



DOI: [https://doi.org/10.14505/jarle.v8.1\(23\).12](https://doi.org/10.14505/jarle.v8.1(23).12)

Bringing Civil Servants to Liability for Disciplinary Misconduct in Judicial Practice of Ukraine, Poland, Bulgaria and Czech Republic

Olena LUTSENKO

Yaroslav Mudryi National Law University, Kharkiv, Ukraine

lenusikl@i.ua

Suggested Citation:

Lutsenko, Olena. 2017. Bringing civil servants to liability for disciplinary misconduct in judicial practice of Ukraine, Poland, Bulgaria and Czech Republic. *Journal of Advanced Research in Law and Economics*, Volume VIII, Spring, 1(23): 103 – 112. DOI: [10.14505/jarle.v8.1\(23\).12](https://doi.org/10.14505/jarle.v8.1(23).12). Available from: <http://journals.aserspublishing.eu/jarle/index>

Article's History:

Received December, 2016; Revised January, 2017; Published March, 2017.

Copyright © 2017, by ASERS® Publishing. All rights reserved.

Abstract:

A discipline of public servants within an organization requires four characteristics: a number of disciplinary offences, proportionate punishments clearly linked to the disciplinary offences, oversight and appeals from disciplinary decisions, and independence from politicians. This paper examines public sector legislation in Ukraine, Poland, the Czech Republic, and Bulgaria to show the peculiarities of legal regulation of each of these criteria. We argue – a claim that creation of arbitrary powers to punish or dismiss staff is unjust if the legislation does not fully inform staff of what a breach of discipline constitutes, if it does not guarantee proportionate punishments to offences, and/or allow the disciplinary process to be used as a tool to coerce staff to perform in a politicized or otherwise unethical manner. In the article all four criteria are disclosed by comparative analysis with certain EU members (Poland, Bulgaria, Czech Republic). Intermediate and key conclusion about the peculiarities of bringing civil servants to disciplinary liability in Ukraine, Poland, Bulgaria and the Czech Republic and some recommendations are made on the basis of the comparative study.

Keywords: disciplinary offences (misconduct); public service; disciplinary sanction; disciplinary liability.

JEL Classifications: K3; K31; K33.

Introduction

A discipline of public servants within an organization is characterized by four features: a number of disciplinary offences, proportionate punishments clearly linked to disciplinary offences, oversight and appeals from disciplinary decisions, and independence from political masters. A disciplinary system which does not give surety concerning the types of behavior constituting breaches, and of the likely or possible responses to such offences cannot be considered to be fair and just (Lauchs and Webster 2012).

In this article, I tried to explore issues of bringing civil servants to disciplinary liability in Ukraine through the prism of a comparative study of legal regulation of this issue in certain European Union member states, namely Poland, Bulgaria, and the Czech Republic.

The relevance of the research topic is confirmed by the fact that the normative and legal provision of the public service in the context of fundamental political and economic changes that are happening in Ukraine requires some improvements that should be directed on increasing of level of controllability of the most important relations in the public service, as well as, on creating conditions for the efficient performance by civil servants of their duties and management tasks.

The reason for researching the experience of bringing to disciplinary responsibility of civil servants of Poland, Bulgaria and the Czech Republic are, above all, relevant to the legal systems of Ukraine and these countries, as well as the way of change and transformation made by these countries on the way to the EU membership. After all, Ukraine confidently walks along this difficult way. Therefore, I am convinced that this article

will be useful and interesting for the international scientific community that deals with life, problems and the future of Ukraine and for the general public to be informed about the first steps in the European changes in Ukraine.

Therefore, this paper contributes to the broadening of knowledge about peculiarities of disciplinary responsibility of civil servants in Ukraine and comparison with experience of the full EU member states.

Finally, this paper intends to highlight Ukraine's potential to become a member of the EU, after all, upon lengthy discussions on adoption of the new law 'On civil service', which fully meets European standards (that is proved in the article).

The purpose and objective of the article is to study the experience of legal regulation of disciplinary responsibility of civil servants for a disciplinary offense in Ukraine, Poland, Czech Republic, and Bulgaria. I propose to carry out a comparative analysis according to certain criteria, which are, in particular, as follows: (1) the concept (legal definition) of a disciplinary offense of civil servants; (2) disciplinary measures; (3) the existence of a special body that reviews disciplinary cases and decides whether to apply or not to apply a disciplinary sanction; (4) some features of the disciplinary proceedings.

1. Materials and Methods

The system of scientific and special methods of cognition was applied herein to achieve reliable scientific results, in particular: normative-comparative, systemic-structural, semantic, analytical, formal logical methods as well a method of abstraction and generalization.

The research methodology is based on the general scientific dialectical method to study legal regulation issues of labor relationship termination with state employees in case of disciplinary misconduct in development and interrelation.

The analytical method, formal logical and semantic methods were used during the study of the legal nature of a disciplinary offence, of determination of its essential features.

The normative-comparative method was useful in the analysis of the national labor regulation and international legal norms regulating the work affected by the issue.

The applied system-structural method gave the opportunity to classify state officials' misconducts.

The method of abstraction and generalization was used to formulate definitions of legal rules and categories.

2. Results and Discussions

2.1. The concept (the legal definition) of a disciplinary offense of civil servants

In the process of reforming the state service, great benefit can be brought by a study of the experience of the states with an effective system of public service. This analysis will allow to investigate the patterns of development of legal regulation of disciplinary responsibility of civil servants for a disciplinary offense, and to select the ways of improvement of regulation of these issues in Ukraine. However, the use of this experience cannot and should not be the main way of labor law formation in the transition period of market relation's formation. The main way should be the preservation of existing and creation of new norms or models, which meet social and economic conditions, traditions, national features, etc.

Termination of an employment contract by the employer is exclusively regulated by the mandatory standards duly applicable. However, an exhaustive list of the grounds of such termination is contrary to new conditions. An idea of the non-exhaustive list of such grounds makes sense and will be proceeded in the future. But no adequate conditions exist at the current stage of development of Ukraine. Most likely this will lead to employers' abuses and will put workers into more dependent conditions (Protsevsky 2012).

