

## Chapter 4.

# THE CONSTITUTION OF THE REPUBLIC OF POLAND AS A SOURCE OF PROFESSIONAL ETHICS

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Professional ethics is the topic of many discussions. Among other things, they concern the distinction of the professional ethics from general ethics, its qualification as an ethics of obligation or ethics of ideal, a codification of ethical rules and a catalogue of professions which should be bound up with the rules of professional ethics.

Even the definition of professional ethics is not simple due to the fact that professional ethics is understood in various ways. According to Z. Ziemiński, by professional ethics we often understand a moral doctrine that systematises assessments and moral norms connected with a particular profession or forms moral norms that are called for being accepted by representatives of a particular profession<sup>2</sup>. According to S. Jedynak, professional ethics is a complex of norms and rules defining, from the moral point of view, the behaviour of representatives of a particular profession<sup>3</sup>. I. Bogucka and T. Pietrzykowski identify professional ethics as standards determining the way the representatives of particular professions should behave. Their moral beliefs are also taken into consideration, as well as accented ethical appraisals of their behaviours<sup>4</sup>. From I. Lazari–Pawłowska’s point of view these are written down standards which answer the question how, on account

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2 Z. Ziemiński, *Podstawy nauki o moralności*, Poznań 1981, p. 106.

3 S. Jedynak (ed.), *Mały słownik etyczny*, Bydgoszcz 1994, p. 67.

4 I. Bogucka, T. Pietrzykowski, *Etyka w administracji publicznej*, Warszawa 2012, p. 75–79.

of morality, representatives of professions should and should not act<sup>5</sup>. However, R. Tokarczyk claims that it is a complex of rules and ethical norms that arises from the social role of a particular profession and regulates some rights and duties of a particular occupation, which leads to the adjustment of professional knowledge to moral values<sup>6</sup>.

However, if we generalise, we are able to note that professional ethics is a complex of norms that are to be obeyed and accomplished by the representatives of particular professions. These norms constitute a group of duties expressing an adequate (appropriate) standard of performing one's profession as well as shape a certain ideal (pattern) of a representative of a particular profession. Professional ethics usually takes into consideration some technical aspects of performing profession, relationship between the society and representatives of a certain profession and the relationship among the representatives of a particular profession.

Norms of this type, above all, are contained in legal acts that regulate the rules of performing a particular profession. Ethical standards are often formulated indirectly, and are indicated while specifying objectives, rights, duties or responsibilities of representatives of a given profession. However, in case of many professions ethical standards are also expressed directly in so called professional ethic codes<sup>7</sup>.

It is also worth noting that the Constitution of the Republic of Poland can also be a source of professional ethics. In particular this regards Article 153 of the Constitution which states that with the aim of ensuring diligent, impartial and politically neutral execution of the State's objectives, a corps of civil servants shall operate in the organs of government administration and their supervisor is the Prime Minister.

Article 153 of the Constitution forms a constitutional authorisation to appoint a corps of civil servants, but for this study it is essential that this regulation determines the criteria of its functioning as well. Civil servants are obliged to execute entrusted objectives:

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- 5 I. Lazari-Pawłowska, *Etyki zawodowe jako role społeczne*, [in:] P.J. Smoczyński (ed.), *Etyka. Pisma wybrane*, Wrocław-Warszawa-Kraków 1992, p. 84.
  - 6 R. Tokarczyk, *Etyka prawnicza*, Warszawa 2011, p. 32–33.
  - 7 See G. Sołtysiak, *Kodeksy etyczne w Polsce*, Warszawa 2006, p. 15 et seq.

- a) professionally,
- b) diligently,
- c) impartially,
- d) politically neutrally<sup>8</sup>.

It is worth emphasising that the criteria mentioned in Article 153 of the Constitution are not unambiguous and precise. Just the opposite, these are semantically broad words and colloquial phrasings whose understanding may raise a lot of doubts. At the same time making them precise is indispensable as they express an ethical standard of executing the State's obligations<sup>9</sup>.

The realisation of the State's obligations by the corps of civil servants in accordance with the criteria expressed in Article 153 of the Constitution is ensured by the Act of 21 November 2008 on Civil Service<sup>10</sup>, and also by the Decree No. 70 of the Prime Minister of 6 October 2011 issued on the basis of Article 15 section 10 a.c.s. and concerning guidelines on the range of observing the rules of civil service and ethical rules of the corps of civil servants<sup>11</sup>.

