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## Types of sanctions for unauthorized construction (ECPRD Request No. 4978)<sup>1</sup>

Rodzaje sankcji za samowolę budowlaną (wniosek ECPRD nr 4978)

The authors discuss the issue of liability for violations of construction law. They analyse types of liability and sanctions for such violations. They discuss the professional, administrative and criminal liability of participants in the construction process for violation of regulations, as well as civil liability for improper performance of contractual obligations. They also discuss civil liability of the State Treasury in the event of an illegal administrative decision issued by public administration bodies, as well as civil, disciplinary and criminal liability, and – in a particular situation of gross violation of the law – also the personal property liability of officers of these authorities.

**Keywords:** ECPRD, construction law

Autorzy omawiają zagadnienie odpowiedzialności za naruszenie przepisów prawa budowlanego. Analizują rodzaje odpowiedzialności i sankcji za te naruszenia. Charakteryzują w skrócie odpowiedzialność zawodową, administracyjną i karną uczestników procesu budowlanego za naruszenie przepisów, a także odpowiedzialność cywilną za nienależyte wykonanie zobowiązań umownych. Omawiają również odpowiedzialność cywilną Skarbu Państwa w przypadku wydania przez organy administracji publicznej niezgodnej z prawem decyzji administracyjnej, oraz odpowiedzialność cywilną, dyscyplinarną i karną i – w szczególnej sytuacji rażącego naruszenia prawa – także osobistą odpowiedzialność majątkową funkcjonariuszy tych organów.

**Słowa kluczowe:** ECPRD, prawo budowlane

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Participants in the construction process bear professional, administrative and criminal liability for violation of the provisions as well as civil liability for improper performance of contractual obligations towards persons to whom they

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caused damage. Supervisory authorities are also exposed to civil liability for illegal activities. Officers of these authorities bear disciplinary and criminal liability, and in a special situation of gross violation of the law, they are also exposed to financial personal liability.

There are different scenarios for the construction process that may be conducted:

- on the basis of a building permit issued by the authority (Article 28 of Construction Law (hereinafter CL))
- on the basis of a construction notification to the authority (Article 29 (1) and (3), and Article 30 of CL).
- without notification and without obtaining a building permit (Article 29 (2) and (4) of CL)

In this study on sanctions for unauthorized construction, the basis is the scenario in which the construction process should be carried out on the basis of a building permit and completed with the issuance of an occupancy permit (Article 28 and Article 55 CL)<sup>2</sup>.

Request no 4978 contained several questions:

1. If the following actions are sanctioned and how they are sanctioned:
  - a) – elaboration with violations of the construction project;
  - b) – the admission of non-conformities to the verification of the project by authorized verifiers;
  - c) – issuance of the urbanism certificate or building permit with violations;
  - d) – construction of buildings in violation of the project or without permissive documents;
  - e) – the lack of reaction of the site supervisor and the verifier to the breach of the project;
  - f) – signing the protocol of delivery and acceptance for operation of the building in violation of the project, or executed without a project.

■ **Ad 1a) Elaboration with violations of the construction project.**

- [Administrative penalty for the investor<sup>3</sup>]

When construction works are carried out contrary to the construction design / building permit and it is confirmed during the obligatory inspection carried out prior to the issuance of the occupancy permit (59a Construction Law<sup>4</sup>), the con-

<sup>2</sup> Description of the construction process – see: <https://www.biznes.gov.pl/pl/opisy-procedur/-/proc/34>.

<sup>3</sup> An “investor” is an entity that performs construction works on its own behalf. It is assumed that it is also the perpetrator of construction violation.

<sup>4</sup> See Journal of laws of 2021, item 2351 (consolidated text), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19940890414>.

struction supervision authority issues a decision refusing to issue an occupancy permit and imposes an obligation to perform a replacement design and works construction in order to bring it into compliance with the law. In such a case, an administrative penalty is imposed on the investor, which is the product of the fee rate (s), the construction object category coefficient (k) and the construction object size coefficient (w). The rate of the fee (s) is PLN 500. (Article 59f. 1 CL). The categories of objects, the object category coefficient and the object size coefficient are specified in the Annex to the Act. These are high amounts.