In theory of labor law in Ukraine, there are two approaches to clarification of the notion of a disciplinary offense. The first is based on the fact that any act which is not a crime or administrative offence and for the commission of which disciplinary penalties are imposed is considered to be a disciplinary offence. The second approach is characterized by an expanded interpretation of the disciplinary misconduct through the indication of its specific features.

This issue was theoretically developed by L.S. Tal (2006), who considered the employer's right to attract a worker to a disciplinary responsibility as dependent on organizational characteristics of labor relations and the essence of economic power. Therefore, the labor offence was considered as a failure to comply or an improper execution of the company's internal regulations, the establishment of economic power. An insufficient labour independence has meant, in turn, the employee's liability to comply with the national labor regulations and economic power. The scientist pointed out that the employee's duty to behave according to the employer's order arose from the labour contract and failure to comply with the latest was believed to be a labour offence.

From a scientific and theoretical perspective, disciplinary misconduct is necessary to distinguish between factual and legal aspects. The legal aspect lies in directly legally enforceable requirements, templates, patterns of behavior of civil servants, the actual aspect lies in the behavior of state officials in which the violation occurred, the violation specifically established for this category of workers claims in the form of responsibilities, rights or restrictions.

Some scientists allocate two approaches to the concept of a disciplinary offense. The first considers any act, not criminal or administrative offence not to be fined, as a disciplinary offense. Thus, S.A. Ivanov (1979) considers an offense as wrongful, culpable non-performance or improper performance by a worker or an employee of the job duties not entailing criminal responsibility; V.N. Smirnov (1980) considers an offense as culpable, unlawful, not entailing criminal responsibility, abuse or failure of power or job duties by an employee. V.I. Nikitinskiy (1981) and Y.P. Orlovsky (1998) consider an offense as a wrongful, culpable failure or improper performance of the employee's work duties, entailing the disciplinary or public sanctions under law. According to L.A. Syrovatskaya (1990), the disciplinary misconduct is determined by separating administrative offenses from other criminal and administrative offences. If a particular offense is not criminal or administrative, we can talk about the offense.

The second approach is characterized by a broad interpretation of the offense by pointing to its specific characteristics. A.I. Protsevskyy (1972) notes that an offense is a culpable, wrongful action (inaction) of a person who being in labor relations violates an internal labor order, work duties, rules of cooperation. S. Monastyrsky (1976) considers an offense as an unfounded, willful failure or improper fulfillment of job duties by persons employed by the company. S.V. Popov (2001) considers an offense as a socially dangerous, illegal, culpable violation of labor, service, training discipline stipulated by the law (statutes, regulations, rules) of the legally binding order of workers and enterprises, institutions and organizations of various activities and ownership. V.I. Shcherbina (1998) considers an offense as a wrongful, culpable act affecting the upon the discipline in the state agencies by failure or improper performance of their work duties, violation of prohibitions or restrictions, abuse of authority or offense defaming an employee as a state employee. V.A. Andrushko (2006) considers an offense as a wrongful, culpable, harmful failure or improper performance of the employee's job duties according to the collective labor agreements and other regulatory acts. M.I. Inshin (2005) considers an offense as a culpable failure or improper performance by public officials of their duties expressed in willful misconduct of service regulations, job duty descriptions, orders of managers, ethical requirements under specific service in these bodies. According to I.P. Grekov (2003), an offense is unlawful, harmful, guilty, volitional act or omission by a public official violating the regulations established by official rules. From the scientific and theoretical point of view, actual and legal aspects should be distinguished in a disciplinary offense. Legal one is directly in legally enforceable requirements, patterns, models of the civil servants' behavior, the actual one is in the civil servants' behavior resulted in violation of requirements, duties, rights or restrictions. N.M. Vapnerchuk (2012) considers a disciplinary offense as a illegal, culpable failure or improper performance of public servants' duties under the law and other legal acts, employment contracts and job duty description to be complied.

V.S. Kovrigin (2012) adheres to the position that the interpretation of the category of 'offense' have both positive aspects and shortcomings: (a) they are too simple, schematic and do not contain all the main features of this type of offense; (b) the others do not meet the requirements of laconism and officially indicate the such forms of guilt as negligence and intent. This is obvious, in fact, pointing to the wrong act, we just mean these forms of guilt; (c) the third formulation generally contradicts the current legislation. In particular, an indication that an offense occurs when a perpetrator acts without any crime characteristics; (d) the fourth one fix specific definitions used only for certain types of professional activity.

The discipline system within an organization requires four characteristics. First, it must have a number of offences so that employees can be certain in advance of what conduct will trigger a disciplinary action. Second, the nature of punishments must be clearly linked to offences and ought also to be proportionate to the offence severity. Third, there needs to be oversight and appeals from disciplinary decisions to ensure that the system is operating correctly. Finally, the system should ideally be out of the control of politicians (Lauchs and Webster 2012).

The elements of the disciplinary offence are:

- (1) a public official;
- (2) in the course of or connected to his public office;
- (3) wilfully misconduct himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;
- (4) without reasonable excuse or justification; and

(5) where such misconduct is meriting disciplinary actions (Lauchs and Webster 2012).

In Ukraine's theory and practice, disciplinary offence has a combination of signs: subject, subjective aspect, object, objective aspect. The subject of disciplinary offense is a person who is in legal relation with a particular employer, and therefore has civil legal capacity and active capacity. Legal capacity and active capacity evidence not only on a certain age of a person, but also on its ability to be aware of its actions. Therefore, the ability to bear personal responsibility for a committed misconduct (delictual dispositive capacity) is a part of the legal personality of employees along with civil legal capacity and active capacity, and comes simultaneously with the latter. Specificity of public service relations differs from labor (civil-law) ones in the fact that public servants pass public service according to service contracts and it is a special kind of administrative legal relations. Therefore, in applying disciplinary responsibility to public servants it is necessary to manipulate with the term of administrative legal personality.