It is characteristic that a.c.s. expresses the essence of professionalism, diligence, impartiality and political neutrality and simultaneously indirectly regulates the rules of accessing to this service, the rules of its organisation, functioning and development<sup>12</sup>. On the other hand, the Decree No. 70 refers to the discussed constitutional criteria in a direct way; it specifies: (1) guidelines on the scope of obeying the general rules of civil service and (2) ethical rules of corps of civil servants, and furthermore obligates, inter alia, the Head of the Civil Service, the

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8 See W. Sokolewicz, *Komentarz do art. 153*, [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II*, Warszawa 2001, p. 1–20; M. Zubik (ed.), *Konstytucja III RP w tezach orzeczniczych trybunału Konstytucyjnego i wybranych sądów*, Warszawa 2011, p. 664–666.

9 G. Dostatni, *Koncepcje służby cywilnej a realizacja konstytucyjnego celu jej działania*, Warszawa 2011, p. 38–74.

10 Act of 21 November 2008 on Civil Service (Journal of Laws 2008, No. 55, item 1505, as amended), hereinafter referred to as a.c.s.

11 The Decree No. 70 of the Prime Minister of 6 October 2011 on guidelines on the range of observing the rules of civil service and ethical rules of the corps of civil servants (Official Journal of the Republic of Poland *Monitor Polski* 2011, No. 93, item 953, as amended), hereinafter referred to as the Decree No.70.

12 Article 1 a.c.s.

Council of the Civil Service and members of the corps of civil servants who take managerial posts to promulgate and enforce those ethical rules<sup>13</sup>.

According to the Decree No. 70, members of the corps of civil servants while executing their duties are guided by the rules of civil service which arise from the legal provisions, in particular:

- 1) a rule of legalism, law-abidingness and developing the trust of society to public administration organs, which means that:
  - (a) while executing tasks on their post they obey law;
  - (b) by their attitude and acting they contribute to accomplishment of the rule of law;
  - (c) by their behaviour and acting with the citizens they significantly influence on the extent of bonds between the citizens and the State;
  - (d) in the limits specified by law, they act in a way that provides an active participation of the citizens in deciding in public issues;
  - (e) they are not prejudiced while serving the citizens, other people and subjects;
  - (f) they do not participate in strikes or any protest campaigns which disturb a normal functioning of the office<sup>14</sup>;
- 2) a rule of human and citizen's rights protection, which means that:
  - (a) they know human and citizen's rights;
  - (b) they do not propose nor take actions that violate human and citizen's rights;
  - (c) they take into consideration that their successful protection leads to the increase of the State's authority<sup>15</sup>;
- 3) a rule of disinterestedness, which means that:
  - (a) they do not accept any benefits from the persons involved in the conducted cases;
  - (b) they do not accept any forms of payment for public performance if it is in relation with their post;
  - (c) they resign from additional employment or gainful employment if further doing of the additional job may have a negative influence on the issues conducted as a part of their official obligations;
  - (d) they do not conduct any trainings if it is possible that they may have

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13 See § 11–12 of the Decree No. 70.

14 See § 2 of the Decree No. 70.

15 See § 3 of the Decree No. 70.

a negative influence on the disinterestedness of the conducted cases<sup>16</sup>;

- 4) a rule of openness and transparency, which indicates that: (a) in the limits specified by law they ensure availability of information about the rules and the effects of their work and the undertaken decisions, which constitutes the basis of the citizen's trust, and any limitations can result from the excluding of the openness of the resolution; (b) while creating the law, making decisions and other resolutions, they strive to assure the explicitness and comprehensibility of the undertaken actions; (c) they exhaustively explain the resolutions, indicate the reasons of undertaking such decisions and present aims which are to be achieved, especially in cases that are a subject of divergence in public debate; (d) they know constitutional and statutory provisions concerning the right to access to public information and ensure the practical realisation of this right<sup>17</sup>;
- 5) a rule of keeping the confidentiality protected by law, which means that: (a) they keep the secrecy protected by law; (b) when they assume the information with protection, they do this in order to protect clearly indicated interests of the State, the citizens and other subjects and not in order to limit the openness or the transparency of their actions<sup>18</sup>;
- 6) a rule of professionalism, which means that: (a) while realising the State's objectives, they have the essential knowledge about the functioning of the State, they increase their qualifications and develop the professional knowledge needed for the best performance at work in the office; (b) they know the legislative acts which concern the functioning of the office in which they are employed and they make themselves acquainted with all the vital factual and legislative circumstances of the conducted cases; (c) they know the rules of the corps of civil service ethics and they keep to them conscientiously; (d) they know the rules of civil service and keep to them conscientiously; (e) they are subjected

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16 See § 4 of the Decree No. 70.