The investor who pays the penalty will have a civil law claim against the designer (if the design was defective), the investor's supervision inspector (if he was appointed and did not fulfill the supervisory obligations), and the construction manager (if he did not fulfill his obligations). If the deviation was caused by the investor's request or the investor agreed to it, the amount of compensation will be reduced accordingly or the claim may be considered unfounded due to the investor's influence on the situation.

■ [Civil, professional and criminal liability of the investor's supervision inspector] The investor's supervision inspector (employed by the investor) performs inspections and undertakes supervisory activities to ensure the construction is carried out in accordance with the construction design and building permit, as well as with the provisions and principles of technical knowledge. (CL Articles 25, 26). The investor's supervision inspector has the right to issue orders to the construction manager, confirmed with an entry in the construction log, ordering the removal of irregularities, and may require the construction manager to suspend construction works in the event that they pose a threat or are inconsistent with the design or building permit.

The investor's supervision inspector bears professional responsibility for improper performance of duties (Article 95 of the Civil Procedure Code), and may also be liable for an offense if he allows construction works to be performed in a situation where the construction supervision authority orders the suspension of construction conducted without the required building permit (Article 93 point 13).

The investor's supervision inspector is also liable to the investor for improper performance of obligations under the contract.

■ [Civil, professional and criminal liability of the site supervisor] [Civil liability of the site supervisor] The site supervisor is responsible for such organization of the construction site as to ensure compliance with the construction permit and the approved construction design as well as technical and construction regulations and work safety regulations (Article 22 CL). Conducting construction works contrary to the requirements specified in the building permit or the approved construction project results in the construction supervision au-

thority issuing a decision to suspend the construction (Articles 48 and 50 CL), which exposes the investor to serious damage, and the construction manager to civil liability for improper performance of duties.

[Criminal liability of the site supervisor] The site supervisor's finding that the construction works are carried out contrary to the design requires the suspension of the works and the appropriate entry in the construction logbook. The supervisor should also notify the investor (CL Article 22 CL). Failure to do so runs the risk of being charged with negligent conduct of the proceedings (Article 95 point 4 CL) and liability for this offense (Article 93 points 1,4,6 CL).

If the site supervisor carries out construction works in a way that differs from the conditions specified in the regulations, in the building permit or significantly different from the approved design – he is liable for offense (Article 93 point 6 CL).

The site supervisor is responsible for keeping the construction logbook. The construction logbook is an official document that records the entire construction process (Article 45 CL and Article 76 the Code of Administrative Procedure, hereinafter: CAP<sup>5</sup>). For certifying an untruth in an official document, the site supervisor runs the risk of disciplinary and criminal liability. He may lose construction qualifications, and depending on the seriousness of the violations committed, he is subject to a fine, restriction of liberty, and even imprisonment for up to 5 years (Article 271 Penal Code<sup>6</sup>, hereinafter: PC). Those who help in this are responsible for complicity in the crime.

The investor must attach to the notice of completion of the construction work or the application for an occupancy permit a declaration of the site supervisor on the compliance of the construction work with the construction design or building permit conditions and regulations (CL Article 57). If the supervisor confirms the untruth in the declaration, he / she is subject to criminal liability (Article 271 PC).

[Professional liability of the site manager] If the site manager has committed any misdemeanors or offenses specified in the Act, he has not fulfilled or negligently fulfilled his obligations (Article 95 point 1 and 4 CL), he is also subject to professional liability.

■ [Civil, professional and criminal liability of the designer]

[The designer's civil liability] The main duty of the designer is to prepare the construction design in accordance with the requirements of the Act, the arrangements set out in administrative decisions regarding the construction project, the applicable regulations and the principles of technical knowledge (Article 20 CL).

<sup>5</sup> Journal of laws of 2021, item 735 (consolidated text), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19600300168>.

<sup>6</sup> See Journal of laws of 2021, item 2345 (consolidated text), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19690130094>.

Defect in the construction project is the responsibility of the person who drew up the design. Article 20 of the Construction Law specifies in detail the duties of the building designer in the construction process. His/her main duties include the preparation of a construction project in a manner consistent with the requirements of the Act, the arrangements defined in administrative decisions regarding the construction project, applicable regulations and the principles of technical knowledge, and also ensuring, if necessary, the participation in the development of the project by people with building qualifications to design in appropriate specialization and mutual technical coordination of design studies carried out by these people, ensuring that the safety and health protection rules contained in the regulations are taken into account in the construction process, taking into account the specificity of the designed building, obtaining the required opinions, arrangements and checks of design solutions in the scope resulting from the regulations. The building designer is responsible for any failure to fulfil these obligations. Article 20, paragraph 2 of the CL introduces an obligation for the building designer to check the design for compliance with regulations, including architectural and construction regulations.

