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Disciplinary liability of insolvency officers: current challenges

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Abstract

In this article we have studied the specific features of the liability of insolvency administrators for disciplinary offenses. The norms of the current legislation (in particular, the Bankruptcy Proceedings Code of Ukraine, the Tax Code of Ukraine, the Labor Code of Ukraine) regarding the determination of the legal status of insolvency officers and the specific features for bringing them to liability have been analysed in the article. The purpose of this research was to study problematic issues related to the liability of insolvency administrators. During the research general scientific methods, in particular dialectical, methods of analysis and synthesis, formal and legal, systematic approach have been used. It is concluded that disciplinary liability in the profession of insolvency officers in Ukraine is of mixed nature. It is partly civil, partly disciplinary and administrative liability -- in its essence -- and is not clearly regulated by the current legislation. Referring to the facts of bringing insolvency administrators to disciplinary liability even for a single offense has, on the one hand, elements of civil liability. On the other hand, disciplinary liability can also be imposed on insolvency administrators.

Keywords: disciplinary liability; arbitration managers; ministry of justice of Ukraine; self-regulated organization of arbitration managers; current challenges.

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Responsabilidad disciplinaria de los gestores de arbitraje: los desafíos de hoy

Resumen

En este artículo se han estudiado las características específicas de la responsabilidad de los administradores concursales por infracciones disciplinarias. Las normas de la legislación actual (en particular, el Código de Procedimientos de Quiebra de Ucrania, el Código Fiscal de Ucrania, el Código Laboral de Ucrania) con respecto a la determinación del estatus legal de los oficiales de insolvencia y las características específicas para llevarlos a responsabilidad han sido analizadas en el artículo. El propósito de esta investigación fue estudiar cuestiones problemáticas relacionadas con la responsabilidad de los administradores concursales. Durante la investigación se han utilizado métodos científicos generales, en particular dialécticos, métodos de análisis y síntesis, enfoque formal y legal, sistemático. Se concluye que la responsabilidad disciplinaria en la profesión de los oficiales de insolvencia en Ucrania es de naturaleza mixta. Es responsabilidad en parte civil, en parte disciplinaria y administrativa --en su esencia-- y no está claramente regulada por la legislación vigente. Referirse a los hechos de llevar a los administradores concursales a la responsabilidad disciplinaria incluso por un solo delito tiene, por un lado, elementos de responsabilidad civil. Por otro lado, la responsabilidad disciplinaria también se puede imponer a los administradores concursales.

Palabras clave: responsabilidad disciplinaria; gestores de arbitraje; ministerio de justicia de Ucrania; organización autorregulada de gestores de arbitraje; desafíos actuales.

Introduction

The professional activity of insolvency officers in Ukraine has a very complex specificity due to the peculiarities of the legal status of the insolvency officer. Apart from the private legal nature, the activity of insolvency officers is burdened with a public element associated with obtaining the right to carry out professional activities through a specially authorized state agency - the Ministry of Justice of Ukraine - and the procedure for recognition in cases of bankruptcy (insolvency) by the state court.

Therefore, insolvency officers in Ukraine, although they are not civil servants, court officials, representatives of creditors and debtors in bankruptcy proceedings, are vested with powers of external administration, supervision and management of the business activities of the bailiffs and

are entitled to the fullest possible proportionate satisfaction of the demands of the creditors.

V. V. Dzhun noted that taking into account the factors of significant public interest in the activities of insolvency officers and the features of their real legal status, the conclusion that the insolvency officer is a special subject of public law is very grounded (Dzhun, 2009). The strengthening of public element in the competition procedure was noted in 1863 by G. F. Shershenevich in his systematic work "Competition process" (Shershenevich, 2000).

Therefore, the authority empowered by the state to perform public functions of redistribution of the property of the debtors for the benefit of the creditors causes increased legal liability of insolvency officers for the compliance with the lawfulness and completeness of their procedural actions in the bankruptcy proceedings.

