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Responsibility as a Key Guarantee and a Special Role in the Practice of the Profession of an Attorney-at-Law in Polish Law: Selected Issues

Abstract

The paper discusses the crucial role of professional self-governments in ensuring that attorneys do so properly, highlighting the significance of "public interest" in regulating and guiding their oversight in Polish law. This concept of the public interest serves a dual purpose: it sets the boundaries of supervision and defines the objectives of such supervision. The public corporation model is closely linked to this dual aspect of the public interest, resulting in the delegation of specific public tasks to professional self-governments. Focusing on the legal profession in Poland, the text looks at how it is held accountable for its actions.

KEYWORDS: legal liability, attorney-at-law, public interest, ethical standards, professional self-government

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1 Introduction

The broadly understood responsibility of representatives of professions of public trust for activities related to their performance is one of the most important guarantees of the right and proper performance of duties and the exercise of powers by their representatives. However, it is impossible

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to discuss all the legal aspects related to this in this dissertation, so I focus on disciplinary liability that has its source in law. Legal aspects related to civil and criminal liability has been discussed in their basic scope.

2 Research and results

In order to discuss the issue of attorney's civil liability, it is necessary to indicate its proper legal basis. In practice, there were cases of applying inappropriate norms of substantive law by the courts of lower instances.[1] Claims for damages are usually based on allegations of a lawyer's failure or improper performance of their duties, either as a legal representative of a party or when providing other types of legal assistance to a client. It should be emphasized that the Supreme Court indicated that "an advocate and a legal adviser are liable for damages caused to the principal as a result of their own negligence and errors leading to losing the case, the outcome of which would have been favorable for the party, if the attorney had exercised due diligence, assessed taking into account the professional nature of their activities."[2] In the light of this thesis, therefore, in order to establish liability, it is necessary to establish a cause and effect relationship between the lawyer's act or omission and the lost case, and pursuant to Article 361 § 1 of the civil code liable for damages is only liable for the normal consequences of the events from which the damage resulted. The debtor's liability applies only to typical effects, i.e. those that can be foreseen in the ordinary course of things and are characteristic of a given cause as a normal result, and not to all events that can be combined into one chain.[3] Failure to exercise due diligence confirms the debtor's unintentional fault, which takes the form of negligence. Conversely, if the obligation set out in the terms of the legal relationship is not performed, or if actions contrary to it are performed, the debtor will be guilty of wilful

1 Andrzej Rościszewski, "Odpowiedzialność cywilna adwokatów" *Palestra*, No. 10 (2014): 7.

2 Judgement of the Supreme Court of 19 December 2012 r., II CSK 219/12, OSN 2013, item 91.

3 Tomasz Szanciło, "Odpowiedzialność cywilna radcy prawnego i adwokata za błędy procesowe" *Palestra*, No. 1-2 (2013): 130.

misconduct.[4] Therefore, the advocate is liable under Article 471 of the Civil Code, in the light of which the debtor is obliged to repair the damage resulting from non-performance or improper performance of the obligation, unless the non-performance or improper performance is the result of circumstances for which the debtor is not responsible. Therefore, it will avoid it if it demonstrates the performance of the obligation in a proper manner. However, if there was actually non-performance or improper performance of the obligation, the rebuttal of the presumption under Article 471 of civil code. may be made by proving that it occurred as a result of circumstances for which the obligated party is not responsible.[5]

The provision of Article 472 of Civil Code provides that the person who is obliged to perform the obligation is responsible for failure to exercise due diligence. Attorneys' diligence is average diligence, corresponding to "a good enough level to properly perform professional activities,"[6] which has also been established in the convictions expressed by the Supreme Court[7]. Damage is another necessary element and premise in the compensation process. As it is noted in the doctrine, cases against lawyers mainly concern the actual damage suffered, and less often the lost profits.[8]

In addition to contractual liability rules, it is also possible to apply their tort form when pursuing claims for damages. According to Article 443 of Civil Code the fact that an action or omission causing damage constitutes non-performance or improper performance of an existing obligation does not eliminate the possibility of pursuing a claim for compensation for damage due to a tort. As follows from the legal justification of the judgment of the Supreme Court of 17 December 2004, a breach of an obligation arising from a contract may be considered a tort, if it also constitutes both conduct contrary to the law and the principles of social coexistence.[9]

