrative Proceedings Code*, Diary Acts, 2000, No 98, item 1071 as amended, Chapter 6.

¹⁵ Cf.: *Act of 15th December, 2000,...*, op. cit., Art. 54. 3 and 4.

Legal competence of architects

Nobody except the architects themselves is able to appropriately assess the detailed aspects concerning architecture and its formation. Because of performing their jobs on a daily basis, they are the most competent specialists in the field of proper discharge of architects' duties on independent technical posts in the building industry. As the experience shows, also when it comes to explaining factual, case-based disciplinary responsibility, they are capable of accomplishing this task very well.

However, we must admit that there is a field where architects do not come out with flying colours. It is the legal grounding of architects to perform the function of the spokesperson for professional responsibility or a disciplinary judge. Of course one cannot generalize, especially as the degree of legal knowledge among the members of the Chamber of Architects is not uniform. Therefore, the author of this paper, in the further part of this chapter, will only describe inadequacies of his own knowledge and lack of experience, which became visible especially at the beginning of his public work in the Chamber. The work started during the second term of IA RP body (lasting from March 2006 to March 2010) from a member of the District Disciplinary Court in Kuyavian-Pomeranian District Chamber of Architects (OSD KPOIA) and continued in the second term (since March 2010) by holding the post of Vice-Spokesman for Professional Responsibility for the same District Chamber.

The author of the paper will share his thoughts on the issue of the potential risks, however, without maintaining that they occurred in the past.

Self-criticism compels to admit honestly that the legal knowledge the author possessed at the time of being chosen as a member of OSD KPOIA was modest and insufficient to perform the accepted function properly. This is why the process of getting used to the current work of the body was gradual, interwoven with numerous courses in legal matters. Only after some time, was it possible to

start work in the disciplinary court. Four years passed, during which the author completed a great deal of specialist courses run by law advisers and legal practitioners, and gained some practical experience during disciplinary and professional proceedings. But even this experience is only a small fraction of the expertise and skills possessed by professional judges or prosecutors. The knowledge and experience of disciplinary judges should be comparable to competence of judges of common law courts, because the body in which they function - the disciplinary court of IA RP - represents the Polish State, which authorizes its jurisdiction on its behalf.

The knowledge of certain branches of law by spokespersons for professional justice and disciplinary judges of the Chamber of Architects is a matter of primary importance. They should - to a considerable degree - know and be capable of applying legal standards. In practice, in the case of individuals who are beginning to perform func-



Fig. 1. Konstanty Zamoyski Palace, 1/2/4 Foksal Street in Warsaw – the seat of the National Chamber of Architects of the Republic of Poland V (photo: A. Furmanek)

Il. 1. Pałac Konstantego Zamoyskiego przy ul. Foksal 1/2/4 w Warszawie – siedziba Krajowej Izby Architektów Rzeczypospolitej Polskiej A.Furmanek)



Fig. 2. Egalitarian public space – Grobla I Street in Gdańsk
(photo: A.Furmanek)

II. 2. Egalitarna przestrzeń publiczna – ulica Grobla I w Gdańsku.(fot. A.Furmanek)

tions associated with IA RP jurisdiction, very intensive training courses prove essential, especially in the field of substantive law and, additionally, procedural and penal law. Specialist legal knowledge and the ability to play an appropriate role in the proceedings are necessary for carrying out the designated tasks. It is not difficult to see that potential risks are hidden here. Irregularities in the proceedings result in, e.g. dismissing a case, invalidation of the verdict or declaring an innocent person guilty and vice versa - a guilty person innocent. Could any of these cases be considered as a just decision in law procedures? The difficulty lies in the fact that it is not the accused that has to prove his innocence but his guilt must be proved - if he is guilty indeed. Practice shows how difficult it is to prove somebody's guilt, yet at the same time, because of professional responsibility, it is necessary. Could such a situation be explained, in which somebody, having committed a punishable deed, and despite the injured party's complaint, would make it impossible for the Chamber to prove the offence? Without deciding about the guilt punishment cannot be decreed, all the more executed. The functions of punishment - justice, protection, guarantee - would not be fulfilled in this case either. The feedback information coming from such a hypothetical event could create a negative picture of the Chamber of Architects' jurisdiction.

Some of the accused employ defenders – e.g. barristers or legal advisers. The training of spokespersons for professional responsibility and disciplinary judges should be professional enough, so that they can run a case properly, not laying themselves open to the charge of incompetence and avoiding all formal errors and negligence. The disproportions between them and the professionals such as barristers or legal advisers should be reduced to a minimum. It is especially essential during trials, because their course is sometimes dynamic and in the extreme situations it can evolve towards situations insulting the dignity of the court. The chairman of the Bench has the duty to control the situation in the courtroom and prevent any possible escalation of emotions.

A remedy for lack of legal training can be the services of professional lawyers employed by the Chamber of Architects. Such cooperation, however, carries some potential risks, e.g. the possibility of manipulation. For this



Fig. 3. Old Town in Toruń (photo: A.Furmanek)

II. 3. Stare Miasto w Toruniu.(fot. A.Furmanek)

reason, it is necessary to establish distinct boundaries of the permissible influence of lawyers on the proceedings in progress. Nobody except the spokespersons for professional responsibility and disciplinary judges should take evidence for them, formulate the interpretation, and particularly decide about the guilt or innocence of the accused.

