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Standardization of disciplinary responsibility in legal professions in the system of Polish law – conclusions *de lege ferenda*

1. INTRODUCTORY REMARKS

Disciplinary law and proceedings are areas of law of specific character. Their character makes it very difficult to position this area within the already existing standard framework of legal regulations as it is the case with criminal law, substantive law or procedural criminal law¹.

In general, what can be noticed when defining disciplinary law is the large diversity of elements co-creating this area. On the one hand, this indicates that disciplinary law and proceedings constitute a set of legal provisions regulating responsibility for acts which infringe the professional duties of a given profession or social group and types of penalties for these acts as well as principles and course of proceedings in the case of the violation of professional duties being confirmed². On the other hand, it is pointed out that the formula of disciplinary responsibility joins in a straight line two contact points in the form of the diligence pattern /professionalism pattern in the performance of professional duties and the pattern of manifesting an exemplary ethical and moral attitude of individuals operating professionally in a specific group, which apart from substantive accuracy proper to this group, is also bound by values considered by it to be of primary importance. A view can also be encountered that the rules of disciplinary law are aimed at raising and guaranteeing the prestige and ethos distinguishing a given social group. This is done, among others, by guaranteeing jurisdictional independence of members within the institutions or corporations operating in accordance with specific rules³. On the other hand, it is commonly believed that the violation of the principles of ethics and dignity constitutes a universal ground for disciplinary responsibility⁴.

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¹ Z. Leoński, *Odpowiedzialność dyscyplinarna w Prawie Polski Ludowej*, Poznań 1959, p. 233–235.

² J. Paśnik, *Prawo dyscyplinarne w Polsce*, Warszawa 2000, p. 8.

³ M. Zubik, M. Wiącek, *O spornych zagadnieniach z zakresu odpowiedzialności dyscyplinarnej sędziów Trybunału Konstytucyjnego – polemika*, „Przegląd Sądowy” 2007, No. 3, p. 70.

⁴ C. Kulesza, *Ewolucja wybranych procedur dyscyplinarnych w świetle konwencyjnego i konstytucyjnego standardu prawa do sądu*, „Białostockie Studia Prawnicze” 2017, No. 1, Vol. 22, p. 12.

As it has been indicated above, opinions as to the definition and aims underpinning the creation of disciplinary proceedings by the legislator vary. It is worth emphasizing that an ever more common opinion is that disciplinary proceedings are repressive in character⁵. This results not only from the fact that this law is closely linked to criminal proceedings and criminal law⁶ (also through clauses on the appropriate application of this law⁷) but also from the fact that this law applies sanctions, including sanctions of very drastic consequences to the accused (e.g. a ban on practising the profession included). Yet, in spite of their character, these sanctions cannot be identified with strictly criminal sanctions because criminal responsibility constitutes an entirely different kind of legal responsibility⁸.

What distinguishes disciplinary law is also absence of common effectiveness which means that it is addressed solely to a narrow group of people. Hence broadly understood disciplinary law is not of universal character but a strongly particular law⁹. There are many groups with their own disciplinary legislation composed of substantive disciplinary law and procedural disciplinary law and even norms of disciplinary law of executive character. The law is exercised by internal bodies of a given group. These bodies never supersede state bodies¹⁰. The Constitutional Tribunal accepts fully the fact of the functioning of the outlined model of disciplinary law seeing in it the provision to members of individual corporations the due independence and sovereignty in practising the profession¹¹.

The arguments presented above show that it is worthwhile to consider whether the diversity of disciplinary models functioning mainly in the area selected here, i.e. legal regulations concerning legal professions, should not be changed through their standardization in a way which would generate a single efficient model of disciplinary proceedings for legal professions. Selected for the analysis of the principles of bearing disciplinary responsibility were the models of relevant legal regulations effective for barristers, legal advisers, common court judges, notaries, court executive officers, prosecutors, court curators and court clerks. Obviously, these are only a few legal professions selected as examples but the social importance and the frequency of their performance make them an adequate study sample on which to assess the title idea of standardizing the disciplinary responsibility in terms of the feasibility of the process.

⁵ P. Skuczyński, *Aktualne problemy odpowiedzialności dyscyplinarnej w zawodach prawniczych* [in:] *Postępowanie dyscyplinarne w zawodach prawniczych. Model ustrojowy i praktyka*, A. Bodnar, P. Kubaszewski (eds.), Warszawa 2013, pp. 65–67; K. Dudka, *Stosowanie przepisów k.p.k. w postępowaniu dyscyplinarnym w stosunku do nauczycieli akademickich* [in:] *Węzłowe problemy procesu karnego*, P. Hofmański (ed.), Warszawa 2010, pp. 354–355.

⁶ P. Kuczyński points out that viewing disciplinary proceedings through the prism of criminal law and criminal proceedings is the perspective most commonly found in literature – comp. P. Kuczyński, *Nierepresyjne funkcje odpowiedzialności dyscyplinarnej a model postępowania w sprawach dyscyplinarnych*, „Przegląd legislacyjny” 2017, No. 3, pp. 354–355.

⁷ The Supreme Court explained how to properly understand the indicated provisions – comp. Resolution of the Supreme Court of 30 September 2003, I KZP 23/03, „Orzecznictwo Sądów Polskich” 2003, No. 12, Item 40.

⁸ P. Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, Warszawa 2013, pp. 23–24.

⁹ W. Świda, *Prawo karne*, Warszawa 1986, p. 17.

¹⁰ Comp. A. Korzeniewska-Lasota, *Jawność postępowań dyscyplinarnych*, „Studia Elckie” 2012, No. 14, p. 512.

¹¹ See: judgment of the Constitutional Tribunal of 8 December 1998, K 41/97, OTK 1998, No. 7, Item 117, similarly the Constitutional Tribunal in the judgment of 27 February 2001, K 22/00, OTK ZU 2001, No. 3, pp. 271–272.

2. SIMILARITIES AND DIFFERENCES IN DISCIPLINARY RESPONSIBILITY OF SELECTED LEGAL PROFESSIONS

Under the present legal status, each of the professions listed (in principle apart from the court clerk) has a separately regulated course of disciplinary proceedings which is included in the pragmatic law concerning the practising of a given profession, that is respectively for:

- 1) barristers – act law on the Bar of 26 May 1982¹²;
- 2) legal advisers – act of 6 July 1982 on legal advisers¹³ (hereinafter referred to as Urpr);
- 3) prosecutors – act law on the Prosecutor’s Office of 18 January 2016¹⁴ (hereinafter referred to as (UoPR);
- 4) judges and court clerks – act of 27 July 2001 on the system of common courts¹⁵ (hereinafter referred to as UoS);
- 5) notaries – act law on the institution of a public notary of 14 February 1991¹⁶ (hereinafter referred to as UoPN);
- 6) court executive officers – act of 29 August 1997 on court executive officers and court execution¹⁷;
- 7) court curators – act of 27 July 2001 on court curators¹⁸.

The scope of the regulation concerning disciplinary proceedings in the acts referred to above covers each time provisions of both substantive-legal and procedural character.

The analysis of the indicated legal acts leads to a number of conclusions:

First, regulations concerning substantive law contained in individual legal professions are very similar in their construction and regulate the same elements (e.g. shape the definition of a disciplinary tort, specify a catalogue of penalties, regulate the question of the limitation of liability to punishment for a disciplinary tort or the question of the way and the time limit for the erasure of the penalty from the register of convictions). Indeed, it can be noticed that these are construction elements (or institutions) relevant for criminal law. Referring to the already mentioned criminal law, it should additionally be pointed out that the provisions of substantive law concerning all the analyzed legal professions are not absolutely autonomic because they always contain reference to appropriate application of the criminal code (CC)¹⁹, though to a different extent and of a different scope²⁰.

Second, referring to the construction of the regulations concerning disciplinary proceedings of procedural character, it should be observed that in each of the analyzed

¹² Act law on the Bar of 26 May 1982 (i.e. Journal of Laws Item 1999 with amendments).

¹³ Act of 6th July 1982 on legal advisers (i.e. Journal of Laws 2016, Item 233 with amendments).

¹⁴ Act law on the Prosecutor’s Office of 18 January 2016 (Journal of Laws 2016, Item 177 with amendments).

¹⁵ Act of 27 July 2001 on the system of common courts (i.e. Journal of Laws 2016, Item 2062 with amendments).

¹⁶ Act law on the institution of a public notary of 14 February 1991 (i.e. Journal of Laws 2017, Item 2291 with amendments).

¹⁷ Act of 29 August 1997 on court executive officers and court execution (i.e. Journal of Laws 2017, Item 1277 with amendments).

¹⁸ Act of 27 July 2001 on court curators (i.e. Journal of Laws 2014, Item 795 with amendments).

¹⁹ Act of 6 June 1997 Criminal Code (i.e. Journal of Laws 2017, Item 2204 with amendments).

²⁰ For instance, in the case of advocates, the scope of reference covers Chapters I–III of the criminal code (see: Article 95 nPoA) while in the case of legal advisers, the scope of reference concerns the whole general part of the criminal code (see: Article 171 of the act on legal advisers).

legal professions the legislator applied the same legislative scheme: individual solutions appropriate for given professions were established, with a simultaneous reference to appropriate application of the code of criminal procedure (CCP)²¹ in the scope not regulated otherwise²². In fact, the scope of these references is so large that it is the CCP provisions that provide the basic construction ('legislative base') of the proceedings.

Third, referring yet to questions related to penal proceedings it should be observed that the model of disciplinary proceedings is based on the construction of essential stages of penal proceedings which can be described as 'preliminary' (of different scope of development) and then two stages appropriate for stages of court criminal proceedings (of the first and the second instance). Possible legally valid punishment of a given person terminates with enforcement proceedings (the same as in criminal proceedings).

The legal consequence of the situation described above is the fact that also the structure of the organs and determination of the parties to the proceedings which are very similar (or sometimes identical) as in criminal proceedings (for instance: a disciplinary spokesman as an accuser is an equivalent of a prosecutor as an accuser in court, the roles of counsels of defense are the same in both proceedings, etc.)

