

Paulina KUZIOR
Silesian University of Technology
Faculty of Organization and Management
paulina.kuzior@polsl.pl

ETHICS IN LEGAL PROFESSION¹

Summary. This article refers to ethics in legal profession, perceiving it as a profession of public trust. The author shows various legal branches which workers are commonly called *lawyers* and describes the principles contained in a few ethical codes: solicitor, bailiff, prosecutor and advocate. The article shows also issues related to ethical behavior in private life in order to be a good lawyer. The author describes also the principles of legal ethics, such as relation between lawyer and his client, principle of autonomy, principle of competence, principle of honesty and professional secrecy.

Keywords: legal profession, legal ethics, ethical codes, principles of legal ethics.

ETYKA W ZAWODACH PRAWNICZYCH

Streszczenie. Artykuł ten przedstawia etykę w zawodach prawniczych, które postrzegane są jako zawody zaufania publicznego. Autorka prezentuje różne dziedziny zawodów prawniczych, których pracownicy powszechnie nazywani są *prawnikami*, a także opisuje zasady zawarte w kilku kodeksach etycznych: radcy prawnego, komornika sądowego, prokuratora i adwokata. Artykuł przedstawia także kwestie zachowań etycznych w życiu prywatnym, niezbędnych, aby być dobrym prawnikiem. Autorka opisuje także zasady etyki prawniczej, takie jak relacja prawnika z klientem, zasada autonomii, zasada kompetencji, zasada szczerości oraz tajemnica zawodowa.

Słowa kluczowe: zawód prawniczy, etyka prawnicza, kodeksy etyczne, zasady etyki prawniczej.

¹ This article was prepared on the basis of current Polish law solely.

1. Introduction

Professional ethics refers primarily to the standards of actions of a particular profession. Legal practice as many other professions has its ethical principles. Legal branches are undoubtedly professions of public trust, so it seems to be natural that lawyers must act ethically - above all, be fair with their customers, as well as "friends" from the industry.

But to understand properly what all those ethical rules are for, we shall define the term "profession of public trust". According to the Supreme Court it is "a profession involving supporting personal human needs, connected with receiving information regarding one's personal life and organized in such a way as to justify social belief about proper, for the interests of an individual, use of that information by the service providers. Performing a profession of public trust is additionally defined with standards of professional ethics (...)"². It proves that even the utmost court in Poland noted that professional ethics plays an important role in proper performing such professions. Every lawyer must be properly educated and trained and also – must represent an appropriate ethical level.³ But, despite acting ethically, every candidate for a lawyer in any branch must have a certificate of good conduct, which means that he must have had no problems with law in the past – most of all have not committed any crime.

It happens often that people don't even know who exactly the lawyer is and what should he act like. They do not know who is responsible for which branch of law, what may cause some misunderstandings and make people feel that lawyers do not want to help them. Each branch meets with different human problems. Sometimes it may become even harder, when a lawyer's decisions will influence someone's health or even life⁴. There are several branches which workers are commonly called lawyers. These are:

- solicitor,
- bailiff,
- notary,
- tax advisor,
- prosecutor,
- advocate,
- judge
- European lawyers

Below there are specified profiles of some of these professions and the ethical codes they shall obey.

² Supreme Court Sentence [Wyrok Sądu Najwyższego z dnia 7 maja 2002 r. Sygn. akt SK 20/00].

³ Niedziński T.: Postępowanie dyscyplinarne wobec radcy prawnego [in:] Radca Prawny. Zeszyty Naukowe, No. 1/2014, Warsaw 2014, p. 117.

⁴ Jurzyk M.: Czy potrzebna jest etyka prawnicza? [in:] Edukacja prawnicza, No. 9 (45) June 02.

2. Solicitor's Ethical Code

Rules for implementing a solicitor's profession that are valid today have been established in 1982 in an Act on Solicitors⁵. Among many other principles relating to solicitors – like who may become a solicitor, how should he behave in his professional actions – we can find there a few sentences about the ethics of this branch, like i.e.: Art. 3. 2. “Solicitor proceeds with diligence resulting from the knowledge of law and solicitor's ethical principles”⁶.

