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LEGAL NATURE OF THE URBAN PLANNING PROFESSION

When regulating the urban planning profession in 2000, the legislator established a professional association and deemed that it had the status of a profession of public trust. This state of affairs lasted for fourteen years, when the so-called Deregulation Act of 9 May 2014 on Facilitating Access to Certain Regulated Professions (Journal of Laws, item 768, hereinafter referred to as: Deregulation Act.) abolished the professional association of urban planners and provided that the urban planning profession lost its status of a profession of public trust. The above Act was appealed to the Constitutional Tribunal, which was to examine its compliance with the Constitution of the Republic of Poland. In its judgment of 24 March 2015 (Case file no. K 19/14, Journal of Laws of 2015, item 476.), the Constitutional Tribunal ruled that the norms of the above Act did not violate the Constitution; however, it did not address the legal nature of the urban planning profession at all. The aim of this article is to show, on the basis of the above-mentioned judgment of the Constitutional Tribunal, characteristic features of the urban planning profession, compare it with the professions of architect and civil engineer, and determine whether, owing to its characteristics, it is a profession of public trust or not. According to the author, the urban planning profession has the status of a profession of public trust, which should be of key importance for the Constitutional Tribunal's assessment of the constitutionality of legal norms contained in the aforementioned Act.

Keywords: Urban planner, Urban planning profession, Legal nature of the urban planning profession, Deregulation Act, Professional Association of Urban Planners.

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Introduction

On 9 May 2014, the Sejm of the Republic of Poland adopted an Acton Facilitating Access to the Practice of Certain Regulated Professions (Journal of Laws of 2015, item 768. Hereinafter referred to as the „Deregulation Act"). The above-mentioned Act was appealed to the Constitutional Tribunal as unconstitutional. On 24 March 2015, the Constitutional Tribunal rendered a judgment ordering that the provisions of the aforementioned Act be examined to confirm whether they are constitutional. In its decision, the Constitutional Tribunal concluded that the profession of urban planner is not the profession of public trust.

Apparently, the profession of urban planner has the quality of the profession of public trust, which was indicated by the legislator itself when it subjected this profession to the provisions of the Act of 15 December 2000 on Professional Associations of Architects, Civil Engineers and Urban Planners (Journal of Laws of 2001, no. 5, item 42).What were the reasons for the legislator's 2014 decision concluding that urban planner was no longer the profession of public trust? An answer to this question is simple: a desire to „slacken" the requirements to be met in order to be admitted to this profession and possibility of urban planning acts being prepared by a considerably larger group of people than before.

One may wonder what circumstances underlined the decision of the Constitutional Tribunal, which deemed the Deregulation Act, as regards the abolition of the profession of urban planner as the profession of public trust, constitutional.

Urban planner as the profession of public trust

The first argument against the judgment rendered was related to the assessment of the profession of urban planner alone. The Constitutional Tribunal assumed that the profession of urban planner is not the profession of public trust. This conclusion (item 5.5. of the reasoning part) was reached by the Tribunal after it previously defined the notion of the profession of public trust (item 3.4. of the reasoning part) and juxtaposed this term with the assessment of the profession of urban planner (item 5.2. of the reasoning part). According to the Tribunal, the profession of urban planner did not match the model adopted; nonetheless, the Tribunal groundlessly excluded derogation due to the unique and specific nature of the profession.

Definition of the profession of urban planner

First, the notion of the profession of public trust has not been defined in the Constitution, so one could have doubts as to what extent the elements (components) of this notion indicated by the Tribunal constitute its *essentialia negotii*.