It can therefore be concluded that a breach of professional secrecy by an advocate, as an obligation arising from both the Professional Act and the Code of Ethics, may constitute improper performance of this obligation. Especially in cases where the lawyer obtains information on negotiations

4 Rościszewski, *Odpowiedzialność cywilna adwokatów*, 7.

5 Ibidem, 8.

6 Ibidem, 11.

7 Judgement of the Supreme Court of 15. Marca 2015 r., I CSK 330/11. OSN 2012, No. 9, item 109.

8 Rościszewski, *Odpowiedzialność cywilna adwokatów*, 12.

9 Judgement of the Supreme Court of 17 December 2004 r., II CK 300/04, OSP 2006, No. 2, item 20.

and business transactions with his client's contractors, using them for his own benefits, in particular financial ones, damage may occur, resulting in a loss in court. This can happen, for example, when a lawyer transfers confidential information obtained from the client to the opposing party or their attorney. Similarly, it can be considered that the violation of advocates' professional secrecy may be considered a tort, constituting an action inconsistent with the provisions – which applies strictly to the violation of the provisions of the Act on the Bar and with the principles of social coexistence, which certainly includes practicing the legal profession in accordance with the rules of practicing all professions of public trust.[10]

It is worth noting that the basis for claims may also be Article 448 sentence 1 of the Civil Code, which states that in the event of a violation of personal rights, the court may award to the person whose personal rights have been violated an appropriate amount of money as compensation for the harm suffered or, at his request, award an appropriate amount of money for a social purpose indicated by him, regardless of other measures needed to remove the breach. As compensation may be claimed by patients in connection with the breach of professional secrecy by a doctor, it seems that similarly this right may also be granted to a client whose confidentiality has been breached by their lawyer.[11]

The criminal liability of an advocate for breach of professional secrecy is based on the provision of Article 266 § 1 of the Penal Code, which states that anyone who, contrary to the provisions of the Act or an obligation accepted, discloses or uses information that he has become acquainted with in connection with his function, work, public, social, economic or scientific activity, is subject to a fine, shall be punishable by restriction of liberty or imprisonment up to 2 years.[12] As indicated in paragraph 3 of the cited provision, the prosecution takes place at the request of the aggrieved party. It is an appropriate individual offense (and thus it can only be committed by a person obliged to maintain professional secrecy), resulting and possible to be committed both by action or omission.[13] Disclosure may be limited to oral or written information, however, its content and weight are irrelevant to fulfilling the characteristics of a prohibited act. Disclosure

10 Judgement of the Supreme Court of 19 June 2015, IV CSK 590/14.

11 Anna Augustynowicz, „Tajemnica zawodowa lekarza" *Medycyna Rodzinna*, No. 4 (2012): 78-80.

12 Act of. June 6, 1997. Penal Code, Journal U. 1997 No. 88, item 553 as amended.

13 Jarosław Warylewski, "Tajemnica adwokacka i odpowiedzialność karna za jej naruszenie (ujawnienie)" *Palestra*, No. 5-6 (2015): 8.

also occurs when another person becomes acquainted with the content of the information. On the other hand, the use of information covered by professional secrecy consists of using confidential information obtained during the representation process for personal or material gain, either within or outside the scope of the business activity.[14]

There is a connection between Article 266 § 1 of the Penal Code and Article 225 § 3 of the Code of Criminal Procedure, which states that if the defender or another person from whom the handover of the item is requested or from whom the search is carried out, declares that the letters or other documents issued or found in the course of the search cover the circumstances related to the performance of the function of the defender, the body performing the search activities leaves these documents to the named person without getting acquainted with their content or appearance. An advocate's intentional resignation from submitting the statement referred to in the cited provision constitutes an offense under Article 266 § 1, for which a penalty may also be imposed with a penal measure in the form of a ban on practicing the profession, which the court should usually do due to the relationship of the offense with abuse of trust related to the practice of the profession.[15] Spontaneous testimony, without invoking the obligation to maintain secrecy and without being released from it by the court, does indeed fulfill the characteristics of Article 266 § 1 of the Penal Code, but it may not be a crime due to the countertype of the obligation to testify as a witness, which repeals both the criminality and social danger of the act.[16] However, the author refers to the judgment of the Supreme Court of 15 November 2004, in which it was ruled that "the submission by a legal counsel in criminal proceedings against his client, without the court's exemption from professional secrecy, is a misdemeanor, the commission of which may result in the imposition of a penalty disciplinary."[17]

Considerations on disciplinary responsibility should begin with a discussion of this concept, as well as juxtaposing it with the concept of professional responsibility.