The act states also in Art. 61. 1. that “the solicitors and apprentices are subject to disciplinary responsibility for the proceedings contrary to law, ethical principles or dignity of the profession or for breach of their professional duties.”⁷

In November 2014 there has been enacted a new Solicitor's Ethical Code. It states in its preamble that “(...) it is a profession of public trust that respects the ideals and ethical duties formed in progress of its implementation. Defining the rules of conduct in professional life (...) contributes to a dignified and fair practice as a solicitor”⁸.

It is worth noting that the ethical code mentioned above, although adopted in accordance with Polish law and for Polish solicitors also applies to foreign lawyers who - while working in Poland - perform tasks equivalent to Polish solicitor's duties.⁹ An important issue characterizing a solicitor's profession is a professional secrecy¹⁰, which will be described wider at the end of this paper.

3. Bailiff's Ethical Code

Bailiff's actions were regulated by the Act on Bailiffs and Enforcement. It states in Art. 16. 1. that „The bailiff is obliged to comply with the law, the oath taken and rules of professional ethics and improve his professional qualifications.”¹¹

The rest of important ethical rules is contained in Ethical Code. The most important issue included in this document is that the principles the bailiffs have to obey are in common with universal ethical norms. The act states also, that professional ethics rules partly refer to moral rights and partly are normative, what causes a disciplinary responsibility. Every new

⁵ Act on Solicitors [Ustawa z dn. 6 lipca 1982 r. o radcach prawnych (Dz. U. 1982 nr 19 poz. 145 ze zm.)].

⁶ Ibidem.

⁷ Ibidem.

⁸ Solicitor's Ethical Code [Kodeks etyki radcy prawnego – Załącznik do Uchwały nr 3/2014 Nadzwyczajnego Krajowego Zjazdu Radców Prawnych z dn. 11 listopada 2014 r.], self-translation for purposes of the article.

⁹ Ibidem, Art. 1.

¹⁰ Kidyba A.: Radca prawny: zawód wolny, regulowany czy przedsiębiorca? [in:] Radca Prawny. Zeszyty Naukowe, No. 1/2014, Warsaw 2014, p. 16.

¹¹ Act on Bailiffs and Enforcement [Ustawa z dn. 29 sierpnia 1997 r. o komornikach sądowych i egzekucji (Dz.U. 1997 Nr 133 poz. 882 ze zm.)].

appointed bailiff has to ensure that he had familiarized himself with these ethical rules and he will obey them. This legal branch is very concentrated on ethical issues, probably because society often does not give a positive opinion about people working in it. Principles contained in this act are to obey not only by workforce bailiffs, but also by the apprentices and retired bailiffs. One of the most important rule is that the bailiff will be subject to disciplinary responsibility for a breach of professional ethics not only in his professional and public life, but also in his private life.¹² That is not very common requirement among other professions, however it is unacceptable to perform a profession of public trust while being untrustworthy person yourself.

4. Prosecutor's Ethical Code

Actions of prosecutors were enacted by an Act on Prosecution. We can find there a note stating that "while assessing the qualifications of a candidate for the vacant of a prosecutor, taken into account are personality traits of a candidate for the profession of prosecutor, including (...) compliance with the rules of ethics of the profession"¹³.

The Prosecutor's Ethical Code States was adopted in September 2012. In § 2. it states, that:

"In any situation, the prosecutor should:

- 1) behave impeccably in accordance with the principles of morality;
- 2) be guided by the principles of fairness, dignity and honor and sense of duty and responsibility;

(...)

- 7) avoid behaviors and situations that could bring discredit his dignity or weaken confidence in the office exercised."¹⁴

It is worth to note the term *in any situation* used to specify when a prosecutor shall obey these rules. Just as in the case of the bailiff, the prosecutor is obliged to act ethically, not only in his professional life, but also the private one. This means that although the prosecutor has immunity (as one of the few legal branches) which protects him against getting arrested on suspicion of having committed a crime, it does not mean that his reprehensible behavior will have no effect on his professional career.