By invoking current court decisions and doctrine, the Tribunal, as regards the understanding of the notion of the profession of public trust, assumed that the characteristics of such profession include:

a) Necessity to ensure the proper practice of the profession consistent with the public interest, due to the importance of a given area of professional activity in the society;
b) Benefits provided and contacts with natural persons established by representatives of the professions discussed in case of potential or real threat to the good of special nature (e.g. life, health, freedom, dignity, good reputation);
c) Care and diligence exercised by representatives of the professions discussed in respect of the interests of persons taking advantage of their services, caring for their personal needs, and ensuring that individual subjective rights guaranteed by the Constitution are protected;
d) Requiring specific qualifications that need to be met in order to be able to practise the professions discussed, covering not only proper, formal education, but also experience acquired and warrantying proper practice of the profession consistent with the public interest, taking into consideration specific rules of professional deontology;
e) Acquiring personal information and information concerning private life of persons taking advantage of the services provided by representatives of the profession of public trust; this information constitutes professional privilege, which may be waived under the provisions of the Code of Criminal Procedure of 6 June 1997 (Journal of Laws No. 89, item 555);
f) Relative independence of practising the profession.

The aforementioned list indicated by the Tribunal should be deemed proper insofar as that it is actually based on the characteristics of the profession of public trust, elaborated in the court decisions. Also the doctrine points to the element of specific relationship with the customer (Wojtczak, 1999).

Since the notion of the profession is very broad, decoding and clarifying what is meant by the definition of the profession of public trust does not seem possible, in particular if, as a result, a complete and universal definition was to be coined. The Tribunal disregarded the fact that each profession is specific, so there may be individual cases when a given profession will not meet the criteria indicated by the Tribunal despite that it has social trust. It should be assumed that the criteria indicated by the Tribunal are not constant and mandatory, so derogation from them should be allowed in justified cases.

Further, it seems that the Constitutional Tribunal failed to notice the specific nature of the profession of urban planner, barely discussed its essence and characteristics, coming to the conclusion that it did not have the quality of the profession of public trust. Consequently, the Tribunal, when justifying the legal classification of this profession

drew attention to: (I) lack of a particular bond between urban planners and natural persons and (II) lack of a threat to personalised good of individuals, which may be threatened as a result of improper exercise of professional activities.

The problem of special relations with natural persons

As regards the people professional activities are addressed to, the Tribunal indicated that the services of urban planners are mainly addressed to territorial government authorities, which commissioned drafts of relevant plans or decisions. In the reasoning part, it was pointed out that, pursuant to Article 9 (1) and Article 14 (1) of the Spatial Planning and Land Development Act of 27 March 2003 (Consolidated text in the Journal of Laws of 2015, item 199, hereinafter the „Spatial Planning and Land Development Act."), the municipal council takes initiative to determine spatial policy of the municipality and purpose of the land, also for the public purpose investments, and the manner of their development, whereas the executive authority (municipality head, mayor, president of the city) is responsible for the urban planning procedure, preparing a draft of the local spatial development plan and draft of the study of land use conditions and directions of the municipality. The drafts of those documents may be prepared only by persons possessing the knowledge of urban planning, pursuant to Article 5 (1)of the Spatial Planning and Land Development Act. However, the above conclusions constitute only part of the whole range of relations (relationships) established by urban planners in the course of their work.

Undoubtedly, the relations established by urban planner are specific due to that they are established with numerous subjects. In fact, they are addressed to a group of individuals rather than one individual. In the performance of their professional activities, urban planners establish particular relations with the Mayor (Municipality Head / President of the City), but not with the municipal council itself, which obviously adopts a resolution of intent at the beginning of the procedure and a resolution on the plan at the end of the procedure, but for the remaining (middle) part of the procedure the executive authority is actually responsible. At this point, there are virtually no contacts with the municipal council. It should be borne in mind that such urban planning services are commissioned by the Municipality, i.e. the community of residents. Eventually, as a result of the exposition of documents and consultations, also the relations with residents (supporters or opponents of the solutions suggested in the draft) are established. One should not forget about investors, mainly developers, interested in the maximum land use, in particular as regards the development density.

However, this multitude of relations, as a permanent characteristic of the profession, does not disqualify it as the profession of public trust. On the contrary, by demonstrating its unique nature, it confirms that among complex inter-subjective relations with the executive authority, legislative authority, urban planning commission, individual councillors,

the ultimate and direct beneficiary are actually owners of real properties located within the area of urban planning activities as well as local and supra local social groups. They are the persons who will make use of the planned road, recreational and sports, or service infrastructure. Thus, those relations, despite their multitude, are ultimately addressed to natural persons. This is because urban planner's care for space also affects both collective problems of the whole local community and its individual representatives who possess legal titles to the real property. In the scope of ownership, such subjects constitute a group of individuals who can be precisely identified. They are not unspecified subjects, and the level of interference in their property is permanent and possible to be precisely specified.