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14 Ibidem, 9.

15 Ibidem.

16 Barbara Kunicka-Michalska, *Ochrona tajemnicy zawodowej w polskim prawie karnym* (Warszawa: Wydawnictwo Prawnicze, 1974), 164-165; Marian Cieślak, *Zagadnienia dowodowe w procesie karnym* (Warszawa, Wydawnictwo Prawnicze,1955), 274.

17 Warylewski, *Tajemnica adwokacka i odpowiedzialność karna za jej naruszenie (ujawnienie)*, 13.

The idea of disciplinary liability is based on the assumption that members of professional corporations – i.e. persons holding a professional title, trainees, trainees and trainees – are liable to disciplinary courts for conduct contrary to the principles of professional ethics, as well as culpable violation of regulations concerning the practice of the profession or its improper performance as well as non-compliance with the law.[18]

Disciplinary liability of representatives of legal professions is primarily included in administrative regulations, but also in criminal regulations. Criminal law includes infringements resulting from professional liability as prohibited acts, provided that the are regulated by law.[19] Indeed, some similarities can be observed in both procedures: the division of the proceedings into several stages, first the suspects and then the accused, who have the right to a defense lawyer. Moreover, many corporate acts explicitly stipulate that the provisions of criminal procedure apply in matters not regulated by substantive administrative law[20]. In addition, as the Provincial Administrative Courts have pointed out several times, "the disciplinary responsibility of advocates is a form of criminal liability, and [...] the exercise of disciplinary power by a professional self-government body is a form of exercising public authority."[21]

The differences between these proceedings are visible in the subjective and objective scope. It seems obvious that the provisions on professional liability do not have a universal scope, but only apply to the circle of people practicing a given profession. Disciplinary liability is defined more broadly in administrative law than in criminal law, because it begins where criminal law does not yet provide for it. This is due to the fact that representatives

18 Sławomir Pawłowski, *Ustrój i zadania samorządu zawodowego w Polsce* (Warszawa: Forum Naukowe, 2009), 163 ff.

19 Kazimierz Buchała, Andrzej Zoll, *Polskie prawo karne* (Warszawa: Wydawnictwo Prawnicze PWN, 1995), 6-7.

20 Pawłowski, *Ustrój i zadania samorządu zawodowego w Polsce*, 159.

21 See.: Judgement of the Provincial Administrative Court in Opole of August 5, 2014, II SAB/Op 52/14, LEX No. 1498305; Judgement of the Provincial Administrative Court in Lublin of September 18, 2014 r., II SAB/Lu 299/14, LEX nr 1584200; Judgement of the Provincial Administrative Court in Poznan of 29 October 2014, II SAB/Po 78/14, LEX nr 1584251; Judgement of the Provincial Administrative Court in Warsaw of 3 December 2014, II SAB/Wa 570/14, LEX nr 1575253; Judgement of the Provincial Administrative Court in Warsaw of 11 December 2014, II SAB/Wa 594/14, LEX nr 1617878; Judgement of the Provincial Administrative Court in Warsaw of 6 November 2015 r., II SAB/Wa 818/15, LEX nr 1957747; Judgement of the Provincial Administrative Court in Opole of 22 February 2016, II SAB/Op 7/16, LEX nr 2011741.

of legal professions, in addition to complying with generally applicable law, are also obliged to comply with non-legal standards, including deontological ones.[22] The conditions of tort are also presented in a different way. The administrative law lacks a description of individual factual situations with the statutory threats of punishment assigned to them. In addition, the described facts resemble rather general clauses, often containing unspecified phrases, such as: improper performance of professional activities or violation of the dignity and seriousness of the profession.

