

**THE ETHICAL CODES
OF POLISH PUBLIC OFFICIALS**

Prof. Dr. habil. Barbara Kudrycka

*Discussion Papers, No. 8
Local Government and Public Service Reform Initiative*

OPEN SOCIETY INSTITUTE

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Open Society Institute

Nádor utca 11

1051 Budapest

Hungary

phone: (36-1) 327-3104

fax: (36-1) 327-3105

e-mail: lgprog@osi.hu

listserve: lgi-announce-subscribe@egroups.com

www.osi.hu/lgi

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Slovakia

phone/fax: (421-7) 785-357

e-mail: nispa@nispa.sk

www.nispa.sk

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INTRODUCTION TO THE SERIES

The development of democratic and effective government at subnational levels remains one of the central tasks of transition in Central and Eastern Europe and the former Soviet Union. The sharing of expertise between countries can contribute significantly to the reform process in the region. Pursuing this goal, the Local Government and Public Service Reform Initiative (LGI) has launched a series of discussion papers, which will be distributed widely throughout Central and Eastern Europe.

The series will report the findings of projects supported by LGI and will include papers written by authors who are not LGI grant recipients. LGI offers assistance for the translation of the papers into the national languages of the region. The opinions presented in the papers are those of the authors and do not necessarily represent the views of the Local Government and Public Service Reform Initiative.

Dr. Barbara Kudrycka is Professor of Administrative Law and Public Administration at the University of Bialystok, and Rector of the School of Public Administration, Bialystok, Poland. At Warsaw University she received a Master of Public Administration from the School of Administration and Economy ('78), a Ph.D. from the School of Law & Public Administration ('85) and a Ph.D. habil. in Law and Public Policy from the School of Law & Public Administration ('95). From 1995 to 1997 she was a NATO Research Fellow, and she is currently a Parliamentary Expert with the Office of Research and Expertise. Dr. Kudrycka has received scholarships and fellowships in the US and UK, has written extensively on local government and ethics in government and has published three books and over forty studies and special reports. She is a member of Transparency International (Poland) and of the Solidarity Trade Union. Comments can be addressed to the author at: kudrycka@polbox.com.

The Ethical Codes of Polish Public Officials

In a poorly organized state, the pursuit of private interests by citizens, and particularly by public officials, takes precedence over striving for the common good. In public life, the antithesis of pursuing private interest is the development of the ethics of administration. As the converse of corruption in public life, this development concentrates on the individual conduct and legal status of every civil servant, and on the institutional establishment of organizational structures. The growth of the ethics of administration, focused on public issues, is the central point that should stimulate all organizational and functional reform in Central and Eastern Europe.

In public life, the antithesis of pursuing private interest is the development of the ethics of administration. As the converse of corruption in public life, this development concentrates on the individual conduct and legal status of every civil servant, and on the institutional establishment of organizational structures.

The ethical image of public officials is a derivative of the ethical image of society itself. Just as the conduct of citizens influences the ethical image of society, the conduct of public officials influences the ethical image of central and local governments. The latter are not merely systems of organizational structures and their formalized links, but living organisms made up of people—with both strengths and weaknesses—who give a “living” character to these organisms by influencing their dynamics, growth and activity.

Under the communist regime, people who held public office in Poland were elected from among Party members and ideological adherents. Suitable education, a predisposition towards a given profession and managerial skills were totally irrelevant. The democratic transformations that took place in the Republic of Poland altered the appearance of public administration and created a new situation for public

officials. During the first years of parliamentary democracy, the activity of central and local governments¹ was devoted to learning fundamental democratic skills: the holding of free elections, the development of a party system at the local level and the establishing of direct links between public functionaries and members of the public, as well as between civil servants and politicians.

Since 1989, local government in Poland became increasingly stronger, and this process was accompanied by a tremendous growth in the knowledge of civil servants, and in the public's general awareness. The 1998 decentralization reforms had formulated novel challenges addressed to public officials. At the level of the new *powiats* and *voivodeships*,² there emerged a need to involve politicians in the work conducted within representative structures. Furthermore, since January 1, 1999, a large group of civil servants has found itself in an unfamiliar situation: they have become accountable to local politicians. The methods of a system of centralized state administration which emphasized only regulations, guidelines, instructions and recommendations issued "from above," have become outdated and irrelevant. Consequently, the roles of civil servants must change from being insignificant cogs in a gigantic state machine to that of professionally trained experts who cooperate with and assist politicians in the administration of local issues according to the needs of the community.

