

How Administration Should Treat Rules of Ethics for Investment Advisors. Possible Legal Consequences of Them Violation in Polish Law

LLM. M. Econ. **Michał Tadeusz NAJMAN**¹

Abstract

The profession of investment advisor is relatively young and not very popular in Poland. It was introduced into the Polish legal system under the Act of March 22, 1991, Law on Public Trading in Securities and Trust Funds (Dziennik Ustaw of 1994, No. 58, position 239). Currently, there are 787 people on the list of investment advisors. It is a free profession within the meaning of Art. 88 of the Commercial Companies Code This profession is largely responsible for the proper functioning of economic transactions, including commercial transactions, which results from the specificity of the duties performed by its representatives. As in any profession of public trust, its representatives are required to be particularly diligent in performing it, and above all, they are subject to a more rigorous than common ethical regime, often resulting from codes of professional ethics. The article draws attention to the erroneous identification of the concept of an investment advisor with a financial advisor. The situation of a person violating the ethical norms of the investment advisor's profession was also presented, in particular what consequences its violation may have on the financial market and whether the state's response to them is adequate.

Keywords: investment advisor, ethics, legal consequences.

JEL Classification: K22, K23

DOI: <https://doi.org/10.62768/ADJURIS/2024/3/07>

Please cite this article as:

Najman, Michał Tadeusz, „How Administration Should Treat Rules of Ethics for Investment Advisors. Possible Legal Consequences of Them Violation in Polish Law”, in Wilson, Paulina E., Marijana Mladenov & Jelena Trajkovska-Hristovska (eds.), *Resilience and Reform: Administrative Law and Public Policy in a Changing World*, ADJURIS – International Academic Publisher, Bucharest, Paris, Calgary, 2024, p. 86-97.

1. Introduction

Along with social development, capital is accumulated by individual entities that are interested in its multiplication². With the accumulation of financial

¹ Michał Tadeusz Najman - University of Łódź, Poland, <https://orcid.org/0000-0001-8207-845>, michalek5558@wp.eu.

² L. Araujo, „Social norms and money”, *Journal of Monetary Economics*, 51(2)/2004, p. 242.

resources, the market for services related to the allocation of accumulated resources is also growing in such a way to bring or the greatest possible profits in the future³. This, in turn, creates the need to create a group of qualified specialists, including in the field of consulting. The very concept of an advisor, understood as a person who gives advice⁴, as well as such a profession, is nothing new in history⁵. What is new is the legal regulation of the status of people engaged in consulting, the requirements that must be met to be able to use a given title and, most importantly, the rules of special responsibility for violation of legal and ethical norms required from representatives of a given profession. Nowadays, financial advice, both in the context of consumer and business-to-business transactions, can have far-reaching effects on the functioning of both the individual and the entire society⁶. This constitutes a requirement for special diligence in performing the profession of an investment advisor, both in legal and moral aspects. In the former, because it involves liability, both under the Act of 29 July 2005 on Trading in Financial Instruments (hereinafter referred to as u.o.i.f.)⁷, as well as the Penal Code and the Penal Fiscal Code, and in the latter, and more importantly, because it undermines trust to the institution of the free profession of investment advisors, thereby annihilating the willingness to use the services of investment advisors and, consequently, in the long run, to the extinction of this profession.

2. The concept of an investment advisor

At the beginning, attention should be paid to the fact that in the legal transactions market there are seemingly similar professions as investment advisor and financial advisor.

First of all, the financial advisor is characterised by the lack of statutory regulation, as well as the lack of mandatory certification and licensing, as well as the lack of institutional supervision⁸. The profession of investment advisor is included in the Regulation of the Minister of Labor and Social Policy of August 28, 2014, on the classification of professions and specialities for the needs of the la-

³ C. Kindleberger, *The formation of financial centres. A study in comparative economic history*, Massachusetts Institute of Technology, Cambridge 1973, p. 4.