The designer's liability for defects in the construction design is governed by the provisions of the Civil Code regarding the warranty for defects in the work (Article 638 in conjunction with Article 566 of the Civil Code – hereinafter: CC<sup>7</sup>). The designer's civil liability after damage usually comes down to the necessity to cover it. So it is important to prove not only the fact of its creation. The size of the damage is important, as is the normal cause and effect relationship between the design errors and the defectiveness of the construction works performed.

[The designer's criminal liability] The designer has the right to enter the construction site and make entries in the construction logbook regarding its implementation; he / she may request the suspension of construction works inconsistent with the project. (Article 21CL). The designer (and possibly an additional checking designer) is required to attach to the construction design a statement on the preparation of the design in accordance with applicable regulations and the principles of technical knowledge. Confirmation of untruth in the declaration may be treated as a crime described in Article 271 PC<sup>8</sup>. In addition, defective project preparation can also be treated as committing an offense described in Article 95 point 1 CL. – anyone who designs or performs construction works in a gross manner, failing to comply with technical and construction regulations and the principles of technical knowledge, is subject to a fine.

<sup>7</sup> See Journal of laws of 2020, item 1740 (consolidated text), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19640160093>.

<sup>8</sup> sometimes such an act is treated in the same way as the crime of “giving false testimony intended to serve as evidence in proceedings conducted pursuant to the Act” in Article 231 PC.

[The designer's professional liability] The professional liability of the designer arises parallel to his civil liability. It is based on Articles 95–101 of the CL regulating this type of liability in construction.

[The designer's disciplinary liability] The scope of disciplinary liability of architects is specified in the Act on the Professional Self-Government of Architects and Civil Engineers. Disciplinary liability of designers (as members of the chamber of professional self-government) is related to the violation of the obligations to comply with the applicable regulations and the principles of technical knowledge when performing professional activities (Article 41 of the Act). Disciplinary proceedings are initiated at the request of the regional chamber council, the regional professional liability ombudsman or the National Professional Responsibility Ombudsman. Disciplinary liability does not apply to acts covered by professional liability referred to in Article 95 CL.

The 2003 amendment repealed the CL provision, which allowed the architectural and construction administration authority to examine the compliance of an architectural and construction design with the regulations, including technical and construction regulations, and the applicable Polish Standards. This is an expression of the tendency to transfer the responsibility for the compliance of the construction design with the regulations from the architectural and construction administration authorities to the persons authorized to prepare it.

■ **Ad 1b) The admission of non-conformities to the verification of the project by authorized verifiers**

■ [Responsibility of the architectural and construction administration authorities] Before issuing the building permit or a separate decision approving the plot or land development design and the architectural and construction design, the architectural and construction administration authority checks the compliance of the plot or land development design and the architectural and construction design with: the provisions of the local zoning plan and other acts of local law or a decision on building conditions and land development in the absence of a local plan. In the event of irregularities, the architectural and construction administration authority should impose an obligation to remove them (Article 35 CL). If the project is defective and the authority issues a building permit, it is exposed to allegations, leading to the consequences described in the subsection 1c.

■ [Professional responsibility of the auditor verifying the design] The auditor ensures that the architectural, construction and technical design is checked for compliance with regulations, including technical and construction regulations, by a person who has building qualifications to design without restrictions in the relevant specialization. The person who will perform the function of checking the design is not a participant in the construction process within

the meaning of CL, but has only one task to perform, i.e. checking a specific architectural, construction and technical design (Article 20 CL). In Article 34 CL it was indicated that both the designer (participant in the construction process) and the auditor attach to the construction design a statement on the preparation of the construction design in accordance with the applicable regulations and the principles of technical knowledge. The auditor, as a person with specific professional qualifications, performing an independent function in the construction industry, takes responsibility for the truthfulness and reliability of this statement. If he certifies the untruth – he risks criminal liability (Article 271 PC), and at least commits an offense (Article 95 point 4 CL).