The new structure of local governments presents new tasks and interdependencies. It also poses new dilemmas with which both politicians and civil servants must learn how to deal in order to find their place within the new legislation. Assistance in resolving these issues is provided, not only by the law, but also by an awareness of the ethics of administration. Laws, as set forth in various legislative acts, provide only the general principles of appropriate conduct and assume concrete meaning only through judicial interpretation. The courts, however, only provide those norms with concrete meaning when adjudi-

cating upon complaints alleging damages caused by administrative decisions. For this reason, the science of ethics in government may also provide assistance to politicians and civil servants in adapting to divergent pressures from various interest groups, superiors, applicants and parliamentarians.

Furthermore, for the purposes of public acceptance, the knowledge and effectiveness of government must be reinforced by the trust of citizens in their public officials. Society directs increasing attention to the ethical aspects of governance, and civil servants themselves perceive the need for creating a framework which marks the boundaries of the ethical conduct of both politicians and civil servants. As public officials must pay heed to an increasing number of ethical norms governing their activities, it undoubtedly becomes increasingly difficult for them to make decisions. The reasons for this state of affairs are numerous: the temptation of easily obtained private profit and material benefit, the lack of a clear definition of the civil servant's role, the difficulty often encountered in even recognizing the conflict between private and public interest, etc. The list, of course, could be much longer.

A democratic state aims at achieving a correspondence between legal norms and the ethical standards demanded in public life. Those ethical rules which are not accompanied by legal sanctions are guided by the individual intuition of members of society. There is always the possibility, however, of a conflict between legal and ethical norms, as in the case where parliamentarians enjoy immunity from criminal liability, but civic ethics demand that they be punished like other citizens for the commission of criminal acts. For this reason, the goal of those committed to democratic transformation and the elimination of corrupt practices is to reduce the number of discrepancies between legal norms and the ethical standards demanded in public life. The common goal of law and ethics in public life is, after all, the establishing of effective measures which guarantee state rule in the public interest.

The aim of ethics in government widely pursued throughout the world is, predominantly, the establishment of workable structural and procedural institutions, which include the development of the adjudication of ethical public issues. In Poland, the new structural institutions shaping the ethical infrastructure include: regulations governing the conduct of members of Parliament, as contained in the Code of Deputies' Ethics; the establishment of a system of government offices—the Head of the Civil Service, for example—which are responsible for developing ethical administrative conduct; the inclusion into the new Constitution of the Polish Republic of the principle of freedom of information, i.e., that the public has the right to know about the activities of civil servants; and a gradual expansion of the responsibility of public officials for ethical misconduct.

The Code of Deputies' Ethics

Codes of ethics are assigned greatest importance in countries like the United States and British Commonwealth member states, where the body politic is organized for the general good, where a codified administrative procedure is lacking, and where the duties of civil servants are regulated by numerous laws with varying rank and force, creating a labyrinth of regulations and judicial precedents through which public officials face the difficult task of navigating

In other countries, the general principles governing the appropriateness of public official conduct are contained primarily in legislation defining the legal status of public officials, or in case law. For example, the conduct of public servants is regulated in Finland by a law on the state civil service; in Norway, by a law on public administration; in the Netherlands, by a general civil service regulation (ARAR) and a law on the officials of central and local administrations; and in Mex-

ico, by a federal law on the various tasks of the public service. However, an increasing number of public offices in Western Europe—for example, in France, Germany, Norway and the Netherlands—are developing codes governing the professional activities of public officials. While one has recently witnessed the preparation of well-defined codes of ethics, there is also a belief that the possibility of disclosing unethical conduct or of demonstrating effective prosecution of such, is much more important than the codes *per se*.

Nonetheless, this writer submits that the Polish Deputies' Ethics Committee took a positive step when it embarked upon developing a code of ethics applicable, first of all, to all deputies.³ In difficult and not readily distinguishable cases, public officials resort to the Civil Service Act (1996) which regulates their obligations, the performance of their official duties and which sets forth principles of professional conduct—professionalism, honesty, impartiality and political neutrality—applicable to various branches of the public service (the police, tax inspectors, etc.). As Poland traveled relatively quickly the long road from a totalitarian to democratic state, politicians whose decisions were of greatest public importance were subject to ambiguously defined standards of “proper” conduct. To compensate for lost time, much could therefore be gained from the experience of western democracies, if they will support Poland's identity and *raison d'état*, and assist in reinforcing and strengthening its democratic processes.