⁴ <https://sjp.pwn.pl/sjp/doradca;2,453,542>, access on 30.03.2024.

⁵ K. Gołąbek, „Doradcy królów w porządku chronologicznym”, *Polityka. Pomocnik Historyczny*, 2022, p. 82.

⁶ S. Marek, A. Wieczorek-Szymańska, *Przyczyny i przewidywane skutki kryzysu finansowego XXI wieku*, „Studia i prace wydziału nauk ekonomicznych i zarządzania”, no. 21, pp. 225-236; U. Ziarko-Siwiek (ed.), *Tradycyjne i alternatywne inwestycje finansowe w świetle kryzysu finansowego. Wybrane zagadnienia*, CeDeWu, Warsaw 2012.

⁷ Consolidated text: Dziennik Ustaw of 2023 position 646, 825, 1723, 1941.

⁸ N. Pniewska, „Regulacje prawne rynku doradztwa finansowego na przykładzie wybranych państw europejskich”, *Zeszyty Studenckie. „Nasze Studia”*, 8/2017, pp. 48.

bour market and the scope of its application in the professional group under number 2412 (financial and investment advisors)⁹. Taking into account the above, a financial advisor performing his duties is liable only for violating generally binding law, as well as the contractual provisions (e.g. employment contract, consulting contracts).

The profession of investment advisor is understood as performing functions in the management or supervisory bodies of an investment company or performing or supervising the performance of activities constituting brokerage activities; activities related to the financial market that do not constitute brokerage activities; other activities related to customer service or access to accounts kept for customers – as part of the person's employment relationship, mandate relationship or other legal relationship of a similar nature with an investment company, managing the company's affairs by a general partner or partner in a partnership that is a brokerage house; the advisor being in an employment relationship, mandate relationship or other legal relationship of a similar nature with the custodian bank when performing or supervising the activities of maintaining security's accounts, derivatives accounts or collective accounts; the advisor being in an employment relationship, mandate relationship or other legal relationship of a similar nature with an entity that is obliged to employ brokers or advisors under separate legal provisions when performing or supervising the performance of the activities specified in these provisions; performance by the advisor of the activities referred to in art. 79 section 2 or 2c. u.o.i.f. (art. 125 u.o.i.f.).

A natural person who has full legal capacity may be entered on the list of brokers or on the list of advisors; enjoys full public rights; has not been found guilty by a final judgment of committing a tax crime, an offence against the credibility of documents, property, economic transactions, money and securities transactions, crimes or misdemeanours specified in art. 305, art. 307 or art. 308 of the Act of June 30, 2000 – Industrial Property Law, offences specified in the Act of October 26, 2000, on commodity exchanges, the Act on investment funds, the Act on public offering or offences specified in this Act and who submitted a positive result before the examination board for advisors referred to in art. 128 u.o.i.f.¹⁰ As part of the profession of investment advisor, representatives of this profession bear special responsibility before the Polish Financial Supervision Authority (Article 130 of the Act on Investment Advisors) and before the Disciplinary Court of the Association of Brokers and Advisors (§ 39 of the Statute of the Association of Brokers and Advisors). This liability is of a professional nature, independent of liability for violating the norms of generally applicable law (e.g. fiscal offence).

⁹ Dziennik Ustaw of 2014 position 1145.

¹⁰ Without exemptions indicated in art. 129 sec. 1b, 2 and 3 u.o.i.f.