17 See § 5 of the Decree No. 70.

18 See § 6 of the Decree No. 70.

to verification of the knowledge of the rules of civil service; (f) they strive to apply high standards of public management, they make a good use of knowledge of their supervisors, colleagues and subordinates, share their own work experience and, if it is justified, they are helped by the experts; (g) they manage their human resources and working time effectively and rationally; (h) in executing their objectives they aim for arrangements based on logical reasoning and argumentation; (i) they are ready to accept the criticism, to recognise their mistakes and to repair their consequences; (j) by their attitude they care about the image of civil service; (k) taking advantage of the guaranteed employer's rights, they take into consideration the limitations of possibilities of taking up the employment or performing other activities, and also the limitations of the confidentiality of the information concerning their private lives; (l) benefitting from a special protection of a civil servant's employment, they take into consideration the aim of this special protection, which means: recruiting and retaining in civil service persons who associate their professional development with working in the government administration and also the employment protection of those civil servants who showed the ability to a professional and ethical behaviour of a member of corps of civil service, and in particular they keep to the rule of political neutrality and objectivity of civil service<sup>19</sup>;

- 7) a rule of responsibility for the actions taken or desisting the action, which means that: (a) they do their tasks with consciousness of a special responsibility resulting from the public character of their service; (b) while doing their tasks they are driven by the public interest and the compliance of their actions with the legal provisions; if there is any disparity between the regulations and the public interest they signal it to their supervisors; (c) on every stage of realisation of the tasks they are ready to account for the undertaken actions in front of their supervisors and citizens; (d) in case of being charged with the violation of duties of a member of

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19 See § 7 of the Decree No. 70.

corps of civil service they do not undertake any actions that lead to disturb the efficient course of proceedings aimed at finding a person responsible for the situation; (e) if they are convinced that the official command of their supervisor violates the rules of civil service, they inform them or their supervisors in a written note<sup>20</sup>;

- 8) a rule of a rational management of public resources, which means that: (a) using public resources they realise the State's obligations and promote directions of its actions, they take state and citizen's interest into account as well as effective achieving of goals and rational utilisation of public resources entrusted by citizens to the state; (b) they are ready to account for their care about public resources and property<sup>21</sup>;
- 9) a rule of openness and competitiveness of recruitment, which means that: (a) they take into consideration a particular care of an equal availability of civil service, they do not discriminate against anybody because of any reasons, professional and diligent execution of the State's tasks by the government administration, political neutrality of civil service; (b) by their actions they enforce citizen's trust in the competence of persons who realise the State's obligations, they pay attention to recruit people who are best prepared to realise the State's tasks and guarantee the open and effective control over the recruitment; (c) they do not wield influence or pressure on the recruitment process, are not influenced by such pressure and if they have knowledge about such things, they inform the competent supervisor<sup>22</sup>.

On the other hand, according to § 13 of the Decree No. 70 a member of corps of civil service keeps to the ethical rules of corps of civil service, that is:

- 1) a rule of admirable behaviour, which particularly means:
  - (a) doing the job with respect for rules of social relationships and good manners, respect for other person's dignity including

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20 See § 8 of the Decree No. 70.

21 See § 9 of the Decree No. 70.

22 See § 10 of the Decree No. 70.

- subordinates, colleagues and supervisors; (b) kindness to people and preventing conflicts at work, relations with citizens and co-workers; (c) appropriate behaviour also outside the office, avoiding undesirable behaviours that can have an influence on the State's image, civil service or the office<sup>23</sup>;
- 2) a rule of public service, which especially articulates in: (a) work that has an ancillary character towards citizens and aims at fulfilling the values that underlie the law of the Republic of Poland; (b) a service whose basic element is the protection of the State's interest and development; (c) co-creating the image of civil service and influencing on the perception of the Republic of Poland in the country and in the world; (d) valuing the interest of citizens over their own, individual or group interest; (e) not avoiding undertaking difficult decisions and responsibility for their own actions being aware of the fact that public interest demands prudent but successful actions which are realised in a decisive way<sup>24</sup>;
- 3) a rule of loyalty, which includes: (a) loyalty to the Republic of Poland; (b) loyal and diligent realisation of the programme of the Government of the Republic of Poland regardless of their own beliefs and political views; (c) loyalty to the office and supervisors, colleagues and subordinates, readiness for carrying out official commands and paying attention not to break the law or make mistake; (d) giving their supervisors objective advice and opinions that are in accordance with the best will and knowledge while preparing suggestions of activity for the government administration; (e) demonstrating circumspection in giving opinions about work of their own and other offices in public, especially when these opinions undermine citizens' trust in those institutions<sup>25</sup>;
- 4) a rule of political neutrality: (a) not manifesting their own political sympathies and opinions in public, especially not agitating politically while being on and off duty; (b) dissociating

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23 See § 14 of the Decree No. 70.

