

Framework for teaching construction law in a rapidly changing legal environment

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ABSTRACT: Discussed in this article is an original proposal to teach Polish Construction Law along with elements of the Code of Administration Procedures. This is intended to prepare students for work in a constantly changing legal environment. It would be included as part of a module taught at the Faculty of Architecture of Cracow University of Technology. Polish legislation concerning the real estate development process, understood as administrative procedures that include setting the conditions for, and the approval and supervision of, construction, is changed very often by national legislators, sometimes several times a year. Changes to specific acts can render large parts of a curriculum obsolete. To address this problem, the authors have proposed an approach to teaching this subject matter that includes a cross-sectional analysis of construction law regulations over a longer period of time. This should give students a broader perspective of the subject, preparing them for future work in an unstable legal environment, as well as demonstrating the consequences that changing legal regulations can have on ongoing design projects.

INTRODUCTION

The Chamber of Architects of the Republic of Poland is the official administrative body governing the professional licensing of architects and civil engineers in Poland concerning design, as well as construction work direction and supervision in the architectural profession. It is assumed that every graduate of an architecture study course will apply for a professional licence at some point during their professional career, earning the title of *Architect IARP* - architect of the Chamber of Architects of the Republic of Poland.

One of the cornerstones of a professionally licensed architect's knowledge is that of the legislation governing both the technical conditions that must be met by buildings and site development in terms of construction and design, and those concerning real estate development. These are governed by a set of administrative procedures that range from issuing planning permits to complete project handover. The body of legal acts that govern these elements is quite substantial and it is impossible to compress it into a form that could be fully taught to students over a short time, particularly the amount of time allotted to this subject matter in university curricula, since this must also include design and engineering-related modules.

This leaves students and later graduates with the need to study the relevant legislation largely on their own, without easy access to experienced practitioners who could provide them with context and explanation. These problems are compounded by the fact that Polish legislation changes quite often, particularly with regard to regulations surrounding and directly affecting real estate development. This is in part because of the many weaknesses of the Polish urban planning system and the length of the administrative proceedings preceding the issuing of construction permits, which often exceed the length of the actual construction of some structures.

Architecture students therefore must be prepared for their future within this legal environment. This preparation requires acquiring skills that allow them to properly identify and categorise legal changes and to understand the impact of these changes on real estate development, which is the focus of a professionally licensed architect's career. Understanding this need, the authors have prepared a proposal for an approach to teaching construction law and the legislation relevant to real estate development that specifically addresses the problem of changing legislation. This is suitable for use outside of Poland as well, as it is a problem that could be encountered in other countries.

CONTEXT

To obtain a professional architectural licence under Polish law, according to Article 14 of the Construction Law Act in the version in force as of the writing of this article [1], persons must first graduate from Engineer's or Master's studies in architecture (for partial and full licences, respectively). They also must accumulate at least two years of professional

experience, viz. one year of work at a construction site and one year of work at a design practice. The professional experience must be performed under the supervision of licensed practitioners, civil engineers or architects, who are referred to as mentors, and pass an official examination overseen by the Chamber of Architects of the Republic of Poland.

Students at the Faculty of Architecture at Cracow University of Technology come into contact with construction regulations in two primary ways. The first is as part of design modules, where the scope is left to the discretion of individual instructors and typically focuses on a segment of the legislation concerning a specific design project, e.g. a single-family residential building or an office building. The second is through the law, economics and management in the real estate development process module taught to third-year students of engineer's studies during the sixth semester. This module is the only occasion when students of the Faculty are presented with a holistic perspective of the legislation governing urban planning, architectural design, construction and building occupancy throughout their studies.

The allotted time for this module is insufficient to present all of the legislation pertaining to real estate development and to provide students with a complete and comprehensive overview of the subject matter. Therefore, students are largely left to explore it themselves. The primary role of instructors is to demonstrate the significance of individual sections of the legislation and which sections of the real estate development process apply. The importance of teaching relevant segments of law to students has been stressed in the literature, for instance by Michaelides-Mateou and Thatcher, who argued in favour of its significance in aviation education [2].

The Chamber of Architects expects graduates to start working under a professionally licensed architect, a mentor, once they begin their professional careers. However, in practice, unlicensed architects can find themselves in organisational arrangements where they have very little contact with licensed designers, construction site directors or supervisors equipped with the necessary knowledge to help them with legal matters. They are once again largely left on their own when it comes to learning the relevant regulations. Examples of such arrangements include working for large design companies with multiple-person teams who partition design work into specialised segments performed by inexperienced assistant designers or working for microbusinesses that subcontract their services to other design companies and that do not necessarily have a licensed architect on staff.