3. Ethics of professionals

3.1. Distinctions between ethics and morality

When starting to consider the importance of ethical behaviour of investment advisors, it is worth paying attention to the relationship between the concepts of ethics and morality. According to M. Ossowska, ethics is a branch of science which task is to show people what is good and what is bad, what should be the goal of human aspirations, what motives should guide people's behaviour, and therefore the attitude of an ethicist is the attitude of a co-creator of morality¹¹. The latter, in turn, is understood as a system of ordered moral demands (orders) and behaviours (practices), covering various spheres of life and recognised as appropriate (ethical) in these spheres¹². Therefore, ethics examine morality and try to answer the question why we consider certain patterns of behaviour to be right (moral) and others are not, as well as attempts to indicate the axiological basis of moral behaviour or to indicate why behaviour treated as moral is not or should not be so and why. Based on the above, ethics can be divided into normative ethics, which aims to ultimately determine what behaviour is right/just and what is unjust/unfair; descriptive ethics, which deals with the search for answers to what people consider to be right and just behaviour, and metaethics, which seeks answers to the question of how to understand basic moral concepts: 'good', 'right' or 'unjust'. In the context of examining the ethics of investment advisors, descriptive ethics is of fundamental importance.

3.2. Professional ethics and its legal nature

Both law and morality come from the sphere of duty and operate with directives, and the addressee of moral and legal norms is a human being¹³. However, the origin of the standards varies. On the one hand, it can be pointed out that the law is a reflection of morality and constitutes a written and formalised set of norms recognised as moral in a given society. On the other hand, law can influence morality and shape moral norms¹⁴. It is therefore clear that legal and moral norms may exist in society independently of each other, i.e. a moral norm may not be a legal norm at the same time and vice versa¹⁵.

¹¹ M. Ossowska, *Podstawy nauki o moralności*, PWN, Warsaw 1963, pp. 10.

¹² E. Budzyńska, *Między etyką i moralnością, czyli rodzina polska na rozdrożu*, in A. Bartoszek (ed.), *Familiaris splendour. Piękno życia rodzinnego jako wyzwanie dla społeczeństwa i Kościoła*, Księgarnia św. Jacka, Katowice, pp.37-38.

¹³ W. Franken, *Recent Conceptions of Morality* in H. Castaneda, G. Nahnikian (eds.), *Morality and the Language of Conduct*, Wayne State University Press, Detroit 1963, pp. 4-9.

¹⁴ M. Michalik, „Moralność a prawo – przegląd typowych ujęć relacji”, *Doctrina. Studia społeczno-polityczne* 2/2005, pp. 383-385.

¹⁵ *Ibid*, pp. 387-388.

Professional ethics is a type of environmental ethics formulated by representatives of that environment. It consists of moral assessments and standards of conduct that define the pattern of proper performance of a given profession¹⁶. It can be said that every profession has a written or unwritten set of ethical standards. However, in the case of professional professions¹⁷, including investment advisors, the degree of formalisation and the need to write them down are dictated by the importance of the activities performed by representatives of this profession and the possible legal and economic consequences of their unethical behaviour.

The legal nature of professional ethics rarely takes the form of generally applicable law. This is also the case with the ethics of investment advisors. The Principles of Professional Ethics for Brokers and Advisors were adopted by the 21st Congress of Brokers and Advisors on October 18, 2014 (*Zasady Etyki Zawodowej Maklerów i Doradców uchwalone zostały przez XXI Zjazd Maklerów i Doradców w dniu 18 października 2014 roku*)¹⁸. Therefore, they do not constitute generally binding law. Their violation may result in the initiation of disciplinary proceedings before the Disciplinary Court (§ 39 of the Statute of the Association of Brokers and Advisors [*Statut Związku Maklerów i Doradców*])¹⁹, as well as before the Polish Financial Supervision Authority (Article 130 of u.o.i.f.).

It should also be added that investment advisors employed in brokerage houses and entities that are institutional investors are also obliged to comply with the ethical standards contained in the Code of Brokerage Houses (Kodeks Domów Maklerskich)²⁰ and the Code of Good Practices for Institutional Investors (Kodeks Dobrych Praktyk Inwestorów Instytucjonalnych)²¹, which, like the Principles of Professional Ethics of Brokers and Advisors, are not generally applicable. Applicable law.