24 See § 15 of the Decree No. 70.

25 See § 16 of the Decree No. 70.



themselves from any political influences and pressures that could lead to partial activities; (c) not undertaking any public activities directly favouring activities of a political character; (d) not generating any suspicions of favouring political parties and keeping to the legally binding limits; (e) taking particular care of clarity and transparency of relationship with persons who serve as politicians while taking into consideration that these relations cannot undermine the trust to the political neutrality of a member of corps of civil service<sup>26</sup>;

- 5) a rule of impartiality, which especially means: (a) not allowing the suspicions of a conflict between the public and private interest; (b) not undertaking any activities that collide with official obligations; (c) treating all the participants of the current administrative cases equally and not undergoing any pressures; (d) not demonstrating intimacy with people who are commonly known for their political, economic, social or religious activity and not promoting any interest group<sup>27</sup>;
- 6) a rule of diligence, which especially concerns: (a) a diligent, reasonable executing of given tasks; (b) fulfilling obligations in accordance with legal provisions; (c) creative undertaking of tasks and active realisation of the obligations with the best will and in public interest, not limited only to observing the regulations<sup>28</sup>.

On the basis of the above-mentioned it is possible to state that the provisions of the Decree No. 70 precise the sense of the criteria presented in Article 153 of the Constitution. They give broad and flexible and at the same time quite precise meaning to professionalism, diligence, impartiality and political neutrality. Along with the provisions of the a.c.s. they determine a circle of subjects obliged to obey as well as promulgate and enforce them. They regulate issues characteristic for the professional ethics, i.e. technical aspects of doing one's profession,

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26 See § 17 of the Decree No. 70.

27 See § 18 of the Decree No. 70.

28 See § 19 of the Decree No. 70.

relationship with the society and also relations among members of corps of civil service<sup>29</sup>.

To recapitulate it should be stated that the Constitution of the Republic of Poland can be interpreted as a source of professional ethics. In Article 153 of the Constitution the criteria (norms) that are to be obeyed and realised are made precise; they form a set of obligations that express a desired standard of doing one's profession and at the same time they form a kind of ideal (pattern) of a representative of a particular profession.

An unsettled matter that can provoke some doubts is the subjective range of Article 153 of the Constitution. It is worth considering whether the criteria of professionalism, diligence, impartiality and political neutrality have an application only to the corps of civil service or whether they also concern (or should concern) other subjects.

The answer may seem obvious and the doubt itself may seem irrational. A literal sound of this provision seems to determine the subjective range of Article 153 of the Constitution which is limited to the corps of civil service<sup>30</sup>.

However, taking into consideration the aims and functions of the indicated regulation, professionalism, diligence, impartiality and political neutrality, they may be treated as criteria affirming a pattern of executing the State's obligations. This assumption justifies the thesis according to which this constitutional ethical standard concerns (or should concern) all the professions involved in executing them. Consequently, this standard should be enforced on corps of civil servants and also on other professions (unqualified as a civil service), including those involved in the functioning of the justice system<sup>31</sup>. The rationality of this assumption is confirmed by the analysis of the codes of professional ethics of judges, barristers, legal counsels and prosecutors.

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29 See previously in force (repealed with effect from 5 November 2011) the Code of Ethics for the Civil Service as the attachment to Decree No. 114 of the Prime Minister of 11 October 2002 on the Establishment of a Code of Ethics for the Civil Service (Official Journal of the Republic of Poland *Monitor Polski* 2002, No. 46, item 683, as amended).

30 This interpretation is confirmed further by a.c.s. and Decree No. 70.

31 After an earlier adjustment to the characteristics of the profession.

These codes of professional ethics, among the technical aspects of performing a job, relationship between the society and representatives of a certain profession and the relationship among the representatives of a particular occupation, include contents that should be clearly qualified as:

- professionalism understood in particular as appropriate and necessary qualifications and duty of their widening,
- diligence understood in particular as honesty and good faith,
- impartiality understood in particular as independence from the non-substantive factors,
- political neutrality understood in particular as a ban on demonstration of political views<sup>32</sup>.

