



INTRODUCTION TO THE LABOUR MARKET

Lecture 7. Architect's professional responsibility

*Katarzyna Palubska, PhD
ICOMOS-POLAND
katarzyna.palubska@gmail.com*



Erasmus+

2 KEY DUTIES OF AN ARCHITECT

The basic duties of an architect in Poland are defined in Art. 20 of the Building Law and include primarily the development of a building design in a manner consistent with the requirements of the Act, arrangements set out in administrative decisions regarding construction, applicable law and the principles of technical knowledge, as well as supervision at the request of an investor or architectural and construction administration authority. Irregularities may occur in both the above scopes of duties that may give rise to legal liability of the architect.

The designer may be liable for any defects in the design documentation, ie defective performance of a specific work, as well as improper performance of the author's supervision, to which the provisions on the order apply. First of all, the designer will be responsible for any improper performance of the contract, i.e. based on art. 471 of the Civil Code. Moreover, if the **warranty liability** specified in the Civil Code has not been excluded, liability on this basis will also arise.

At the same time, it seems logical to specify in the agreements the method of calculating the warranty period not from the moment of issuing the documentation, but from obtaining the permission to use the facility built on the basis of documentation, because in practice many defects of the project documentation are revealed only at the construction stage. In the event of damage, the provisions of the Civil Code on torts may also be the basis of liability.

Defective documentation may also result in disciplinary liability of the architect before the Chamber of Architects. In extreme cases, eg when a construction disaster occurs, the architect may also be responsible for a crime, for example for **bringing a life-threatening or health-threatening event to many people**.

3 CIVIL LIABILITY OF AN ARCHITECT

The specific nature of the architect's work, as a freelancer, involves them performing independent technical functions.

Conducting this type of activity, which includes designing, checking architectural and construction projects and supervising copyright, requires professional knowledge and entails considerable risk.

Therefore, architects are legally obliged to have liability insurance. This obligation results from art. 6.2 of the Act of 15 December 2000 on professional self-government architects, construction engineers and urban planners (ustawa z dnia 15 grudnia 2000 roku o samorządach zawodowych architektów, inżynierów budownictwa oraz urbanistów), according to which a member of the chamber of professional self-government is subject to civil liability insurance for damages that may arise in connection with the performance of independent technical functions in construction industry.

An architect must conclude the civil liability insurance contract within 30 days after becoming a member of the architects' chamber, however not later than on the day preceding the start of performing independent technical functions in the construction industry. The minimum sum insured for third party liability insurance in respect of one event the effects of which are covered by the contract, is the equivalent in PLN of EUR 50,000.



4 CIVIL LIABILITY OF AN ARCHITECT

On the basis of the above provision, the Minister of Finance issued a decree of 11 December 2003 on compulsory civil liability insurance for architects and civil engineers.

It defines the detailed scope of civil liability insurance for architects and construction engineers, the date of the obligation to insure and its minimum guarantee sum. Such architect's insurance covers his/her civil liability for damage caused as a result of an act or omission during the period of insurance coverage in connection with the performance of independent technical functions in the construction industry within the scope of building licenses held.

It is therefore closely related to the work of the architect and does not apply to:

- damage caused to natural persons employed by the architect, arising in connection with the provision of work, works or services to him;
- damage incurred during the suspension or removal of the architect from the list of members of the chamber (unless the damage results from activities performed before suspension or striking off);
- damages resulting from exceeding the determined costs;
- damage consisting in the payment of stipulated damages;
- damage caused as a result of infringement of copyright and patents;
- damage caused as a result of normal wear or faulty operation of construction works;
- damage caused by war activities, martial law, riots and riots, as well as acts of terror.

It is important that § 2 section 3 of the above regulation exhaustively defines the damage covered by the insurance and the damage excluded from it. This means that the scope of payment of compensation from civil liability insurance of architects can not be contractually limited by an insurance company.

5 CONTRACTUAL LIABILITY

A contract for design works in construction industry is treated as a type of contract for specific task. Therefore, the party preparing an building permit design or its part is responsible for the result in the form of a building which is ready for operation or use, or its component part, as described in the contract for the design or its part.

When design defects are found during construction, the maker is obliged to prepare a replacement design at his own expense (remove the defect). The so-called "detailed design", according to court case law, is not subject to legal protection as a construction design and, among others, and Art.36a of the Construction Law therefore doesn't apply, which means that there are no "significant changes" in the design. Changes made in the detailed design do not require the designer's opinion, which does not mean that the replacement solution may conflict with the technical and construction regulations.

A designer who is not a party to a civil-law contract is not liable to the contracting authority (eg an investor) for errors in the construction project or its part.

6 CONTRACTUAL LIABILITY

Any claims of the ordering party regarding design defects should be directed to the performing party (entrepreneur) - a party to the civil-legal contract for design works, and not to the author of the design.

The ordering party (investor), after identifying design defects, requests the performing party to remove the defects and defines a reasonable time to remove the defects with the reservation that after the expiry of that deadline, the ordering party will refuse to accept the design - see Art. 55 sec. 1 of the Act on Copyright and Related Rights (ustawa o prawie autorskim i prawach pokrewnych (Dz.U. z 2006 r. Nr 90, poz. 631, z późn. zm.).