As a side, it should be highlighted that in u.o.i.f. a general clause was included requiring the advisor to act in accordance with the principles of fair dealing (Article 126, Article 130 sec. 1 point 2). Due to the lack of a legal definition of a given concept, its explanation was left to the doctrine and case law²². However, if the ethical norms contained in the Principles of Professional Ethics for Brokers and Advisors are recognised as norms violating the principles of fair

¹⁶ I. Lazari-Pawłowska, „Etyka zawodowa bez kodeksu”, *Etyka*, 27/1994, pp. 178.

¹⁷ J. Smarż, „Relacja pojęć „wolny zawód” i „zawód zaufania publicznego”, o którym mowa w art. 17 ust. 1 Konstytucji R. P. Cz. II”, *Przegląd Prawa Konstytucyjnego*, 1(59)/2021, pp. 134–138.

¹⁸ The document is available online at http://reszka.edu.pl/uploads/ZASADY%20ETYKI%20ZAWODOWEJ%20MAKLER%C3%93W%20I%20DORADC%C3%93W_od%2018%2010%202014.pdf, access on 30.03.2024.

¹⁹ The document is available online at https://zmid.org.pl/wp-content/uploads/2021/08/20200615_Aktualny-Statut.pdf, access on 30.03.2024.

²⁰ The document is available online at <https://arslege.pl/kodeks-dobrej-praktyki-domow-maklerskich>, access on 30.03.2024.

²¹ The document is available online at https://www.generali.pl/media/kodeks_dobrych_praktyk_Inwestorow_instytucjonalnych_908de387ec.pdf, access on 30.03.2024.

²² More: A. Goździńska-Skóra, W. Zatoń, „Zasady uczciwego obrotu w teorii i praktyce”, *Finanse i Prawo Finansowe*, 1(33)/2022, pp. 159–173.

trading, then these norms would indirectly have the force of generally binding law. This would require, for example, a resolution of the Supreme Administrative Court or the Polish Financial Supervision Authority to clearly equate the concepts of violation of the principles of professional ethics with violation of the principles of fair dealing.

4. General characteristics of the professional ethics of investment advisors

As indicated hereinbefore, the standards of professional ethics of investment advisors are included in the Principle of Professional Ethics of Brokers and Advisors, as well as in the Code of Brokerage Houses and the Code of Good Practices for Institutional Investors, the latter two of which refer to investment advisors employed in Brokerage Houses or Institutional Investors.

The principles of ethical conduct of investment advisors can be divided into four groups: general principles, principles for employers, principles for clients and principles in professional relationships.

Regarding general principles, § 1²³ indicates that the principles of professional ethics of brokers and advisors result from general moral norms applicable to the professions of a securities broker, a commodity broker and an investment advisor. However, it has not been explained or indicated what these general moral norms are. It can be concluded that the authors meant generally applicable moral norms. It was emphasised that an advisor should act honestly and behave in a dignified and trustworthy manner, taking care of the good name of the Association of Brokers and Advisors and the ethos of the broker and advisor profession (§ 4). It was further noted that the title broker or investment advisor should be used in a justified and dignified manner (§ 2). The key norm, however, seems to be the obligation to act in accordance with the law and the principles of fair trading and to take into account the legitimate interests of clients, while resolutions of the bodies of the Association of Brokers and Advisors, disciplinary jurisprudence and customs developed by the environment of brokers and advisors (§ 3). Another general principle is the prohibition of accepting benefits the amount of which could affect the objectivity of their research reports, investment recommendations or public statements (§ 23). The next principle is the obligation to act rationally regarding the portfolio of instruments financial resources, both your own and those of others, and in accordance with your public statements (§ 22). Additionally, investment advisors, in accordance with the ethical principles of their profession, are obliged to act ethically and professionally in their professional contacts, to perform their duties to the best of their knowledge and with

²³ All '§' cited hereinafter refers to the Principles of Professional Ethics for Brokers and Advisors were adopted by the 21st Congress of Brokers and Advisors on October 18, 2014.