- [Professional responsibility of the designer who exercises author's supervision] A designer who, under the contract concluded with the investor – regardless of whether it resulted from the statutory obligation or the initiative of the investor himself – undertook additional activities of the author's supervision, but carelessly performs the tasks assigned to him under copyright supervision, or refuses to undertake tasks in this regard, violates the law and is at risk of applying to it the principles of professional liability in construction to it, pursuant to Article 95. point 5 CL. See also subsection – civil, professional and criminal liability of the investor's supervision inspector].

#### ■ **Ad 1c) Issuance of the urbanism certificate or building permit with violations.**

- [Cancellation of a decision in ordinary appeal proceedings or extraordinary proceedings]

The building permit or the occupancy permit may be issued contrary to the provisions – then it has a defect justifying the annulment in appeal proceedings or in extraordinary proceedings, the purpose of which is to declare nullity or set aside in the resumed proceedings.

The issuance of a decision in violation of the law may result in the revocation in an ordinary appeal procedure, if the appeal is submitted by any of the parties to the construction procedure<sup>9</sup>. Appeal proceedings may be initiated only by a party to the proceedings by submitting an appeal, extraordinary proceedings may also be initiated ex officio by supervisory authorities. Apart from the parties and authorities, these proceedings may be initiated by social organizations, the prosecutor and the Ombudsman (Article 31 Code of Administrative Procedure CAP).

<sup>9</sup> See Article 28.2 CL and Article 127 of Code of Administrative Procedure Journal of laws of 2021, item 735 (consolidated text), (hereinafter: CAP), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19600300168>.

After the deadline for submitting an appeal, such a decision may be removed following extraordinary proceedings (which may be initiated both *ex officio* and upon request) by declaring the decision invalid<sup>10</sup> or reopening the proceedings<sup>11</sup>. The type of defect justifies the choice of mode. If these are the circumstances listed in Article 156 CAP – it will be a procedure of annulment if these are the circumstances listed in Article 145 CAP of the – this will be the procedure for reopening the proceedings.

However, according to Article 37b. 1. CL the building permit is not declared invalid if 5 years have elapsed from the date of its delivery or publication. Similarly, the decision in the reopened proceedings is not reversed – if 5 years have elapsed<sup>12</sup>. In these cases, the authority is limited to issuing a decision confirming that the building permit has been issued in violation of the law. The declaration of invalidity of a decision, declaration of the repeal in reopening the proceedings or declaration that it was issued in violation of the law, is the basis for pursuing claims for damages in civil proceedings.

If, during a planned or *ad hoc* inspection<sup>13</sup>, the supervisory authorities find that there are circumstances justifying the resumption of the proceedings or the declaration of invalidity of the decision issued by the architectural and construction administration authority, the competent architectural and construction administration authority shall resume or initiate proceedings *ex officio* (Article 84b CL).

■ [Civil liability of authorities for illegal activities]

Issuing a decision to revoke a decision in administrative or court-administrative proceedings is the basis for the aggrieved parties to file a claim for compensation from the authority that issued the defective decision – pursuant to Article 417, 417 (1) § 2 of the Civil Code<sup>14</sup> (hereinafter: CC).

■ [Financial liability of officers for gross violation of the law]

If the authority pays the awarded compensation, the authority manager – in accordance with the Act on property liability of public officials for gross violations of the law<sup>15</sup> – should submit a request to the district public prosecutor to conduct

<sup>10</sup> See Article 156 of CAP.

<sup>11</sup> See Article 145 of CAP.

<sup>12</sup> See Article 146 of CAP.

<sup>13</sup> See Act on inspections in government administration (Journal of laws of 2020, item 224 consolidated text), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20111851092>.

<sup>14</sup> Journal of laws of 2020, item 1740 (consolidated text), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19640160093>.

<sup>15</sup> The Act lays down the principles of property liability of public officials towards the State Treasury, local government units or other entities liable for damage caused in



explanatory proceedings within 14 days from the date of payment. If the manager fails to notify the public prosecutor, he or she may be imprisoned for up to 2 years. The public prosecutor, deciding that the payment of compensation by the authority was caused by a culpable act or omission of a public official, brings an action against that officer for payment of compensation to the authority. The rules of procedure and the determination of the amount of compensation are regulated by the act on property liability of public officials for gross violation of the law.