1. Methodology of the study

The scientific article is based on the provisions of the legal acts of Ukraine, official data of court practice regarding the disciplinary liability of insolvency officers. Scientific data of current jurisprudence, international relations, world politics and economics was actively used while working on the article. Theoretical basis of this article was the current scientific development of domestic and foreign scholars on disciplinary liability of insolvency officers, the strains of improvement of legislation on this matter and law enforcement practice.

During the study, general scientific methods were used, in particular, dialectic, methods of analysis and synthesis, formal and legal, systematic approach. The comparative and legal method was widely used, by means of which the experience of France and the Federal Republic of Germany with regard to imposing disciplinary liability on arbitration supervisors was examined. The systematic method has been used in identifying the problems of the current state of affairs in this matter.

2. Results and discussion

2.1. Grounds for disciplinary liability of insolvency officers and its features

In accordance with the Art. 21 of the Bankruptcy Procedures Code of Ukraine insolvency officers are brought to the following types of liability for their actions: civil, administrative, disciplinary, criminal (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures", 2018).

The disciplinary liability among the listed types of legal liability is of particular interest for the research and requires conceptual rethinking and legislative reform taking into account the following listed factors.

As we have already noted, disciplinary liability is one of the types of legal liability. The classic notion of disciplinary liability in domestic law is found in the Labour Code, which regulates the relations between employers and employees (The Labour Code of Ukraine, 1971). In the field of labour relations, disciplinary liability is the obligation of an employee who has committed a disciplinary offence to account to his/her employer for his/her illegal actions and to bear disciplinary penalties provided by the labour law.

The basis for disciplinary liability is a disciplinary offence - a culpable, illegal failure to perform or improper performance of the duties imposed on the employee (violation of labour discipline) for which disciplinary liability is incurred. According to the Art. 1471 of the Labour Code of Ukraine: "Disciplinary penalties shall be imposed by the authority that has granted the right to hire (recruit, approve and appoint to the position) the given employee" (The Labour Code of Ukraine, 1971).

According to the Labour Code of Ukraine, disciplinary penalties shall be imposed by the owner or its authorised agency indirectly upon the discovery of a disciplinary offence, for a breach of the employment discipline prescribed by the employment regulations, the disciplinary statute or another disciplinary procedure (The Labour Code of Ukraine, 1971).

> General disciplinary liability is stipulated by the Labour Code of Ukraine and internal labour regulations for all categories of employees, except for those whose labour activity is regulated by special legislation of Ukraine or by internal acts (statute or discipline regulations). The special disciplinary liability is characterized by the possibility of applying to the offender of labour discipline, in addition to the admonition and dismissal, also such disciplinary restraint measures, such as: demotion in rank, demotion, loss of badge, dismissal with loss of rank, reprimand for inactive service, a delay of up to one year in promotion to a higher rank or in being appointed to a higher position, reduction in rank, reduction in rank by one level, etc., (Official position of the Ministry of Justice of Ukraine, 2018: 15).

There is a number of questions: whether an insolvency officer is a subject of labour relations, an employee in the context of the Labour Code of Ukraine, what type of disciplinary liability is applicable to him? The professional legislation does not provide an answer to this question, but a concrete answer can be found in the Tax Code of Ukraine. Since the insolvency officer is a subject of independent professional activity in accordance with paragraph 1 of the Art. 10 of the Bankruptcy Code of Ukraine, in accordance with the Tax Code of Ukraine he cannot be an employee since he is a self-employed person (Tax Code of Ukraine, 2010: article 14.1.226).

The conclusions of the Supreme Court's Resolution of 13 March 2018 in the case No. B8/180-10 are also interesting in this context. Thus, the Court states the following in clauses 49.1 and 49.2: "The insolvency officer is appointed by the court and acts in accordance with the provisions of the Law of Ukraine "On Restoring the Debtor's Solvency or Declaring the Bankruptcy of the Debtor". Nevertheless, even the insolvency officer's performance of his duties as the head of the insolvency organization, i.e. the duties of the head of the company, does not confirm the existence of employment relations and the respective guarantees associated with them.