Fourth, as regards the procedural proceedings of individual legal professions analyzed, contained separately in each of subject acts, it should be observed that they are, in principal, very similar, in spite of certain natural and fairly well justified difference (e.g. in the nomenclature of disciplinary organs²³, definition of the defendant as a representative of a given legal profession²⁴, etc.). This statement does not contradict the fact that in individual professions certain individual 'original' procedural institutions can also be found, institutions which cannot be found in other professions (e.g. a procedure of determining obvious groundlessness of the motion for punishment in the case of prosecutors).

3. CHARACTERISTICS OF SUBSTANTIVE PROVISIONS CONCERNING DISCIPLINARY RESPONSIBILITY

Provisions of substantive law for each of the analyzed legal professions contain the following elements: definition of what a disciplinary tort is²⁵, specification of

²¹ Act of 6 June 1997 Code of Criminal Proceedings (i.e. Journal of Laws 2017, Item 1904 with amendments).

²² In literature, the scope of this 'appropriate application of the regulations is discussed broadly with respect to individual professions – comp. A. Korzeniewska-Lasota [in:] *Odpowiednie stosowanie przepisów kodeksu postępowania karnego w postępowaniu w sprawach odpowiedzialności dyscyplinarnej adwokatów. Część I: Zagadnienia ogólne*, „Palestra” 2013, No. 9–10, pp. 73–82 and A. Korzeniewska-Lasota [in:] *Odpowiednie stosowanie przepisów kodeksu postępowania karnego w postępowaniu w sprawach odpowiedzialności dyscyplinarnej adwokatów. Część II: Sporządzanie uzasadnień i postanowień kończących postępowanie dyscyplinarne w pierwszej instancji. Z urzędu czy na wniosek? Uwagi na tle Art. 88a ustawy Prawo o adwokaturze*, „Palestra” 2013, No. 11–12, pp. 177–194, comp. C. Kulesza, *Ewolucja...*, p. 18.

²³ For instance, the disciplinary organ of the 1st instance for advocates, legal advisers, notaries and prosecutors is called Disciplinary Court (and in the 2nd instance – Higher Disciplinary Court), and for prosecutors they are Disciplinary Court and Disciplinary Court of Appeal. In turn, for court executioners and court clerks, the organs of the 1st instance are disciplinary commission and disciplinary commission of the 1st instance, respectively.

²⁴ For instance, for barristers the defendant is an advocate (or, respectively, advocate's trainee) who was presented, in the course of proceedings, a charge of committing a disciplinary tort (see: Article 93 sect. 3 PoA). In turn, for notaries the defendant is the person against whom authorized entities formulated a motion addressed to the court to initiate disciplinary proceedings – comp. A. Oleszko, *Prawo o notariacie. Komentarz. Vol. 1. Ustrój notariatu*, Warszawa 2016, p. 852.

²⁵ For instance, a prosecutor is responsible for a professional offence, including an obvious and stark infringement of legal regulations and impeachment, with the exception of a situation in which the prosecutor's action or

a catalogue of penalties, specification of directives for the measure of penalty and the way in which it is to be carried out (in the case of a legally valid punishment of the defendant), determination of the limitation and liability to punishment of the disciplinary tort, determination of provisions concerning the possibility of temporary suspension of the defendant in practising a given profession.

The catalogues of penalties foreseen for disciplinary offences formulated by the legislator are also similar in each of the legal professions. Starting from the construction element consisting in listing penalties from the most lenient to the most severe and finishing with their types. The most severe penalty is expulsion from the profession and the mildest – an admonition²⁶.

The common construction denominator of the analyzed penalties is also the fact that they are not attributed to a specific offense which means that each of the law specified penalties can be theoretically applied to any disciplinary offense²⁷.

On the level of the specification of the limitation of liability to punishment, there are certain objective differences consisting in the fact that regulations concerning certain professions (e.g. barristers, legal advisers²⁸) contain the specification of both limitation as regards instituting disciplinary proceedings and determination of limitation of liability to punishment for a given disciplinary tort while some only the limitation of liability to punishment. However, this is not a significant procedural difference in the sense that it can be leveled, without major difficulties by amending and standardizing this institution in every legal profession without influence on the essence or character of the proceedings as a whole. A remark should here be made that in the case of the standardization of the procedures it would be worthwhile for the legislator to specifically describe both types of limitation in writing.

What needs to be emphasized separately is the fact that in spite of the fact that the legislator included in the acts referred to individual provisions of the character of substantive law, they still fail to be absolutely autonomic (independent) due to the fact that they always contain an entry speaking about relevant application of the provisions of the criminal code within the scope not regulated in the act. From an objective point of view, the scope of the application of this criminal code varies. However, what needs to be emphasized is that the ‘minimum’ of the application

failure to act was motivated solely and exclusively in social interest (Article 137 para 1 and 2 of the act law on the prosecutor’s office). Advocates and advocate’s trainees are subject to disciplinary responsibility for acting against the law, ethical principles or professional dignity or for infringement of professional duties while advocates also for failure to perform the duty of concluding an insurance agreement referred to in Article 8a sect. 1, pursuant to the provisions issued on the basis of Article 8b of the law PoA. A notary bears disciplinary responsibility for a professional offense, including an obvious and stark infringement of legal regulations, impairment to the authority and dignity of the profession as well as failure to perform the duty of concluding an insurance agreement referred to in Article 19a, pursuant to the provisions issued on the basis of Article 19b as well as failure to perform the duty referred to in Article 71 para 8 and failure to perform the duty referred to in Article 71a para 5 and also for the failure to perform the duty referred to in Article 8a Sect. 1 of the law of 24 March 1920 on the acquisition of real estate by foreigners (Journal of Laws of 2016, Items 1061 and 2175) – comp. Article 50 of the law on the institution of a notary public.

²⁶ Such a penalty is for example inflicted in the case of advocates, legal advisers, notaries or court executioners.

²⁷ For instance, about the catalogue of penalties for prosecutors – A. Kiełtyka, W. Kotowski, A. Ważny, *Prawo o prokuraturze. Komentarz*, Warszawa 2017, commentary to Article 142, available in the LEX 2017 programme, about the catalogue of penalties for legal advisers K. Kwapisz, *Ustawa o radcach prawnych. Komentarz*, commentary to Article 65 of the law, commentary available in the LEX 2016 programme.

²⁸ What should be understood under this term is the determination by the legislator of the time after the lapse of which proceedings cannot be instituted. Such provisions can be found, for instance, with barristers (Article 8 sect. 1 PoA) and legal advisers (Article 70 sect. 1 of the law on legal advisers).

of the provisions contained therein comes down, in practice, to the application of the institutions specified in Chapters I–III of the code. In essence, these provisions specify concepts of crucial importance to criminal law such as, for example, the determination of the time and place of the commission of an act, determination of the type of guilt (intentional, unintentional), the principle of the legal certainty, inter-temporal rules in the case of changes to legal provisions, determination of the forms of the commission of an offence (perpetration, attempt, abetment, etc.) as well as circumstances barring prosecution. It can thus be definitely said that the criminal code (next to the code of criminal procedure) also plays a significant role in shaping substantive criminal law in disciplinary proceedings concerning the legal professions analyzed. It is a serious argument for specifying disciplinary proceedings as repressive proceedings of quasi-criminal character.

4. CHARACTERISTICS OF PROCEDURAL PROVISIONS CONCERNING DISCIPLINARY RESPONSIBILITY

As regards the question of the construction of the regulations concerning the analyzed legal professions of procedural character, it should be noted that in each of the analyzed legal professions the legislator placed a provision stipulating clearly that provisions of the code of criminal proceedings apply, respectively, within the non-regulated scope²⁹.

Here, it should be clearly pointed out that in spite of the appearances which may arise, this reference is not the legislator's legal 'insurance' of sorts for a possibility of a given regulation being incomplete nor is it a carrier of a certain narrow group of procedural acts described in the criminal procedure (e.g. as regards the way of the delivery of summons or the way of counting procedural time limits) but this concerns key procedural elements and is extremely broad.

What should be stressed, in the first place, is the fact that provisions concerning evidence, procedures of their admissibility, way of carrying them out or evaluating apply here, respectively, as a whole. This means that the course of the evidence proceedings as a whole is regulated by the provisions of the code of criminal procedure which is very important.

Secondly, there is another no less important element which should be emphasized and, namely, the fact that the broad scope of the application of the provisions of the code of criminal proceedings means, in practice, appropriate application of the provisions of over 30 chapters of the code of criminal procedure, including provisions concerning the powers and the procedural position of counsels for defence and proxies, rights and duties of the defendant (including his right to defence) as well as the definition of the wronged person (if such a person appears in the given proceedings) and specification of the latter's rights and duties.

The scope of reference concerns also the procedure to be followed by the disciplinary body of the first instance (including the course of the proceedings, the way

²⁹ As, for example, Article 78b of the act on court executive officers, Article 69 of the act law on the institution of notary public, Article 153 sect. 3 of the act law on the prosecutor's office, Article 95 pt. 1 of the law on the structure of the Bar.

of discussing the adjudication, the rules of issuing and announcing the adjudications), the way of drawing up and lodging an appeal, the way of its processing by the body of the second instance (including the scope of monitoring the appeal, the way of its examination, types of adjudications that can be made), the application of extraordinary remedies in the form of cassation (if it can be lodged³⁰) as well as the resumption of proceedings.

In the analyzed disciplinary proceedings, provisions concerning legal-proceedings-related actions (including time-limits, deliveries, proceedings-related written statements, adjudications, decrees, instructions, etc.) are applied as appropriate which is also important from the point of view of the rank and significance of these provisions for criminal proceedings.

Another point that should be made is that appropriate application in the analyzed disciplinary proceedings of Article 17 para 1 of the CCP specifying the so-called negative prerequisites for court proceedings, that is prerequisites the occurrence of which creates the inability to institute proceedings or the necessity of discontinuing proceedings already in progress³¹. It is the duty of disciplinary bodies conducting the case (at all its stages individually) to analyze whether any of the negative procedural prerequisites did not occur and to make appropriate procedural decisions in the case of their occurrence³².