■ [Disciplinary liability of officers]

The building supervision inspector is a member of the civil service corps. A member of the civil service corps is disciplinarily responsible for breaching the duties of a member of the civil service corps (Article 113 Civil Service Act)<sup>16</sup>.

■ [Criminal liability of officers for failure to comply with or excess of powers]

An officer may also be held criminally liable on general principles – for exceeding his powers (possibly failing to fulfil his duties), when his action is detrimental to public or private interests. This offense, defined in Article 231 of the Criminal Code, may be committed intentionally or unintentionally. In the first situation, it is punishable by imprisonment of up to 3 years. If the official acted unintentionally and the damage was significant, the provisions impose a fine, restriction of liberty or imprisonment for up to two years. The case must be reported to the police or the prosecutor's office. These authorities will take appropriate proceedings.

■ **Ad 1d) Construction of buildings in violation of the project or without permissive documents.**

■ [Legalisation fee – “a voluntary payment due to the State Treasury”]

The construction of a building object without the required documents, i.e. a building permit or occupancy permit results in the initiation of proceedings, which may end in “legalization” of construction lawlessness by bringing it into

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the exercise of public authority, for acts or omissions leading to gross violation of the law, and the rules of conduct in the field of such liability. A public official is a person acting as a public administration body or under its authority or as a member of a collective public administration body or a person performing work in a public administration body under an employment relationship, service relationship or civil law contract, participating in the handling of a case resolved by a decision or orders by such an authority. See: Journal of laws of 2016, item 1169 (consolidated text) <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20110340173>.

<sup>16</sup> See: Civil Service Act (Journal of laws of 2021, item 1233 (consolidated text), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20082271505>).

compliance with the law or with a demolition order, when such compliance cannot be achieved<sup>17</sup>.

Proceedings for suspension of construction as part of unauthorized construction are initiated *ex officio*, even if the information about the indicated irregularities came from a third party or the initiation of the proceedings was the result of an action of another administrative body. Each case of unauthorized construction is subject to more or less stringent legal regulations, which are primarily intended to legalize it. The application of one of the three procedures (Article 48 or 49f or Articles 50–51 CL) depends on the nature (type) of unauthorized construction and the period that has elapsed since the completion of the construction.

The authority is obliged to issue a decision to suspend the construction in each case when the building object or part thereof is under construction or was built without the required building permit decision, or without the required notification, or despite objecting to this notification. The decision to suspend the construction is also issued by the authority in the case of a building that has already been built, provided that at least 20 years have not elapsed since the completion of construction. If 20 years have not elapsed since the completion of the construction works, the authority initiates a simplified legalization procedure (Article 49f (1) of CL).

In the decision on the suspension of construction, the authority informs about the possibility of submitting an “application for legalization of a building object” and about the necessity to pay the legalization fee and the rules for calculating this fee. The legalization procedure depends on the express will of the party and begins only after the investor (owner, administrator) submits an application for legalization (Article 48a CL). If the investor, owner or manager of such an application for legalization does not submit it, the authority will issue a decision ordering the demolition of the building (Article 49e CL).

After submitting the application and then paying the legalization fee by the investor (or the owner or manager), the construction supervision authority issues a “legalization decision” which approves the construction design made in accordance with the regulations and allows the construction to be resumed if the construction is not completed. The decision on legalization ends the procedure.

The amount of the legalization fee in the case of a construction that requires a building permit is calculated in accordance with the provisions of Article 59f

<sup>17</sup> The authority issues a decision ordering the demolition of the building only in cases of: 1) failure to submit the application for legalization within the required period; 2) withdrawal of the application for legalization; 3) failure to submit, within the prescribed period, the legalization documents; 4) non-performance, within the prescribed period, of the provisions on the removal of irregularities in the legalization documents; 5) failure to pay the legalization fee within the prescribed period; 6) continuation of construction despite the decision to suspend construction (Article 49e CL).

(the amount of the fee is the product of the fee rate ( $s$ ) – PLN 500, the building object category coefficient ( $k$ ) and the building object size coefficient ( $w$ )), except that the rate is increased fifty times.

Changing the use of a building object without the obligation to notify the architectural and construction administration authority also requires a legalization procedure. The amount of the legalization fee in this case is calculated in accordance with the provisions of Article 59f, however, the fee rate increases tenfold.