The Bankruptcy Law does not automatically create employment duties when the duties of the head of the company are performed by the head of the insolvency organization. The Law on Bankruptcy shall be predictable in application, which complies with the principle of legality and legal certainty as components of the rule of law. A prerequisite of the employment relations is the existence of an employment contract between the employee and the employer.

In this case the court-appointed insolvency officer is a subject of independent professional activity, is not an employee and, therefore, the employment contract between him and the company is absent. There is no owner or his authorized agency, the presence of which is required by the Art. 117 of the Labour Code of Ukraine and his fault. The nature of the relationship between the insolvency officer and the debtor is civil one and is regulated by "the Law on Bankruptcy". (Resolution of the Supreme Court, 2018).

Thus, the insolvency officer is not a subject of disciplinary liability under the Labour Code of Ukraine and his liability is of special nature and is regulated exclusively by a special law - the Code of Ukraine on Bankruptcy Procedures.

The codified act defines the concept and types of "disciplinary misconduct" (Article 19):

1) the fact of engaging in an activity incompatible with the activity of the insolvency officer;
2) violation of professional ethics rules of the insolvency officer;
3) failure to perform or improper performance of his/her duties;
4) non-compliance with the statute and decisions of the self-regulatory agency of the insolvency officers (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures", 2018).

Paragraph 5 of the Art. 20 of the Code of Ukraine on Bankruptcy Procedures stipulates that: "If violations of *legislation* are found during the insolvency officer's inspection, the bankruptcy authority may terminate

the insolvency officer's activity and submit the materials to a disciplinary commission for imposing *disciplinary penalties* on the offender" (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures", 2018).

The bankruptcy legislation does not provide sufficient legal definition of the types of disciplinary offences, although the scope of disciplinary offences may be defined exclusively by law. The stated conclusion is based on the provisions of the Art. 92 of the Constitution of Ukraine (Constitution of Ukraine, 1996) and also on the practice of applying the Art. 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) (Convention on the Protection of Human Rights and Fundamental Freedoms, 1950).

In the interpretation of the law, it is inadmissible to use a broad interpretation of the construction of the enshrined in its disciplinary offences. In our opinion, this interpretation does not comply with the principle of legal definiteness and, therefore, contradicts the Art. 8 of the Constitution of Ukraine and violates the guarantees for the right to profession provided by the Art. 8 of the Convention.

2.2. Specific features of bringing insolvency officers to disciplinary liability

It should be noted that there is no code, statute or collection of disciplinary rules and regulations for insolvency officers in Ukraine. Both the Code of Ukraine on Bankruptcy Procedures (Law of Ukraine No. 2597-VIII, 2018) and the Order on the procedure for monitoring the activities of insolvency officers (Order No. 3928/5, 2019), and the Code of professional ethics of insolvency officers (Congress of Arbitration Administrators of Ukraine, 2019) do not contain specified list of disciplinary offences (infractions, gross misconduct) and correspondingly established sanctions for their commission.

This results in duplication of the functions of the agencies controlling the activities of the arbitral authorities, dual jurisdiction of judicial control (commercial and administrative), full use of the formulas of offences and sub-evaluation of the sanctions.

Insolvency officers who are subject to disciplinary liability shall be liable for violation of the law, the rules of the organization of their professional activities, the rules of professional ethics, the regulations of self-regulatory organizations. This entails substituting the notion of disciplinary offence with the notion of gross misconduct, which is not clearly defined and is applied in a voluntary and subjective manner.

Violations found as a result of inspections and referred to the Disciplinary Commission are generally classified by the inspection agencies as "gross

violations". Such violations are often the basis for imposing disciplinary liability on the insolvency officers, including forfeiture of the right to operate. But there is no clear definition and list of gross violations in the professional regulations.