The scope of the application of the code of criminal proceedings described above fully confirms the thesis put forward above that the provisions of the code of criminal procedure constitute a procedural ‘matrix’ of sorts for the analyzed disciplinary proceedings and that it is these provisions that largely create (and co-create) the procedure of carrying disciplinary proceedings.

5. ATTEMPT AT RECREATING A STANDARDIZED MODEL OF DISCIPLINARY PROCEEDINGS IN SELECTED LEGAL PROFESSIONS

The analysis of regulations concerning disciplinary proceedings in selected legal professions allows to conclude that their construction consists in fact of three separate stages: the proceedings which can be described as ‘preliminary’ (of varying, profession-related character), two-tier proceedings before (differently called) disciplinary bodies and enforcement proceedings (in the case of a legally valid adjudication of the defendant’s guilt). It is obvious that this resembles criminal proceedings the standard model of which, as already pointed out, consists of preparatory proceedings, (two-instance) court proceedings and enforcement proceedings.

³⁰ Cassation cannot be lodged by court executive officers and judges while court curators and court clerks lodge, instead of cassation, an appeal to a competent court of appeal – the court of labour and social insurance, with the application of the provisions of the code of civil proceedings (CCP) concerning appeals.

³¹ Such is the nomenclature of prerequisites from Article 17 para 1 of the CCP – comp. R. Poniowski, W. Posnow, Z. Świda, *Postępowanie karne. Część ogólna*, J. Skorupka (ed.), Warszawa 2012, p. 65.

³² There is one exception to the rule of discontinuing proceedings in the case of negative procedural prerequisites coinciding, namely, a situation where a limitation prerequisite appears simultaneously with one of the prerequisites from Article 17 para 1 of the CCP (the act was not committed or there are no sufficient grounds to confirm it) or the prerequisite from Article 17 para 1 pt. 2 of the CCP (absence of features of a prohibited act or where an act stipulates that the perpetrator does not commit the act). Determination of these prerequisites coinciding after all the necessary evidence procedures have been carried out and all factual circumstances clarified obliges the court to give an acquittal sentence – comp. Supreme Court judgments of 3 April 2002, V KKN 484/00, LEX No. 53336, and of 2 July 2002, IV KKN 264/99, LEX No. 54407; Supreme Court judgment of 15 April 2004, SDI 21/04, OSNKW 2004, No. 6, Item 64.

There are three models of ‘preliminary’ proceedings to be distinguished, the point of reference being their similarity to the construction of preparatory proceedings from the criminal proceedings.

In the first model, the ‘preliminary’ proceedings are similar in their essence to the so-called confirmatory proceedings from Article 307 of the CCP, that is the proceedings preceding the institution of preparatory proceedings in criminal proceedings. In principle, evidence proceedings are not carried out but certain circumstances (e.g. the character of the act, its legal qualification, exact date of the act, etc.) are established and then a motion for instituting disciplinary proceedings (called differently) is lodged with a relevant body. This model is applied by notaries and court executive officers.

The procedural effect of the described model of proceedings is that the accused, as a party to the proceedings (an equivalent of the defendant) ‘appears’ (begins to be formally present) only after a spokesman (or possibly another act-specified entity) has placed a motion to institute disciplinary proceedings (an indictment act). Prior to it the person concerned does not have such a status (they have not been presented with charges) and consequently is not a party to the proceedings though the person has the right to present explanations (as a form of response to the case)³³.

The second model of ‘preliminary’ proceedings is close in its essence to prosecution or investigation. This means that in these proceedings there are evidence proceedings carried out as in the preparatory proceedings in the criminal proceedings. Evidence is collected and secured towards the disciplinary proceedings proper (similar to court proceedings). This model can be found in the case of barristers, legal advisers, court curators and court clerks³⁴.

It should be indicated that in spite of evidence proceedings carried out in disciplinary proceedings in the above professions, there are differences as to whether a given person is presented with charges (causing that the accused becomes a party to the proceedings) or whether the charges are not presented and the presentation of a motion for punishment is the moment in the proceedings when a party in the form of the accused beings to appear.

In the disciplinary proceedings of legal advisers and barristers, proceedings are carried out which (as in the preparatory proceedings in the criminal proceedings) are divided into two stages: the stage of the ‘*ad rem*’ proceedings, i.e. proceedings in the case, and the stage of the ‘*ad personam*’ proceedings, i.e. proceedings against a person. Once evidence material making the perpetration sufficiently plausible has been collected, the person concerned is presented with the charges and acquires the procedural status of the accused. This is important because from that moment the accused has the right to defence and, as a party, can actively participate in the

³³ In this way about the status of notaries – A. Oleszko, *Prawo...*, p. 852, similarly about the status of court executive officers – G. Kuczyński – comp. G. Kuczyński, *Ustawa o komornikach sądowych i egzekucji. Komentarz*, commentary to Article 75(f) of the act on court executive officers and execution available in the LEX 2012 programme.

³⁴ For instance, with reference to court clerks, literature points out that explanatory proceedings involve extensive evidence-collecting proceedings. It is possible to hear witnesses and experts as well as to carry out other evidence-collecting proceedings which are necessary to provide a comprehensive explanation of the case – comp. P. Zuzankiewicz [in:] *Ustawa o pracownikach urzędów państwowych*, W. Drobny, M. Mazuryk, P. Zuzankiewicz (eds.), Warszawa 2012, p. 167.

proceedings (e.g. submit evidence-related motions, participate in evidence-related actions, etc.³⁵).

In the proceedings concerning curators, the person concerned becomes the accused the moment a motion for instituting disciplinary proceedings is lodged against them. The stage preceding the submission of the motion can thus be compared to the preparatory proceedings of the ‘*ad rem*’ stage at which evidence proceedings are carried out. At this stage of the process, the accused does not appear which means that in fact he has no right to defend himself though he is informed of the fact that proceedings are conducted against him and has the right to present his comment on the case (called the explanations of the accused by the legislator). It is much the same with court clerks, though, in spite of the lack of the status of the party, they have a much broader right to defence (including the right to submit motions for evidence, the right to get acquainted with the files of the completed proceedings and the written results of the proceedings, etc.).

In the third model of the ‘preliminary proceedings’, explanatory proceedings are first carried out (as in the first model), and where they reveal a possibility of a given disciplinary tort to have been committed, then proceedings such as in the second model are instituted (an equivalent of preparatory proceedings). They are conducted by the disciplinary spokesman and their commencement is related to the presentation of the charges against the accused in writing. The proceedings can terminate with a decision to discontinue the disciplinary proceedings (and this may happen even where charges have been presented) or a motion for the examination of the disciplinary case lodged with a disciplinary court. This model is applied by judges and prosecutors.

It should be emphasized that in the case of an occurrence of a potential disciplinary tort, all the above models of ‘preliminary’ proceedings terminate in the same way – the empowered body (as a rule, a disciplinary spokesman and, occasionally, also another authorized entity³⁶) lodges a motion for punishment with a competent disciplinary court³⁷. This motion is an equivalent of an indictment act and the prerequisites are to satisfy its requirements³⁸.

The motion for punishment pointed to above sets off, as it has been indicated, the stage of proceedings before disciplinary courts (called differently)³⁹. These are always two-tier proceedings as the adjudication made in the first instance can be appealed against by the parties (and frequently also by entities entitled by law)⁴⁰.

³⁵ In this way about the status of advocates – K. Ceglarska-Pilat, M. Zbrojewska, *Prawo o adwokaturze. Komentarz*, commentary to Article 93 of the act – Law on the Bar available in the LEX 2016 programme, in this way about the status of legal advisers – W. Kozielowicz – comp. W. Kozielowicz, *Odpowiedzialność dyscyplinarna sędziów, prokuratorów, adwokatów, radców prawnych i notariuszy*, edit. 2, Warszawa 2016, p. 317.

³⁶ In court executors, the entities entitled to present a motion for punishment specified in the act include: presidents of courts, visiting judges, bodies of the court executors’ self-government as well as visiting court.

³⁷ In the case of court clerks and court execution officers with the disciplinary commission.

³⁸ This results from proper application of the CCP and applies to disciplinary proceedings in the case of each of the analyzed legal professions, for instance, so as in (about the motion with notaries). A. Oleszko, *Prawo...*, p. 853, and also about the same notion applicable to court execution officers G. Kuczyński, *Ustawa...*, commentary to Article 75(f) of the act on court execution officers and execution available in the LEX 2012 programme.

³⁹ As with the description of the disciplinary proceedings for legal advisers K. Kwapisz, *Ustawa...*, commentary to Article 68(1) of the act on legal advisers, the commentary is available in the LEX 2011 programme, in relation to prosecutors; A. Herzog, *Zmiany w postępowaniu dyscyplinarnym prokuratorów w ustawie o prokuraturze*, “Prokuratura i Prawo” 2016, No. 7–8, p. 190.

⁴⁰ As in the description of the disciplinary proceedings concerning advocates – J. Trela, *Prawo o adwokaturze*, commentary to Article 63 – Act on the Bar available in the LEX 2016 programme.

It should be emphasized that at the ‘court’ level all proceedings are characterized by the fact that the procedure of proceeding before the relevant bodies is generally based on the provisions of criminal procedure – as regards evidence proceedings, carrying out of hearings (e.g. with respect to the procedure of counting the final votes of the parties), making adjudications and their examination. Importantly, at this stage, the adjudicating organs have the status of independent bodies which is meant to guarantee objectivity of jurisdiction⁴¹.

Two other elements that should additionally and necessarily be stressed involve the openness of disciplinary proceedings and the guarantee of the right to defense to the accused. In terms of the former, all the analyzed disciplinary proceedings are open⁴².

Simultaneously, referring to the question of the right to defense, it should be emphasized that in all the analyzed proceedings the accused are guaranteed a broadly understood right to defense (both in the formal and in the substantive meaning of the word) throughout the process. It is extremely important because this right is a basic and fundamental procedural guarantee and also tends to be treated as one of the subjective fundamental human rights⁴³.

From the formal point of view, the right of the accused to defense manifests itself in the right of the latter to have a defense counsel⁴⁴. The defense counsel can be a legal adviser, a barrister or a representative of a given profession. Due to the absence of specific entries as to the number of defense counsels, it should be deemed that the accused can have up to three defense counsels simultaneously⁴⁵ (as in criminal proceedings), with a possibility of counsels for defense constituting a ‘mixed composition’, i.e. for the accused being simultaneously represented by legal advisers and barristers.