Subjective aspect of disciplinary offence is expressed in the guiltiness of an offender. The presence of guilt is a prerequisite for bringing a public servant to disciplinary responsibility.

The objective aspect of disciplinary offense of public servant is formed from the elements that characterize it as a particular act of external conduct of a person.

Disciplinary offences, as like other offences, are the behavior of people, rather than thoughts and beliefs. Indispensable elements of the objective aspect of disciplinary offence of public servants are:

- wrongful deed (action or inaction) by a public servant;
- infliction of harm to employer, society, the state;
- existence of a causal link between wrongful deed and harm inflicted.

Wrongfulness of a public servant's conduct manifests violation of service duties imposed on the employee by a public contract, statute, official regulations, service regulations and other internal acts, and in addition is not limited to performance of only official duties (Frolov 2013).

Therefore, disciplinary offence should be determined as a culpable, wrongful act of public servant, which lays in the non-performance or improper performance of its service duties, for commission of which the public servant may be subjected to disciplinary penalty.

According to Act of the Czech Republic on service of public servants in administrative authorities and on remuneration of such servants and other employees in administrative authorities (the Service Act) No. 218/2002, a culpable breach of service discipline shall be a disciplinary misconduct (§71), similar position is also in article 113 of the Act On Civil Service of Poland, a Civil Service Corps member shall be disciplinarily liable for violating the responsibilities of a Civil Service Corps member. Therefore, this Acts does not provide the list of disciplinary offences of public servants, whereas Civil Servants Act of Bulgaria No. 67/27.07.1999 (amended and supplemented) established that any civil servant, who has culpably breached the official duties thereof, shall be punishable by the sanctions provided for in this Act. The following shall be treated as a breach of discipline:

- (1) dereliction of official duties;
- (2) delay in the execution of official duties;
- (3) non-compliance with the scope of official powers;
- (4) breach of the duties to citizens referred to in Article 20 herein;
- (5) non-observance of the Code of Conduct of State Administration Staff (the articles 89, 90).

The Law of Ukraine 'On Civil Service' of 10th December 2015 (came into force on 1st May 2016) is considered to be the ground for bringing civil servant to disciplinary liability on commission of disciplinary misconduct, that is, the perpetrator of the wrongful act or omission or decision, consists in default or inadequate performance of public servants of their duties and other requirements established by this Law and other normative and legal acts for which it may be subject to disciplinary sanction. Disciplinary offences are the following:

- (1) violation of the Oath of civil servant;
- (2) violation of the rules of ethical conduct of public servants;
- (3) disrespect for the state, the state symbols of Ukraine, the Ukrainian people;
- (4) actions that hurt the credibility of the public service;
- (5) failure to perform or improper performance of official duties, acts of public authorities, orders and instructions of the leaders, adopted within their powers;
- (6) failure to comply with the rules of internal service regulations;
- (7) abuse of power, if it does not contain components of administrative offence or a crime;
- (8) failure to comply with the requirements for political impartiality of the civil servant;
- (9) the use of authority for personal (private) interests or of illegal interests of other persons;

- (10) representation at receipt on public service of false information about circumstances preventing the realization of the right to public service, as well as failure to provide necessary information on circumstances arisen during the military service;
- (11) failing to report to the head of the civil service about the relations of direct subordination between a civil servant and persons close to in 15-day term from the date of their occurrence;
- (12) public servant's absenteeism (including absence in the service of more than three hours within working day) without good reasons;
- (13) public servant's being at work in an alcohol, narcotic or toxic intoxication;
- (14) making public servants unfounded decisions that resulted in a violation of the integrity of state or municipal property, illegal use or other damage to state or municipal property, if such actions do not contain structure of a crime or administrative offence (Article 65).

Therefore, the Law stipulates an exhaustive list of misconduct, but I believe that it is not caused by the variety of misconduct that can be tolerated in the public service.

I believe that it's possible only to talk about the necessity of fixing an indicative yet not exhaustive system of disciplinary misconduct of public servants. Forming such a system, one should remember that not all misconduct in the public service is the same in the direction of negative influence. I believe that all disciplinary offences of civil servants can be divided into domestic, public and mixed. Criterion of this classification is the direction of the negative impact of disciplinary misconduct.

Conventionally internal offences are those of internal disciplinary offences of the civil servants, which infringe internal service regulations of a public authority (e.g., absenteeism, being late for work, improper performance of duties, the state employee's appearance at a workplace in a drunken state). Internal disciplinary offences hurt the public interest of the state as a whole. Misconduct of public servants is not only encroaching on the service discipline of a specific public authority, but also directly or indirectly affects the public service's interests in general.

Public can be considered to be disciplinary offences which do not affect the internal regulations of a public authority and are not connected with a public servant's official duties, and impinge directly on the proper functioning of the public service. This group can be attributed to violation of the law prohibitions, violation of the constraints, disciplinary charges outside of working hours.

Mixed offences are disciplinary offences which impinge simultaneously on the rules of internal service regulations and on public interest directly. Mixed offences are, for example, failure to comply with lawful orders of superiors, abuse of power.

Therefore, disciplinary offence should be determined as a culpable, wrongful act of public servant, which lays in the non-performance or improper performance of its service duties, for commission of which the public servant may be subjected to disciplinary penalty. A clear set of offences means that employees can be certain in advance of what conduct will trigger disciplinary action.

Analyzing the experience of the EU member states, we can say that Ukraine is using the positive experience of the EU member countries, which proves the attempt of Ukraine to approximate its legislation to *acquit communautaire*.

2.2. Disciplinary measures

In Czech Republic, one of the following disciplinary measures may be imposed on a public servant for a disciplinary misconduct: (a) a written warning, (b) decrease in salary by up to 15 % for the period of up to 3 calendar months, (c) recalling from the service position of a principal, or (d) dismissal from the service relationship (§ 72).

In Bulgaria, the following disciplinary sanctions may be imposed: (a) reprimand; (b) censure; (c) deferral of promotion to a higher rank for one year; (d) demotion to a lower rank for a period ranging from six months to one year; (e) discharge (the article 90).