If the ordering party suffers losses as a result of defects in the design, the performing party is obliged to repair the damage resulting from non-performance or improper performance of the subject of the contract (design) under Art. 471 and further of the civil code.

The author of the design (designer) employed by the performing party on the basis of the labor law does not bear financial consequences for the defects of the design. Amendments to the design or development of a new design are made at the expense of the performing party. The performing party's manager, if he deems it justified, may draw business consequences against the designer (employee).

7 CONTRACTUAL LIABILITY

Contractual liability means that if the subject of the contract (design) has defects, the performing party (design entity, which may also be a designer who concluded a civil law contract) should remove the defect, and if as a result of the design defect damage occurs - repair the damage (Art. 471 and subsequent in civil code). Damage can be remedied by, for example, paying the ordering party a certain amount (**stipulated damages**) or full compensation.

In the event the stipulated damages have been established for non-performance or improper performance of the contract, it should be taken into account that if the contractual penalty does not cover the entire damage, the ordering party may request the so-called **supplementary compensation** (the difference between the actual loss and the contractual penalty reserved in the contract).

Taking into account the fact that the contract for design work in construction is a contract for specific task, or result, it is very difficult to relieve the debtor (designer) from contractual liability.

8 CONTRACTUAL LIABILITY

Under these conditions, it is in the designer's best interest to insure against civil liability, regardless of the group insurance concluded by the professional association (Chamber of Architects). Third-party liability insurance ("additional") is expensive, you should pay for it as part of remuneration for design work.

Design work in construction industry usually entail a technically extremely complicated object (building object), and the liability period is very long (on average eight years from the date of receipt of the documentation by the ordering party). **Therefore, it is in the best interest of the ordering party to check whether the designer is insured against contractual civil liability and what period.** Contractual insurance against civil liability is an additional cost for the designer, which means that the insurance value should increase the price for design work, and the ordering party should cover this cost for his own safety.

Tenders for design work where the only criterion for selection is the offered price can also lead to the bankruptcy of the ordering party or may complicate its economic situation, and the manager may be subject to indictment.

9 DISCIPLINARY RESPONSIBILITY OF AN ARCHITECT

Apart from civil liability, architects also bear disciplinary and professional responsibility.



Architects may receive a penalty of reprimand, warning, suspension in the rights of a member of the chamber for up to 2 years, and even be removed from the list of members of the chamber for culpable violation in the performance of their professional activities of the obligation to comply with applicable laws and principles of technical or urban knowledge, as well as professional ethics, the obligation to comply with the resolutions of the bodies of the chamber, and regular payment of membership fees.

The rules of professional ethics are set out in the **Code of Professional Ethics of Architects** available on the website of the Architectural Chamber of the given country.

10 PROFESSIONAL LIABILITY OF AN ARCHITECT

The disciplinary liability excludes acts for which an architect in Poland may be subject to **professional liability under Art. 95 Building Law**.

On the basis of the above-mentioned act, professional responsibility in construction industry is applicable to persons performing independent technical functions in construction, who:

- have committed misdemeanors or offenses determined in the act; they were punished in connection with the performance of independent technical functions in construction industry;
- due to gross errors or negligence, have caused a threat to human life or health, property or environmental safety or substantial material damage;
- do not fulfil their duties or perform their duties negligently;
- they refrain from undertaking the author's supervision or perform the duties resulting from performing this supervision negligently.

11 PROFESSIONAL LIABILITY OF AN ARCHITECT



According to art. 96 Building Law, acts resulting in professional liability in the construction industry are subject to a warning, warning with simultaneous obligation to pass an exam in the construction process and practical application of technical knowledge, a ban on performing independent technical function in construction for a period of one to five years , combined with the obligation to pass the exam.

The penalties above are determined by the professional self-government competent for persons who have committed the above-mentioned violations (see Article 98 Building Law).

12 PROFESSIONAL LIABILITY OF AN ARCHITECT

Proceedings regarding professional liability in construction industry are instituted at the request of the building supervision authority, which submitted after conducting the explanatory proceedings (see Article 97 of the Building Law).

Proceedings for professional liability in construction industry cannot be instituted later than 6 months from the day the construction supervision authority is informed of committing an act and no later than after 3 years from the date of completion of construction works or notice of completion of construction or issuing a permit for use building object in question.

The provisions cited above show that the designer is personally responsible for the above-mentioned offenses.

Performing independent technical functions in construction industry, despite the regimes resulting from the Building Law, technical and construction regulations, due to the lifetime of the building and the high value of this object, is associated with high risk for the designer, because a building is one of the most technically complex economic undertakings to pursue.

13 PROFESSIONAL LIABILITY OF AN ARCHITECT

Considering the above conditions, professional associations of designers insure their members against civil liability for damages that may arise as a result of defects in the construction project up to the equivalent of EUR 50,000. If, in order to meet the conditions of the Building Law, a design requires verification by another designer, the ordering party (investor) may claim compensation from both the designers (each equivalent to EUR 50,000, or EUR 100,000 total), and if the design flaws also affect defects in other designs making up the building permit design, liability for damages includes defects for which designers are responsible.