In a substantive sense, the right to defense of the accused manifests in his right to undertake procedural acts (compliant with law) in order to obtain the possibly most favourable result of the trial⁴⁶. These rights include: the right to present explanations (with respect for their specific legal character, i.e. the fact that explanations non-compliant with objective reality are not punishable), right to a refusal to present explanations and answers to individual questions, right to take the floor in any case in which the court hears the positions of the parties, right to express a stance on any evidence taken, right to deliver the final speech as the final entity taking the floor (the so-called *favor defensionis*).

In connection with the above presented brief outline of the course of proceedings before pertinent disciplinary courts, one can point out that they resemble the proceedings before courts in criminal cases (they are an equivalent of this stage).

⁴¹ In this way about the independence of disciplinary courts in judges – W. Kozieliwicz, *Odpowiedzialność dyscyplinarna sędziów w świetle ustawy z 27.07.2001 – Prawo o ustroju sądów powszechnych – kwestie procesowe i materialne*, “Krajowa Rada Sądownictwa” 2017, No. 2(35), p. 65, also, in W. Kozieliwicz, *Odpowiedzialność dyscyplinarna sędziów, Komentarz*, Warszawa 2005, p. 23. Thus, for instance, about disciplinary courts of court executioners – K. Gromek, *Ustawa o kuratorach sądowych. Komentarz*, edit. II, commentary to Article 54 available in the LEX 2005 programme.

⁴² This satisfies the conclusions and remarks to be found in literature – comp. A. Korzeniwska-Lasota, *Jawność...*, p. 522, also in K. Kremens, *Jawność postępowań dyscyplinarnych prokuratorów*, „Prokuratora i Prawo” 2015, No. 5, pp.141–142.

⁴³ Comp. C. Kulesza, *Efektywność udziału obrońcy w procesie karnym w perspektywie prawnoporównawczej*, Kraków 2005, p. 333.

⁴⁴ Comp. K. Marszał, S. Stachowiak, K. Zgryzek, *Proces karny*, Katowice 2003, p. 119.

⁴⁵ The only exception here is a disciplinary proceeding where the accused can have up to 2 counsels of defense at the same time (see: Article 75 g sect. 2 of the act on court executioners and court execution).

⁴⁶ Comp. P. Wiliński, *Zasada prawa do obrony w polskim procesie karnym*, Kraków 2006, p. 213–214.

It should be pointed out that the provisions of the analyzed disciplinary proceedings contain regulations concerning costs of proceedings as well as enforcement proceedings, in the case the accused is convicted in a legally binding way. To give an example, in the case of legal advisers such an organ is the Dean of the District Chamber of Legal Advisers⁴⁷ and in the case of notaries the relevant council of notaries (or the Minister of Justice in the case expulsion from the profession is adjudicated)⁴⁸. Enforcement proceedings are the third and final stage of criminal proceedings.

What also requires to be underlined separately is the fact that the legislator foresaw a possibility of applying extraordinary remedies of suability (submission of cassation, motion for resumption of proceedings) with the purpose of changing a legally valid judgment to which the provisions of the code of criminal proceedings apply, respectively.

Referring to the convergence of parties in disciplinary proceedings and in criminal proceedings, it should be pointed out that at the stage of proceedings before disciplinary courts, the accuser (being a disciplinary spokesman) is an equivalent of the prosecutor in criminal proceedings while the accused is an equivalent of the suspect (in 'preliminary' proceedings)⁴⁹ and the accused (at the stage of proceedings before disciplinary courts and commissions).

In turn, the party in the form of the wronged person appears only in some proceedings in the analyzed legal professions (in the case of barristers, legal advisers and court executive officers), not being present in the remaining analyzed professions. The wronged person does not have their own definition in any of the acts which means that it is the provision of Article 49 of the code of criminal proceedings (containing the definition of the wronged person⁵⁰) that applies to him. It should thus be pointed out that the wronged person is the person whose legal good was directly infringed by the action of a barrister (or trainee barrister), legal adviser or court executive officer⁵¹.

In addition, it should also be indicated that in the disciplinary proceedings in the professions where the wronged person does not appear as a party in the trial, he can play the role of a personal source of evidence (witness)⁵².

The described above legal status as regards the absence of the appearance of the wronged person as a party in the majority of disciplinary proceedings in the

⁴⁷ K. Kwapisz, *Ustawa...*, commentary to Article 71 of the act on legal advisers, commentary available in the LEX 2016 programme.

⁴⁸ Comp. K. Ceglarska-Pilat, M. Zdrojewska, *Prawo...*, commentary to Article 95(l) of the act, available in the LEX 2016 programme.

⁴⁹ A situation of this kind occur only in the proceedings by advocates and legal advisers where the accused is presented with charges at the stage of preliminary proceedings

⁵⁰ Pursuant to Article 49 of the code of criminal proceedings, Article 49 para 1 of the code of criminal proceedings stipulates that the wronged person is a physical person whose legal good was directly infringed or threatened by the offense. Pursuant to para 2 of the analyzed provision the wronged person can also be a state or self-government institution or any other organizational institution not having the status of a legal person to whom legal capacity is given by separate provisions.

⁵¹ In this way about attorneys M. Gawryluk, *Prawo o adwokaturze. Komentarz*, edit. 1, Warszawa 2012, p. 93, about court executive officer – G. Kuczyński, *Ustawa...*, commentary to Article 75(f) of the act on court executive officers, available in the LEX programme, and about legal advisers W. Kozielowicz – W. Kozielowicz, *Odpowiedzialność...*, Warszawa 2016, p. 316.

⁵² And thus with reference to disciplinary proceedings against prosecutors P. Czarnecki [in:] P. Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, Warszawa 2013, pp. 213–214.

analyzed legal professions should be changed in the future. The changes should involve giving the wronged person the rights and status of a party in all analyzed disciplinary proceedings. An obvious remark to be made here is that with thus potentially changed regulations, the wronged person will not appear in all cases anyway due to the definition of the wronged person specified in the appropriately applied Article 49 of the code of criminal proceedings (i.e. the directness of victimization requirement).

Referring to the considerations discussed above, it should also be added that only in the proceedings concerning court executive officers, other entities (other than those described above) can appear in the role of a party, namely: Minister of Justice, court presidents, judges-inspectors, bodies of the court executive officers. The indicated entities will acquire the status of a party only when they lodge with a disciplinary commission a motion for instituting proceedings.

Speaking in more detail about the procedural provisions regulating disciplinary proceedings in the analyzed legal professions it is worthwhile to point out that they are on the whole very similar in spite of certain objectively present differences.

First, as it has already been indicated above, all disciplinary proceedings consist of ‘preliminary’ proceedings (with the above described varied construction) and exceptionally in the case of court executive officers there is a possibility of a situation in which they can be abandoned and a motion for instituting the proceedings lodged right away. The motion for immediate institution of disciplinary proceedings before a disciplinary commission (with the omission of the investigation stage) can be lodged by the Minister of Justice, court presidents, judges-inspectors, court executive officers self-government bodies and court executive officers-inspectors⁵³. In this place, it is worth pointing out that the proceedings in question are always conducted by disciplinary spokesman who can undertake their actions *ex officio* (with the exception of court curators and court clerks) or in response to a motion by pertinent bodies⁵⁴. Conclusions reached by these bodies oblige disciplinary spokesmen to institute proceedings but they do not affect their substantive decisions as to the way of terminating the proceedings (with the exception of court curators and court clerks⁵⁵). This in fact means decision-making independence of disciplinary spokesmen as regards the termination of the preliminary proceedings⁵⁶.

⁵³ Comp. A. Durda, *Act on court executioners and execution. Commentary*, Warsaw 2016, pp. 416–417. The listing of the entities indicated is enumerative – comp. M. Biezuński, P. Biezuński, *Ustawa o komornikach sądowych i egzekucji. Komentarz*, edit. 2, Warszawa 2011, p. 205.

⁵⁴ For instance, such a body is the Minister of Justice (for legal advisers and attorneys) though there are also other additional authorized bodies (e.g. court executors self-government bodies for court executioners, the board of relevant chamber of notaries for notaries).

⁵⁵ In the case of court clerks, the institution of the explanatory proceedings by a spokesman is initiated by the president of the district court. It is also his sole decision that the motion for instituting disciplinary proceedings is lodged with a disciplinary commission – comp. P. Zuzankiewicz [in:] W. Drobny, M. Mazuryk, P. Zuzankiewicz, *Ustawa...*, p. 166. In the case of Court curators, it is the disciplinary spokesman with initiates proceedings solely on the motion of the district court president – comp. T. Jedynek, K. Stasiak, *Ustawa o kuratorach sądowych, Komentarz*, edit. II, Warszawa 2014, p. 281.

⁵⁶ In this way about the disciplinary spokesman for barristers – W. Kozielowicz, *Odpowiedzialność...*, Warszawa 2016, p. 249, Kozielowicz wrote the same about disciplinary spokesmen for judges – comp. W. Kozielowicz, *Odpowiedzialność dyscyplinarna...*, p. 65. In general, this is an expression of the independence of disciplinary proceedings conducting bodies, more on this subject (on the example of legal advisers) see: T. Niedziński, *Nadzór sądów i Ministra Sprawiedliwości nad postępowaniem wobec radców prawnych*, “Radca Prawny. Zeszyty Naukowe” 2015, No. 2(3), pp. 84–96.

Second, in all analyzed disciplinary proceedings for legal professions, the procedural action initiating the ‘main’ (similar to the court stage) stage of the proceedings is the lodging, by a disciplinary spokesman (mainly) or by other authorized entities, a motion with a relevant body (called differently). This motion is an equivalent of the indictment act in criminal proceedings and performs all its functions⁵⁷.

The motion in question is called in the majority of legal professions, with the exception of proceedings concerning prosecutors and court executive officers, a motion for the institution of disciplinary proceedings. In the case of prosecutors, the motion is called ‘a motion for examining a case in disciplinary proceedings’. In turn, in disciplinary proceedings concerning court executive officers the legal status is such that where the motion proceeds from a disciplinary spokesman, than the legislator used the expression ‘motion for punishment’ and where it proceeds from other law-authorized entities (e.g. Minister of Justice) it is called by the legislator a motion for the institution of disciplinary proceedings.