due diligence, striving to achieve the highest work standards and guided by independent professional judgment, and they are also obliged to continue their education (§ 4). Investment advisors should also not undertake activities that could mislead or create false impressions about their qualifications, skills or competences and should not use comparative advertising unless it contains factual, true and useful information for persons who may benefit from it and provided that it does not because it is applied selectively (§ 5). Another general principle is the principle of mutual control expressed in § 6, according to which advisors should ensure that the Principles of Professional Ethics are observed by the Members of the Association of Brokers and Advisors. Advisors are entitled to bring to the attention of any broker or advisor violating these Rules. The last of the general principles is the principle of priority of transactions for clients or employers over transactions for the advisors' own account (§ 33).

Employers are obliged to take care of the good name of the employer and to be reliable in the performance of their employee duties (§ 8), including compliance with the regulations established by the employer, specifying the conditions for placing orders and the frequency of concluding transactions regarding individual or all financial instruments (§ 34). The most important, however, seems to be the principle of loyalty to the employer resulting from § 9, 24, 27 and 31. According to them, without the written consent of the employer, advisors cannot undertake commercial activities or activities that bring other benefits, which could constitute competition to the activities conducted by the employer, provided that activities for the Association of Brokers and Advisors do not require the employer's consent, as well as the optional possibility of excluding the non-competition clause in the contract for teaching or research activities, provided that it does not involve the use of information owned by the employer. The principle of loyalty also has an informational dimension, which states that advisors should inform their employer about any additional benefits obtained in connection with performing their profession, as well as the obligation to disclose to the employer any facts and circumstances that may lead to a conflict between their interests and their obligations towards clients, potential clients or employers and about any form of pressure from other people exerted on them in the performance of their professional duties (§ 27). Moreover, the principle of loyalty includes a ban on advisors using the workplace, equipment, company logos or its reputation to conduct other business on their own account without the employer's consent. The principle of loyalty is also manifested in the obligation to maintain professional secrecy (§ 24), as well as the obligation to have an investment account in the investment company where he or she practices (§ 31).

Investment advisors are obliged to act towards their clients within the limits of the law, i.e. they should not provide clients with services to which they are not entitled under the law (§ 14) in the best interest of the clients (§ 11). The concept of the best interest of the clients seems to be inappropriate. It cannot be clearly deduced from it whether it is about the client's best interest objectively or

subjectively, and in the latter sense it may refer both to the client's perception (what is best for the client in his/her opinion or belief) or in the advisor's assessment (the best according to the advisor due to his knowledge at the time of giving the advice – which does not mean objectively). It is also impossible to say to what period of time the best interest should apply. An important principle towards investment advisors' clients is also the principle of non-discrimination, according to which investment advisors are obliged to apply uniform criteria to clients and act fairly and objectively towards all clients (§ 11) and, as far as possible, analyses prepared on behalf of several clients should be provided to them at the same time, so that individual customers do not benefit from any special benefits resulting from earlier, privileged receipt of the information (§ 12 sec.5). The principle of signalling threats is also important, according to which advisors should take all necessary actions to protect clients against possible losses resulting from the termination of their activities or by their employer (§ 11 sec.3). It violates the principle of loyalty to the employer. Advisers are also obliged to provide the client with information necessary to make an investment decision, in particular regarding investment risk and the method of transaction execution (§ 12) as well as all relevant connections and circumstances that may affect their impartiality or objectivity (§ 28). The principle of reliability in providing information and settlements with clients was also emphasised, which states that the information provided to clients should be reliable, accurate and complete, and that facts should be separated from opinions and forecasts clearly marked (§ 12 sec.3), as well as obtaining information from the client about his financial situation, tax status, investment goals and restrictions, as well as other information that may be important for the recommendation or investment decision made (§ 13) and, with the utmost care, maintain documentation enabling the protection of clients' assets and their identification (§ 25). In terms of content, the most important seems to be the principle of expressing realistic predictions of changes in prices of securities and other financial instruments (§ 12 sec.4). The principle of honesty towards the client is also key, according to which advisors should not encourage clients to make transactions that are inconsistent with their investment goals and restrictions, in particular those that could seriously threaten the client's financial situation (§ 13). The principle of ethical behaviour of an investment advisor towards clients should also include the principle of impartiality and objectivity, which indirectly results from § 29, which stipulates that if there are personal conflicts between the client and the broker or advisor that have no substantive justification, and if these conflicts may have an adverse impact on the level of service provided, the broker or advisor should ask the employer to appoint another person who could take over the responsibilities related to servicing this client.