An example which illustrated the benefits to be gained from the experience of other countries was the bill passed by the Sejm of the Republic of Poland on July 17, 1998, establishing the Code of Deputies' Ethics. Article 1 of the Code provides: “Upon the taking of his oath, a deputy to the Sejm, in his public service, acknowledges the existing legal order as binding, and agrees to abide by generally accepted ethical principles and a commonly shared concern for the general well-being of the country.” Furthermore, Article 2 requires that “a deputy

should conduct himself in a manner consistent with the dignity of his office and, in particular, by observing the following principles:

1. impartiality
2. openness
3. conscientiousness
4. a regard for the good name of the Sejm
5. accountability.”

The principle of impartiality implies that a deputy should be guided by the public interest, and that he should not exploit his position for the purposes of personal gain or for the gain of persons close to him, nor enjoy benefits which could potentially influence his activity as a member of Parliament. The principle of openness implies conduct which demonstrates that he is open to, accepting of, and indeed encourages public opinion, and that a deputy should disclose a potential conflict of interest in any decision in which he participates. In following the principle of conscientiousness, a member of Parliament should execute his duties in an befitting manner and should consider the merits of each case with which he is presented. Regard for the good name of the Sejm suggests that a deputy should refrain from behavior which might bring that institution into disrepute, and that he should respect the dignity of others. The principle of accountability implies that a member of Parliament should not only be held answerable for his own actions and decisions, but should also subject himself to binding explanatory and control procedures. Accountability for the violation of the foregoing principles is set forth in the 1990 internal regulations of the Sejm.

These internal regulations raise three prime issues which require further consideration:

- To what degree is the Code of Deputies' Ethics consistent with the constitutional and legislative acts that precisely set forth the duties of deputies?

- Was it necessary to introduce for members of the Polish parliament an ethical code which conformed to the seven principles adopted by the British Nolan Committee?
- How is one to translate the catalogue of principles, formulated in the ethical code, into the responsibilities of deputies?

The obligations of members of the Polish Parliament are set forth in the Constitution of the Republic. They are also contained in the law on the mandates of deputies and senators, the law on voting and in the Rules of the Sejm; however, the regulations contained in these internal acts defining duties of deputies—based on the contents of the oath, for example—are not uniformly formulated. Thus, these latter regulations must be brought into conformity with the Constitution, and the legal contradictions and gaps, or discontinuities arising, must be eliminated.

Above all, in order to have a clear concept of the deputies' ethical code, from the outset there must be a clearly defined distinction between the methodological approach to regulating their conduct by means of such a code, and by means of universally applicable laws—namely, the Constitution and other statutes. A different methodological approach is required in the ethical code in order to determine the form and scope of the regulations adopted therein.

The variation approved in Poland anticipates the simultaneous existence of regulations dealing with: the immediate practicalities of being a professional parliamentarian, as set forth in the law on the exercise of the mandates of deputies and senators; and the general pattern of proper conduct, as contained in the ethical code. Thus, legal and ethical norms complement each other in achieving the same goals: the development of good professional habits on the part of parliamentarians, the protection of the public interest and the application of “justice and equality before the law” in the internal activities of govern-

ment. Above all, however, these legal and ethical norms contribute, not only to legal, but also to political responsibility in relation to society on the part of those parliamentarians who violate them.

Before proceeding further, the distinction between the regulations of the Code of Deputies' Ethics, and legal obligations of deputies as contained in the Constitution and other statutes requires further explanation.

It is readily apparent that the standards defined in the Code of Deputies' Ethics do not specify *what* a parliamentarian should do: that appears in the functions and duties of deputies, as set forth in the Constitution and other universally applicable legislative acts. The Code of Deputies' Ethics, on the other hand, defines *how* a member of parliament is to carry out his duties. In other words, the ethical code provides the manner in which he is to do execute his duties, so that in a world of political struggle and competing interests, his conduct earns him approval, trust and public support. On the other hand, the law on the exercise of the deputies' mandate, for example, describes *what* a deputy is obligated to do while exercising his mandate, and contains certain legal injunctions and prohibitions. The functions and duties prescribed by law burden deputies to a degree commensurate with their rights and privileges: non-fulfillment gives rise to legal sanctions, including, if necessary, the forfeiture of mandate (Constitution of the Republic of Poland, Article 107, s. 2).