In accordance with the Act On Civil Service of Poland, disciplinary penalties applicable to Civil Servants shall include: (a) a warning; (b) reprimand; (c) depriving a Civil Servant of opportunities of promotion to a higher rank for a period of two years; (d) decreasing the basic salary by not more than 25% for the period not exceeding six months; (e) downgrading to a lower rank in the Civil Service; (f) expulsion from the Civil Service.

From the above it can be concluded that financial sanctions occupy an intermediate position among the entire list of disciplinary sanctions that may be applied against public servants employed in these countries, whereas for Ukraine this practice is not typical, because according to article 66 of the Law of Ukraine 'On Civil Service' one of the following disciplinary measures may be imposed on a public servant for a disciplinary

misconduct: (1) remark; (2) reprimand; (3) a warning about incomplete official correspondence; (4) dismissal of the public service.

The Ukrainian law clearly defines the interrelation between the type of the misconduct and the penalties, which may be imposed for its commission. In case of non-observance of rules of internal service regulations the subject of the appointment or the head of the state service may be limited to *remark*.

In the case of (a) the Commission of acts that harm the credibility of the public service; (b) non-performance or improper performance of official duties, acts of public authorities, orders and instructions of the leaders, adopted within their powers; (c) absence of civil servant (including absence in the service for more than three hours within one working day) without good reasons, subject to the appointment of or the head of the civil service of such government employee may be *reprimanded*.

The subject of the appointment or the Director of public service may warn a public servant about *incomplete official correspondence* in the case (a) violation of the rules of ethical conduct of public servants; (b) failure to comply with the requirements for political impartiality of the public servant; (c) the systematical commission (repeatedly for years) of actions that harm the credibility of the public service or non-performance or improper performance of official duties, acts of public authorities, orders and instructions of the heads taken to the limits of their powers.

Dismissal of public service is the sole disciplinary action and may be used only in case of committing such misconduct: (1) violation of the Oath of civil servant; (2) disrespect for the state, the state symbols of Ukraine, Ukrainian people; (3) the abuse of power, if it does not contain the composition of administrative offence or a crime; (4) the use of authority for personal (private) interests or of illegal interests of other persons; (5) performance of admission to state service of false information about the circumstances preventing the realization of the right to public service, as well as failure to provide necessary information on such circumstances that have arisen during the military service; (6) failing to report to the head of the civil service about the origin of the relations of direct subordination between a civil servant and persons close to in 15-day term from the date of their occurrence; (7) a public servant being in the service in a drunken state, in a condition of narcotic or toxic intoxication; (8) making public servants unfounded decisions that resulted in the violation of the integrity of state or municipal property, illegal use or other damage to state or municipal property, if such actions do not contain structure of the crime or administrative offence and (9) in case of systematic (repeated during a year) state employee's absence (including absence in the service of more than three hours within one working day) without good reasons.

In accordance with the Act on Civil Service of Poland, employment relationship of a Civil Servant shall be terminated in case of: (a) refusal to take the oath; (b) the loss of the citizenship of a state which is a member state of the European Union or of another state whose citizens, pursuant to international agreements or Community law, have the right to work in the territory of the Republic of Poland; (c) final and legally valid adjudication of a disciplinary penalty of expulsion from the Civil Service; (d) final and legally valid conviction for a willful offence or a willful fiscal offence; (e) final and legally valid adjudication of loss of civil rights or the right to work as a Civil Servant; (f) lapse of three months of an absence from work because of preliminary custody; (g) refusal to comply with the decision concerning transfer referred to in Article 62 and 63 or failure to undertake employment in the Office to which a Civil Servant has been transferred pursuant to Article 66.

Therefore, the Law determines the differentiation of types of disciplinary action depending on the committed disciplinary offences. However, it should be noted that there was a possibility of widespread arbitrary discretion of the subject of the assignment in determining the type of disciplinary sanctions for specific misconduct. The application of financial sanctions for committing disciplinary misconduct by public servants is not typical for Ukraine that, in my opinion, is correct.

Financial sanctions relate to the deprivation of certain goods, which belong to the employee, tangible assets in the form of income, *i.e.* wages. Despite we are talking about public servants who have a heightened responsibility for their decisions and actions, I think, the penalty for a disciplinary offense in General may not apply in Ukraine because a civil servant is an employee who receives wages for their work, and if they are to be fined for misconduct, it would be a violation of their right for labor at a decent level. I believe that for committing a disciplinary infraction, the state officer or employee of a particular company should not be withheld of a certain percentage of his earnings.

Legislative consolidation should accept classification of disciplinary offences, which combines two criteria – according to the severity and the disciplinary sanctions that should be applied to the public servant. The degree of danger of certain types of misconduct will serve as a material criterion of this differentiation, a certain disciplinary action will serve as a formal one.

However, it is unacceptable to establish an absolutely fixed disciplinary action for specific misconduct. These penalties should be set alternately, for example, caution or reprimand for the less dangerous misconduct, dismissal for more dangerous one. When use of this approach is provided, on the one hand, the balance between clarity and definiteness of law, and on the other hand, – the selection of specific disciplinary action to take into account the form of guilt (intent or negligence), the nature of the disciplinary offense, the circumstances under which it was made, the onset of serious consequences, voluntary compensation of the caused damage, the previous behavior of the civil servant and his attitude to performance of official duties.

2.3. Disciplinary proceedings

A disciplinary sanction will be legally applied only after a preliminary investigation of the offense and after hearing public servants (Ticlea *et al.* 2010)

In Poland, disciplinary proceedings involving Civil Service Corps members shall be executed by the following disciplinary commissions: (1) in the first instance – by the disciplinary commission; (2) in the second instance – by the Higher Disciplinary Commission of the Civil Service, hereinafter referred to as 'Higher Disciplinary Commission'. The Higher Disciplinary Commission adjudicates appeals against decisions of disciplinary commissions. The parties may appeal against the adjudication of the disciplinary commission to the Higher Disciplinary Commission via the disciplinary commission of first instance within fourteen days from the delivery of the adjudication. The disciplinary commission of first instance shall refer the appeal along with the case files to the Higher Disciplinary Commission within fourteen days from the receipt of the appeal.