Specially protected good when practising the profession of urban planner

In the reasoning part of the judgment (item 5.4.) the court held: „*As a result of the activities of urban planners the personalized good of individuals is generally not threatened*". This is also reiterated at the end of the reasoning part (item 9.5). It seems however that, contrary to what the Tribunal holds, this good includes both the spatial order, as a category capable of being individualized in a given area, and sustainable development. It is after all the protection of property as the specific good to which specific subjects are entitled. At the same time, the Tribunal is aware of the existence of that good, to which it explicitly points in the reasoning part (item 5.3.), defining the spatial order as a „value of major importance". In the judgment, the spatial order was deemed part of protection of natural environment and was provided for in Articles 5 and 74 of the Constitution. Nonetheless, it was not given the status of specially protected good. The spatial order alone not only determines sustainable development, but affects the quality of present and future life of residents. In the authors' opinion, there are no grounds to think that poorly designed cities pose a lesser threat to the health of their residents than poorly designed houses or systems, and the professions of civil engineer or architect have been deemed the professions of public trust after all.

It should be also added that the search for threats to specially protected good, which is the condition for classifying a profession as the profession of public trust and which the Tribunal could not find, is the ownership protected by the Constitution. Obviously, the ownership may be restricted by the act, whereas spatial development plans constitute local law acts of non-statutory nature (Although they are issued under acts, in particular local government acts and spatial planning and development act.). Thus, drafting urban planning documents of such major importance should be done with full social trust in persons who possess relevant qualifications for preparing them.

Thus, the Tribunal not ed that practising the profession of urban planner means meeting the needs of the population. Nonetheless, this circumstance did not lead to the conclusion that the profession they practise is the profession of public trust. The

argument against the judgment at hand is not that the judgment completely omitted the aforementioned good, but that it classified it in the wrong way.

Furthermore, this profession is proved to be unique not only because it establishes ownership rights in connection with developing urban planning acts. It is unique because it also combines the relevant relations between the customer, owners or investor's economic interests, and the urban planner, who is a buffer in such relations and often the only subject, who, following good practices, takes into account also public interests. It seems that in a short (Half a page, item 5.3, out of 29 pages of the reasoning has been devoted to urban planning) description of urban planning the Tribunal did not see the role of urban planner, who, equipped with multidisciplinary knowledge, should be able to resist pressure of persons and authorities pursuing economic and political interests. Thus, urban planner is not (and at least by the nature of the profession should not be) a craftsman to draw streets and squares or a person to de termine the purpose of land as ordered by specific investors. It also does not seem justified that urban planner should take into account all guidelines of the municipality authorities, since they may arise from political motives. The fact that the orders are placed most often by the Municipality cannot mean that urban planner should be absolutely obedient to the ordering party, because in such a case supra local interests will remain unprotected. Independence of urban planner is thus justified from the perspective of public interest.

Purpose of urban planning activities

The essence of the profession of urban planner and the quality of the profession of public trust are really determined by the purpose of professional activities, which is based on the protection of the common good. This is related to the need to ensure proper practice of the profession consistent with public interest, which, in the case of professions of public trust, is verified by the professional association. No one else possesses such expertise as to be able to assess whether urban planning assumptions are optimal and consistent with the regulations and deontology rules. Thus, the profession of urban planner, who not only affects the ownership, which is the good protected by the Constitution, through the draft plans, but also, owing to proper plans, shapes the standards of the protection of life and health and additionally protects the common good, e.g. the good related to the protection of cultural and natural heritage, as well as the protection of natural environment, is the profession of public trust. Among all professions of public trust it is hard to find those, which are focused on the protection of the common good in a similar manner.