It should be added that due to the appropriate application of the CCP provisions, all the above mentioned motions for punishment are subjected to formal control by disciplinary courts⁵⁸.

Third, the accuser in two-instance procedures is always a disciplinary spokesman who performs the function of the accuser. In exceptional cases, regulations allow for another (additional entity) to appear as an accuser next to the spokesman. This situation occurs only as regards court executive officers in a situation when the motion for punishment (without preliminary proceedings) is lodged by court presidents, judges-inspectors, court executive officers self-government bodies and court executive officers-inspectors. These entities can then appear as accusers next to the spokesman as a party⁵⁹.

Fourth, in all the analyzed proceedings, cases are examined before relevant disciplinary bodies at hearings⁶⁰. As for the attendance of the parties, all the analyzed proceedings contain entries stipulating that an unaccounted for failure of the accused or his defense counsel to present at a hearing does not prevent the examination of the case. In disciplinary proceedings for prosecutors, there is a clause that this rule does not apply where the disciplinary court finds the presence of these parties unnecessary. As regards legal advisers and barristers, the legislator writes that such a decision of a disciplinary court (concerning an obligatory presence of the parties) is possible for ‘serious reasons’. What should in fact be pointed out is that

⁵⁷ And thus, for instance, about the motion for punishment in relation to court executioners, A. Marciniak [in:] A. Marciniak, *Ustawa o komornikach sądowych i egzekucji. Komentarz*, edit. 6, Warszawa 2014, p. 411.

⁵⁸ Such a procedure of motion control is universal in all disciplinary proceedings for analyzed legal professions, also in notaries – comp. R. Greszta, *Kontrola wniosku o wszczęcie postępowania dyscyplinarnego przed sądem dyscyplinarnym rady izby notarialnej* [in:] *Rozprawy z prawa prywatnego. Księga pamiątkowa dedykowana Profesorowi Aleksandrowi Oleszce*, red. A. Dańko-Roesler, Warszawa 2012, pp. 155–157. It is worthwhile to note that such a solution was also in force under earlier acts, for instance, the act on prosecutors of 1985 – comp. M. Mitera, M. Rojewski, E. Rojowska, *Ustawa o prokuraturze. Komentarz*, Warszawa 2011, pp. 199–200.

⁵⁹ See: Article 75 f sect. 1 UKiES.

⁶⁰ Literature points out that the disciplinary body should in principle strive to close the proceedings as fast as possible and thus, for instance, in relation to court executioners – A. Marciniak [in:] A. Marciniak, *Ustawa...*, p. 418. It is emphasized in literature that in order to quickly examine the case it is necessary to have it adequately prepared by, for instance, preparing evidence, a list of witnesses and questions to be addressed to them – comp. Z. Knypl, Z. Merchel, *Ustawa o komornikach sądowych i egzekucji*, Warszawa 2015, p. 635.

the rule is effective also in other proceedings as long as the provisions of the code of criminal procedure are applied. As for other elements concerning the analyzed subject, it is worth adding that in the disciplinary proceedings for prosecutors the legislator included a separate and special clause saying that the establishment or change of a defense counsel cannot become a reason for interrupting or adjourning a hearing.

Fifth, the legislator established the rule of openness of the disciplinary proceedings carried out (as it has already been signaled), with a simultaneous inclusion (in different legislative ways) of exceptions which actually refer to an appropriate application of Article 360 of the code of criminal proceedings which regulates the question of departures from the principle of the openness of the hearing (expressed in Article 355 of the code of criminal proceedings)⁶¹. Thus, in disciplinary proceedings the court (or a relevant disciplinary commission) can exclude the openness of the hearing as a whole or in its part if this openness could:

- a) cause disturbance of public peace,
- b) insult good manners,
- c) reveal circumstances which should be kept secret due important state interest,
- d) infringe important private interest.

Openness can also be excluded for the duration of the hearing of a witness who is below 15 years of age. It should also be added that in Article 360 para 2 of the code of criminal proceedings the legislator included the rule that where the prosecutor objects to the exclusion of the openness, the hearing is open. Applying this rule to disciplinary proceedings, it should be pointed out that the subject entitled to lodge the indicated objection to the exclusion of openness will be a disciplinary spokesman (as an accuser before disciplinary courts/commissions).

Sixth, the course of the proceedings before courts (or disciplinary commissions) is very similar. This results from the fact that the course of the whole evidence proceedings (and thus, for example, the procedure of summoning and hearing a witness or an expert, deriving evidence from documents) are a reflection of the appropriate application of the code of criminal proceedings, i.e. after collecting and taking evidence in a case the court procedure is closed, the parties take the floor and the procedure of the discussion of the adjudication takes place and then the adjudication is announced. In a complex case or for other important reasons, the court can adjourn the issuance of a judgment for a period not longer than 14 days and a different regulation can be found only in the provisions concerning court curators (namely, 3 days) as well as court clerks (7 days).

Seventh, it should be pointed out that while the procedure of delivering the adjudication with reasons for it varies among the analyzed professions (there are three models of delivery), the legal requirements concerning the reasons of judgment prepared are identical in all the procedures due to the appropriate application of the provision of Article 424 of the code of criminal proceedings. This means that the reasons for judgment should include concise:

⁶¹ W. Kozielwicz, *Odpowiedzialność...*, Warszawa 2016, p. 253.

- 1) indication of what facts the court found proved or not proved, on what evidence the court based in this respect on evidence and why it did not accept evidence to the contrary;
- 2) explanation of the legal grounds for the adjudication.

Moreover, the reasons for judgment should include the circumstances which the court had in mind when adjudicating the punishment and when making other judgment-related decisions.

The three models of delivery referred to above include:

- The rule of the absolute preparation and delivery of the reasons for the judgment of the disciplinary court of the first instance and simultaneous delivery of its reasons *ex officio*⁶², with a simultaneous inclusion of exceptions from this rule referring to the way of terminating the case (where the case ended with reprimand or where the adjudication was made in course of consensual case termination⁶³). This model was adopted by the legislator for barristers, legal advisers and court executive officers.
- The rule of delivery by the disciplinary court of solely the sentence of the adjudication made in the first instance with an assumption of the reasons for the adjudication being prepared and delivered to the entitled subject who will apply for it within a law-specified period (calculated from the date of the receipt of the sentence of the adjudication). This model is effective solely as regards prosecutors.

Eighth, in each of the analyzed disciplinary proceedings appeal is the legal remedy to be used against the first instance adjudication. The appeal can be lodged in principle within 14 days (with the exception of court executive officers where it is 30 days) counted from the date of the delivery of the reasons of the adjudication. The procedural requirements with respect to the appeal are the same as in the case of a written statement of claim. The provisions applicable here are the same as in the case of an appeal in criminal proceedings (including, for example, provisions concerning the formulation of possible demurrers from Article 438 or 439 of the code of criminal procedure).

As for the formal possibility of lodging appeals, it should be pointed out that entitled to lodge them are always parties to proceedings (as well as their possible representatives) and in addition other entities indicated by law (with the exception of proceedings against court curators and court clerks). The entities, most frequently indicated as entitled to lodge an appeal include the Minister of Justice⁶⁴ and the General Prosecutor (for prosecutors). In exceptional cases, other entities can also be entitled: for judges (National Council of the Judiciary) and for court executive officers (presidents of the court, judges-inspectors, court executive officers'

⁶² This is the case with judges, notaries, court curators and court clerks.

⁶³ The point is that the motion of the disciplinary spokesman for making and adjudication, and inflicting the disciplinary punishment agreed on with the accused without conducting a trial or cases which took into account the motion of the accused to issue an adjudication and inflicting a specific disciplinary punishment. Such a situation is possible, for instance, in the case of advocates – comp. W. Kozielwicz, *Odpowiedzialność...*, Warszawa 2016, p. 253.

⁶⁴ This applies to advocates, legal advisers, judges, notaries, court executioners.

self-government bodies as well as court executive officers-inspectors). The last indicated numerous group of entities in the case of court executive officers has the right to lodge an appeal only provided that it is these entities that have lodged a motion for instituting disciplinary proceedings (because these entities are then treated as a party to the proceedings).

Ninth, the way of proceeding of the disciplinary bodies of the second instance is based on an appropriate application of the provisions of the code of criminal proceedings. This means, among others, that these organs examine a case at a hearing (and in exceptional cases at a session) as well as that the formula of potential adjudications is the same as for the criminal court in appeal proceedings (i.e. apart from maintaining in force the adjudication of the first instance there is a possibility to change both the judgment and the cassation adjudication: to overrule the adjudication and to pass the case for re-examination).

What requires to be emphasized separately is the fact that appropriate application of the code of criminal procedure in the appeal proceedings of the analyzed legal professions causes that the same *reformationis in peius* rules and the related with them *ne peius* rules apply⁶⁵. The application of the first of the rules referred to means that the disciplinary body of the 2nd instance can rule against the accused only when an appeal is lodged against him as well as within the limits of the appeal against the judgment and only in the case the transgressions raised in the appeal are confirmed (unless the appeal does not come from the accuser or a proxy and does not raise pleas or where the law prescribes that an adjudication be made irrespective of the pleas raised⁶⁶).

In turn the application of the *ne peius* rule means that the organ of the 2nd instance cannot convict an accused who was found not guilty in the 1st instance or the proceedings against whom were discontinued in the 1st instance⁶⁷. Moreover, where the adjudication appealed against is overruled and the case is referred for re-examination, an adjudication more severe than the overruled can be made only where the adjudication referred to was appealed against to the disfavour of the accused.