In each of the Bulgarian administration, there shall be established a Discipline Board, consisting of not fewer than three and not more than seven full members and two alternate members who shall be civil servants.

In Czech Republic, the first-degree disciplinary committees and the second-degree disciplinary committees shall execute the disciplinary powers. The first-degree disciplinary committee shall decide on imposing a disciplinary measure. The second-degree disciplinary committee shall decide on appeals against decisions on imposing a disciplinary measure.

In Ukraine, for the implementation of disciplinary proceedings to determine the degree of guilt, nature and gravity of the disciplinary offence, the disciplinary Committee on handling disciplinary cases is established. A disciplinary Committee in respect of civil servants holding positions of public service of category 'A,' is the Committee on senior civil service (a permanent collegial body and works on a voluntary basis). The disciplinary Committee in respect of civil servants holding positions of public service categories 'B' and 'C', assigns the head of the civil service in any government organ. The decision on imposing disciplinary sanction can be appealed by civil servants of category 'A' in the court, and by categories 'B' and 'C' in the Central Executive body which provides forming and implements the state policy in the sphere of public service or in the court.

The Central Executive body, which provides forming and implements the state policy in the sphere of public service is National Agency of Ukraine concerning public service.

After analyzing the experience of the Czech Republic, Bulgaria and Poland, I found that in these countries there are special bodies responsible for disciplinary proceedings against civil servants. Ukraine has also gone this way, but still has a lot of questions. In particular, the disciplinary Committee to handle disciplinary cases assigns the head of the civil service in each government body, and, therefore, this Committee is accountable to and controlled by the head. The members of the Committee will be elected from among the civil servants who work in the same state body, that is, will decide the disciplinary case against their colleagues. Would the Committee be effective, and would the decision be fair? So, for Ukraine in this matter, it is appropriate to use the experience of the Czech Republic, Bulgaria or Poland, that is, to form a separate and independent disciplinary Committee, which would not have to report to the head of the public servant under disciplinary proceedings. In addition, it is worth considering the experience of the Czech Republic, Bulgaria and Poland on the procedure of appealing against decisions on disciplinary cases, as in Ukraine, these decisions are appealed or the National Agency of Ukraine on civil service or in the court. However, from the study it is seen that in the Czech Republic, Bulgaria and Poland appeal decisions based on the results of the disciplinary proceedings is carried out in special disciplinary bodies of the second level (the appellate instance). I believe that this approach is more prudent, since the case will be considered by a specialized organ whose powers are these functions, whereas in Ukraine 'in the case enters' the Central Executive authority, which is contrary to the principle of system of courts and is unlikely to be fair and independent, more than that, in our opinion, the Central body of Executive power in general cannot perform the functions of reviewing and making decision by the disciplinary (or other) cases, because it is the competence of a specialized or narrow body or court.

Ukraine must also take into account all the experience, described in this article, of the EU member states on the level of the disciplinary proceedings against civil servants, which can develop according to such variants as: (1) simplified proceeding and (2) special proceeding. For example, Poland has such experience. For minor violations of the responsibilities of a Civil Service Corps member, the Director General of Office may punish a Civil Service Corps member with a written warning. The punishment may be preceded with explanatory proceedings to clarify the circumstances of the case. A Civil Service Corps member may, within seven days from the application of the penalty of a warning, appeal against it to the Director General of Office. In case of the appeal referred to in Section 2, the General Director of Office shall promptly refer the case to the Disciplinary Ombudsman. The referral of the case to the Ombudsman shall result in the initiation of explanatory proceedings (the article 115).

During simplified proceedings in the commission of certain types of disciplinary misconduct, the decision on collecting is to be made by the head of the state body where the person committed this offense works. In this case, in connection with the efficiency of the proceedings such stages as initiation of disciplinary proceedings, adoption and execution of decisions on application of measures of disciplinary influence combine. Therefore, prompt review of cases of disciplinary misconduct, and at the same time decision-making are the stage at which production begins, and which is connected with the direct detection by the head of the apparent violation. This type of production is believed to be possible only in the case of remarks, reprimand or severe reprimand.

Special disciplinary proceedings against civil servants may take place in more complex ways. This refers to the common practice for disciplinary proceedings, which in the prescribed manner before the subject of disciplinary authority raised the question of the application of the appropriate disciplinary action. This option covers the mandatory and optional stages (internal investigation and appeals against decisions to impose disciplinary penalties).

Conclusion

- (1) Features of disciplinary responsibility of civil servants are: (a) the basis for termination is a disciplinary offence of a public servant; (b) special subject of disciplinary proceedings; (c) a particular procedure of bringing civil servants to disciplinary responsibility is a system of stages of disciplinary proceedings; (d) the possibility of occurrence of specific consequences of termination of the employment relationship, which lies in limiting the right of accessing public service (in case of violation of the Oath).
- (2) Every disciplinary offence of a public servant should be related to specific disciplinary action for his Commission. However, penalties should be set alternately, for example, caution or reprimand for the less dangerous misconduct, dismissal for more dangerous. When using this approach will be provided, on the one hand, the balance between clarity and definiteness of law, and on the other hand, – the selection of specific disciplinary action to take into account the form of guilt (intent or negligence), the nature of the disciplinary offense, the circumstances under which it was made, the onset of serious consequences, voluntary compensation of the caused damage, the previous behavior of the civil servant and his attitude to performance of official duties.
- (3) In the EU member states, it is common to use financial disciplinary penalties, whereas in Ukraine – it is impossible which, in my opinion, is positive. Financial sanctions relate to the deprivation of certain goods, which belong to the employee, tangible assets in the form of income, i.e. wages. Despite we are talking about public servants who have a heightened responsibility for their decisions and actions, I think, the penalty for a disciplinary offense in general may not apply in Ukraine because a civil servant is an employee who receives wages for their work, and if they are to be fined for misconduct, it would be a violation of their right for labor at a decent level. I believe that for committing a disciplinary infraction, the state officer or employee of a particular company should not be withheld of a certain percentage of his earnings.
- (4) In the EU member states, there are permanent special bodies dealing with issues of bringing civil servants to disciplinary liability (disciplinary commissions, Discipline Board, disciplinary committees). In Ukraine such bodies are also established, such as the Commission on senior civil service and the disciplinary Committees.
- (5) Disciplinary proceedings against civil servants are characterized by the stages and can develop according to such variants as: (1) simplified proceedings and (2) special proceedings. During simplified proceedings in the commission of certain types of disciplinary misconduct the decision on collecting is accepted by the head of the state body where works the person committed this offense. This type of proceeding is believed to be possible only in the case of remarks, reprimand or severe reprimand.