Polish legislation - particularly legislation related to construction law and the regulations surrounding real estate development - changes very often. The Construction Law Act alone has been amended 94 times since it was first passed by the Sejm (Parliament) in 1994. It was subjected to eight amendments in 2018 alone and averaged close to four amendments a year between 1994 and 2019; further changes already have been announced [3][4]. This does not include the planned Urban Planning and Construction Code, a vast legal project meant to unify all construction-related acts in one document. This will significantly change numerous aspects of current legislation and has been worked on for about four years [5].

To illustrate the impact of the amount of legislation, and changes to it, the required reading list of legal acts for the 2019 summer architectural licensing examination organised by the Polish Chamber of Architects includes 54 positions [6]. The destructive impact of constantly changing and excessively expanding legislation also has been highlighted in trade journals [7].

The problem of constantly changing regulations; the chaotic nature and ultimately the weakness of these changes in turn leading to further amendments; and their impact on real estate development, were discussed at length by Korbel [8], who explored this subject by focusing on not only the legislation itself [9], but also, in co-operation with Szklarczyk, on the difficulties administrative officials face because of it [10].

The administrative officials in question are professionally licensed architects themselves and enjoy the full support of the Chamber of Architects, as well as their own institutions, in both tracking and interpreting changes.

The previously mentioned studies have confirmed the problems faced because of the rapid pace of these changes. This can be considered a significant argument in favour of the proposition that a student or unlicensed architect or engineer, who does not receive adequate support from their mentor or does not have one at all, is at a significant disadvantage in their attempts at understanding the significance of changes in legislation.

Therefore, students of architecture and civil engineering need to be properly prepared to face these challenges. The curricula taught at architectural schools should prepare them, not only in terms of familiarisation with construction law and its current provisions, but also the systems that are a part of it and how these systems have changed and can change depending on the section of law amended.

Although the problem is discussed primarily from the perspective of the situation in Poland, it is likely similar situations exist internationally, as every country and legal system, and every architectural and civil engineering community can find itself in a similar situation, thereby making the subject matter topical, significant and worthy of academic discussion.

PROBLEM TO BE ADDRESSED

The problem to be addressed by the framework proposed by the authors is the insufficient preparation of students and, as a result, future candidates for architectural and civil engineering licensing. Frequent changes to legal regulations create an environment of uncertainty as to the consequences of these changes concerning the architectural and civil engineering professions.

The model proposed by the authors is targeted at students of architecture at all tiers of study. It also could be useful for students of all other engineering courses where there is an insufficient emphasis on matters of changes to construction and real estate development legislation.

The broader goal of the approach is to raise awareness among students that legal regulations are not set in stone and that it is necessary for them to constantly self-educate themselves in this subject should they pursue a career in architectural design or civil engineering. It is also to prepare students to deal with changes concerning these regulations by equipping them with the skills necessary to extrapolate the effects these changes may have on practising architectural and civil engineers.

FRAMEWORK PROPOSAL

The proposed framework introduces elements of the *cross-sectional* analysis of the evolution of legal acts to the teaching of construction law. Its main component is the analysis and categorisation of individual regulations, and then examining their evolution over time. This categorisation stresses the following key components of legal regulations:

- Legal definitions: that which a given provision applies to specifically and to which it does not; the impact of changes to definitions and any related inconsistencies on legislation; the tracking of definitions within legislative acts. This element in particular can lead to cascades of changes to design projects, significantly affecting their completion time.
- Administrative procedure systems: how legal acts shape administrative procedures; how supposedly major legal changes can prove insignificant in administrative practice and vice-versa; the evolution of formal and legal requirements.
- Interpretation: how changes in the interpretation of regulations affect administrative procedures and, by extension, architectural design; the importance of following judicature or case law, where applicable, is stressed.

The foundation of the framework is formed by a representation of the administrative elements of the real estate development process in the form of a modular, pipeline-based system. Each module corresponds to a different step within this process, such as obtaining a specific approval under a specific act of law, the issuing of a construction permit or final project handover. The modularity stems from the fact that every project is different, and has a unique set of applicable and non-applicable regulations; utilising it can aid students in visualising the impact of specific legal documents and how it can change from project to project and between various versions of a given legal document.