Tenth, all the analyzed disciplinary proceedings regarding legal professions have regulated provisions concerning the enforcement procedure set in motion once a legally valid adjudication is made declaring the accused guilty. The common procedural element of these regulation is the fact that:

- 1) they specify what entities shall be delivered a copy of the legally valid disciplinary adjudication *ex officio* and indicate the placement of the copy;
- 2) they contain the indication of the entity (or entities) entitled to inflict the penalties. Obviously, the entities are specific to the proceedings though it is worth emphasizing that the Minister of Justice takes part, among others, in proceedings concerning judges, notaries and court executive officers;
- 3) they specify the period for some kind of an erasion of the entry in the register of convictions, that is removal from personal records of the entry

⁶⁵ More on the subject of the rules referred to in, for instance, M.J. Szewczyk, *Reformationis in peius ban in the Polish criminal proceedings*, Warszawa 2015.

⁶⁶ In the criminal procedure this ban is formulated in Article 434 of the code of criminal proceedings.

⁶⁷ In the criminal procedure this ban is formulated in Article 454 of the code of criminal proceedings.

regarding the conviction (or a copy of the adjudication). These regulations specify individual (generally similar) periods simultaneously indicating that they apply to a situation of the absence of liability to punishment for other disciplinary torts or absence of the initiation of new disciplinary proceedings (because in the latter case the time necessary for the 'erasure' is extended).

Eleventh, in the analyzed legal professions the legislator provided for a possibility to institute extraordinary measures of appeal against adjudications by disciplinary bodies of the 2nd instance in the form of cassation⁶⁸ and a motion for the resumption of the proceedings.

Legal regulations concerning the right to lodge a cassation vary which should be criticized. Barristers, legal advisers, prosecutors and notaries also have the right to lodge a cassation. Judges and court executive officers do not have this right at all. In turn, as regards court curators and court clerks, instead of a possibility to lodge a cassation, the legislator created a possibility to place an appeal with a relevant court of appeal – a court of labour and social security with the application of relevant provisions on appeal from the code of civil procedures (CCP)⁶⁹. This solution should be definitely criticized and in particular the application of the provisions of the civil procedure which, after all, have not been applied at all and which have nothing in common with the penal (and also quasi penal) character of the disciplinary proceedings carried out.

It should be emphasized that the procedure of lodging a cassation in the professions in which it is admissible is based to a large extent on the code of criminal procedure⁷⁰ and is, in effect, very similar, for instance:

- Cassation is lodged within 30 days from the delivery of the adjudication of the disciplinary organ of the 2nd instance (through the mediation of this organ). The only exception here is the General Prosecutor who has three months to lodge a cassation in the disciplinary proceedings against prosecutors.
- Cassation is examined by the Supreme Court composed of three judges.
- Cassation is lodged free of charge and results in a suspension of the performance of punishment (prosecutors being the only exception).
- Legal ground for lodging a cassation can be a glaring infringement of law or glaring incommensurability of the disciplinary penalty.

In addition, in each of the above four analyzed disciplinary procedures, apart from the parties entitled to lodge a cassation there are also other entities, such as

⁶⁸ The great importance of the regulation referred to (the right to lodge a cassation) is emphasized by C. Kulesza [in:] C. Kulesza, *Ewolucja...*, p. 18.

⁶⁹ In the reasons of judgment of the Court of Appeal in Warsaw of 21 August 2000 (III Apo 10/00, OSA 2001, No. 2, Item 7) this Court pointed out that the possibility of placing an appeal against the adjudication of the commission of the 2nd instance is aimed at ensuring the governance of jurisdiction of the court over disciplinary decisions, not at replacing the proceedings before disciplinary commissions with court proceedings.

⁷⁰ In their decisions the Supreme Court directly pointed out that in the scope not regulated otherwise, cassation proceedings are governed by the code of criminal procedure – comp. judgment of the Supreme Court of 27 July 2016, SDI 28/16, LEX No. 2087127; adjudication of the Supreme Court of 10 April 2014, VI KZ 2/14, LEX No. 1444635.

the Minister of Justice or the Ombudsman (in the case of barristers, legal advisers and notaries), the General Prosecutor (in the case of prosecutors) as well as entities representing professional self-governments (for a given profession): the National Council of Notaries, President of the Supreme Bar Council, President of the Nation Council of Legal Advisers. In the case of notaries, in addition, also the disciplinary spokesman has the right to lodge a cassation (other spokesmen do not have this right).

In turn, as regards the right to lodge a motion for the resumption of disciplinary proceedings, it should be pointed out that it is possible in all the analyzed disciplinary proceedings. In some professions this possibility is clearly provided for in the act regulating their performance⁷¹ while in others it results from the appropriate application of the code of criminal procedure.

Twelfth, in all the analyzed legal professions, the regulations contain solutions concerning the impact of the abandonment of the performance of a given profession on the possibility of initiating or continuing disciplinary proceedings.

The principle is that a change of the profession prior to the commencement of disciplinary proceedings results in the absence of a possibility to effectively institute new disciplinary proceedings against a given person.

As regards the proceedings already in progress, the analyzed regulations provide, in principle, for two possibilities: the proceedings become inadmissible or continue irrespective of the cessation of practising the profession (it is so in the case of judges, prosecutors and notaries⁷²). In addition, the legislator provided for a possibility of notifying specific corporate bodies or government offices about the disciplinary punishment of the accused.

It should be pointed out in this place that while in principle the cessation of the performance of the profession of a barrister or a legal adviser constitutes a procedural obstacle to further disciplinary proceedings, the provisions concerning the performance of these professions provide for a possibility of refusing to cross a given person out from the list of people practising the profession (till the termination of the proceedings⁷³). What is at stake is giving the professional self-government bodies a possibility to stigmatize the reprehensible behaviours of the accused⁷⁴.

It seems that the legislator should definitely consider the adoption of the principle that a change of profession does not constitute an obstacle to the continuation of disciplinary proceedings due to the character of the analyzed legal professions

⁷¹ This applies to common court judges, prosecutors, court clerks. The provisions in question regulate in these cases the procedure of lodging a motion but do it holistically as they contain also reference to appropriate application of the provisions of the Code of Criminal Procedure.

⁷² In the case of notaries, such a situation has place also where the Minister of Justice declares loss of the effectiveness of a given notary's appointment – comp. A. Oleszko, *Prawo...*, p. 871.

⁷³ Pursuant to Article 30 of the Act on Legal Advisers, where disciplinary proceedings are in progress against a legal adviser, his removal from the list of legal advisers can be denied in spite of the motion of the legal adviser referred to in Article 29 pt. 1 of the Act on Legal Advisers – more on this subject in K. Kwapisz, *Act on legal advisers. Commentary*, edit. 1, Warsaw 2013, pp. 81–82. In turn, in the case of advocates, the room of maneuver for the self-government of the Bar (the district bar council) to refuse to cross a given person out from the list of advocates is narrower. Pursuant to Article 72 sect. 2 Law on Barristers the district bar council can refuse to cross somebody out from the list of advocates for reasons specified in Article 72 sect. 1 pt. 2 or 3 (stepping down from the Bar, transfer of the professional seat to another bar chamber) if there are disciplinary proceedings in progress against a given barrister.

⁷⁴ The refusal to cross a person out from the list of legal advisers is discussed by W. Koziolowicz [in:] W. Koziolowicz, *Odpowiedzialność...*, Warszawa 2016, p. 314.

which have the feature of a profession of public trust. Abuses (disciplinary torts) committed by lawyers of the analyzed professions should be stigmatized and pointed out if only due to the fact that disciplinary punishments should perform both the preventive and the educational function.

Thirteenth, all the analyzed provisions foresee a possibility of suspending the accused in the performance of professional activities. The regulations referred to have a few essential common features:

- a) the decision about the suspension in the performance of professional activities is always enforceable forthwith,
- b) the sentenced decision about the suspension in the performance of professional activities (or possible extension of the decision) can always be appealed against within 7 days in the form of a complaint. Naturally, at the level of individual legal professions there are differences consisting in specifying the entity which will examine a given complaint. The prevailing feature of the analyzed disciplinary proceedings is the fact that the suspension in the performance of professional activities is adjudicated by a disciplinary court (or a disciplinary commission)⁷⁵.

As regards the initiation of the proceedings resulting in the suspension of a given person in the performance of professional activities (an organ acting *ex officio*, action on the motion of an entitled entity), the legislator seems to have, in principle, diversified the question evenly: it is either an action exclusively *ex officio* (as it is in the case of court clerks, notaries, judges) or an action alternatively: *ex officio* or on the motion of an entitled entity (e.g. in the case of legal advisers, barristers and court curators).

In principle, the decision about a possible suspension of a given person in the performance of a specific legal profession is optional (i.e. it depends on the analysis of a particular and individual case). Provisions on disciplinary proceedings for barristers and legal advisers as well as judges are the only exception as in specific situations they include a legal order to suspend a given person in the performance of professional activities⁷⁶.

As regards the duration of the suspension in the performance of professional activities, the legislator did not actually specify the time for which it is to apply which leads to the allegation that the upper time limit of the suspension is a legally valid termination of the disciplinary proceedings⁷⁷. However, this suspension can be cancelled earlier⁷⁸.

⁷⁵ Such a situation occurs in 5 of the analyzed legal professions: advocates, legal advisers, judges, notaries and court executioners (in the case of the latter it is a disciplinary commission which adjudicates).

⁷⁶ In the case of legal advisers and advocates the legislator foresaw an obligatory suspension of a person in relation to whom the court applied temporary detention. In turn, in the case of judges, the disciplinary court adopts a resolution allowing to bring a judge to criminal justice for a deliberate crime subject to public prosecution, the judge being suspended in professional activities *ex officio*.

⁷⁷ In the case of prosecutors the decision about the duration of the suspension belongs to disciplinary superiors and the legislator specified the maximum period of the suspension as 6 months. The suspension of a prosecutor can, in justified cases be extended by the disciplinary court for another, necessary period.

⁷⁸ Provisions concerning prosecutors are the only exception as the decision concerning the duration of the suspension belongs to disciplinary superiors and the legislator specified the maximum duration of the suspension as 6 months. The suspension of a prosecutor in his duties can, in justified cases, be extended by a disciplinary court for another necessary period.