- [Administrative penalty for non-compliance of the construction with the building permit or design]

The construction supervision authority carries out, upon the investor's request, a compulsory construction inspection in terms of its compliance with the provisions and conditions set out in the building permit decision and the construction design (Article 59f CL). If it is found non-compliant with the building permit and the design, the authority shall impose a fine in the amount of the product of the fee rate ( $s$ ), the building object category coefficient ( $k$ ) and the building object size coefficient ( $w$ ). The rate of the fee ( $s$ ) is PLN 500.

- [Administrative penalty for the use of a building object without obtaining an occupancy permit or notification of construction completion]

The construction supervision authority imposes a fine for the use of the building without an occupancy permit. The amount of the penalty is determined on the basis of Article 59f CL, but the fee rate increases tenfold. The penalty may be imposed multiple times, but it may not be imposed earlier than 30 days from the date of the previous penalty (Article 59i CL).

- [Civil, professional and criminal liability of the site supervisor and the investor's supervision inspector]

Carrying out construction works under conditions of unauthorized construction is an offense (Article 93 point 13 of CL) and a professional misconduct (Article 93 CL). Detailed description – see subsections: *civil, professional and criminal liability of the site supervisor* and *civil, professional and criminal liability of the investor's supervision inspector*.

- **Ad 1e The lack of reaction of the site supervisor and the verifier to the breach of the project.**

Managing the construction of a building object or other works is classified as performing independent technical functions in construction (Article 12 CL). The person in charge of the construction independently (personally) carries out the tasks entrusted by the regulations and resulting from the construction process and technical knowledge, and bears full responsibility for the proper course of construction, both from the technical and partially organizational and legal side.

- [Civil liability of the site supervisor or investor's supervision inspector]

As a rule, the basis for civil liability of the site supervisor or investor's supervision inspector to the investor will be the provisions of the Civil Code concerning contractual liability (when a contract is concluded<sup>18</sup>) or tort liability (caused damage). The investor is entitled to demand that the site supervisor repair the damage if it resulted from failure to fulfil the obligations arising from the construction management.

The site supervisor must also take responsibility for the investor's decisions that deviate from the construction design and are implemented without following the appropriate procedure. If the investor proposes solutions that are inconsistent with the art of construction or significantly deviate from the design, the site supervisor is obliged to express his objection by making an entry in the construction log, and if necessary, he should stop the construction. If the supervisor agrees to the proposed solution without observing the procedures, it is he who bears full liability for damages towards the investor. Liability exists even in a situation where the site supervisor has agreed to a specific solution only at the request of the investor.

- [Criminal liability of the site supervisor or investor's supervision inspector]

In a situation where the site supervisor learned or witnessed an event that led to the construction by the investor or contractor not in accordance with the permit, health and safety rules, or by unauthorized persons, and therefore when there is a possibility of a hazard on the construction site – he is obliged to suspend construction works. If the site supervisor fails to react, he may be subject to criminal liability under the Penal Code and directly in the construction law,

- [Professional responsibility of site supervisor or investor's supervision inspector]

Site supervisor or investor's supervision inspector bears professional responsibility when he does not perform his duties or does it carelessly. **Detailed description – see subsections:** *civil, professional and criminal liability of the site supervisor and civil, professional and criminal liability of the investor's supervision inspector.*

- **Ad 1f) Signing the protocol of delivery and acceptance for operation of the building in violation of the project, or executed without a project.**

The basic duties of the site supervisor include reporting the construction object for collection by making an entry in the construction log and participating in the acceptance activities, as well as providing the investor with a declaration of compliance with the construction design and regulations (Article 57.1 point 2 CL). The investor attaches this statement to the application for an occupancy permit.

<sup>18</sup> See Article 471 CC and Article 22 pkt 3 CL.

The entry in the construction logbook confirming the untruth, as well as the declaration confirming the untruth, exposes the construction manager to professional, criminal liability and civil liability towards the investor. Detailed description – see subsections: *civil, professional and criminal liability of the site supervisor*.

## ■ 2. Are the actions described above qualified as administrative offences or criminal offences?

Depending on the identified irregularities, there is an administrative penalty, professional or disciplinary responsibility, as well as responsibility for offenses and criminal responsibility.