Many advantages could be brought by training sessions in the field of rules of ethics and selected elements of law, addressed to the members of the professional autonomy. During their term of office, the spokespersons for professional responsibility and disciplinary judges attend many training courses designed specially for them. The Chamber of Architects of the Republic of Poland should, on a much larger scale than today, organize training sessions, seminars or courses in which all members would have an opportunity to acquire specialist knowledge connected with the problems of the disciplinary responsibility and also the professional responsibility in the building industry.

Another valuable source of information is publication of opinions and judicial decisions on the internet websites of the Chamber of Architects of the RP, which was started by the National Chamber of Architects and some regional Chambers. It seems justified to provide access via the Internet to the decisions in cases run by both lower and higher disciplinary courts of IA RP; as a matter of fact, this should be made obligatory, of course after their validation and with appropriate anonymity of the documents.

Additionally, one could consider the possibility of providing access to the public information in the form of cyclical reports from disciplinary and professional proceedings going on before the bodies of the Chamber of Architects of the Republic of Poland. An interesting solution in this regard has been applied by the Superior Chamber of Physician and Dentists which, in tabular form, publishes on its own Internet site detailed annual reports concerning cases within its jurisdiction¹⁶. The openness and transparency doubtlessly strengthen the position of every profession of public trust.

¹⁶ See: *The Statistical data of medical courts 1998-2009* available on the web site of Naczelna Izba Lekarska: http://www.nil.org.pl/xml/nil/wladze/str_sad/statystyki.

Conclusion

The responsibility for the quality of the developed environment in large measure lies with the architects. It refers to those directly designing as well as to those who indirectly participate in the process of forming architecture and supervising the professional activities. Among them there are architects performing functions in the bodies of the Chamber of Architects of the Republic of Poland which conducts disciplinary proceedings. They, not only by professional work, but also by fulfilling their social functions, are, in a way, jointly responsible for the quality of the Polish space, because the bodies in which they work constitute an important link in the system of legal responsibility of the architects.

The image and the significance of the professional autonomy to a large extent depend on ethical conduct of the members of the Chamber of Architects' bodies and the influence they have on the conduct of other architects.

The proper fulfilment of obligations taken on by the Chamber of Architects is the necessary basis of its functioning so far and confirms the validity of establishing this organization and also the necessity of further activity. It is noteworthy that the professional autonomy of architects is not a trade union, and the beneficiaries of its

actions are not to be the architects alone, because it acts in the widely understood public interest.

To sum up, the above mentioned problems and risks should not in any way cast a shadow over indisputable advantages resulting from the existence of the Chamber of Architects. The members of the Chamber performing functions in its bodies carrying out disciplinary procedures have done irreplaceable work over the first eight years, which they still do.

The world is in a state of constant transformation. Together with it, the realities of architectural profession in Poland also change. This is why it is justifiable to analyse the gained experience and the current situation of the Chamber of Architects. There is no need to introduce any radical changes. It will suffice to react to alarming signals, to identify potential threats and to seek solutions to the problems by a gradual process of improvement. Thanks to this, we can improve what has already been achieved and protect the freedom of performing the profession by architects. This should allow creating greater safety for them, as well as for their clients and the whole society, consequently influencing the quality of architecture. *Pro publico bono.*

IA RP – The Chamber of Architects of the Republic of Poland
KPOIA – Kuyavian-Pomeranian District Chamber of Architects
OSD – District Disciplinary Court

SARP – Association of Polish Architects
KEZA - Architects' Code of Professional Ethics
ZEZA – Principles of the Profession of Architect

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Zasady etyki a pełnienie funkcji w organach Izby Architektów Rzeczypospolitej Polskiej prowadzących postępowania dyscyplinarne – wybrane problemy praktyczne

Wydaje się, że trudność interpretacji rzeczywistości zawodowej jako przesłania etycznego stanowi obecnie jedno z największych wyzwań, przed którym stoi środowisko projektantów architektury. W klasycznym ujęciu etyki praktyka dostarcza podstaw do sformułowania spójnego zbioru aksjomatów. Obecnie żyjemy w czasach, gdy coraz częściej dąży się do oparcia metod skutecznego działania na zachęcie

zamiast na nakazie, na elastyczności i promocji zamiast na sankcjach dyscyplinarnych. Jednocześnie pojawiają się naglące pytania: czy przeciwnie do obostrzeń na wzór kodeksu karnego, kodeks etyki zawodowej architekta nie powinien stanowić jedynie zbioru zasad, z którym identyfikowanie się byłoby chlubą? Czy rola wychowawcza kodeksu etyki zawodowej architekta nie jest w rzeczywistości

działaniem *post factum*? Zdaniem autora niniejszego artykułu, należałoby szukać innej jego wykładni, na przykład w formie przynależności do elitarnego zrzeszenia na wzór wiktoriańskich

klubów dżentelmenów, nobilitujących swoich członków, a jednocześnie tworzących najwyższy poziom ich etycznego i kulturalnego wyrobienia.

Key words: architects' Code of Ethics, problem analysis of architectural praxis, model of the code of ethics

Słowa kluczowe: kodeks Etyki Zawodowej Architektów, analiza problemów praktycznych, model kodeksu etyki