In the light of the foregoing, the criteria presented in Article 153 of the Constitution are in use – and even become fundamental, elementary and common – not only for members of corps of civil service but also for professionals involved in the functioning of the justice system such as judges, barristers, legal counsels and prosecutors.

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32 However, these codes of professional ethics do not explain the criteria presented in Article 153 of the Constitution as widely as the Decree No.70 does.

## Chapter 5.

# ENTREPRENEUR AND COURT CULTURE – IS THERE ANY CONNECTION? A LAW STUDENT’S PERSPECTIVE

**Ewa Pankiewicz<sup>1</sup>**

## **I. Introduction**

Economic activity and its development depend on numerous factors, internal, concerning an enterprise as well as external, coming from the environment. One of these factors, which can be considered in two perspectives – from an entrepreneur and state perspective – is court culture understood as a part of more comprehensive term “legal culture”.

It follows that, undoubtedly, there is a connection between an entrepreneur and court culture. The aforesaid connection is distinguished by dependence between efficiency in carrying out economic activity by an entrepreneur and his knowledge regarding procedural law, which is equivalent to acquisition of high court culture on the one hand, and judicial bodies’ performance, which means the level of court culture represented by state, on the other hand.

## **II. The scope of terms entrepreneur, court culture and legal culture**

Analysing an issue of connection between an entrepreneur and legal culture, for a greater and clearer understanding of the subject,

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it is necessary to expound on the term “entrepreneur”. In Polish law a uniform definition does not exist and in consequence it does not facilitate classifying a particular entity to the “entrepreneur” category. Furthermore, it repeatedly hampers understanding of the law as well as its application. The most prevalent legal definition is included in Article 43<sup>1</sup> of the Civil Code<sup>2</sup>. According to the aforementioned provision, an entrepreneur shall be a natural person, a legal person and an organisational unit not being a legal person but which has been granted the legal capacity by virtue of statutory law that carries out economic or professional activity on their own behalf. Apart from the Civil Code, also other statutes include definitions of the term “entrepreneur”, which results in large discrepancies. Additional difficulties arise while using in statutes the terms “enterprise” and “economic activity” in various meanings. The definition of economic activity, also rising controversies in a number of cases, is included in Article 2 of the Act on Freedom of Economic Activity<sup>3</sup>. Economic activity shall mean profit-gaining activity in the fields of production, construction, commerce, services and in the prospecting for exploration and extraction of minerals from deposits, as well as a professional activity carried out in an organised and uninterrupted manner. Furthermore, European Union law defines an entrepreneur as an entity who carries out an economic activity. Economic interpretation of the term “entrepreneur” contains some discrepancies as well. Generally speaking, an entrepreneur is an entity who makes its own capital contribution to an enterprise, manages an enterprise by itself and bears economic risk as well as legal liability concerning the enterprise activity by itself<sup>4</sup>.

Before commencing further considerations it is worthwhile reflecting on the meaning of the key term “court culture”. This term could be understood as the element or constituent of legal culture and for that reason broader explanation of the term “legal culture” is necessary. It is essential to emphasise that its meaning in the literature

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2 Act of 23 April 1964 – Civil Code (consolidated text Journal of Laws 2014, item 121).

3 Act of 2 July 2004 on Freedom of Economic Activity (consolidated text Journal of Laws 2010, No. 220, item 1447, as amended).

4 C. Kosikowski, *Przedsiębiorca w prawie polskim na tle prawa europejskiego*, Warszawa 2003, p. 14.

is not uniform and, moreover, multitude of definitions does not facilitate unambiguous identification of the term. S. Grodziski defines “legal culture” as “individual and collective attitudes towards the law – the administration of justice, as well as its institutions and specific provisions determining the boundaries of liberty and prohibition area”. He assumes that acting in a “virtuous” (individuals) and “law-abiding” (organisations and state) manner is a basis of legal culture<sup>5</sup>. On the other hand, L.M. Friedman treats legal culture as an element of the legal system. Simultaneously, he defines legal culture as the whole of social values and attitudes related to them, which affect the legal system by combining its elements to form of a homogeneous whole or determine validity of legal provisions and functioning of specific legal institutions<sup>6</sup>.

Besides, it is proper to consider the utility of the term “legal culture”. It is used as a convenient language shortening in order to define common phenomena, processes and states of affairs regarding the legal system, not similar to each other on numerous occasions, but remaining in some relation<sup>7</sup>. Additional distinction of “legal under-culture”, existing apart from the legal system, but strongly related to it, perfectly reflects this concept of legal culture. “Legal under-culture”, as the term proposed by A. Podgórecki, means existing in every society “some social practice of the realisation of general principles of law, some degree of observing the law and its prestige, some general accumulation of various opinions, moral and social attitudes, which support or weaken the functioning of the whole legal system” whereas “all habits and values aforesaid relating to acceptance, judgment, critics and realisation of the legal system in force could be defined as the general legal culture of the particular society”<sup>8</sup>.