[**Administrative penalty**] for the investor, owner or manager – see chapter above.

[**Responsibility for offenses**] for the investor, investor's supervision inspector, site supervisor, designer – see chapter above.

[**Criminal responsibility**] for site supervisor, designer officers – see chapter above.

[**Professional responsibility**] for investor's supervision inspector, site supervisor, designer, auditor verifying the design – see chapter above.

[**Disciplinary responsibility**] for designer (architect), officer – building supervision inspector – see chapter above

## ■ 3. How harsh are the punishments?

[**Administrative penalty**] – these are usually high amounts, for example: the legalization fee for a construction object constituting a small single-family residential building will amount to PLN 50,000.

[**Responsibility for offences**] – the penalty is imposed on the basis of the Petty Offenses Code<sup>19</sup> in the proceedings conducted pursuant to the Code of Petty Offenses Procedure<sup>20</sup>. All offenses listed in Articles 92–93 CL are only fined. The fine may range from PLN 20 to PLN 5,000. (Article 24 § 1 of the Civil Procedure Code)

[**Criminal responsibility**] A public officer or another person authorized to issue a document who certifies an untruth therein, in circumstances of legal significance, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years. If the perpetrator commits an act in order to gain financial or personal benefit, he or she is subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years (Article 271 PC).

A public officer who, by exceeding his powers or not fulfilling his duties, acts to the detriment of a public or private interest, shall be punishable by impris-

<sup>19</sup> Journal of laws of 2021, item 2008, (consolidated text), hereinafter: POC, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19710120114>.

<sup>20</sup> Journal of laws of 2021, item 457, (consolidated text), hereinafter: CPOP, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20011061148>

onment for up to 3 years. If the perpetrator of the act acts unintentionally and causes significant damage, he or she shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years (Article 231 PC).

Anyone who, when submitting a testimony to serve as evidence in court proceedings or in other proceedings conducted on the basis of the Act, testifies untruthfully or conceals the truth, is punishable by imprisonment from 6 months to 8 years. The condition of liability is that the person taking the testimony, while acting within the scope of his rights, warns the person testifying about the criminal liability for giving false testimony (Article 233 PC). This type of crime may be committed by the designer by making a statement regarding the possibility of connecting the designed building object to the existing heating network (Article 33 CL).

**[Professional responsibility]** – Committing acts causing professional liability in the construction industry is punishable by the following penalties: 1) admonition; 2) a warning with the simultaneous imposition of the obligation to submit, within the prescribed period, a professional examination; 3) prohibition to perform an independent technical function in the construction industry, for a period of one to five years, combined with the obligation to submit, within the prescribed period, a vocational examination (Article 96 CL).

**[Disciplinary responsibility]** Disciplinary penalties applicable to civil servants are: 1) admonition; 2) reprimand; 3) deprivation of the possibility of promotion for a period of two years to a higher rank; 4) reduction of the basic salary, not more than by 25% – for a period not longer than six months; 5) lowering the rank of the civil servant; 6) expulsion from the civil service. Disciplinary penalties applicable to persons occupying higher positions in the civil service and civil servants are in turn: 7) admonition; 8) reprimand; 9) reduction of the basic salary, by no more than 25% – for a period no longer than six months; 10) expulsion from work in the office. A valid sentence of the penalty mentioned in point 10 shall result in the termination of the employment relationship. A legally valid sentence of the penalties listed in points 6 and 10 shall result in the prohibition of applying for employment in the civil service corps for a period of five years. (Article 114 of the Civil Service Act).

The scope of disciplinary responsibility of architects is specified in the Act on Professional Self-Governments of Architects and Civil Engineers. Disciplinary liability of designers (as members of the architects' professional self-government chamber) is related to the violation of the obligations of compliance with the applicable regulations and rules of technical knowledge when performing professional activities. The penalties that may be imposed on the architect by the regional disciplinary court are: admonition, reprimand, suspension of the membership of the chamber (up to 2 years), removal from the list of members (Article 41 of the Self-Government Act.). Disciplinary liability shall not apply to acts subject to professional liability, as specified in Article 95 CL.