To illustrate further, the oath sworn by a deputy, and contained in the Constitution, describes *what* he is to do; for example: "to safeguard the sovereignty and interests of the state, to do everything within my power for the prosperity of the Homeland and the well-being of all its citizens and to observe the Constitution and other laws of the Republic of Poland." The Code of Deputies' Ethics proceeds to define *how*, or the manner in which he is to fulfill those obligations—for example, with impartiality, honesty, openness, etc.

Several arguments support regulating the duties of the deputies by means of a separate code of ethics, in addition to existing regulations which deal with their practical functions:

1. Parliamentary codes of ethics in OECD countries serve to reinforce the ethical infrastructure of public life. While not all member states regard them as binding, as in France, for example, codes of ethics are enforced in many others; for example, in the US, the UK, Australia, New Zealand, Portugal and Norway.

2. The parliamentarian's specific functions create particular demands: participation in the legislative process and the resolution of problems involving the rights and liberties of others require that he conduct himself as a moral authority, and "remain beyond all suspicion." As moral authority requires both legal and ethical activity, deputy accountability—in addition to its legal aspects—should also include the effective execution of political responsibilities to one's party, as well as to the electors and society in general. This triple responsibility is a result—not only of the formal aspect of his exercised mandate—but also of the parliamentarian's moral reinforcement through the general elections, to act in the name of and for the well-being of others.

3. Universal ethical principles declared in the Code of Deputies' Ethics are rooted in the Ten Commandments and in the European Convention on Civic Rights and Liberties. Defining universal ethical rules of conduct in the code in a form acceptable to representatives of various parties, orientations and religions unites them around a common understanding of proper, i.e., ethical behavior, and subsequently permits stronger public censure, regardless of one's party affiliation, convictions and network of relationships with colleagues and others.

4. Several ethical principles regarding appropriate conduct cannot be expressed directly in the language of legal norms. It is sometimes possible, however, to describe conduct which transgresses the limits permissible in given circumstances only by resorting to ethical intu-

ition. Frequently, it is not the actual conduct itself, but the circumstances, time and place which render the conduct unethical. In different situations, for example, a strong verbal attack on one's political opponent may be regarded either as highly desirable political criticism, or as an inadmissible derision. Designating an act of legislation regulating ethical standards as an ethical code endows it with a particularly extra-legal quality.

5. The ethical principles formulated in the Code of Deputies' Ethics, which refer to intuitive comprehension and the interpretation thereof accepted by the Deputies' Ethics Committee, will provide a common orientation to the formulated ethical assessments of the conduct and political culture of the Polish Parliament. This is particularly necessary in the case of parliaments with a young democratic tradition. Nonetheless, it is equally important that the Ethics Committee does not interpret ethical principles in the Sejm for the achievement of short-term, particularly political goals, or for the imposition of certain religious convictions and views upon others. This can be guaranteed only if the Committee has ultimate authority and by a political and personal culture of its members which develops a trend of interpretation acceptable to the majority.

6. The standards presented in the Code perform several functions which affect the ethical sensitivity and political culture both inside and outside Parliament. Primarily, the ethical principles are a guide for councilmen in self-governing communities (*gmina*), counties (*powiat*) and *voivodeships*, assisting them in the preparation of their own rules of ethical conduct.

7. The rules contained in the Code constitute an ethical guide for the legislator drafting concurrent legal regulations aimed at, for example: effectively eliminating the conflict between public and private interest; defining the procedures for cooperation between lobby groups and public officials; eradicating various forms of nepotism in, or abuse of, public office.

The interrelationship between legal obligations formulated in the Constitution and various legislation and the standards proposed in the Code of Deputies' Ethics is extremely complex. In a democratic state they should mutually complement each other, and there should be no inconsistencies between them. A proper function of the Deputies' Ethics Committee is—not only to clarify the rules in the Code of Deputies' Ethics—but to provide a clear explanatory catalogue of deputies' obligations as contained in various statutes. It is therefore necessary to analyze all laws regulating the rights and duties of members of Parliament, the relationship of such laws to the Constitution and to eliminate any contradictions.