Additionally, it seems that local communities incessantly demand that certain spatial functions in a given area be preserved, e.g. they file petitions for preservation of green areas (parks, green squares, forests, squares),designing additional streets or public utility areas. These persons engage in such activities to improve the standard of life and

protect their life and the environment, invoking civilization diseases and stress, which may indirectly result from defective urban planning solutions. Dependence between the protection of health and professional activities cannot be thus assessed only from the perspective of direct nature of the cause and effect relationship. Such perspective is too short and needs to be revised. It is hard not to notice that defective transport solutions (contributing to accidents or traffic jams), burdensome neighbourhood (which is a result of being designed in the vicinity of other onerous elements) affect human health.

The purpose of the profession is the protection of common values, which is at the same time combined with the protection of individual's values. This function, consisting in balancing various interests as well as the individual and collective good, at the same time points to professional difficulties, which urban planner comes across in the performance of professional activities. This makes the profession unique.

Profession of urban planner vs. professions of architect and civil engineer

In the Tribunal's opinion, the legal status of the compared professions of urban planner, architect and civil engineer is different, despite that the scope of professional associations was regulated in the same act. Thus, the Tribunal held that there was no prerequisite of legal inequality, meaning that only urban planners were wrongly deprived of the professional association. Consequently, Article 29 (1) of the Deregulation Act and Article 3 of the Act on Professional Associations were deemed compatible with Article 32 (1) of the Constitution. The Tribunal's conclusions derived from a simple assumption that, since those are not similar professions, it is difficult to assess their similar treatment or constitutionally justified differentiation.

The Tribunal began analysing the allegations of unequal treatment in respect of the professions indicated with a short characteristics of the professions of architect and civil engineer. Referring to the provisions of the Construction Law of 7 July 1994 (Journal of Laws of 2013, item 1409, as amended.) and the Act of 15 December 2000 on Professional Associations of Architects, Civil Engineers and Urban Planners (Journal of Laws of 2013, item 932, consolidated text, as amended.), the Tribunal indicated that those two professions include the activities, such as: design, verifying architectural and construction projects, author's supervision, managing a construction site or other construction works, managing the production of construction elements, supervision and technical inspection of the production of such elements, investor's supervision and technical inspection of the maintenance of building structures. The Tribunal held (item 9.4. of the reasoning part) that the work of architect is characterized by designing construction site plans, extension and modernization of building structures or their parts, and in particular preparing project assumptions, taking decisions on construction and material solutions, developing projects with arts- and space-wise, as well as designing direct surroundings of the structure and developing its plot. Whereas the duties of civil engineers include the

activities, such as planning and designing of building structures, preparing construction technology, inspection and supervision of each stage of construction or improving the structure of buildings or their parts.

The aforementioned activities of architects and civil engineers, in the Tribunal's opinion, are related to the need to protect individual's life and health (in particular during the construction process), that is the good of special nature. It is proper preparation of an architectural and construction project, and then its proper execution that safety and health of building users depends on. With regard to the profession of urban planner, it should be pointed out that it is the proper development of draft urban planning acts that the quality of life and health of residents depends on. However, the Tribunal presented no arguments to support the claim that a person preparing an industry design provides better protection of human life and health than a person preparing a draft urban planning act, in particular a local development plan. Defective design or execution of a number of industry designs has no big influence on human health and life. Such defects are for the most part related to functionality, and design-implementation defects may be removed without any effect on human health.

Thus, it is difficult to logically prove that professional activities, consisting in designing a sanitary system necessary for instance for smooth operation of a kitchen, are „superior" to a draft urban plan of part of the city or housing estate. Notwithstanding the importance of the profession of civil engineer, it cannot be rationally explained why only the profession of civil engineer is the profession of public trust, whereas engineers working in the motor or air industry do not benefit from this privilege. The accuracy of their projects determines after all the safety and life of users of aircraft and land vehicles.

It should also be noted that the activities carried out by urban planners may have a financial impact on communes. Such impact can be positive or negative and will affect the commune's budget. The already prepared planning acts (local zoning plans) will either increase the commune's budgetrevenues, e.g. from the planning fees, property taxes, etc., or increase the expenditure in connection with the need to buy out properties intended for public investments (streets, squares, etc.) or in connection with the need to pay compensation as a result of decrease in the value of the property.