¹² Bailiff's Ethical Code [Kodeks Etyki Zawodowej Komornika Sądowego - Załącznik do uchwały KRK nr 909/IV z dn. 08 lutego 2012 r.].

¹³ Act on Prosecution [Ustawa z dnia 20 czerwca 1985 r. o prokuraturze (Dz.U. 1985 Nr 31 poz. 138 ze zm.)].

¹⁴ Prosecutor's Ethical Code [Zbiór zasad etyki zawodowej prokuratorów - Załącznik do uchwały Nr 468/2012 Krajowej Rady Prokuratury z dn. 19 września 2012 r.].

This ethical code states also, that if a prosecutor violated the ethical principles, he should immediately remove the consequences of his actions.¹⁵ This proves that in this professions ethical issues are almost as important as the legal ones. There are also several rules on how a prosecutor should behave in his private life, and these are among others: “§ 21. 1. Activity in private life must not interfere with the performance of the duties of the prosecutor. 2. The prosecutor resigns from additional employment (...), if it turns out that their continuation would hinder the performance of official duties.”¹⁶

5. Advocate’s Ethical Code

Advocates work pursuant to the Act on Advocates, enacted in 1982. Similarly to solicitors advocates fall under disciplinary responsibility for actions contrary to law, ethical principles or dignity of the profession or for breach of their professional obligations.¹⁷

The Advocate’s Ethical Code was enacted in order to improve and adapt the principles of the profession and corporate life. Every advocate is obliged to adhere to ethical standards and behavior which could debase him in public opinion is unacceptable and is regarded as a violation of the dignity of the profession. The disciplinary responsibility mentioned above means failure to comply with the ethics of an advocate in his professional and public, as well as in private life. He is also bound by the professional secrecy and must not act to the detriment of his client.¹⁸

It can be concluded that the advocate’s professional ethics is very rigorous¹⁹. It requires from him strictly ethical behavior even in his non-professional life and the private actions taken may influence in a good or bad way on his job. But all these professional ethical rules are not an artificial creation just to impede the work of lawyers. Their naturalness results from being consistent with common ethical principles.²⁰ That definitely helps to deal with them all, to act and behave properly. It is hard to imagine a lawyer whose actions are not in common with ethical rules – such activities would be unacceptable.

¹⁵ Ibidem, § 6.

¹⁶ Ibidem, § 21.

¹⁷ Act on Advocates [Ustawa z dnia 26 maja 1982 r. Prawo o adwokaturze (Dz.U. 1982 Nr 16 poz. 124)], Art. 80.

¹⁸ Advocate’s Ethical Code [Zbiór Zasad Etyki Adwokackiej i Godności Zawodu (Kodeks Etyki Adwokackiej) - uchwała Naczelnej Rady Adwokackiej nr 2/XVIII/98].

¹⁹ Krzemiński Z.: Etyka adwokacka. Teksty, orzecznictwo, komentarz, Publishing House Wolters Kluwer, Warsaw 2008, p. 15.

²⁰ Naumann J., Zbiór Zasad Etyki Adwokackiej i Godności Zawodu, Publishing House C.H. Beck, Warsaw 2012, p. 7.

6. Prohibition on advertising

In the light of today's legal regulations, all legal branches are related to the prohibition of advertising. It means that the solicitor or the notary are not allowed to advertise their businesses in any way. According to a Notary's Ethical Code, practicing personal advertisements or advertising the notary office is treated as an act of an unfair competition.²¹ The advocate is also not allowed to advertise himself, however it is acceptable to publish brochures or guides and posting press news related directly to legal aid²². Such regulations allow lawyers – despite the prohibition on advertising own business – inform about it, so that potential customers can learn about the existence of the legal office, and the provisions of ethical codes will not be broken.²³