Moreover, the disciplinary regulations do not include the principle of *nullum crimen sine lege* in criminal law, and the effect of violating the norms are of secondary importance; therefore it is not a sine qua non condition for the emergence of disciplinary liability. Therefore, this rises question of whether such widespread use of general clauses in this respect will be acceptable. An attempt to answer them was made by the German Constitutional Court, which decided that the use of such clauses is admissible, as it would be impossible to fully enumerate the obligations related to a given profession in the act.[23] The conclusion that the effect of the behavior is not the most important element of disciplinary liability leads to another, according to which the violation of the rules of performing professional activities is the most important.

In disciplinary law, it is also in vain to look for sanctions defined in advance by the court, in connection with the open catalog of crimes. In practice, this leads to a situation where even for a serious offence, the strictest sanction does not have to be imposed. On the other hand, for acts related to the violation of codes of professional ethics, any penalty may be imposed, and even the same penalty for various violations.

Another difference between the above-mentioned procedures is the consequences of incurring a given type of liability. The effects of violation resulting from disciplinary liability are limited to the sphere of activity of a representative of a given profession, therefore they do not transfer directly to his other spheres of life. In the case of criminal liability, such interference may occur and there are no restrictions.[24]

The functions of the two types of responsibility are also different. In the case of criminal liability, the emphasis is on protecting the society against crimes, i.e. acts that are characterized by significant social harmfulness

22 Pawłowski, *Ustrój i zadania samorządu zawodowego w Polsce*, 159.
23 Ibidem, 160.
24 Ibidem.

of the act. Compliance with legal and non-legal rules in connection with professional liability is, in turn, aimed at ensuring the high quality of services provided.

Although often used interchangeably in the legal nomenclature, disciplinary liability and professional liability are two separate concepts. The first is used in Polish legislation in relation to the majority of corporations governed by public law. In addition to legal professions, this term also includes, among others: tax advisors, statutory auditors, patent attorneys, psychologists and corporations of technical professions or brokers. In turn, the term professional responsibility is used primarily in relation to medical professions that are formed by public law corporations: doctor, veterinarian, nurse, pharmacist, midwife and others that are not professions of public trust, e.g. dietician, masseur, medical laboratory technician. It is important to consider where this distinction comes from. It is worth quoting here the thought of Zbigniew Leoński, who claims that "the essence of each disciplinary liability was seen in the fact that it is functionally related to a specific organization, and in this case – to the professional self-government."[25] This principle was used in the pre-war professional self-government, but, interestingly, the term was abandoned in the 1950s and this terminology was not reintroduced in connection with the reactivation of medical self-governments after 1989. The logical justification for such a terminological distinction may be the lack of a liberal profession in relation to doctors due to the need for employment[26].

However, it seems puzzling to apply the concept of disciplinary liability to a legal adviser who, although he may practice his profession under an employment relationship, remains a freelance profession, and moreover, the Labor Code in the part concerning liability for violation of public order provisions does not apply to him and work discipline.

Taking Polish legislation into account, it is difficult to indicate a clear boundary between the term disciplinary liability and the term professional liability. However, thanks to the linguistic interpretation, it can be concluded that the latter refers to activities related to the exercise of a profession. In contrast, disciplinary responsibility focuses rather on order values and allows for a deeper understanding of the attitudes of responsibility, taking into account offenses that are unrelated to the performed profession

25 Zbigniew Leonski, *Odpowiedzialność dyscyplinarna w prawie Polski Ludowej* (Poznań: Państwowe Wydawnictwo Naukowe, 1959), 9,114.

26 Ibidem.

and violate the law and ethical principles, as well as organizational and order obligations[27]. Analyzing the literal meaning of the concept of disciplinary responsibility, it is worth referring to the *Great PWN Encyclopaedia*, which defines it as "an employee's answering to a disciplinary body in the event of a serious violation of duties; also: the necessity for a member of an association to be held accountable for violation of the statutory provisions."[28] Disciplinary liability is a special type of administrative and legal liability, which is primarily for in official pragmatics regulating the legal status of state employees and public officials.[29] The same author, in the first volume of the Dictionary, indicates the meaning of the word discipline itself, derived from the Latin *disciplina,* meaning "the way of treating students, bringing them up in discipline, subordination to the regulations governing relations within a given community, organization, social group, etc.; discipline, rigor, established order."[30]

The provisions of the 14th-15th century concerning corporate organizations should be regarded as the prototype of disciplinary law. These provisions in a fragmentary manner regulated the catalog of behaviors defined as unacceptable and subject to sanctions in the event of their violation[31]. The key to the development of these provisions was the separation of the official corps, which was associated with the creation of a special category of crimes, which in turn forced the state to react. Over time, appropriate regulations and rules of conduct began to be created for each of the state positions. Particular professional groups began to acquire competencies that had so far been appropriate only for state authorities, which, however, still exercised a kind of supervision over professional self-governments.