Furthermore, it is emphasised that the term “legal culture” could be used in several variants. Legal culture could be understood as: a measure of observing the law, a measure of the degree of internalisation of the legal provisions, a measure of knowledge of law and a measure of the

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5 S. Grodziski, *Z dziejów staropolskiej kultury prawnej*, Kraków 2004, p. 10.  
6 K. Pałeczki, *O użyteczności pojęcia kultura prawna*, PiP 1974, No. 2, p. 65.  
7 *Ibid.*, p. 66.  
8 A. Podgórecki, *Prestiż prawa*, Warszawa 1966, p. 179–180.

degree of legal awareness<sup>9</sup>. Stating lack of legal culture, as well as high or low legal culture, implies a positive or negative judgment on legal culture in the aforementioned meanings.

As previously mentioned, court culture is a part of legal culture. Referring to quoted definitions of the term “legal culture” it is proper to state that court culture means, on the one hand, (as regards an entrepreneur) the awareness, knowledge and application of procedural provisions as well as attitude towards judicial bodies, and on the other, the functioning of the administration of justice.

### **III. Court culture of an entrepreneur**

According to the foregoing considerations, an entrepreneur’s court culture consists of several elements related to his awareness of court proceedings’ rules, knowledge of functioning of judicial bodies and attitude to them. Ability to effectively carrying out of economic activity, particularly in the area of enforcing his/her rights in the court, depends on the level of mentioned elements.

Whereas high legal awareness results in the possibility to prove one’s rights and reasonable arguments in a dispute, low legal awareness or its lack yields emotional instead of matter-of-fact attitude, which unfortunately does not contribute to dispute resolution favourable to an entrepreneur.

Moreover, frequently the consequence of ignorance of law, as well as of the basis of functioning of the administration of justice is unconsciousness of violation of legal provisions. Illegal actions taken by an entrepreneur and his/her omissions are not always intentional, nevertheless, he/she has to be liable for this and struggle with difficulties that may arise as a result of the said actions. Frequent amendments to the law and the fact that reality is quite often ahead of the law also arise significant impediments to the carrying out of economic activity and facilitate looking for loopholes in the law. As a result, actions taken by

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9 K. Pałeczki, *op. cit.*, p. 72.

entrepreneurs are not transparent and procedural provisions are not observed<sup>10</sup>.

It is not merely the carrying out of economic activity that is strictly connected with court culture. Also features and type of an entrepreneur directly affect his/her court culture. It is proper to say that large enterprises are characterised by higher court culture than small enterprises, for instance because of hiring permanent legal service. It enables larger entrepreneurs to prepare to court trials in a significantly better way and in consequence increases his/her chances of a favourable resolution of a dispute. Large enterprises are also oriented towards the fastest resolution of a dispute. Small entrepreneurs' attitude towards court proceedings is more emotional due to stronger relationship to their enterprises. It also appears that court culture of an entrepreneur is affected by his/her education and experience in the carrying out of economic activity. The higher the education and the longer the experience is, the better the knowledge of legal provisions and better opportunity to protect entrepreneur's rights in the court. The willingness to reach a settlement and use Alternative Dispute Resolution (ADR) appears similar. Large enterprises, usually more particular about their image, are inclined to use ADR so the dispute could be resolved faster<sup>11</sup>.

It is proper to refer to the term "diligence" used in Article 355 § 2 of the Civil Code, which particularly applies to an entrepreneur due to the reference to economic activity. The fact of carrying out economic activity itself determines an entrepreneur's feature, which is professionalism, and consequently specific diligence – over generally required, average standard. Moreover, due diligence of an entrepreneur also covers the knowledge of the law in force, especially with regard to its consequences related to carrying out economic activity<sup>12</sup>. An entrepreneur, as a professional, should therefore, and even he/she must, know the legal provisions due to his/her major responsibility connected

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10 A. Turska (red.), *Kultura prawna polskich przedsiębiorców. Raport wstępny badań przeprowadzonych przez Instytut Badań Nad Demokracją i Przedsiębiorstwem Prywatnym*, Warszawa 2000, p. 43–44.

11 *Ibid.*, p. 36–38.