To sum up this thread, it should be noted that in each of the analyzed legal professions there is a legal possibility of suspending a given person in the performed professional duties. There are several differences as regards the determination of specific solutions in the application of this institution in individual legal professions but these differences are not of a character that their possible changes (particularly in the direction of standardizing the rules of applying these institutions) could distort the analyzed legal institution. In the case of possible standardization of the provisions referred to, the legislator should consider, as the principle of adjudication the suspension by a relevant disciplinary court, the establishment as the principle of adjudicating the suspension *ex officio* or on the motion by authorized parties as well as decide that the suspension should last at most till the legally valid termination of the disciplinary proceedings, with a possibility of its earlier reversal at the request of the parties (or the entitled entities) as well as *ex officio* (where absence of grounds for further duration of the suspension is established).

Fourteenth, all the analyzed legal professions have regulations concerning the question of the costs of the trial in which two functioning variants can in principle be distinguished.

In the first variant the costs of the proceedings are fully covered by the State Treasury and this principle concerns the disciplinary proceedings in the case of judges, court executive officers and court clerks. These are legal professions performing official duties on behalf of the Republic of Poland. It should be added that these costs are incurred by the State Treasury irrespective of the type of adjudication made.

In the second variant, the costs of the proceedings are incurred by individual professional self-governments which determine the level and method of their calculation. Where the motion for punishment proves effective and the accused is found guilty, the accused returns the costs of the proceedings. In turn, where the accused is acquitted or where the proceedings against him are discontinued, these costs will be incurred by a given professional self-government.

The described variants are a natural reflection of the specific position of individual legal professions with respect to whether they have their own professional self-government (which they are subordinated to) or whether they are directly subordinated to state bodies.

6. UNIQUE SOLUTIONS IN LEGAL REGULATIONS CONCERNING DISCIPLINARY RESPONSIBILITY

It has already been signaled earlier that apart from obvious differences resulting from the specificity of professions (manifesting itself, for instance, in the names of individual disciplinary bodies), in individual professions there are solutions which are unique in character as well as solution which operate only in a narrow group of particular professions. They will be given a brief presentation hereinafter.

As regards the institutions which appear only in certain disciplinary proceedings, it is worth pointing to a possibility of extending the motion for punishment (as in the extension of the indictment act from Article 398 of the Code of Criminal

Procedure regulating ‘the accident trial’⁷⁹) as a possibility of giving a combined punishment.

The extension of the scope of the motion for punishment concerns judges and prosecutors. In relation to these two professions the legislator introduced a rule that where another offense is revealed in the course of a trial then, apart from the offense covered by the motion for the examination of the disciplinary case, the court can pass a judgment with respect to this offense only with the consent of the disciplinary spokesman and the accused or the latter’s counsel of defense. In the case of lack of consent by the entities referred to above, the disciplinary spokesman shall conduct separate disciplinary proceedings in this respect⁸⁰.

In turn, with respect to a possibility of giving a combined punishment, the legislator provided for such a possibility in relation to judges, prosecutors and court clerks, specifying, in each case, (similar) conditions for combining punishments.

Simultaneously, as regards unique procedural solutions contained in individual legal professions analyzed, it is worthwhile to indicate the regulations for 3 professions:

- 1) In the disciplinary procedure for judges, the legislator provides for a possibility of a combined adjudication (a combined judgment of sorts). According to this regulation, where the accused has committed two or more disciplinary offenses before the first, even legally valid adjudication is given with respect to any of them, then a combined adjudication is issued on the motion by the accused provided the adjudicated penalties can be combined according to the rules appropriate for the adjudication of a combined punishment for several offenses in one judgment.
- 2) In the disciplinary proceedings against prosecutors two legal peculiarities can be found: a possibility to make use of a piece of evidence in the form of technical devices aimed at controlling unconscious reactions of the organism as well as a possibility of placing in the sentence of the adjudication of the disciplinary court of a mention of an obvious groundlessness of the lodged motion for punishment or a mention of an obviously undeserved discontinuation of the proceedings.

As for the first of the procedural peculiarities, it should be pointed out that pursuant to Article 154 para 5 of the Act Law on Prosecutors, in order to reduce the range of people suspected of having committed a disciplinary offense containing features of a crime of disclosing information from criminal proceedings containing secret information of confidentiality clause ‘secret’ or ‘top secret’, the disciplinary spokesman, can, in the course of the proceedings carried out,

⁷⁹ Here, it should be indicated that the Supreme Court ruled that the provisions of the law referred to above constitute independent grounds for extending the limits of the accusation which constitute *lex specialis* in relation to Article 398 para 1 of the Code of Criminal Procedure – comp. decision of the Supreme Court of 15 November 2002, SDI 31/12, LEX No. 1515153. This does not change the fact that there are similarities between the institutions. More on the subject of the ‘incident trial’ in, for instance, P. Rogoziński, *Kodeks postępowania karnego. Komentarz do wybranych przepisów*, commentary to Article 398 of the Code of Criminal Procedure, available in the LEX 2016 programme; S. Stachowiak, *Przedmiotowe rozszerzenie oskarżenia w toku rozprawy głównej w polskim procesie karnym*, „Prokuratura i Prawo” 2002, No. 6, p. 7–15.

⁸⁰ Comp. the provision of Article 117 of the act law on the system of common courts and the provision of Article 158 of the act law on the prosecutor’s office.

appoint an expert to apply towards the prosecutor having access to the information, with his consent, technical devices aimed at controlling the unconscious reactions of the organism. The application of the above mentioned technical devices requires also the consent of the General Prosecutor. This is a unique solution because no other disciplinary procedure provides for a possibility of taking such evidence.

On the other hand, the second unique procedural regulation consists in the fact that the disciplinary court adjudicating in the case of an appeal against the discontinuation of disciplinary proceedings by the disciplinary spokesman can, dismissing the decision appealed against, simultaneously adjudicate in the sentence of the decision that it was really undeserved. This procedure is identical where the court gives the accused a sentence of acquittal or discontinues the proceedings – the disciplinary court has the right to place in the sentence of the judgment a mention of the fact that the motion for punishment in a given case was lodged on obviously wrong grounds. This is a very interesting institution and it should be pointed out that the legislator should consider transferring it to criminal proceedings.

- 3) in the disciplinary proceedings for court clerks, a procedural peculiarity of sorts is a possibility to initiate disciplinary proceedings, not terminated in substance due to a decision on the discontinuation of the proceedings after the death of the accused. Proceedings can be initiated in this way at the request of a spouse, relation or relative in direct line or siblings. This is possible pursuant to para 3 of the Decree of the President of the Council of Ministers of 5 December 2011 on explanatory and disciplinary proceedings concerning government officials and disciplinary commissions and disciplinary spokesmen. The accused is then represented by the counsel of defense established by applicants or established *ex officio*, where the accused has not appointed one.

The legal solution referred to should be definitely criticized as it does not comply with the essence of disciplinary proceedings where bodies adjudicate whether a given person is guilty with a real possibility of this person being punished (which is, obviously, impossible in this situation). The death of the accused or the suspect is a basic negative prerequisite in criminal proceedings as well as in other disciplinary proceedings concerning the analyzed legal professions. There was no other rational reason to depart from this negative prerequisite in the case of disciplinary proceedings concerning court clerks.

Summing up, the above considerations, it should be pointed out that the character of the above procedural solutions allows the legislator to resign from them, 'without damage', in the case of possible standardization of procedures or, conversely, expand the scope of the application of these institutions. It seems that the said extension of the application of the institutions would be desirable in relation to the introduction of a procedure of marking obviously wrong discontinuations as well as motions for punishment (as in the case of prosecutors) as well as introduction of an institution of a 'combined judgment' of sorts.

7. CONCLUSIONS *DE LEGE FERENDA*

The analysis carried out above shows that the present models of disciplinary proceedings for the analyzed legal professions which are now functioning separately are very similar both in terms of substantive-legal and formal-legal solutions. Individual procedural regulations are very similar due to the very broad scope of relevant application of the provisions of the code of criminal procedure.

Simultaneously, the general conclusion which should now be drawn is that the title idea of the standardization of the disciplinary law and disciplinary procedure in legal professions makes sense and is entirely possible in the future. The degree of construction- and meaning-related similarities in individual disciplinary regulations for legal professions is considerable which will no doubt favour the proposed standardization. Obviously, apart from numerous similarities, there are also certain differences but their character is not likely to make them constitute an obstacle to the proposed standardization. Some of the existing differences anyway seem totally redundant and hard to account for, just as for example, why a legal adviser or a barrister can harm a client with their action and he will then have the status of the wronged person while this status will never be given to person affected by a harmful action of a notary or a prosecutor. What is more, as it has been shown above, such a standardization cannot have any adverse affect on procedural standards or adjudication standards (in general on the guarantees of a fair trial) because at present these standards are actually the same and simultaneously very high in the analyzed proceedings.

What should be indicated among the details of a possible standardization process is, for instance, the fact that it is difficult to justify the currently diversified stance of the Minister of Justice in the analyzed disciplinary proceedings who has the status of a party in some proceedings while in others the right to lodge an appeal (without the status of a party) and in yet others has significantly limited competences.

The key problems which will appear in the course of standardization attempts will also involve, among others, the fact that trying to make changes and perform a standardization of disciplinary procedures of sorts, the legislator will have to adopt, first and foremost, decisions as to the legal character and shape of the 'preliminary' proceedings, or make a decision as to determining the role and position of the wronged person as well as the competences of the Minister of Justice referred to above. These are the key differences which appear in the analyzed proceedings. These possible decisions of the legislator will have a significant impact on the final model of standardized disciplinary proceedings. What will be needed in addition to the effective implementation of the standardization process are substantive changes but they will be much less complex and involve, for instance, the naming of disciplinary bodies of both instances and the shape of the adjudication benches, the naming of the motion initiating the court proceedings, the period for the adjournment of the announcement of the judgment, etc.

As regards the potential direction of the above changes, it seems that it would be appropriate to shape the 'preliminary' proceedings following the example of the disciplinary proceedings for, for instance, legal advisers and barristers. The proceedings are substantive proceedings in which evidence proceedings are carried

out and the case is first conducted at an *ad rem* stage and then (after the collection of relevant evidence material) at an *in peronam* stage (i.e. the accused is presented with charges). In its essence, these proceedings are extremely close to the investigation known from criminal proceedings. The advantage of this model is potential reduction of the number of cases that come on for the trial by disciplinary bodies thanks to reliable and accurate examination of cases (thanks to the evidence proceedings carried out) already at the stage of investigation. This remark is made because at present, in many legal professions, appropriate substantive examination of the case is made as late as at the court stage.