■ **4. Are there pecuniary and custodial sanctions, and the prohibition to occupy a certain position/ to carry out a certain activity?**

Ad 4) See: chapter 3

■ **5. A distinction is made between unauthorized constructions or those with violations, on private, public, green spaces, which have affected historical monuments... or are they considered equal in severity and sanction?**

The effects in the form of sanctions for demolition, voluntary legalization fee and liability incurred by the participants of the construction process in the event of the possibility of bringing the structure into compliance with law are the same, but apart from the above-mentioned, there are also additional specific regulations regarding protected green areas and protected monuments.

- [Responsibility for offenses for violating the prohibitions in force in green protected areas]

Violation of the prohibitions on construction in force in national parks<sup>21</sup> and nature reserves, landscape parks<sup>22</sup>, in a protected landscape area<sup>23</sup>, botanical and zoological gardens<sup>24</sup>, near the sea, lakes and other water bodies, rivers and canals<sup>25</sup> implies liability for offenses – arrest or a fine (Article 127 NCA). The procedure is conducted on the basis of the provisions of POC and CPOP. The length of the arrest sentence is at least 5 days, the longest 30 days; it is imposed in days (Article 19 POC). A fine is imposed in the amount of PLN 20 to PLN 5,000 (Article 24 POC).

- [Responsibility for offenses relating to the violation of the provisions on the protection of monuments]

Whoever violates the prohibitions on activities in the protected cultural park or part of it, shall be punishable by detention, restriction of liberty or a fine. Adjudication in these cases is based on the POC and the CPOP (Articles 112 and 120 of the act on the protection of monuments and the care of monuments<sup>26</sup>).

<sup>21</sup> Article 15 of Nature Conservation Act, Journal of laws of 2021, item 1098, hereinafter NCA, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20040920880>.

<sup>22</sup> Article 17 NCA.

<sup>23</sup> Article 24 NCA.

<sup>24</sup> Article 65 NCA.

<sup>25</sup> Article 119 NCA.

<sup>26</sup> The act on the protection of monuments and the care of monuments, Journal of laws of 2021, item 710, hereinafter: APM, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20031621568>.

- [Administrative penalty for taking actions without permission or against the permission of the provincial inspector of monuments protection]

Conducting construction works at a facility entered in the register of monuments or in an area entered in the register of monuments requires, prior to the issuance of a building permit decision, obtaining a permit to carry out these works, issued by the competent provincial conservator of monuments. In relation to objects and areas not entered in the register of monuments, and included in the municipal register of monuments, the building permit is issued by the architectural and construction administration authority in agreement with the provincial conservator of monuments. (Article 39. CL) Whoever, without the permission of the provincial inspector of monuments, undertakes activities related to the construction of buildings, shall be subject to a financial penalty in the amount of PLN 500 to 500,000. The provisions of section IVa of the CAP (107d. And 107g APM) apply to fines.

The construction of a facility in the area of the Holocaust Monument or its protection zone requires the consent of the competent voivode (governor) (Article 39a CL) before issuing the building permit. The provision of Article 10 PNDC<sup>27</sup> imposes on the voivode the obligation to order, by way of a decision, the demolition of a building structure, built without obtaining prior consent for works. In this case, unauthorized construction cannot be legalized.

- **6. Are the actions prescribed as specific or generic infringements? (e.g.: Issuance of the urbanism certificate or building permit with violations. Is it qualified as an unlawful act of issuing documents with violations or is it qualified as exceeding the duties of service or negligence in service?).**

A construction permit (and other acts) issued in violation of the law are always qualified as defective acts and if defects are discovered or reported, the relevant authorities are required to initiate ordinary or extraordinary verification proceedings to remove these defects. Due to the culpable defectiveness of these acts, officials may also be subject to criminal or disciplinary liability, although this is very rare.

The conduct of officials and participants in the construction process may at the same time constitute a crime, misdemeanor, professional and disciplinary misconduct, as well as result in the obligation to pay civil damages.

In Polish law there is a rule that “you cannot punish the same twice” (i.e. for an offense and a crime at the same time), but this rule does not work in the case of combining professional or disciplinary liability. A participant in the construc-

<sup>27</sup> Act on the protection of the sites of the former Nazi death camps hereinafter: PNDC, Journal of laws of 2015, item 2120, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19990410412>.



tion process may incur disciplinary / professional responsibility for the same act simultaneously with criminal responsibility.

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