Special disciplinary proceedings against civil servants are a form of production, which in the prescribed manner raised the question of the application of the appropriate disciplinary action before the subject of disciplinary authority.

- (6) The creation of arbitrary powers to punish or dismiss staff is unjust if the legislation does not fully inform staff of what constitutes a breach of discipline, does not guarantee proportionate punishments to offences, and/or allow the disciplinary process to be used as a tool to coerce staff to perform in a politicized or otherwise unethical manner. Only if the law establishes a list of disciplinary offences, then we can talk about the proper approach to legal regulation of bringing civil servants to disciplinary responsibility. Otherwise, it is not possible to expect a fair disciplinary proceeding within the legal framework. In Ukraine, as in the actual member countries of the EU, all four criteria are reflected in the legislation on civil service, which indicates positive developments in Ukraine towards the creation of a legal, democratic state.

Note

The proposals for improvement of the Law of Ukraine 'On civil service', which is given in this article and which I developed on the basis of analysis of legislation of Poland, Bulgaria and the Czech Republic on bringing of public servants to disciplinary responsibility, have been submitted by me to the Committee of the Verkhovna Rada of Ukraine on civil service for consideration.

References

- [1] Andrushko, V.A. 2006. Disciplinary offence as a basis of disciplinary action. *State and law*, 32(1): 380-385.
- [2] Frolov, V.A. 2013. Disciplinary offence of a public servant: concept and general characteristics. *The topical issues of public law*, 11(1): 62-72.
- [3] Grekov, I.P. 2003. *Peculiarities of legal regulation of work of civil servants*. Moscow: AST. 192.
- [4] Inshin, M.I. 2005. *Issues of legal regulation of civil servants work in Ukraine*. Kharkiv: Urayt. 452.
- [5] Ivanov, S.A. 1979. *Employment law: encyclopaedia*. Moscow: Nauka. 528.
- [6] Kovrigin, V.S. 2012. *Disciplinary liability in labour law*. Kyiv: Lotos. 221.
- [7] Lauchs, M.A., and Webster, J. 2012. Disciplinary unfairness in Queensland public service legislation. *International Employment Relations Review*, 18(1): 1-19.
- [8] Monastyrsky, S. 1976. *Disciplinary liability*. Kyiv: Lotos. 522.
- [9] Nikitinskiy, V.S. 1981. *The ABCs of employment law: dictionary-guide for students of people*. Moscow: Academia. 240.
- [10] Orlovsky, Y.P. 1998. *Dictionary of labour law*. Moscow: Nauka. 600.
- [11] Popov, S.V. 2001. *Dismissal of employees of internal affairs for violation of discipline and the law rules*. St.Petersburg: Peter. 186.
- [12] Protsevsky, A. I. 1972. *Method of legal regulation of labor relations*. Moscow: Academia. 288.
- [13] Protsevsky, V.O. 2012. *Private law and public law regulation of social-labor relations*. Moscow: AST. 332.
- [14] Shcherbina, V.I. 1998. *Disciplinary responsibility of civil servants of bodies of internal affairs*. Kharkiv: Urayt. 208.
- [15] Smirnov, V.N. 1980. *Internal labor schedule consultation*. Leningrad: Svet. 160.
- [16] Syrovatskaya, L.A. 1990. *Liability for violation of labour law*. Moscow: AST. 176.
- [17] Tal, L.S. 2006. *Employment contract: civil study: monograph*. Moscow: Academia. 539.
- [18] Ticlea, A., Georgescu, L., Cioriciu, A., and Barbu, V. 2010. *Public labour law*. Bucharest: Wolters Kluwer Publishing House. 363.
- [19] Vapnerchuk, N.M. 2012. *Theoretical and applied problems of legal regulation of disciplinary responsibility of civil servants in Ukraine*. Kharkiv: Urayt. 312.