In the event the insurance does not cover the actual damage sustained, the aggrieved party has the right to claim supplementary compensation from the designer in court proceedings.

14 CRIMINAL LIABILITY OF AN ARCHITECT

Criminal liability is imposed on the designer who:

- performs independent technical functions in construction without having proper building licenses or the right to perform independent technical functions in construction;
- when designing, he/she in a gross manner does not comply with the provisions of Article 5 of the Building Law, and thus causes hazard to:
 - construction safety,
 - fire safety,
 - safety of use,
 - hygienic and health conditions and environmental protection,
 - protection against noise and vibration,
 - energy savings and adequate thermal insulation of partitions.

The assessment of the incident causing the violation of penal provisions mentioned in art. 91 par. 1 point 2 and art. 92 point 1 of the Building Law, is made by the court based on a motion of a prosecutor or a person who has notified the suspicion of committing an offense by the designer.

15 CRIMINAL LIABILITY OF AN ARCHITECT

Penalty will be adjudged if the **designer's** fault is proven, this could entail the designer's recklessness when preparing (developing) the design or when the author of the design was performing the function of the author's supervision.

The author's supervision performed by the author of the design is deemed an "extension to the design", and therefore this contract is also a contract for specific task, and so the responsibility for design defects is not limited.

The person performing the function of author's supervision who is not the author of the design or its part against which objections have been raised, may be released from responsibility for errors in the design if in the agreement for author's supervision stipulated that they were not responsible for errors in the design and that such errors could not be detected with due diligence.

The contract for author's supervision by a person who is not the author of the design is a contract of mandate, in which the liability is limited to "due diligence", which means that such person may be released from responsibility if they shows diligence in performing the order, and if the defect could only occur as a result of the execution of construction works.

In the event the provisions of the Building Law impose the **obligation to check the correctness** of the design, the person responsible for the defects leading to criminal liability will also be the checking person.

KEY DUTIES OF AN ARCHITECT VS. INVESTOR'S EXPECTATIONS

An architect should take into account the investor's expectations, which should be specified in detail in the contract for design. It is deemed a contract for performance of a specific task.

An investor can not interfere with the design obligation in accordance with the law, administrative decisions and principles of technical knowledge, because in this respect the architect bears sole responsibility in these aspects.

An architect must update the design, in respect of fire safety regulations, historical monument conservation recommendations or construction safety by adapting it to the actual state of the ground as it is revealed during the construction, even if this entail increased costs of future construction.

An investor can not oppose to such changes.

LIABILITY OF AN ARCHITECT FOR SUBCONTRACTORS

An architectural design should be complete and include not only architectural elements, i.e. perceivable elements creating a space, but also technical designs, e.g. construction, electrical and low voltage installations, water and sewage.

The author of the design documentation is responsible for its subcontractors, including other architects and designers of particular specialities.

Therefore, it is important to pay attention to the content of contracts with subcontractors, as well as the content of their insurance policies.

18 REFERENCES

- Overview maps insurance fact sheets, w: <https://www.ace-cae.eu/international/insurance-overview/> (01.02.2019)
- Ogólny zarys cywilnej, dyscyplinarnej i zawodowej odpowiedzialności architekta, w: <http://www.kopoczynski.pl/prawo2/ogolny-zarys-cywilnej-dyscyplinarnej-i-zawodowej-odpowiedzialnosci-architekta> (16.12.2018)
- Odpowiedzialność prawna architektów – wywiad z mec. Marcinem Lassotą po Element Urban Talks, w: <http://lookkreatywni.pl/wywiady/odpowiedzialnosc-prawna-architektow-wywiad-mec-marcin-lassota-element-urban-talks/> (16.12.2018)
- Orłowski H.J., Granice odpowiedzialności projektanta, Buduj z Głową 3/2014
- Ustawa z dnia 15 grudnia 2000 r. o samorządach zawodowych architektów oraz inżynierów budownictwa (Dz. U. z 2016 r. poz. 1725)
- Rozporządzenie Ministra Finansów z dnia 11 grudnia 2003 r. w sprawie obowiązkowego ubezpieczenia odpowiedzialności cywilnej architektów oraz inżynierów budownictwa (Dz.U. 2003 nr 220 poz. 2174)



**Project "SURE - Sustainable Urban Rehabilitation in Europe"
implemented in frames of Erasmus+ Programme
Key Action 2: Strategic Partnership Projects
Agreement n° 2016-1-PL01-KA203-026232**

This publication has been funded within support from the European Commission.

Free copy.

This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

**Co-funded by the
Erasmus+ Programme
of the European Union**





Project "SURE - Sustainable Urban Rehabilitation in Europe" implemented in frames of Erasmus+ Programme Key Action 2: Strategic Partnership Projects Agreement n° 2016-1-PL01-KA203-026232



This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/).