Increased disbursement of funds from the commune's budget for the above-mentioned objectives may consequently lead to the limitation of financing for the implementation of commune'sother tasks, which will have an impact on the quality of their implementation. Poorly prepared and then adopted local plans and limited financial possibilities may also contribute to not so much limitation as inability to carry out the commune'stasks at all (e.g. in the case of communes in a poor financial condition or in the case of failing to include the commune'sneeds in the local plans and failing to allocate the land for the commune'simportant purposes).

Also a badly drafted act of the commune's spatial policy (study of conditions and directions of spatial development of the commune), failing to take account of the com-

mune's needs in the long run (at least 20-30 years), will affect the commune's development possibilities and increase or decrease the commune's budget revenues.

That is why it is so crucial to adequately prepare persons responsible for drawing up planning acts and to ensure they systematically improve their professional qualifications, including not only the ability to design and develop space or the knowledge of legal principles of drawing upplanning acts, but most of all economic knowledge, which includes forecasting the financial impact the adopted planning acts may have.

Considering the model of the profession of public trust, indicated by the Tribunal, it should be noted that an average citizen never comes in contact with civil engineers, who perform works commissioned by developers or architects. So, there is no close relation between a representative of the profession and a person who actually makes use of their work and whose health is to be the most important purpose of the activities performed. General experience shows that an average user of a household system has no influence on design solutions and, what is equally important, s/he does not know the author of such solutions. Additionally, such relations are often missing in the work of architect, who prepares a design commissioned by an investor, not a user. There is no contact with an architect if copyrights to recurring designs are purchased. For this reason, it should be reiterated that this element of the profession does not constitute a necessary prerequisite which determines its nature. While there are differences between the professions indicated (because they are different professions), this fact does not determine the lack of the quality of the profession of public trust as regards urban planners.

Final remarks

In the years 2000–2014,the profession of urban planner had a status of the profession of public trust (Mrożek, 2014). At the same time, the legislator entrusted the supervision over the quality of urban planners' skills and the quality of urban planning acts prepared by them to the professional association at the national (national chamber of urban planners) and district (district chambers of urban planners) levels. The professional association of urban planners was dissolved by the Act of 9 May 2014 on Facilitating Access to the Practice of Certain Regulated Professions. At the same time, by the aforementioned Act the profession of urban planner was deregulated, meaning that the qualification requirements authorizing a person to practise the profession were lowered.

The profession of urban planner has, in my opinion, the quality of the profession of public trust. Even if one assumed that it has no such quality, it would be difficult to point out fundamental differences (obviously to the detriment) of the profession of urban planner if compared with the professions of architect or civil engineer. Therefore, it is necessary to revert to legal solutions, giving a special status to the profession of

urban planner. Additionally, it should be noted that within the area of spatial planning (preparing urban planning acts, and in particular local spatial development plans) the conflicts of national, local and individual interests are very common. Furthermore, adopting urban planning solutions, which have not been thought through, in the local spatial development plan leads to the lack of facilities, social services or hindered access to work, school or other places within a given municipality. As outlined above, it may also affect the finances and the ability of communes to carry out their own tasks. As a result, educating properly the persons practising this profession becomes extremely important. They must possess not only extensive expertise in urban planning but also consolidated knowledge of law and finances. Apart from knowledge, it is also necessary to possess good negotiating or conciliatory skills. It would be wrong to assume that all persons engaged in urban planning activities (as at the date of liquidation of the professional urban planners' self-government there were 1,458 urban planners, including 963 architects – data obtained from the last chairmen of District Councils of Urban Planning Chambers) in communes (as at 1 January 2019 there were 2,477 communes in Poland, including 1,537 rural communes, 638 urban-rural communes, 302 urban communes) will improve their skills on their own. Given the above, the legislator should consider granting a special status to the profession of urban planner and in particular the requirements for the persons applying for admission to practise this profession need to be regulated and the issues of systematic improvement of professional qualifications. It also seems justified, in the context of the above considerations, to re-establish the professional urban planners' self-government, which would provide training and workshops for people professionally involved in urbanization of land.

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