12 M. Safjan, *Zobowiązania. Przepisy ogólne*, [in:] K. Pietrzykowski (ed.), *Kodeks cywilny. Komentarz do artykułów 1–449<sup>9</sup>. Tom 1*, Warszawa 2011, p. 1283–1284.



with an obligation to exercise due diligence. It is thus necessary for an entrepreneur to know the legal provisions perfectly in order to avoid bearing responsibility and in consequence financial loss, as well as uninterrupted carrying out economic activity. It obviously also refers to procedural provisions.

It turns out that entrepreneurs have a possibility to acquaint themselves with the functioning of justice institutions without major difficulties. Entities which carry out economic activity – as many as 90% of entrepreneurs that have been researched, similar to the majority of respondents, claim that the aforesaid information is easily accessible<sup>13</sup>. It explicitly follows from the research that an entrepreneur may widen his/her knowledge without difficulties and his/her acquaintance with legal provisions is up to him/her, not to justice activity. Generally, the level of court culture represented by an entrepreneur is only up to him/her.

#### IV. Court culture of judicial bodies

Although entrepreneur's attitude towards court proceedings and judicial bodies must be considered with reference to court culture of an entrepreneur, it would be appropriate to refer to this issue as regards court culture of administration of justice itself. The justification for the aforesaid approach is a direct relation between entrepreneur's opinion about justice institutions and their activity, as well as the fact that a high level of court culture of entrepreneurs depends on the quality of procedural law and its application by courts.

Before commencing the analysis of entrepreneur's attitude to justice it is necessary to consider what influences on judicial bodies' court culture, which consists of, among other things, elements such as the length of legal proceedings, costs of proceedings, application of the law by courts, costs of legal service and attitude of judges. Commonly known

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13 Ministerstwo Sprawiedliwości, *Raport końcowy z badania opinii publicznej. Wizerunek wymiaru sprawiedliwości, ocena reformy wymiaru sprawiedliwości, aktualny stan świadomości społecznej w zakresie alternatywnych sposobów rozwiązywania sporów oraz praw osób pokrzywdzonych przestępstwem. Raport przygotowany przez TNS OBOP dla Ministerstwa Sprawiedliwości*, Warszawa 2011, p. 26.

and discussed feature of Polish justice is, above all, the protraction of proceedings, which undeniably constitutes a substantial obstacle to entrepreneurship development. Firstly, it discourages from commencing economic activity, secondly, hinders possibility of development, and lastly, results in inefficiency of entrepreneurs' activities, and financial and image losses. The same consequences have relatively high costs of proceedings, which restrict entrepreneurs' access to courts, in particular small enterprises.

In this place the issue of the quality of procedural law could be considered. Admittedly the separate procedure in commercial cases, which was stricter and required from an entrepreneur stronger involvement than it was in ordinary civil procedure, has been eliminated<sup>14</sup>, however, particularly small and medium entrepreneurs still must consult a lawyer while participating in legal proceedings. It obviously results in high costs. Not every entrepreneur is able to afford to hire permanent legal service. It results in the situation in which an entrepreneur, analysing the legal provisions by himself/herself, cannot fully focus his/her attention on main activities connected with carrying out economic activity, which weakens the efficiency of this activity. Also imperfection of the law and its complexity contributes to such a situation.

Due to the aforesaid circumstances, the entrepreneurs opinion and the level of confidence in justice is low. It is confirmed in the research carried out in Poland in the last years by the research institutes. According to the data included in the report of research carried out for the National Council of the Judiciary, the functioning of justice in 2009 was rated 4.27 on average on a scale of 1 to 7, where a score of 1 is assigned 'a very high opinion' and 7 is 'a very low opinion', and the efficiency of court proceedings has been rated the lowest. The level of confidence in courts is not high as well (4.28 on average on a scale of 1 to 7), and Poles have more confidence in international justice than in domestic courts. The confidence in commercial courts is similar<sup>15</sup>.

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14 Act of 16 September 2011 amending the Code of Civil Procedure and Some Other Acts (Journal of Laws 2011 No. 233, item 1381).

15 The most often stated opinions on the scale of 1 to 5 were 3 and 4. See INDICATOR Centrum Badań Marketingowych, *Badanie opinii publicznej związanej z zaufaniem do wymiaru*

Also general opinion about the functioning of justice according to the report of research carried out for the Ministry of Justice in 2011 is low – 46% of respondents perceived it positively, but not many fewer (41%) negatively. It is similar as regards the administration of justice. Thirty percent of respondents have high confidence in it, 41% have medium confidence and 29% have low confidence<sup>16</sup>.