The system of control over the activities of insolvency officers in Ukraine is characterized by duplication of internal control responsibilities on the part of the state authority for bankruptcy and judicial control within the scope of the proceedings in the bankruptcy case. We believe that this duplication of control agencies causes a shift in the scope of different types of responsibility of insolvency officers: civil and legal and disciplinary.

State courts control the activities of insolvency officers within the scope of court proceedings in bankruptcy cases. Judicial control is based on the analysis of the current reports of the insolvency officer on the exercise of his/her powers at different stages of bankruptcy proceedings, reviewing appeals by parties to bankruptcy proceedings in the form of applications and complaints about the insolvency officer's performance. Institutional control is based on scheduled and unscheduled inspections of the activities of the insolvency officers. Unscheduled inspections are carried out at the request of any individual or legal entity regarding the activities of the insolvency officers.

Occasionally, complaints are filed simultaneously with both the Commercial Court and the Ministry of Justice of Ukraine. Often the aim of such complaints is not to restore the violated right of the claimant, but to remove the disloyal insolvency officer and replace him with a trustworthy one.

This duplication of control functions in the law and in law enforcement practice interaction between the state agency on bankruptcy and the commercial court is virtually absent, and these forms of control exist separately and independently of one another and are aimed at different results with the same subject of control: as opposed to the main focus of home control on the part of the Ministry of Justice of Ukraine, the main result of the exercising by a state court of bankruptcy control in case of finding violations of the legislation is the dismissal of the insolvency officer and/or the court decision ordering to require him/her to initiate certain actions/obstruct their initiation within the scope of the bankruptcy case, where the latter shall exercise the powers of special subjects in bankruptcy proceedings.

In accordance with the Art. 21 of the Bankruptcy Code of Ukraine: "Insolvency officers shall be liable to disciplinary liability under the procedure established by this Code. The bankruptcy state authority shall impose disciplinary penalties on the insolvency officers upon the filing of a disciplinary commission" (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures", 2018).

Special attention should be paid to the fact that the Regulation on the Ministry of Justice of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of July 2 2014 No. 228. does not provide for the Ministry of Justice of Ukraine to impose disciplinary liability on insolvency officers.

Similar provisions are stipulated by the Art. 3 of the Bankruptcy Code of Ukraine, which provides an exclusive list of powers of the bankruptcy authority, in particular: "establishes the procedure for exercising control over the activities of insolvency officers, checking the organization of their work, their compliance with the legislation on bankruptcy". However, there is no obligation to impose disciplinary liability.

We believe that this case is not an accident - the Ministry of Justice of Ukraine and the insolvency officers do not have a full range of legal relations that could entail disciplinary liability.

It should be noted that the Ministry of Justice of Ukraine does not employ insolvency officers and they, in turn, are not civil servants. In bankruptcy cases, insolvency officers are appointed by the state courts and the source of payment for their work is creditors, debtors or the liquidation estate.

A characteristic feature of disciplined liability of insolvency officers is the fact that the authority which imposes disciplinary liability on the offenders (the Ministry of Justice of Ukraine) does not decide on the imposition of the respective penalty. The Disciplinary Commission shall take a decision in accordance with the Art. 22 of the Bankruptcy Code of Ukraine.

This procedure, especially in combination with a short statute of limitations, inherently undermines the effectiveness of the disciplinary liability mechanism.

The provisions of paragraph 3 of the Art. 20 of the Code of Ukraine on Bankruptcy Procedures and paragraph 3, clause 6 of the Section II of the Control Procedure as amended, establish an unreasonably large number of persons who have the right to appeal (complain) against the actions of insolvency officers, which is the basis for unscheduled audits. It is, in fact, any individual or legal entity who contacts the supervisory authority on the grounds of non-compliance or improper performance of the duties of the insolvency officer.

Notwithstanding the fact that any legal relation that creates obligations for the insolvency officers to perform a certain set of procedural actions shall arise within the scope of bankruptcy proceedings, the list of persons entitled to apply for information on their violated rights shall be limited to the participants in the bankruptcy proceedings as defined by the Bankruptcy Procedures Code of Ukraine.