On the other hand, professional liability concerns primarily the consequences of conduct inconsistent with the principles of ethics and professional dignity.[32] It is based on the violation of standards considered crucial in a given professional environment and the application of repressive

27 Ibidem, 163.

28 http://encyklopedia.pwn.pl/szukaj/odpowiedzialno%C5%9B%C4%87-dyscyplinarna.html, March 2023.

29 Paweł Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego* (Warszawa: C.H. Beck, 2013), 79; *Uniwersalny słownik języka polskiego*, t. II, ed. Stanisław Dubisz, 1165 (Warszawa: PWN, 2008).

30 Ibidem, 745.

31 Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, 35.

32 Genowefa Rejman, *Odpowiedzialność karna lekarza* (Warszawa: Wydawnictwa Uniwersytetu Warszawskiego, 1991), 15.

sanctions to the employee, and therefore penalties for violation of the rules of conduct. Such violations may affect the dignity or authority of the office, as well as the duties of employees and the professional standards of art, ethics and deontology.[33] In addition, the indicated type of responsibility is a kind of care over the professional ethos, and thus the lifestyle and everyday behavior of representatives of a given profession. Paweł Czarnecki is of the opinion that the concepts of disciplinary and professional responsibility should be treated synonymously. The scope of responsibility is similar, with the difference that the term "professional" indicates a certain subject-object scope, and the term "disciplinary" oscillates around ethical values. At the same time, it indicates that professional liability is a special type of disciplinary liability[34].

When discussing disciplinary liability in the context of legal professions of public trust, one should relate its analysis to both criminal and administrative liability.

It is common in the doctrine that disciplinary liability cannot be equated with criminal liability in the strict sense, however, it can certainly be referred to this legal branch in the broad sense.[35] In the light of the opposite view, disciplinary liability applies only to persons performing specific functions in certain state and social organizations, and thus to criminal liability.[36] A disciplinary offense will never be universal, because it will always take an individualized form.

Administrative liability is not as uniform a concept as criminal liability. In the light of one of the definitions proposed in the doctrine, administrative liability is the "possibility of applying to a specific entity, due to its activity, legal measures implemented in administrative forms and procedures."[37]

As part of the administrative and material liability, the following can be distinguished: liability under administrative enforcement proceedings, criminal-administrative liability and liability consisting in the withdrawal

33 Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, 80.

34 Ibidem.

35 Ibidem, 110.

36 Zbigniew Leoński, *Odpowiedzialność dyscyplinarna w prawie Polski Ludowej* (Poznań, Państwowe Wydawnictwo Naukowe, 1959), 155.

37 Dobrosława Szumiło-Kulczycka, "Prawo administracyjno-karne, czy nowa dziedzina prawa?" *Państwo i Prawo*, No 9 (2004): 7.

or limitation of the right acquired under an administrative decision.[38] The literature clearly shows that administrative liability and disciplinary liability are similar, primarily in that they are both legally regulated and involve the limitation or deprivation of legally protected rights, as well as judicial control of liability decisions. The differences concern primarily the circle of entities subject to it: not only natural persons, but also legal persons and organizational units without legal personality are subject to administrative responsibility. In addition, it is universal in nature – and therefore theoretically it can apply to anyone, and it does not require – as in the case of disciplinary responsibility – belonging to an organization.[39]

The first of the types of liability indicated in the division is enforcement liability, which basically consists in the use of state coercion measures for the purpose of enforcing the performance of an obligation arising directly or indirectly from a norm of substantive administrative law, when the entity obliged to do so does not voluntarily perform such an obligation. The basic difference between a disciplinary penalty and an enforcement measure is that the former serves to protect the goods protected by law through an ailment inflicted on the accused, while the indicated measures serve to fulfill a legal obligation, and not to cause an ailment that may occur, but as a side effect. Moreover, enforcement measures may be applied multiple times as a response to failure to perform the same obligation.