In the other research, carried on by the SMG/KRC at the request of the National School of Judiciary and Public Prosecution in 2010–2011, the respondents assessed the preparation and competence of judges high; however, entrepreneurs are less content with it. In their opinion, the judges' knowledge about the principles of economy "leaves a lot to be desired". Furthermore, entrepreneurs consider that too long court proceedings and protracting trials are one of the gravest disadvantages of justice. They also expect more efficient service in courts and clearer formalities. Generally, the surveyed entrepreneurs expect to reduce the duration of trials (50% of respondents) and to decrease bureaucracy (33%), as well as improvement of work organisation in courts (23%)<sup>17</sup>.

From the data analysed above it explicitly follows that the opinion about justice in Poland and the confidence in judicial bodies are not satisfactory, although it exceeds the average level. It also regards entrepreneurs who, as professionals, are obligated to greater diligence as well as better knowledge of legal provisions, and have more frequent contact with jurisdiction.

In order to make a judgment about accessibility of court proceedings for entrepreneurs, it is suitable to look at Doing Business report<sup>18</sup>. According to this report Poland, in respect of enforcing contracts, is on 56 position from among 185 economies covered by Doing Business (2012; in 2011 Poland was on 84 position), and in the aggregate ranking on the ease of doing business it is on 55 position. Enforcing contracts indicator encompasses sub-indicators such as the time to resolve a dispute, the

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*sprawiedliwości. Raport z badania zrealizowanego przez Centrum Badań Marketingowych INDICATOR dla Krajowej Rady Sądownictwa, Warszawa 2009, p. 14–15, 17, 64.*

16 Ministerstwo Sprawiedliwości, *op. cit.*, p. 14, 22.

17 M. Jałoszewski, *Sędzia idealny*, Na Wokandzie 2012, No. 1, p. 17–18.

18 See World Bank, *Doing Business 2013. Smarter Regulations for Small and Medium-Size Enterprises*, Washington 2013, p. III–VI.

cost of court proceedings and the average number of procedures to enforce a contract. According to the data included in this report, the average time of court proceedings is 685 days, the average cost is 19% of debt value, and the number of procedures is 33 (2012)<sup>19</sup>. Poland, in respect of accessibility and ease of court proceedings in commercial cases, despite higher rank in comparison with the previous report, has been overtaken by fifteen members of the European Union<sup>20</sup>.

One of the reasons why Poland is on a low position in the above ranking is undoubtedly low percentage of using ADR, i.a. mediation. Mediation is an advantageous way for entrepreneurs to resolve a dispute because it contributes to more efficient carrying out of economic activity. Its main advantages are, above all, the reduction of the length of proceedings and lower costs. Admittedly the number of commercial cases brought to mediation has increased since 2006 (514 cases), nevertheless, it is still small and only amounted to 851 in 2010<sup>21</sup>. The cause of such a situation is little knowledge and lack of confidence in mediation, but also lack of a habit of using it by lawyers, particularly judges and advocates. It results in long and expensive pursuit of claims through the court and, as a result, it evidently does not influence on economic activity positively.

It can be declared, differently to the above considerations, that an entrepreneur, as a professional, is obliged to know the legal provisions and obey them as well as accept the functioning of justice. It is in his/her best interest to know the legal procedure and adapt to the jurisdiction as it has been shaped. It is also required of a professional to have greater knowledge due to his stronger position towards a consumer. From this point of view court culture should not significantly influence an entrepreneur, but just be a determinant of activities undertaken by him/her.

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19 *Ibid*, p. 189.

20 Doing Business. *Enforcing Contracts*, <http://www.doingbusiness.org/data/exploretopics/enforcing-contracts> (2 January 2013).

21 S. Pieckowski, *Mediacja w sprawach gospodarczych*, Warszawa 2011, p. 9.

## V. Summary

The connection between an entrepreneur and court culture is apparent. The functioning of an entrepreneur without reference to procedural provisions and justice is impossible. Despite the fact that court culture is only one of the factors affecting economic activity, the quality and efficiency of this activity, development of entrepreneurship, as well as the increase of Polish economy's competitiveness is determined by the level of court culture.

The way to increase the level of entrepreneur's court culture could be particularly trainings for entrepreneurs concerning the legal provisions in force and amendments to the law. Moreover, the dissemination of information on ADR, i.a. mediation, would positively influence the efficient carrying out of economic activity. Additionally, enabling entrepreneurs' access to inexpensive legal service would contribute to more efficient legal proceedings in commercial cases. On the other hand, it is necessary to simplify the legal provisions and improve the functioning of courts, i.e. improve the judicial bodies' court culture.