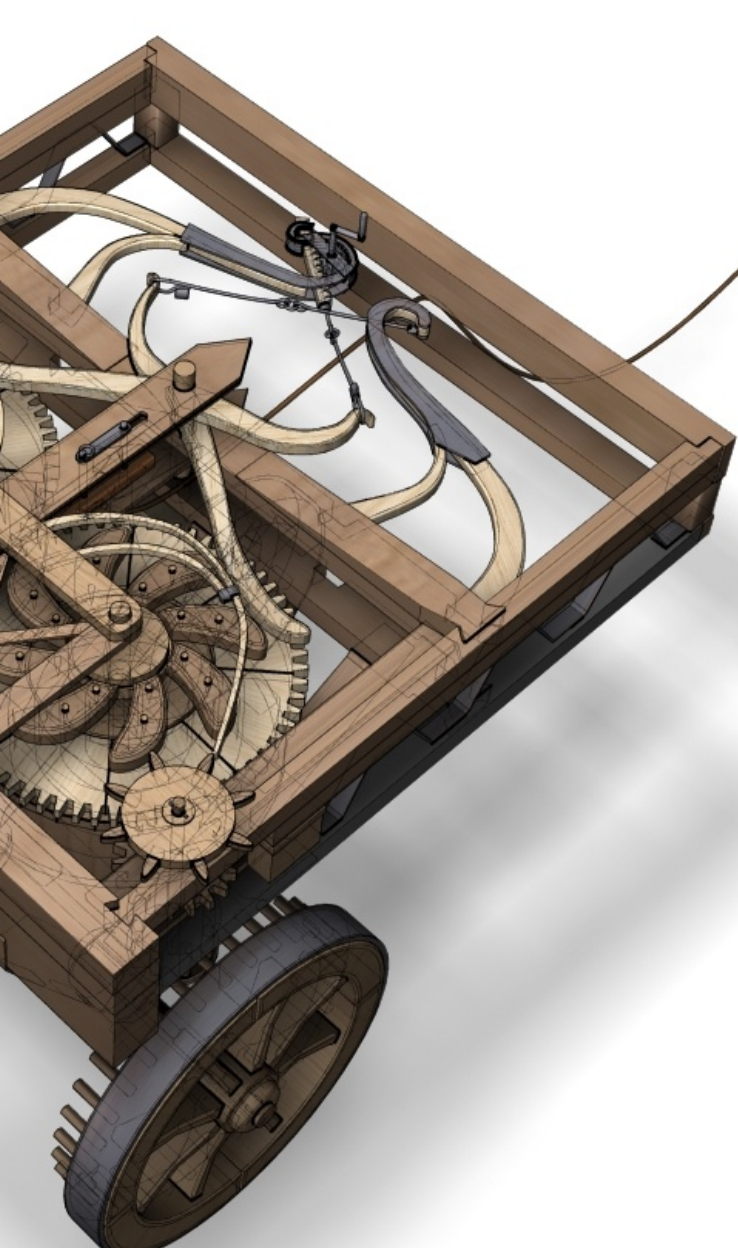
*** Act of 21 November 2008 on Civil Service of Poland. 2008. Journal of Laws 227: 1505-1514.

*** Act of the Czech Republic on service of public servants in administrative authorities and on remuneration of such servants and other employees in administrative authorities (the Service Act) of April 26, 2002. Collection of Laws 84: 4914-4985.

*** Civil Servants Act of Bulgaria. 1999. State Gazette 67/27.07.1999: 23-24.

*** The Law of Ukraine 'On Civil Service' of 10th December 2015 No 889-VIII. 2015. Available at: <http://zakon2.rada.gov.ua/laws/show/889-19/page3>

ASERS



 **ASERS**
Publishing

Web: www.aserspublishing.eu and www.asers.eu

URL: <http://journals.aserspublishing.eu>

E-mail: jarle@aserspublishing.eu

ISSN 2068-696X

Journal DOI <https://doi.org/10.14505/jarle>

Journal's Issue DOI [https://doi.org/10.14505/jarle.v8.1\(23\).00](https://doi.org/10.14505/jarle.v8.1(23).00)

ASERS

Journal of Advanced Research in Law and Economics

Quarterly

Volume VIII

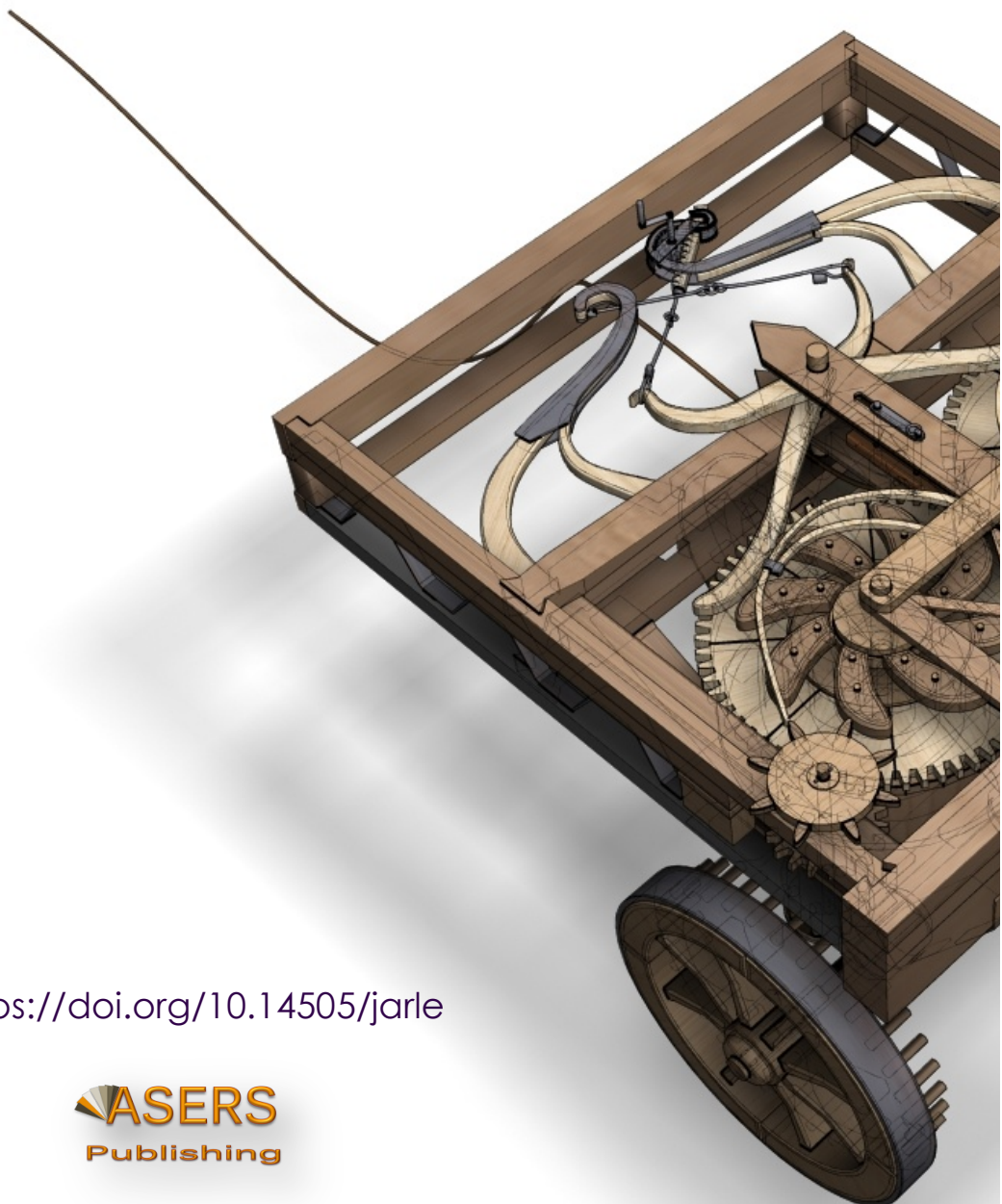
Issue 1 (23)