The second type of administrative liability indicated in the doctrine is penal administrative liability. While an administrative penalty is imposed by way of a decision, which is a consequence of the violation of legal obligations stemming from substantive administrative law and takes the form of a fine, a disciplinary penalty is rarely in this form and is imposed in the form of a disciplinary ruling[40]. In addition, disciplinary liability is individualized and based on the principle of fault, while criminal-administrative liability is liability for the violation of the law itself, although the provisions relating to it sometimes require taking into account the degree of fault.

The final type of administrative liability is the withdrawal or limitation of a right acquired by virtue of an administrative decision. We are talking mainly about authorizations to perform specific activities, especially

38 Radosław Giętkowski, *Odpowiedzialność dyscyplinarna w prawie polskim* (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2013), 158.

39 Ibidem.

40 Ibidem, 159-161.

economic ones, contained in decisions called permits, permissions, consents, licenses or concessions. In the case of this type of responsibility, the author notices mainly similarities, not differences in confrontation with disciplinary liability. The aforementioned withdrawal or limitation seems to resemble a similar institution in the field of disciplinary law, consisting in depriving or limiting the rights of a member of a given organization[41] – even a lawyer, who is a profession of public trust, in relation to whom the penalty of suspension or deprivation of the right to practice the profession is imposed.

Among others, Wiktor Jaśkiewicz presents an interesting position, assuming that disciplinary liability can only be distinguished in the context of administrative law. According to Małgorzata Stahl, it is the use of enforcement compulsion that is the basic way of the administration's reaction to disobedience, passivity or resistance of the administered entities. This coercion may take the form of an enforcement coercion or an administrative penalty [...]."[42] Disciplinary penalties are a form of state coercion, while their adjudication is an act of an administrative nature[43]. The view of Rafał Rajkowski, according to which a disciplinary penalty may be equated with an administrative penalty, which is characterized by the fact that it is imposed on representatives of a specific professional group, also seems to be important. Closely related to this is the administrative sanction, the discussion of which should begin with an explanation of the concept of a sanction.

A sanction, as noted by Paweł Chmielnicki, is understood as a negative consequence of behavior inconsistent with the legal norm and is associated with ailment, evil and coercion.[44] In addition, a sanction can be imposed in an institutionalized way – a concentrated sanction, and it can also consist in a spontaneous social or economic boycott – then it is called a diffuse sanction.[45] It seems that in the event of a violation of professional

41 Ibidem 162.

42 Małgorzata Stahl, "Sankcje administracyjne – problemy węzłowe", [in:] *Sankcje administracyjne. Blaski i cienie*, ed. Małgorzata Stahl, Renata. Lewicka, Marek Lewicki (Łódź: Wydawnictwo Uniwersytetu Łódzkiego 2011), 17-18.

43 Wiktor Jaśkiewicz, *Stosunki służbowe w administracji* (Warszawa-Poznań: Państwowe Wydawnictwo Naukowe, 1969), 95.

44 Paweł Chmielnicki, "Sankcje publicznoprawne jako sposób formalizacji reguł określających wypłaty i koszty działania", [in:] *Sankcje administracyjne, blaski i cieni* ed. Małgorzata Stahl, Renata. Lewicka, Marek Lewicki, 34.

45 Zofia Duniewska, „Podstawowe pojęcia prawa administracyjnego", [in:] *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, 70.

ethics – including advocates' confidentiality – by an advocate, an example of a widespread sanction may be even strong criticism of the legal community, and the consequence of this – the omission of such a representative of the profession when filling positions within a given advocate chamber.

An administrative sanction is, in the simplest terms, a kind of affliction and exerting pressure by state coercion,[46] which have their own specific characteristics.[47] The concept of an administrative sanction is not clearly defined in either in the doctrine or in the jurisprudence of the Constitutional Tribunal and the courts.[48] Generally speaking, a legal sanction, including an administrative sanction, is identified with "responsibility established in a specific norm for the violation or non-performance of a legal norm and the resulting ailment – property, personal, consisting of a loss of rights (withdrawal or expiration), the invalidity of an act or act or other unfavorable legal consequences for a given entity – economic, personal."[49] It is worth noting that the determination of the grounds for administrative liability – i.e. guilt or an objective violation of the law – is a contentious issue both in doctrine and jurisprudence. The expansion of the scope and drastic nature of administrative sanctions imposed without regard to fault, especially financial ones, raises serious concerns.[50]