In professional relations, investment advisors are obliged to comply with internal regulations, including resolutions of the Association of Brokers and Advisors (§ 44); to cooperate with the bodies of the Association (§ 45–46) and to maintain professional secrecy regarding information obtained while performing

functions in the bodies of the Association of Brokers and Advisors (§ 41). The principle of kindness and courtesy applies in relations between advisors (§ 36). However, this principle is secondary to the interests of clients or employers. The key here is the prohibition of mutual evaluation, including the prohibition of issuing an opinion on the reliability of another advisor (§ 37).

5. Consequences of violating ethical standards of investment advisors. How administration shall qualify for infringement of ethical standards of investment advisors

The results of violating the norms of investment advisor etiquette can be considered at various subjective levels. There are consequences for the infringer himself, for society in general, for his clients, as well as for other investment advisers.

As indicated hereinbefore, the ethical standards to which internal regulations oblige investment advisors are not generally applicable law. The effects of their violation will, therefore, in principle, be of an extralegal nature, including a decline in the number of clients and a lack of support from other members of the profession²⁴. Despite it, the legislator provides a legal sanction against an investment advisor in connection with his violation of: 1) regulations and other internal regulations that a broker or advisor is obliged to comply with in connection with the performance of his profession; 2) the principles of fair trading or 3) the interests of clients (art. 130 of u.o.i.f.). This sanction is the possibility of deleting an investment advisor from the list of investment advisors with the inability to re-enter the list for a period of 10 years from the date of issuance of the decision, or suspension of the license to practise the profession for a period of 3 months to 2 years. However, the application of this sanction is facultative, and the indicated period of prohibition against entry on the list of investment advisers may be shortened (art. 130 sec.6 u.o.i.f.). It is also worth emphasising that in a situation where behaviour violating the ethical standards of the investment advisor's profession is also a violation of the principles of generally binding law (e.g. causes damage or constitutes a crime or fiscal offence)²⁵, in addition to disciplinary liability, the investment advisor is liable due to general rules.

Considering the consequences of violating the ethical principles of investment advisors, the particular importance of the financial market on the functioning of the entire economy should be taken into account²⁶. They may manifest themselves in market deregulation and disruption of market stability. Opposite in

²⁴ A. Brien, „Professional ethics and the culture of trust”, *Journal of Business Ethics*, 17/1998, p. 400.

²⁵ M. Freedman, „Professional responsibility of the criminal defence lawyer. The three hardest questions”, *Michigan Law Review*, 64(8)/1966, pp. 1476.

²⁶ C. Sablich, „Duties of Attorneys Advising Financial Institutions in the Wake of the S& (and) L Crisis”, *Chicago-Kent Law Review*, 68/1992, pp. 519–520.

the case of other professions (e.g. lawyers or doctors), the consequences of violating ethical principles by investment advisors may have consequences on a much broader scope than individual ones²⁷.