In developing the Code, the Deputies' Ethics Committee referred to the seven principles enunciated by the British Nolan Committee, notwithstanding the differences between the political-legal systems of Poland and Great Britain, in the place and role of their respective parliamentarians. A comparison with the Bodziewicz Code of the Second Republic, and the Code of Civic Morality of the Polish Provisional Government in Exile in 1941, may lead one to conclude that the current Code of Deputies' Ethics contains—not only modern ethical standards—but also those applicable to contemporary Polish conditions. A further comparison of the Code with its counterparts in the US, Canada and Australia reveals that such codes frequently regulate the same behavior, but under different names, or with slightly varying interpretations. Thus, notwithstanding legal diversity and national differences, there are certain common features in the conduct of members of Parliament in all democratic countries.

The fact that the principles of the Nolan Committee were established relatively recently is also a point in their favor. The Committee deliberated from 1995 to 1998 and conducted numerous studies, comparative research and analyses of actual parliamentary practice. Considering that the British Parliament is highly regarded throughout the

world for its political and democratic traditions, but must nonetheless—like its Polish counterpart—constantly remind its members of the principles of proper conduct, it is to the credit of the Polish Deputies’ Ethics Committee that it selected the British model as the foundation for its own work.

An extremely important problem concerning the Code is the translation of the abovementioned ethical principles into the responsibilities of deputies. The issue of ethical accountability must be analyzed together with its legal, political and constitutional counterparts, because improper conduct in many cases may involve the simultaneous violation of one or more sets of regulations, in addition to the Code of Ethics; for example, the Constitution, the internal regulations of the Sejm, the Criminal Code, etc.

The Deputies’ Ethics Committee is responsible for examining cases based upon complaints and for establishing whether objectionable activities of deputies are ethically permissible, violate ethical principles, infringe certain legal obligations or constitute a possible crime or a misdemeanor. For this purpose, the Deputies’ Ethics Committee convenes a hearing at which the alleged wrongdoer is called upon to explain his actions in answer to the complaint (referred to in this paper as the “explanatory hearing”).

If at the explanatory hearing the Deputies’ Ethics Committee concludes that the member of Parliament neglected his legal obligations or violated an ethical principle, the case is then forwarded to the Rules and Deputies’ Affairs Committee, with possible application of Rules of the Sejm, Art. 23, dealing with accountability, either under the constitutional or under other legislative acts. If there is a finding of “conduct inconsistent with the dignity of a deputy,” the present Rules provide for the imposition of a penalty, administered by the Rules and Deputies’ Affairs Committee. Ranging from the relatively benign to more severe, penalties include:

- the mere bringing of the infraction to a deputy's attention,
- an admonishment, and
- a reprimand.

It appears, however, that in cases where the alleged wrongdoer *voluntarily* submits to an explanatory hearing of the Deputies' Ethics Committee, the sanction applied may simply take the form of a *public announcement* regarding the actions which constituted a violation of a principle in the Code. Apparently, a voluntarily initiated hearing giving rise to the previously mentioned publication requires the consent of both the complainant and the alleged wrongdoer. However, the fact of one's failure to consent to a voluntary hearing may itself be made public.

It would appear that the introduction of this procedure into the political culture of the Polish Parliament should reinforce the quality of ethical standards, as well as the ethical sensitivity and legal responsibility of deputies. The sanction of publicizing a deputy's ethical violations, or his refusal to voluntarily submit to an explanatory hearing before the Deputies' Ethics Committee, should give rise in turn—not only to the possibility—but to the necessity of political accountability. Indeed, given that a political party is concerned with retaining the votes of its constituents, requiring the wrongdoer to account for his actions would be in that party's own interests, especially when the mass media take notice of the issue. In addition, publicizing ethical infractions could very well reinforce accountability to the electorate and encourage public criticism of deputies, with the possible loss of office resulting. At the same time, however, publicizing the outcome of an objectively conducted explanatory hearing could also result in the public exoneration of a wrongly accused deputy.

In summary, showing the relationship between ethical violations and the system of accountability is by no means an easy task. The

explanatory hearing conducted by the Deputies' Ethics Committee is extremely complicated, and, as the applicable sanctions are arguably too weak, the results are often unsatisfactory. However, given that the ethical code is already in force, a failure to at least attempt its enforcement would bring ridicule upon its very existence. In any case, the system of procedures implemented by the current Polish Parliament will undoubtedly influence political life and the ethical sensitivities of deputies for many years to come.