There is a dispute in the doctrine as to the nature of administrative sanctions as a consequence of failure to act in accordance with an order or prohibition. The main task of an administrative sanction is not repression, but administration, and its severity cannot be arbitrary.[51] In addition, the sanction is closely related to administration, and public administration cannot function properly without the application of coercion, which will ensure the performance of the administrative and legal obligation.[52]

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46 Chmielnicki, "Sankcje publicznoprawne jako sposób formalizacji reguł określających wypłaty i koszty działania", 51.

47 Duniewska, „Podstawowe pojęcia prawa administracyjnego", 70.

48 Magorzata Stahl, „Podstawowe pojęcia prawa administracyjnego", [in:] *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, 82.

49 Ibidem.

50 Michał Kasiński, „Sankcje administracyjne a patologie w działaniu administracji", [in:] *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, 149.

51 Piotr Przybysz, *Egzekucja administracyjna* (Warszawa: Dom Wydawniczy ABC, 1999), 181.

52 Andrzej Michór, „Z problematyki odpowiedzialności administracyjnej", [in:] *Nowe problemy badawcze w teorii prawa administracyjnego*, ed. Jan Boć, Andrzej Chajbowicz (Wrocław: Kolonia Limited, 2009), 645.

The following features of administrative sanctions can be listed: non-compliance of an individual's behavior with the law, the existence of a legal basis, preventive and repressive nature, the form of a normative act or an authoritative factual act, necessity, indispensability, ailment, enforcement by way of an administrative decision, subject to judicial review.[53] These standards specified in the jurisprudence are applicable to disciplinary penalties, especially since in the vast majority they should be applied in disciplinary proceedings.[54] On the other hand, imposing disciplinary penalties, such as removing an officer from service, involves considering circumstances unknown to the classic formula for administrative sanctions, such as the merits of an individual or the degree of harmfulness of violations in a given situation. Moreover, an administrative sanction – unlike a disciplinary penalty – is usually not subject to the statute of limitations. Another difference is the mode of adjudication: in the case of disciplinary offences, courts adjudicate, and administrative delicts – usually by administrative authorities.[55]

When discussing the aspect of relating disciplinary liability to criminal and administrative liability, it is also worth pointing out the relatively new concept in the doctrine, which is administrative and criminal liability. The administrative and criminal law itself is defined as "the totality of legal regulations covering the establishment and pursuit of liability for violation of administrative law norms subject to a sanction in the form of a fine, sanation fee, increased fee or a similar financial sanction implemented in administrative proceedings and before an administrative body."[56] The distinction of this legal branch has its source in three reasons: a dispersed conglomerate of many legal acts that are classified as administrative norms, identity or administrative sanctions similar in nature to criminal penalties, sanctions for non-compliance with administrative law norms of a financial (monetary) nature.[57] How, then, to relate the concept of

53 Małgorzata Stahl, „Sankcje administracyjne w orzecznictwie Trybunału Konstytucyjnego", [in:] *Instytucje współczesnego prawa administracyjnego,* Księga jubileuszowa profesora zw. dr. Hab. Józefa Filipka, ed. Iwona Niżnik-Dobosz (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2001), 658-659.

54 Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, 143.

55 Ibidem, 148.

56 Szumiło-Kulczycka, *Prawo administracyjno-karne, czy nowa dziedzina prawa*, 29.

57 Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, 152-153.

administrative and criminal liability to disciplinary liability? It turns out that disciplinary law has a strong relationship with administrative and criminal law, not only from the point of view of the nature of the sanction or the mode of its imposition, but also in the context of the dispersed nature of the regulations.

In the case of the relationship between disciplinary liability and civil liability, the main focus should be on the differences, as these concepts, in the most general sense, are not related to each other. Firstly, unlike in the case of disciplinary liability, the source of civil liability, from a formal point of view, is a contractual relationship of a civil law nature. Secondly, its function is primarily to repair damage to the property or goods of the aggrieved party, while disciplinary responsibility is to cause the perpetrator a certain affliction. Therefore, it is in vain to look for the application of similar principles within the above-mentioned concepts.[58] The description of the stages of disciplinary proceedings has been included in a separate scientific publication.

