

Summary

The subject of this doctoral dissertation is the appropriate application of the provisions of the Code of Criminal Procedure in disciplinary proceeding against attorneys and legal counsels. The work contains four research theses. In order to prove them, the author analyzes the provisions most of all of the Code of Criminal Procedure and corporate laws in terms of the scope and manner of appropriate application of the provisions in disciplinary proceedings of lawyers and legal counsels. The following issues were discussed in the work: the place of disciplinary proceedings against lawyers and legal counsels in the Polish legal system, with particular emphasis on the historical development of disciplinary liability and proceedings related thereto and the nature of disciplinary proceedings, primarily based on the interpretation of constitutional and convention provisions; theoretical considerations on the appropriate application of the provisions as a specific type of referral; appropriate application of the provisions concerning first the statics and then the dynamics of the criminal process in corporate disciplinary proceedings.

The main thesis of the work is the claim that the current regulation of procedural issues in disciplinary proceedings for lawyers and legal counsels, i.e. by means of a general reference to the appropriate application of the provisions of the Code of Criminal Procedure in matters not regulated, is a correct and optimal solution. It is worth paying attention to the historical changes in legal acts relating primarily to the bar, where, with the development of legal thought and legislative activities in the field of disciplinary procedures, attempts at comprehensive procedural regulations or the use of only point-specific references to specific provisions of the Code of Criminal Procedure were rightly replaced by a general reference to the appropriate application provisions of the Code of Criminal Procedure. The systemic aspect is also important – it is also the structure of application in many disciplinary procedures and professional responsibility, including: in matters relating to judges, prosecutors, notaries and doctors. Acceptance of a general reference as part of the construction of the appropriate application of regulations requires, however, attention to the need for the quality of legislative activity. For this solution to be fully functional and to minimize exponential problems, the legislator's activity at the level of regulation of professional laws is necessary. Currently, it is not the model based on the appropriate application of criminal procedural provisions in disciplinary cases that is the problem generating exponential doubts. This problem is the insufficient quality of regulation of professional laws. If the elements necessary to be included in professional laws were reliably regulated, a model based on the appropriate application of

the provisions of the Code of Criminal Procedure would not only be an accurate normative solution, but also a solution creating a complete procedure, specific only to a given type of disciplinary proceedings.

The main thesis is supported by three detailed theses. Firstly, disciplinary proceedings are repressive proceedings, criminal proceedings *sensu largo*. The above position is based mainly on constitutional and, to some extent, conventional criteria. In the jurisprudence of the Constitutional Tribunal, disciplinary proceedings have been recognized as repressive proceedings, and the key argument in this matter is the application of constitutional provisions closely related to criminal cases, i.e. Art. 42 section 2 of the Constitution of the Republic of Poland regulating the right to defense, Art. 42 section 3 of the Constitution of the Republic of Poland, which regulates the principle of the presumption of innocence, as well as the application of guarantees arising from the right to a court (Article 45(1) of the Constitution of the Republic of Poland). The statement that disciplinary proceedings are repressive proceedings is not prevented by assigning disciplinary cases as adjudicating on civil rights and obligations according to the jurisprudence of the European Court of Human Rights under Art. 6 section 1 ECHR. It should be emphasized that in Art. 6 The Convention creates a minimum standard that may be increased by a state party. In the Polish legal system, this increase - compared to the "pure" standard of civil cases - occurs, on the one hand, by deriving the standard from Art. 6 section 1 ECHR as well as the guarantees of a fair trial arising from Art. 6 section 2 and 3 ECHR, on the other hand, by applying in the national order a standard appropriate for repressive proceedings, with an increased level of procedural guarantees, which results primarily from constitutional jurisprudence. The reference to the application of the provisions regulating criminal proceedings, and not another procedure, is the result of the conclusion that disciplinary proceedings are repressive proceedings. Determining this nature and the degree of repressiveness of disciplinary proceedings (less than in criminal cases) is an important guide for determining which provisions and how to apply them appropriately in the cases in question.

Secondly, one cannot equate the appropriate application of static and dynamic provisions of the Code of Criminal Procedure. Significantly more autonomous elements, regulated directly in corporate laws, concern the statics of the criminal process, which means that the provisions of the Code of Criminal Procedure regarding the statics of the criminal process are applied in disciplinary proceedings less frequently and to a lesser extent than the provisions on procedural dynamics. Among the provisions regulating the dynamics of the criminal process, the appropriate application of the provisions plays a smaller role due to the

scope of regulations of corporate acts, while among the provisions related to the dynamics of the proceedings, a significant part of the course of proceedings is based on the applicable provisions of the Code of Criminal Procedure. As part of the provisions on procedural statics, special attention should be paid to regulations regarding procedural rules, which generate significant exponential problems resulting from the only fragmentary regulation of certain procedural rules in professional acts, including one that does not provide a clear answer as to the scope of its application. in a given proceeding, as well as different regulation of certain procedural rules in the cases of lawyers and legal advisors, which in principle constitute twin procedures. In terms of procedural dynamics, the key issue is the appropriate application of the provisions on extraordinary remedies in a situation where professional laws regulate only one of the three such remedies known to the criminal process, and also make it a specific remedy, characteristic only of disciplinary proceedings.

Thirdly, in the case of twin proceedings on the same subject, in similar self-governments of public trust professions, the normative disproportion occurring in corporate laws is incorrect, and statutory regulations – unless they concern extremely specific issues, characteristic only for a given professional group – should be consistent. Some of the regulations contained primarily in the Attorneys' Act have no equivalents in the Attorneys' Act. These regulations include, among others: regarding the openness of the hearing (Article 95a), withdrawal of an appeal (Article 95g), limits of examination of the appeal and gross injustice of the decision (Article 95h, paragraphs 1 and 2), prohibition of *reformationis in peius* (Article 95i). In the case of very similar models of disciplinary proceedings for lawyers and legal advisors, such disproportion in regulations is not desirable. Especially since the bar regulations do not regulate elements specific only to disciplinary proceedings of representatives of this profession.

The dissertation is an original solution to the scientific problem regarding whether the structure of the appropriate application of the provisions of the Code of Criminal Procedure in matters not regulated in corporate laws in the framework of disciplinary proceedings for attorneys and legal counsels, included as a general reference, is the correct and optimal way to standardize the procedure for disciplinary proceedings for attorneys and legal counsels.