7. Principles of legal ethics

Characteristic of legal profession sometimes requires from lawyers to contradict with things that commonly seem to be right and moral. It relates to almost any legal branch – the advocates have to defend people who had killed others, the prosecutors have to charge people who had broken legal rules in defense of higher value goods, the bailiffs have to oust people who cannot manage to pay off their debts because of losing their jobs and so on. People performing legal professions need to deal with some moral principles in order to do their job well. But these moral principles are applied properly only if a person has the necessary legal and ethical knowledge. Any action taken by a lawyer should make him able to wonder how other people will get it. That is a part of moral principles of legal ethics that bind lawyers.²⁴ Refuse to provide a legal assistance may be only for an essential cause and private moral beliefs are definitely not one of them. For example no advocate is allowed to refuse a legal help for a murderer, just because he had killed someone, although someone might say, that killers should not be protected at all.

²¹ Notary's Ethical Code [Uchwała Nr 19 z późn. zm. Krajowej Rady Notarialnej z dnia 12 grudnia 1997 r. Kodeks Etyki Zawodowej Notariusza].

²² Advocate's Ethical Code..., § 23 - § 23a.

²³ Masiota A., Masiota J.: Zakaz reklamy a prawo do rzetelnej informacji (w świetle przepisów o adwokaturze) [in:] Ruch prawniczy, ekonomiczny i socjologiczny, Rok LXIV — zeszyt 4 — 2002, p. 60.

²⁴ Tokarczyk R.: Etyka prawnicza, Lexis Nexis Publishing House, Warsaw 2006, p. 73-74.

7.1. Relation between a lawyer and his client

An important principle is the relation between a lawyer and his client. A lawyer works for his client and is obliged to take care of his interests. A. Bloch described a conversation between some advocate and a prosecuted one, which could happen to any lawyer:

“- (...) it does not matter whether I find you guilty or not, my job is to get you as the best solution - either an acquittal or the mildest sentence.

- Does it mean that you would defend me even if you were sure that I actually did it?

- Yes, it does”²⁵

This situation shows exactly the conflict between what an advocate may think about his client, and what shall he do for him. He must not act to the detriment of his client. “The advocate cannot refuse [legal assistance] because he is convinced of the guilt of the accused,²⁶ and the committed act seems to him morally reprehensible and contrary to his beliefs.”²⁷ Those, who are not familiar with law and legal proceeding, could say, that the advocate could “adopt the weakest line of defense and just secretly work to the disadvantage of the accused. Lawyers ensure that such action is not only unprofessional, but also against the law. (...) It is threatened with imprisonment and even exclusion from the profession”.

7.2. Principle of autonomy

A worth noticing principle here would also be the principle of autonomy, which plays an increasingly important role in applied ethics, including legal aspects of it. A lawyer may justify prejudicing the autonomy of his client in several ways, but legal ethics includes two of them:

- soft paternalism – “may occur in relations between a lawyer and his client – manipulating him by asking appropriate questions, listening with compassion, tone of voice, facial expressions, etc.”²⁸

²⁵ Bloch A.: Prawnicze prawo Murphy’ego, Poznań 2000, p. 7, cited by Kulesza C.: Efektywność udziału obrońcy w procesie karnym w perspektywie prawnoporównawczej, Publishing house Kantor Wydawniczy Zakamycze, Zakamycze 2005, p. 16.

²⁶ Jak bronić morderców i gwałcicieli? O ciężkiej walce sumienia z etyką zawodu prawnika - electronic access <http://natemat.pl/10565,jak-bronic-mordercow-i-gwalcicieli-o-ciezkiej-walce-sumienia-z-etyka-zawodu-prawnika> 2015-06-30.

²⁷ Ibidem.

²⁸ Tokarczyk R.: Op. cit., p. 79.