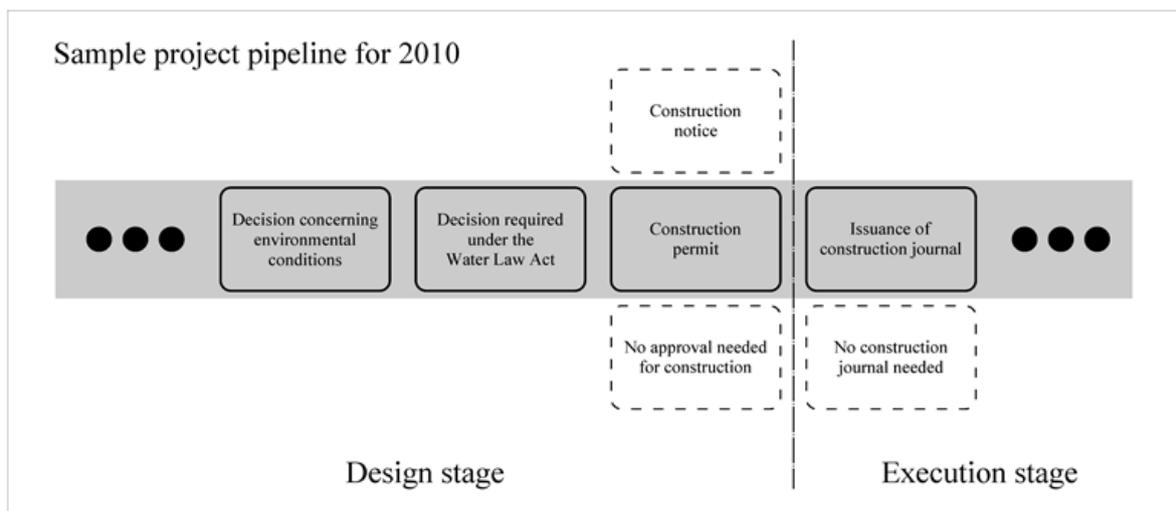


Figure 1: Visualisation of a section of the real estate development administrative process for a sample project for the state of legislation in 2010 (original work).

An example of a module could include: administrative proceedings concerning the issuing of a decision under the Water Law Act. This is required only when the water conditions of the project site are altered in the design or those concerning the issuing of a decision under the Act Concerning the Sharing of Information about the Environment and its Protection. The Participation of Society in the Protection of the Environment and Environmental Impact Assessment,

are issued for specific types of projects listed in the Ordinance of the Council of Ministers on the Matter of Projects that can Significantly Impact the Environment.

This Ordinance is a document with frequent amendments to the wording, sometimes causing exemption of complicated projects from the requirement of preparing an environmental impact assessment report. This is a complex document that could require more than a year to prepare. Then, the requirement for an environmental impact assessment report may be reinstated a year or two later, causing such projects to be significantly delayed as the report is required during other key administrative procedures. The Ordinance is also an excellent example of how changes to legal definitions can significantly impact a project duration and cost.

Each module will have a group of submodules, representing individual legal documents that govern it, along with a specification of key elements that each of them contains. These key elements will be grouped into categories: legal definitions, administrative procedure systems and interpretations, where applicable. Changes to these elements and their impact on the applicability of the module to a project then can be easily demonstrated to students, displaying the consequences of legal changes in an intuitive manner. This should allow students to calculate the time necessary for a given project to pass the administrative approval stage before the issuing of a construction permit, which is a key element of an architect's work, affecting the budgeting and scheduling of design work.