The dignity of a profession, as one of the types of dignity, should be considered primarily from an external perspective – as awareness of one's own value and respect for the profession due to it from its representatives. This aspect of dignity must reflect certain features that people performing, among others: should have the profession of lawyer in order to create a professional, reliable and socially trusted organization. The source of professional dignity for these people is the obligation to perform specific functions and fulfill socially important and important functions, which gives special value to their professional activity and, on the other hand, requires representation with high educational, practical and ethical standards.[59] The condition of violating the dignity of the profession will therefore be met whenever a representative of a profession of public trust acts in a way that may deprive him of social respect and trust. This misconduct may take various forms, such as: violation of the law – consisting, for example, of acting inconsistent with the obligation to be faithful to the oath, professional diligence or maintaining confidentiality of information in connection with the services provided within the scope of the profession – or violation of ethical norms under which also includes, among others: maintaining professional secrecy, as well as violating the norms customarily functioning in a given organization, related to certain customs, culture and good

58 Ibidem, 154-156.
59 Giętkowski, *Odpowiedzialność dyscyplinarna w prawie polskim*, 204.

manners.[60] Such a violation of the dignity of the profession does not necessarily have to occur during the provision of services. This type of behavior contrary to this value may occur outside working hours, in a sphere of life not directly related to professional aspects, even if the laws do not specify such behavior directly and only indicate their general framework.

The doctrine notes a strong connection between professional dignity and professional ethics. Professional dignity is the justification for this type of so-called general ethics. It is professional ethics that specifies it by specifying the conditions for performing a specific profession. However, the phenomenon of reducing professional ethics solely to the sphere of duties and codes of professional ethics should be assessed negatively, even though they are the only ones that are important for assessing whether a disciplinary ban has been violated at all.[61] Moreover, the principles set out in professional codes of ethics cannot constitute an independent legal basis for disciplinary liability. The basis is a provision of the Act specifying a given type of disciplinary tort, the content of which is to define conduct contrary to the principles of professional ethics. On the basis of such a provision, the deciding body each time considers whether a specific act is a disciplinary offense, based, however, on the principles written in professional ethics collections.

3 Conclusion

One of the basic roles of professional self-governments is to ensure the proper performance of these professions by their representatives. When it comes to the professional self-government's supervision over the proper performance of the profession, the use of the undefined phrase "public interest" is of basic constructive importance, and in a double context: indicating both the boundaries and the framework for exercising supervision over performing the profession and the purpose of exercising this care. The public law form of a corporation is therefore inextricably linked with the double use of the category of public interest. This gives rise to public tasks statutorily assigned to a given professional self-government.

60 Ibidem, 205.
61 Ibidem, 206-207.

The provided text is an extensive exploration of various forms of liability issues as they pertain to professions of public trust with a focus on legal profession which is the attorney-at-law in the Polish legal system. The text discusses the legal foundations for holding attorneys accountable for their professional actions, touching on both civil and criminal consequences. It delves into the specifics of establishing lawyer responsibility, particularly the need to demonstrate a causal link between the attorney's actions and any damage or loss caused. It highlights the Supreme Court's standards of due diligence and the consequences of negligence or willful misconduct within the profession.

The research examines the rules for contractual liability and the possibility of pursuing tort claims. It further explores the implications of breaches of professional secrecy in both in civil and criminal contexts, providing detailed legal grounding from the Polish Civil Code and Penal Code, to the procedures of the Code of Criminal Procedure regarding advocate confidentiality.

Disciplinary responsibility in professional self-governance and its association with criminal and administrative proceedings is also analyzed, including the historical evolution of disciplinary law. The text contrasts disciplinary responsibility with professional responsibility, examining the terminological and conceptual differences and touching upon the implications and enforcement mechanisms of each.

Lastly, the discussion encompasses the moral and ethical aspects of professional conduct, relating them to overall professional dignity and the ethos of professions of public trust. It concludes with reflections on the nature of such responsibility and the importance of ethical standards within professional communities.

In summary, the text is a comprehensive legal and ethical analysis of the nature of professional responsibility, especially legal liability, including civil, criminal, and professional accountability, with a focus on the discipline of attorneys within professions of public trust.

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