- hard paternalism – “imposing the client by a lawyer particular understanding of his value and interest.”²⁹

7.3. Principle of competence

In turn, the principle of competence means that the lawyer is well prepared to perform his profession. Sometimes there is legal malpractice, which means that the lawyer lacks in competence or does not have it at all, but despite this fact he works with a client and exposes him to the detriment. Such behavior is unacceptable and morally disqualifies a lawyer.³⁰

7.4. Principle of honesty

Equally important is the principle of honesty. A lawyer’s honesty is something more than just avoiding moral and legal norms. He has to improve his actions to become even better in his profession and work better for his client, but also remember not to harm the third party³¹ - e.g. an advocate who defends a rapist must act in the interests of his client, but he must not do any harm to the victim of this rapist – what he might do by suggesting that what happened was not actually a rape and the victim wanted it herself. There are divisive opinions on whether what lawyer does in his private life may have an impact on his professional life and whether the everyday honesty translates into honesty at work.

7.5. Professional secrecy

Last but not least principle is the professional secrecy. A lawyer, especially an advocate and a solicitor, is obliged to keep in secrecy everything that he have heard during the conversation with his client. This “everything” does not mean that the lawyer must not tell completely anything e.g. in the court, it just relates to these parts of conversation that the client does not want to share with anybody else. The important thing here is, the professional secrecy is unlimited in time, which means, that even after this particular lawyer ceases to be a defendant of the accused one, he is still not allowed to share information which he heard in connection with performing professional activities³².

²⁹ Ibidem.

³⁰ Ibidem, p. 80-81.

³¹ Ibidem, p. 81-83.

³² Tabaszewski R.K.: Etyka i odpowiedzialność zawodowa adwokatów i radców prawnych jako przedsiębiorców [in:] Człowiek, społeczeństwo, gospodarka: perspektywa odpowiedzialności społecznej, A. Zadroga, K. Sawicki (eds.), Lublin 2013, p. 227-229.

Any lawyer – an advocate, a solicitor, a bailiff – is obliged to keep professional secrecy always, and not only when his client wants that.³³ “A solicitor’s professional secrecy covering all what he learned in connection with the provision of legal advice and while conducting the case, excludes the possibility of submission of his testimony as a witness in criminal proceedings”³⁴. Only court may release a lawyer from keeping the secrecy, he must not decide about it himself, even if it is in common with his client’s interests.

8. Conclusions

Legal practice requires not only a vast legal knowledge, but also the knowledge and skills to apply ethical principles. It is very important to act ethically not only in professional life, but also in a private one. Any actions undertaken by a lawyer – solicitor, advocate, prosecutor or bailiff – privately, may influence on their professional situation. A very important note has been written in Advocate’s Ethical Code, and it states that it is not allowed to threaten anybody with criminal or disciplinary prosecution.³⁵ This means that advocate while performing his duties is obliged to explain to his client what are the legal proceedings in his case, but must not threaten him with criminal sanctions because of what he had done.

Being a lawyer is definitely not easy. But as long as they act in compliance with the applicable ethical standards, everything will go in a good way. That is why legal ethics is so important and every lawyer should learn it and obey it.

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³³ Dębowski R.: Sprawa Rogalskiego a tajemnica adwokacka [in:] Rzeczpospolita C, No. 108, p. 2.

³⁴ Supreme Court Sentence [Postanowienie Sądu Najwyższego z dnia 15 listopada 2012 r., sygn.. akt SDI 32/12].

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Omówienie

Celem artykułu jest zaprezentowanie specyfiki etyki w zawodach prawniczych. Autorka zwraca uwagę na fakt, że są one powszechnie postrzegane jako zawody zaufania publicznego, a – co za tym idzie – od ich przedstawicieli wymaga się więcej niż od przedstawicieli innych zawodów. W artykule przedstawione zostały różne gałęzie zawodów prawniczych, których pracownicy powszechnie nazywani są *prawnikami*. Przedstawiono kwestie etyczne w aktach prawnych regulujących działalność poszczególnych zawodów, a także aspekty zawarte w kodeksach etycznych radcy prawnego, komornika sądowego, prokuratora i adwokata. Artykuł przedstawia także kwestie zachowań etycznych w życiu prywatnym, które są konieczne w pracy prawnika. Autorka opisuje również zasady etyki prawniczej, którymi powinni się kierować kompetentni prawnicy. Zasady te to: relacja prawnika z klientem, zasada autonomii, zasada kompetencji, zasada szczerości oraz tajemnica zawodowa.