The direction of changes regarding the position of the wronged person in disciplinary proceedings concerning legal professions seems obvious because it should aim at such a change of provisions that the wronged person (satisfying the directive of Article 49 of the Code of Criminal Procedure) be a party and could take part in disciplinary proceedings for all legal professions. This is demanded by justice and social considerations.

In turn the position of the Minister of Justice should be regulated in a uniform way and we should opt for his broad competences, that is for the right to take part in any proceedings, the right to look into the files of the case at every stage (irrespective of whether he takes part in a given case), the right to lodge appeals against substantive adjudications and other adjudications terminating proceedings.

Leaving aside the above remarks, it should be pointed out that at present the legislator has a choice between several legal solutions as regards possible standardization (unification) of analyzed disciplinary proceedings. Their type and selection depend on the choice of the general model of the organization of disciplinary proceedings of which there can be in principle four.

The first model is characterized by the fact that the total of the disciplinary proceeding is carried out before relevant bodies established by relevant bodies representing legal professions. What is maintained is the full competence of professional self-governments in this respect. If the legislator wanted to preserve this model of proceedings, he has the choice of two different construction variants.

First, the legislator can make an amendment of all the individual acts concerning all legal professions, by way of one large act in such a way as to include in them the same general and uniform procedural provisions, with additional specificities of individual professions being taken into account (e.g. individual determination of the role of professional self-governments). This will lead to the emergence of a legal situation in which disciplinary proceedings for given professions will be regulated later in individual acts concerning these professions and will proceed on the level of bodies appointed by representatives of this profession. What will be crucial is the fact that every profession will have in principle the same regulated procedure of disciplinary proceedings, specified in 'their' act, regulating the principles of the performance of a given profession.

Second, instead of passing an act regulating a number of acts, the legislator can simply pass one 'large' act which will regulate the matter as a whole, i.e. introduce uniform procedural regulations, respecting simultaneously the specificities of given professions (e.g. individual determination of the role of professional self-governments). It will then be an act regulating disciplinary proceedings for legal

professions and will constitute, in its scope, a complement and at the same time *lex specialis* for specific acts (from which clauses concerning disciplinary proceedings will be erased). The act referred to above can have a solely procedural character (i.e. contain regulations concerning only provisions of procedural character) or it can have a mixed character, i.e. contain provisions procedural as well as substantive in character (irrespective of whether they would be standardized or not).

In the second potential model the legislator can standardize procedural provisions with a simultaneous legislative 'transfer' of the equivalent of 'court proceedings' from the level of pertinent bodies of the legal professions to the level of selected state bodies. This refers, first of all, to common courts, the Supreme Court or possibly another, specially established new body. Against the background of the indicated entities, the legislator should consider in particular, the choice of the Supreme Court and this not only because of its particular legal rank and position, but also due to the fact that a new chamber is created there, that is the Disciplinary Chamber of the Supreme Court. Thus, in this model the 'preliminary' proceedings would remain the domain of pertinent bodies of the legal professions (including individual professional self-governments, the role of which would terminate with the presentation of an equivalent of an indictment act or with the discontinuation of the proceedings (subject possibly to control by indicated external court bodies, e.g. by the Disciplinary Chamber of the Supreme Court). Disciplinary spokesmen for given professions would act as prosecutors before the court.

It should be pointed out that with the present diversity of legal regulations concerning 'preliminary' proceedings, the indicated variant could in fact signify marked diversification of the role of individual bodies of legal professions and in effect frequent transfer of the whole burden of the proceedings (transfer of the proper substantive examination of the case) to a stage of court proceedings before external government bodies. The point is that in some proceedings evidence-related procedures would be carried out (e.g. in investigations concerning barristers or legal advisers) while in others the role of the bodies would be limited to an initial recognition of the case or only to the formulation of a motion for punishment (e.g. in the case of court executive officers).

What could act as a panacea for the above described drawbacks is introduction of uniform regulations concerning the 'preliminary' proceedings and shaping them as in the investigation concerning barristers and legal advisers. These proceedings would then be substantive in character and the decision-making as regards the object of the relevant presentation of the indictment act would remain on the level of relevant bodies of legal professions (including relevant professional self-governments), after they have completed evidence proceedings. This means that professional self-government would still be responsible for determining whether a given disciplinary tort was committed and for taking legal steps adequate to these findings, that is discontinuation of proceedings in the case of establishing absence of the said tort (or establishment of the occurrence of other negative prerequisites for court proceedings. It will be for the legislator to decide whether he will leave to professional self-government bodies the legal remedy in the form of quasi-punishment for 'minor' matters (of an insignificant degree of guilt/injuriousness) like a dean's admonition given by the dean of the district bar council. There are no

contraindications why the legislator should not establish such powers for a body of individual self-governments. On the other hand, the question of the final determination of the scope of disciplinary responsibility would already remain in the hands of the judicial body, for instance, of the Disciplinary Chamber of the Supreme Court. It would examine not only cases activated by the submission of a motion for punishment (an equivalent of an indictment act in criminal proceedings) but would also constitute an instance of appeal against decisions made in the course of 'preliminary' proceedings carried out by the self-government bodies of a given legal profession.

It seems that the legislator can achieve the indicated model of proceedings by creating a special act separately regulating the matter.

The potential third model is in principle similar to the second model described above, the possible difference being that the legislator could decide that at the stage of 'court' proceedings before pertinent state bodies an already specified external entity (not connected with any legal profession) would appear in the role of the prosecutor. This prosecutor would join the case already after it has been initiated by relevant legal professions bodies (that is already after the submission by them of an indictment act) and would be procedurally independent and sovereign in the course of further proceedings. His position as well as the construction of the office remains to be considered. It seems that the most appropriate legislative path to the implementation of the possible model referred to above would be a new special act. Yet, this model seems to be the least convincing. The point is that it seems to be deprived of much substantive sense to establish a special external body to act as a prosecutor in a situation when this body would join proceedings already initiated with an equivalent of an indictment act or legal action. Such a prosecutor would in a way double the work (including procedural actions) of the complaint-lodging entity and, moreover, it would be in principle bound by its scope and content.

In the potential fourth model, the legislator could decide to 'transfer' all the stages of the disciplinary proceedings for legal professions outside of the bodies of individual legal professions, that is entrust both the 'preliminary' proceedings to a separate entity (e.g. establishing a public body of a disciplinary spokesman for legal professions) and the conduct of the 'court' proceedings to relevant state bodies (pertinent common courts, Supreme Court or another, specially established body). An alternative variant of the described model would also be a solution in which the 'preliminary' proceedings as well as the equivalent of court proceedings would be conducted by one 'external' entity (within its different internal organizational units). This could be any new or specially created entity (body) or an already existing body (for instance, the Ministry of Justice).

The indicated solutions from the category of the 'fourth model', though theoretically possible, could arouse numerous legal queries as to the scope of interference in the autonomy of individual legal professions by the legislator as well as to give rise to numerous problems of practical nature.

In light of the above it can be seen that standardization of procedural provisions concerning disciplinary proceedings for selected legal professions is highly possible due to their present statutory construction largely based, anyway, on the principles of criminal procedure and incorporating all the principal criminal and procedural rules.

The legislator has broad room for maneuver within the scope of potential changes to disciplinary proceedings for legal professions, including the determination of their organizational model. It seems that such changes are desirable while their scope and direction will depend to a larger extent on the decision of the legislator as regards one of the four (above described) ‘principal’ models, that is determination of the organization of disciplinary proceedings and then possibly on the choice of variants of the implementation of a given model.

After the choice of a given organizational model, the legislator has at his disposal an almost ready ‘set’ of procedural provisions (from among those presently applied) with a reservation for the necessity of adopting an essential decision to the establishment of the role of the wronged person, the character of the ‘preliminary’ proceedings, the role and powers of the Minister of Justice as well as a reservation for the necessity of standardizing the individual detailed provisions (e.g. standardization of the maximum possible period for the postponement of the trial).

Abstract

**Marcin Wielec, Roland Szymczykiwicz, *Standardization of disciplinary responsibility in legal professions in the system of Polish law*
– conclusions de lege ferenda**

The present study presents an analysis of normative patterns of bearing disciplinary responsibility in selected legal professions such as barristers, legal advisers, common court judges, notaries, court executive officers, prosecutors, court curators and court clerks. These are basic legal professions functioning within the system of Polish law. The special aim of the analysis was to present arguments in favour of a possibility to standardize the provisions regulating disciplinary responsibility questions in broadly understood legal professions.

Keywords: *disciplinary proceedings, disciplinary law, legal professions, disciplinary responsibility, criminal proceedings, criminal law*

Streszczenie

**Marcin Wielec, Roland Szymczykiwicz, *Unifikacja odpowiedzialności dyscyplinarnej w zawodach prawniczych w systemie prawa polskiego*
– wnioski de lege ferenda**

Prawo i postępowanie dyscyplinarne są szczególnego rodzaju obszarami prawa. Mają taki charakter, że bardzo trudno jest uszeregować ten obszar w istniejące już standardowo ramy regulacji prawnych, tak jak to ma miejsce chociażby z prawem karnym materialnym czy prawem karnym proceduralnym. Warto się zastanowić, czy ta różnorodność modeli dyscyplinarnych funkcjonujących głównie na wybranym tu obszarze, tj. regulacji prawnych zawodów prawniczych, nie powinna być zmieniona poprzez jej unifikowanie w ten sposób, aby powstał jeden sprawny model postępowania dyscyplinarnego dla zawodów prawniczych. Do analizy możliwości unifikacji zasad ponoszenia odpowiedzialności dyscyplinarnej wybrano poszczególne modele tych regulacji prawnych, które obowiązują u adwokatów, radców prawnych, sędziów sądów powszechnych, notariuszy, komorników, prokuratorów, kuratorów sądowych oraz referendarzy sądowych.

Słowa kluczowe: *postępowanie karne, prawo i postępowanie dyscyplinarne, zawody prawnicze, odpowiedzialność dyscyplinarna*