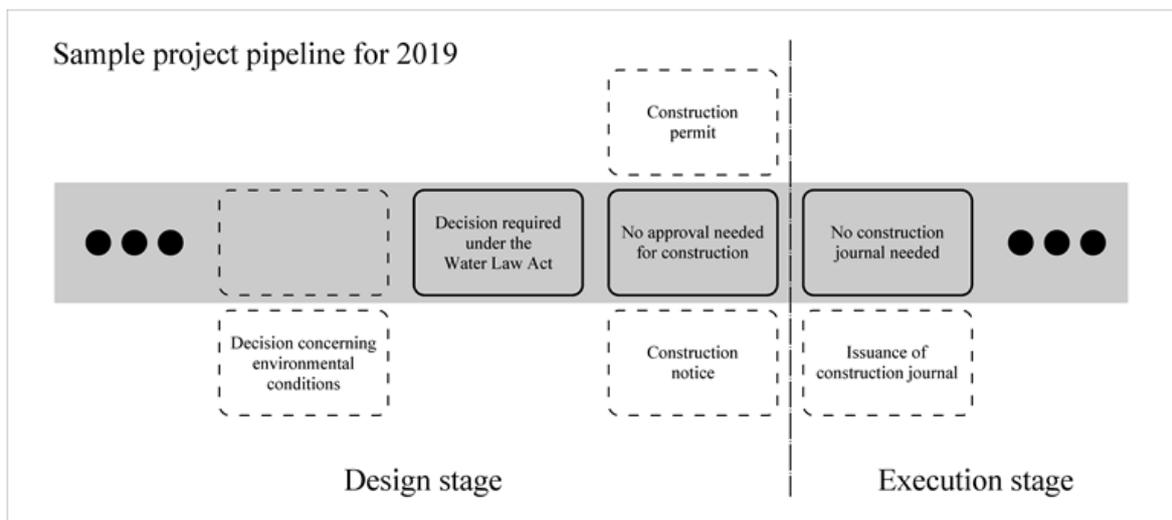


Figure 2: Visualisation of a section of the real estate development administrative process for a sample project for the state of legislation for 2019 (original work).

It is also intended for the framework to provide the possibility to compare the previously mentioned categories of element between different legal acts, thereby demonstrating to students the changes they can expect in other areas of construction law. A lecture with the framework could feature a detailed explanation of the interdependencies between the elements within a given legal document, and later refer to similar elements from a different one, acquainting students with the content and giving them a general idea of expectations from any changes to it.

Therefore, the key is not necessarily to familiarise students with each and every legal document there is, as the framework has been prepared specifically for curricula with a limited time assigned to legal matters, but to demonstrate how legal acts operate and how changes to each of their elements can affect relevance to specific groups of projects. Once students become acquainted with the interdependencies between the internal elements of legal acts and the consequences of alterations to them, they will be better prepared to analyse documents they have not been specifically acquainted with by teachers, thereby enhancing self-education skills.

Two versions are shown in Figure 1 and Figure 2 of a section of the real estate development administrative process pipeline, with legislation in force in 2010 and 2019, respectively, for a hypothetical sample project. Each box represents a sub-stage of the real estate development process. The boxes with continuous outlines within the grey field represent the elements included in the pipeline, while those with dashed outlines represent elements that are not, but should regulations change, could become a part of it. Including such pipelines in lectures about individual acts and using them to demonstrate how amendments to acts can affect the same project can be a significant aid in raising awareness among students of the consequences of legal changes.

DISCUSSION

The framework can prove an effective tool in presenting the impact of changes to legal acts on the overall real estate administrative process. The intended use is to provide teachers with easily and intuitively displayed effects of individual legal changes on an act and its applicability to a variety of projects. Potentially it could be developed into a digital tool,

making the comparisons between act versions and different acts faster and easier to display. It could utilise a keyword-related system that would also require thoroughly familiarising students with the officially used nomenclature featured in legal acts, and how it relates to specific functional, spatial and structural solutions in architectural designs. This would develop student skills in verbally describing projects through correct nomenclature and enhancing their awareness of the applicability of legal regulations to specific parts of a building or structure.

The framework is meant to illustrate, with selected examples, the impact of legal changes on the real estate development administrative process under conditions of limited assigned class time. Therefore, only a set number of cases need to be prepared to be sufficient to implement the framework. It could be expanded into a comprehensive tool enabling analysis of the applicability of various legal regulations to projects, provided that all of the relevant acts have been analysed and prepared in accordance with the framework guidelines. However, such an endeavour would be highly time- and resource-consuming. It would be primarily useful to active architects who have already completed their education. Comprehensive analysis of past projects is not necessarily a part of university curricula, although students should be made aware of its significance.

CONCLUSIONS

The instability of the legal system and the introduction of constant changes to administrative procedures lead to uncertainty and disorientation among those who deal with administrative processes in their careers, such as licensed architects or civil engineers. They need to ensure that their designs not only are up to the required standard, but also that all of the necessary administrative approvals are secured in due time. Making students aware that legal regulations can and do change, potentially significantly altering the way they will work numerous times over the course of their future career, is an important factor in preparing students for future employment and should be included in university curricula.

Teachers require effective tools to prepare students in this regard, including methods of easily visualising the consequences of legal changes, particularly if the associated workload of architectural practices also can be visualised along with them. The framework proposed by the authors could be adopted to accomplish this goal, allowing students to alleviate the difficulties associated with the lack of access to a mentor before their licensing examinations, helping them to gain a fuller understanding of construction law.

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