The Disciplinary Commission of Arbitrage Managers, in accordance with the Art. 22 of the Bankruptcy Code of Ukraine: "shall be constituted in accordance with the procedure established by the bankruptcy authority to consider the cases of arraignment of insolvency officers for committing a disciplinary offence.

The Disciplinary Committee shall consist of seven members, three of whom shall be appointed by the order of the head of the bankruptcy authority and four of whom shall be appointed by the meeting of insolvency officers. The duties term for the members of the Disciplinary Committee shall be two years. The Disciplinary Commission shall be chaired by the head of the bankruptcy authority or a person designated by the authority" (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures, 2018).

The activity of the Disciplinary Commission is regulated by the Regulation on the Disciplinary Commission of Insolvency Officers, approved by the Decree of the Ministry of Justice of Ukraine No. 2993/5, dated of 25th of November, 2019 (Ministry of Justice of Ukraine, 2019).

The Disciplinary Commission of Insolvency Officers is an advisory and expert agency established by the Ministry of Justice of Ukraine to take a decision on the imposition of disciplinary penalties in respect of offences detected by the insolvency officers' supervision authorities. Its members shall not receive any compensation for their activities or for their expenses incurred in travelling to the meeting. At the same time, the Disciplinary Commission is not a separate agency or legal entity. It cannot issue regulatory documents or act as a party to court proceedings, nor it can be a defendant in a court, when a decision to impose disciplinary liability on the insolvency officers is appealed.

The lack of clarity of the legal status of the Disciplinary Commission of Insolvency Officers causes low problems of disciplinary proceedings.

There are two types of decisions to impose the same disciplinary penalties on insolvency officers: the decision of the Disciplinary Commission and the order of the Ministry of Justice of Ukraine. There may be a considerable lapse of time between the adoption of these decisions, which creates a procedural problem in terms of determining the time limit for disciplinary liability.

Decisions of the Disciplinary Commission, which are drawn up in a protocol, do not sufficiently motivate and substantiate the grounds for taking specific decisions on each disciplinary case. According to court practice, the decision to disqualify insolvency officers from disciplinary liability cannot be determined by the content of the minutes, do not allow to establish the motives used by the Disciplinary Commission, in particular why the credible arguments of the person who was held liable were suppressed.

Protocol decisions of the Disciplinary Commission shall not be transparent and open to the public. As the Disciplinary Commission is not an independent agency, it is not able to maintain its website or publish its decisions in mass media.

Disclosure of information about disciplinary proceedings may be made with due regard to the confidentiality of the activities of the insolvency officer and the bankrupt company. At the same time, it is necessary to take into account the presence of commercial and state secured assets, especially in state-owned enterprises.

The experience of France and the Federal Republic of Germany is very useful to take into account in the proposals for reforming the legal status and work regulations of the Disciplinary Committee of Insolvency Officers. In France, the National Commission for the Registration and Discipline of Court Administrators and Court Representatives (CNID) (henceforth referred to as the National Commission) is an independent and self-regulated agency, independent of the Ministry of Justice.

The Commission is not a court but acts as a tribunal. Every three years, the National Commission conducts inspections of court representatives and court administrators. Professional auditors are hired for this inspection. Regarding decision-making, there are no set criteria and situations are regulated depending on the circumstances. Regarding the qualification of disciplinary offences, the expert noted that an act is considered a disciplinary offence if it is of a continuous, systemic nature.

The Federal Republic of Germany does not in any way control the quality of work of the members of the profession of insolvency officers. The state control is not exercised in general in the profession, but in each case where the court controls the actions of the manager. Complaints about the work of the insolvency officer shall be sent by a sheet to the court, which shall forward it to the insolvency officer for explanations.

The explanations shall be given to the creditor with a copy to the court. In exceptional cases, if it is insufficient, the court shall examine the case and take specific steps for the supervision. This may include additional requirements or, in the worst case, the replacement of the insolvency officer by another person (Hlushko, 2019).