The importance of an investment advisor on the financial market is particularly important for clients using his services and advice²⁸. Although the latter are not binding on clients, they are often the basis for their investment decisions. The dynamics and unpredictability of economic phenomena may affect the predictions made by investment advisors. That is why, their clients may experience different consequences of decisions made based on the advice. Therefore, the advisor's liability is not consequential in nature, but depends on the advisor's diligent action²⁹. The above causes wondering whether a client who suffered damage by following the advice received from an investment advisor will be able to legally demonstrate the lack of diligent in the advisor's actions³⁰. In other words, whether demonstrating a violation of ethical standards applicable to investment advisors can be a sufficient basis for legal liability. This is also complicated by the abstractness and lack of specificity of the catalogue of ethical norms and the use of vague and evaluative concepts. A client seeking damages from an investment advisor due to a violation of the ethical principles applicable to him is obliged to demonstrate on his own that behaviour constitutes a violation of ethical principles, and thus analyse, interpret and possibly classify (subsumption) them, which is subsequently verified by the competent authority³¹. Thus, a client of an investment advisor who violates the ethical principles of his profession is practically deprived of appropriate legal means of recovering the incurred losses³². Even if it is shown that the advisor's behaviour violated the ethical principles of the profession in question, the issue of the number of the claims pursued, i.e. proving the damage suffered, also remains problematic³³. Simplify, the injured party should prove that if the advisor had acted in accordance with internal regulations (ethical principles), the client would have earned a given amount (higher than he obtained) or suffered a given loss (lower than he suffered). Difficulties of an evidentiary and formal legal nature when pursuing claims for violations of

²⁷ S. Schwarcz, „Keynote Address. The Role of Lawyers in the Global Financial Crisis”, *Australian Journal of Corporate Law*, 24/2010, pp. 218–224.

²⁸ L. Fan, „Information search, financial advice use, and consumer financial behaviour”, *Journal of Financial Counseling and Planning*, 32(1)/2021, p. 26.

²⁹ S. Moses, „Long-term care due diligence for professional financial advisors”, *Journal of Financial Planning*, 14(9)/2001, p. 161.

³⁰ G. Munneke, A. Davis, „The standard of care in legal malpractice. Do the model rules of professional conduct define it?”, *Journal of Legal Profession*, 22/1998, pp. 81–83.

³¹ R. Ion, S. Olivier, P. Darbyshire, „Failure to report poor care as a breach of moral and professional expectation”, *Nursing inquiry*, 26(3)/2019, p. 2.

³² M. Egan, G. Matvos, A. Seru, „The market for financial adviser misconduct”, *Journal of Political Economy*, 127 (1)/2019, p. 260.

³³ S. Ripinsky, „Assessing Damages in Investment Disputes. Practice in search of perfect”, *The Journal of World Investment and Trade*, 10(1)/2009, pp. 11–19.

ethical principles by investment advisors justify the need to strengthen the protection of people using the advisor's services.

Finally, it should be noted that the unethical behaviour of investment advisors may affect the entire professional group. These effects may be of a general and abstract nature (reducing the reputation of the profession) as well as individual ones, i.e. constitute a violation of the principles of unfair competition (Articles 3, 12, 17a of the Act of 16 April 1993 on combating unfair competition)³⁴.

6. Conclusions

Some professional groups are required to be particularly diligent and reliable in providing services. This group also includes the relatively young profession of investment advisor. The importance of ethical principles in its implementation is demonstrated by taking them into account when determining the legal liability of investment advisors. It should be emphasised that the consequences of violating these norms among representatives of this profession have much wider effects than in the case of other professions (including lawyers or doctors). Their violation may affect the processes taking place in the financial market and disrupt its functioning, which may, in extreme cases, result in a violation of its stability and disintegrate the economy. However, a general, abstract and non-specific catalogue of ethical norms and their lack of character as generally binding law do not guarantee they will be followed properly. In other words, the consequences of violations of ethical standards by investment advisors can be extremely harmful both for individuals and the community as a whole, while for the violators they are uncertain and relatively mild (unless they also constitute a violation of statutory law).