Spring 2017

ISSN: 2068-696X

Journal's DOI: <https://doi.org/10.14505/jarle>

ASERS
Publishing



11	Certain Aspects of the Interbranch Regulation of the Convictis' Labor Organization in France by Aleksandr Aleksandrovich Krymov, Alexey Vladimirovich Rodionov, and Andrey Petrovich Skiba ... 97
12	Bringing Civil Servants to Liability for Disciplinary Misconduct in Judicial Practice of Ukraine, Poland, Bulgaria and Czech Republic by Olena Lutsenko ... 103
13	Adultery and Rape in the Muslim Criminal Law: Comparative Law Analysis by Ammar Abdul Karim Manna, Maryus Yokubo Murkshtis, Lev Vladimirovich Bertovskiy, Natalya Aleksandrovna Selezneva, and Milena Alekseevna Ignatova ... 113
14	Model of an Organization's Internal Environment Development on The Basis of Human Resource Audit by Elena V. Maslova, Elena V. Kulchitskya, Evgenia V. Melyakova, Natalia G. Kizyan, and Olga S. Penzina ... 118
15	A Model of Internal Audit in the Company Management System by Albina Mukhina ... 128
16	The Challenges of Fighting Crime in the Current Geopolitical Environment by Ramazan Tuyakovich Nurtayev, Yerden Ramazanovich Nurtayev, Almas Kanatovich Kanatov, Zhaukhar Kenesbaevna Kozhantayeva, Adil Temirovich Kerimkulov, Semen Sergeevich Simonenko, and Isatay Temirzhanovich Musalimov ... 144
17	Application of International Rules Ensuring Social Rights of Families and Children in Kazakhstan by Ayman Bekmuratovna Omarova, Binur Adamovna Taitorina, Adlet Tokhtamysovich Yermekov, Bulat Doszhanov, Yermek Abiltayevich Buribayev, and Zhanna Amangeldinovna Khamzina ... 153
18	Theoretical Bases of Investment Activity Management in Kazakhstan (Institutional Approach) by Yerkenazym Orynassarova, Saltanat Yerzhanova, Sagynysh Mambetova, Kuat Zhaksybaev, Turlybek Kazbekov ... 164
19	International Aspect of Legal Regulation of Corruption Offences Commission on the Example of Law Enforcement Agencies and Banking System of Ukraine by Oleg M. Reznik, Alyona M. Klochko, Vladimir V. Pakhomov, Olena O. Markova ... 169
20	The Current Status of the Local Self-Government Reform in Ukraine: Preliminary Conclusions and Outlook by Oleg V. Rohovenko, Svitlana I. Zapara, Nina M. Melnik, and Ruslana I. Cramar ... 178

ASERS Publishing

Copyright © 2017, by ASERS® Publishing.
All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning or otherwise, except under the terms of the Romanian Copyright, Designs and Patents Law, without the permission in writing of the Publisher.

Requests to the Publisher should be addressed to the Permissions Department of ASERS Publishing: asers@asers.eu and apg@aserspublishing.eu

<http://journals.aserspublishing.eu>
ISSN 2068-696X
Journal DOI: <https://doi.org/10.14505/jarle>
Journal's Issue DOI:
[https://doi.org/10.14505/jarle.v8.1\(23\).00](https://doi.org/10.14505/jarle.v8.1(23).00)

Call for Papers

Volume VIII, Issue 3(25), Summer 2017

Journal of Advanced Research in Law and Economics

Journal of Advanced Research in Law and Economics is designed to provide an outlet for theoretical and empirical research on the interface between economics and law. The Journal explores the various understandings that economic approaches shed on legal institutions.

Journal of Advanced Research in Law and Economics publishes theoretical and empirical peer-reviewed research in law and economics-related subjects. Referees are chosen with one criterion in mind: simultaneously, one should be a lawyer and the other an economist. The journal is edited for readability both lawyers and economists scholars and specialized practitioners count among its readers.

To explore the various understandings that economic approaches shed on legal institutions, the Review applies to legal issues the insights developed in economic disciplines such as microeconomics and game theory, finance, econometrics, and decision theory, as well as in related disciplines such as political economy and public choice, behavioral economics and social psychology. Also, *Journal of Advanced Research in Law and Economics* publishes research on a broad range of topics including the economic analysis of regulation and the behavior of regulated firms, the political economy of legislation and legislative processes, law and finance, corporate finance and governance, and industrial organization.

Its approach is broad-ranging with respect both to methodology and to subject matter. It embraces interrelationships between economics and procedural or substantive law (including international and European Community law) and also legal institutions, jurisprudence, and legal and politico – legal theory.

The quarterly journal reaches an international community of scholars in law and economics.

Submissions to *Journal of Advanced Research in Law and Economics* are welcome. The paper must be an original unpublished work written in English (consistent British or American), not under consideration by other journals.

Journal of Advanced Research in Law and Economics is currently indexed in SCOPUS, EconLit, RePec, CEEOL, EBSCO, ProQuest, and Cabell's Directory.

Invited manuscripts will be due till April 1st, 2017, and shall go through the usual, albeit somewhat expedited, refereeing process.

Deadline for submission of proposals:	1 st April 2017
Expected Publication Date:	June 2017
Web:	http://journals.aserspublishing.eu
E-mail:	jarle@aserspublishing.eu

Full author's guidelines are available from: <http://journals.aserspublishing.eu/jarle/about>