Ethical Codes for Civil Servants

The mere existence of the Code of Deputies' Ethics does not in itself guarantee an automatic improvement in the conduct of members of Parliament. Nonetheless, increasingly frequent reference to parliamentary ethics, and the existence of a formal structure established for the purposes of determining whether deputies behave ethically or not, do have an impact on their own self-awareness and instill greater self-discipline. At present, as Poland experiences wide-scale decentralizing reform, there is also a need for systematizing and implementing ethical codes which are binding upon civil servants as well, at both the central and local government level.

Until now, there has definitely been a need for a clear, explicit and detailed code of ethics governing the manner in which civil servants perform their duties. Above all, such a code ensures that public servants have a clear idea of the demands made upon them by their employers pursuant to the various laws dealing with the civil service, and that the latter do not interpret such duties in an arbitrary and authoritarian manner.

The law on the civil service⁴ develops the constitutional principles of the service's functioning, i.e., the principles of professionalism, hon-

esty, impartiality and political neutrality. In a similar fashion, codes of ethics for civil servants expand the meaning of duties contained in the law on the civil service and other related legislation: the code of administrative procedure, laws restricting the business activities of public servants, the so-called anti-corruption law, etc. By describing what is deemed to be “ethical” and “desirable” conduct in accordance with the so-called “rules of good custom,” ethical codes also clarify with greater precision the various functions involved in the execution of duties set forth in the law on the civil service and other legislative acts. Since the duties contained in the last mentioned have both ethical and legal aspects, this greater degree of precision reinforces the legal significance of their proper execution.

It appears, however, that the need to establish codes of ethics for civil servants arises primarily from the fact that the law on the civil service deprives administrative courts and labor courts of legal jurisdiction to judge the performance of a civil servant’s duties. When the courts are excluded from this process, ethical codes should take their place by clarifying the meaning of legally formulated but undefined duties in order to assist civil servants—not only in the constant monitoring of their activities—but also in cases where their rights *vis a vis* their superiors must be protected, and when non-performance or violation of those duties is alleged.

In the opinion of this writer, the introducing of codes of ethics for civil servants is also supported by the following arguments:

- The need to counteract corruption, abuse of public office, bias and other unethical or illegal conduct;
- To make civil servants mindful of the rules of appropriate conduct in the realization of their legal duties;
- To protect the position of the civil servant who performs his duties properly, conscientiously and honestly;

- To protect the rights of the citizen who claims that a civil servant has acted improperly;
- To create conditions conducive to the realization of administrative work and the pursuit of administrative policy, in accordance with European standards;
- To improve the quality of administrative solutions and other administrative activity from the viewpoint of public needs expressed by various interest groups;
- To create a foundation for the development of a managerial style in administration;
- To ensure greater prospects for an open and more rational realization of administrative activity;
- To supplement various forms of control over the work of civil servants with self-discipline, that is, by instilling extensive legal and ethical self-awareness and professional sensitivity; and
- To build the public's trust in administrators in general, on the basis of personal observations regarding the conduct of individual civil servants.

It is worth reflecting upon the legal form of the ethical codes of public officials, from the viewpoint of the many varied tasks and services performed within the state administration. It would appear that the most suitable for this purpose would be codes dealing with particular professions, *and* binding only upon certain groups of civil servants. It is important that the regulations of those codes correspond to specific areas of professional administration, for example, the requirements of the police, the army, the health service, education, social care, etc. As mentioned above, such codes do not have to duplicate the duties of civil servants as contained in the civil service laws. They should, however, *supplement* general legal obligations with administrative rules appropriate for a *given* profession.

In the opinion of this writer, professional codes should be created by self-governing associations, composed of clearly defined professional groups which also work in the sphere of public administration, for example, secretaries of local government offices, city managers, the health service, school administrators, accountants, computer scientists, architects, social care employees, land surveyors, etc. The codes would therefore be similar to acts dealing with *non-governmental organizations*. This approach would not introduce anything particularly radical to the legal form of contemporary Polish codes dealing with the voluntary self-governing of certain professions; for example, the Medical Professional Ethics Code, the Lawyers Ethical Conduct Code, etc.

The self-governing fiduciary nature of professional organizations gives rise to the special merit of such codes: members of self-governing organizations should be particularly interested in the quality of work and services they and their colleagues perform and in eliminating those activities which lower this standard. For example, a client entrusting his case to a lawyer, legal counsel or tax adviser, or a patient entrusting his health to a physician, wants to be confident that the latter will render services in the best name of their profession.