Bibliography

1. Araujo, L., „Social norms and money”, *Journal of Monetary Economics*, 51(2)/2004.
2. Brien, A., „Professional ethics and the culture of trust”, *Journal of Business Ethics*, 17/1998.
3. Budzyńska, E., *Między etyką i moralnością, czyli rodzina polska na rozdrożu*, in A. Bartoszek (ed.), *Familiaris splendour. Piękno życia rodzinnego jako wyzwanie dla społeczeństwa i Kościoła*, Księgarnia św. Jacka, Katowice.
4. Egan, M., G. Matvos & A. Seru, „The market for financial adviser misconduct”, *Journal of Political Economy*, 127 (1)/2019.
5. Fan, L., „Information search, financial advice use, and consumer financial behaviour”, *Journal of Financial Counseling and Planning*, 32(1)/2021.
6. Franken, W., *Recent Conceptions of Morality* in H. Castaneda, G. Nahnikian (eds.), *Morality and the Language of Conduct*, Wayne State University Press, Detroit 1963.

³⁴ Consolidated text: Dziennik Ustaw of 2022 position 1233.

7. Freedman, M., „Professional responsibility of the criminal defence lawyer. The three hardest questions”, *Michigan Law Review*, 64(8)/1966.
8. Gołąbek, K., „Doradcy królów w porządku chronologicznym”, *Polityka. Pomocnik Historyczny*, 2022.
9. Goździńska-Skóra, A. & W. Zatoń, „Zasady uczciwego obrotu w teorii i praktyce”, *Finanse i Prawo Finansowe*, 1(33)/2022.
10. Ion, R., S. Olivier & P. Darbyshire, „Failure to report poor care as a breach of moral and professional expectation”, *Nursing inquiry*, 26(3)/2019.
11. Kindleberger, C., „The formation of financial centres. A study in comparative economic history”, Massachusetts Institute of Technology, Cambridge 1973.
12. Lazari-Pawłowska, I., „Etyka zawodowa bez kodeksu”, *Etyka*, 27/1994.
13. Marek, S & A. Wiczorek-Szymańska, *Przyczyny i przewidywane skutki kryzysu finansowego XXI wieku*, „Studia i prace wydziału nauk ekonomicznych i zarządzania”, no. 21.
14. Michalik, M., „Moralność a prawo – przegląd typowych ujęć relacji”, *Doctrina. Studia społeczno-polityczne* 2/2005.
15. Moses, S., „Long-term care due diligence for professional financial advisors”, *Journal of Financial Planning*, 14(9)/2001.
16. Munneke, G. & A. Davis, „The standard of care in legal malpractice. Do the model rules of professional conduct define it”, *Journal of Legal Profession*, 22/1998.
17. Ossowska, M., *Podstawy nauki o moralności*, PWN, Warsaw, 1963.
18. Pniewska, N., „Regulacje prawne rynku doradztwa finansowego na przykładzie wybranych państw europejskich”, *Zeszyty Studenckie. „Nasze Studia”*, 8/2017.
19. Ripinsky, S., „Assessing Damages in Investment Disputes. Practice in search of perfect”, *The Journal of World Investment and Trade*, 10(1)/2009.
20. Sablich, C., „Duties of Attorneys Advising Financial Institutions in the Wake of the S& (and) L Crisis”, *Chicago-Kent Law Review*, 68/1992.
21. Schwarcz, S., „Keynote Address. The Role of Lawyers in the Global Financial Crisis”, *Australian Journal of Corporate Law*, 24/2010.
22. Smarż, J., „Relacja pojęć „wolny zawód” i „zawód zaufania publicznego”, o którym mowa w art. 17 ust. 1 Konstytucji R P. Cz. II”, *Przegląd Prawa Konstytucyjnego*, 1(59)/2021.
23. Ziarko-Siwiek, U. (ed.), *Tradycyjne i alternatywne inwestycje finansowe w świetle kryzysu finansowego. Wybrane zagadnienia*, CeDeWu, Warsaw, 2012.