While a medical doctor or attorney is entrusted with the problems of individual citizens, public officials—especially those elected—deal with specific issues raised by hundreds, thousands and even millions of citizens. Thus, the quality of the professional performance of civil servants and public functionaries, who act on behalf of large social groups, assumes even greater value and fiduciary character. It is preferable for the monitoring of the quality of that performance to be the concern of functionaries themselves, rather than of several controlling offices. In the age of a developed consumer society, members of professional associations themselves must be interested in the protection of their distinctive professional character. By resorting to professional

codes they can protect those members who fulfill their obligations properly and expel those who undermine trust in their profession.

Professional codes will be considered binding only if they are created by the professional groups concerned. It is easier and much more effective to subject oneself to self-imposed rules than to those imposed by others. Furthermore, specialized knowledge today is extremely inaccessible to non-professionals; hence, errors committed in the course of professional work can be best dealt with only by those who are themselves experts in that particular profession. In other words, the establishing of rules governing the performance of professional functions should be conducted by those with a *vested interest* in the proper execution of those functions. Appropriate codes should be adopted either by the ultimate authority of a self-governing professional association, such as a general assembly, or by one of its representative structures.

It must be kept in mind, however, that certain groups of civil servants may not wish to be governed by a professional code, for example, policemen, tax inspectors, customs officers, state control inspectors, etc. In those cases, the role of the Chief of the Civil Service or Civil Service Council would be to encourage and assist in the organization of self-governing activities in such a manner that the professional codes would be prepared by the professional groups concerned, and not imposed externally, for example, by the minister ultimately responsible for that professional group.

If the regulations of the civil service laws provided for a variety of disciplinary measures which could be taken for the violation of the rules of a professional code, then jurisdiction for administering disciplinary action could be transferred from those laws to professional codes. As for civil servants who violate a professional code, one could fully apply the administrative measures provided for in the State Employees Act (1982), not to mention criminal and civil liability. This would be necessary, given that professional codes must assume the

form of legislative acts or internal regulations. Thus, the accountability of a civil servant for violating a professional code would be of a dual nature, although it would not duplicate the disciplinary measures which may be taken. It would, however, involve accountability to the disciplinary commissions of various professional associations of civil servants, and, at the same time, it would be possible to resort to disciplinary sanctions within public agencies, with eventual civil or criminal liability.

In Polish law, the accountability rules dealing with non-government organizations, including professional associations, provide sanctions which are basically lenient; for example, admonishment, reprimand, a prohibition on fulfilling ones organizational functions or expulsion from membership. In the opinion of this writer, when a professional sanction is applied to a civil servant, his place of employment should be notified. The manager thereof could then apply an additional sanction, if necessary. The organization should also have the authority to administer stricter sanctions within public offices, including reduction of salary, a prohibition from occupying key positions, demotion within the civil service and, if justified, discharge. Furthermore, this does not preclude other legal action. A good example of ethical codes of this type are those passed by professional associations of physicians, lawyers, architects and journalists. Similar codes are presently being developed by the Association of Construction Engineers and the Polish Academy of Sciences.

In conclusion, it must be emphasized that the introduction of a binding code of ethics for members of Parliament will have an impact on the development of similar codes for council members and civil servants at both the central and local government levels. These efforts should be supplemented with extensive courses, seminars and workshops on the subject. The most important factor in managing ethical issues in the public service will be the scrupulous monitoring of rules

as defined in the various codes by those whom they most concern, and who have the greatest vested interest in the proper execution of those duties.

End Notes

- ¹ In 1990, autonomous and self-governing local government was introduced in Poland, but only at the lowest levels of territorial divisions, known as *gmina*.
- ² With the decentralizing reforms introduced in 1998, autonomous and self-governing local government was established at additional levels of the territorial divisions. A *powiat* is similar to a district in France, or a province in Italy. The next level, the *voivode*, is similar to a region in France or in other EU countries.
- ³ The ethical code does not apply to senators as they have not yet taken the initiative of having it apply to them.
- ⁴ General regulations on the legal status of civil servants in Poland are contained in four separate legislative acts. Civil servants of the central government are governed by the State Employees Act (1982) and Civil Service Act (1996). A new Civil Service Act to replace these two statutes was passed by the Parliament on December 18, 1998, but the president has referred this legislation to the constitutional court. Civil servants of local governments are governed by the Local Government Employees Act (1990). In this paper, all four statutes are referred to collectively as the “law on the civil service”.