According to its statute the Disciplinary Commission is not a structural unit of the Ministry of Justice of Ukraine, which means that its decisions in the form of a protocol on the results of the relevant meetings (p. 5 of the Art. 22 of the Bankruptcy Code of Ukraine) are not decisions of the Ministry of Justice of Ukraine. However, the Ministry of Justice of Ukraine as a state agency responsible for bankruptcy shall be executed by the decree of the Ministry, which in essence is an administrative act of the powers that should be subject to administrative jurisdiction.

This circumstance created a jurisdictional collision for consideration of appeals against decisions on imposition of disciplinary penalties: bankruptcy cases are considered by commercial courts, while decisions to impose disciplinary liability on insolvency officers are considered by administrative courts.

In view of the above-mentioned law collisions, there is ambiguity in determining the terms of disciplinary liability. Paragraph 4 of the Art. 21 of the Bankruptcy Code of Ukraine stipulates that the decision to impose a disciplinary penalty shall be taken within two months from the date of detection of the disciplinary offense, but not later than one year from the date of its commission. What decision is referred to: the protocol decision of the Disciplinary Commission or the order of the Ministry of Justice of Ukraine? The legislation does not clearly regulate it. There is a significant time lag between these decisions being taken. These are the arguments used by the insolvency officers in bringing them to disciplinary liability.

The most widespread types of irregularities detected by the authorities controlling the activity of insolvency officers are the following: failure to conduct inspections (the absolute majority of violations); violations regarding creditors and maintenance of the creditor register; violations related to the inventory and protection of the property of a debtor; errors related to the realization of the property of the debtor (bankrupt); errors related to the analysis of financial and business activities; violations related to the identification and management of the assets of the debtor; failure to submit timely and proper information on their activities to the joint-stock company; violations of organizational nature (lack of an insurance contract, deficiencies in management, failure to comply with the rules of the office equipment); failure to upgrade the qualification; failure to implement the order to eliminate the violations identified by the previous inspection.

Cases of different types of sanctions for the same offences were recorded. There is no gradation and harmonisation of the types of offences according to the degree of guilt of the insolvency officer, the degree of gravity of the offence, the systemic nature of the offence, the overall individual capacity to execute a particular order and the amount of the inflicted school.

Based on the above, we can conclude that the application of the above formulas and definitions of disciplinary offences of insolvency officers today is of subjective and evaluative significance and requires a clear normative regulation.

2.3. Scientific discussion on amending the rules for recovering penalties on insolvency officers

Experts in the field of insolvency, judges of commercial and administrative courts are discussing the feasibility of amending the rules on

the jurisdiction of disputes over the cancellation of orders of the Ministry of Justice and the decisions of the Disciplinary Commission of Insolvency Officers in order to transfer their decisions to state courts (appellate state courts), to refer their decisions to commercial courts (appellate commercial courts), which directly apply the bankruptcy law.

The study of court practice shows that administrative courts due to the lack of proper specialization of judges can be important to assess the correctness of the application of bankruptcy law by insolvency officer, which may be necessary to assess the legality of the penalty imposed on him.

The Bankruptcy Procedures Code of Ukraine provides the establishment of a single self-regulatory organization with mandatory membership of all insolvency officers, whose information is included in the Unified Register of insolvency officers. Such an organization was established in Ukraine on 21 of November 2019. Today it is called the National Association of Insolvency Officers of Ukraine (NAIOU).

According to the Art. 33 of the Bankruptcy Code of Ukraine (Functions and duties of self-regulatory agency of insolvency officers), the self-regulatory organization of insolvency officers shall carry out in the manner prescribed by this Code control over the activities of insolvency officers for the compliance with this Code, the Code of Ethics for Insolvency Officers and other regulations on the activities of insolvency officers (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures, 2018).

A self-regulatory organization of insolvency officers "shall have the right, upon application of a participant in a bankruptcy case or at its own initiative, to review the performance of the insolvency officer for the compliance with the statute of the self-regulatory organization of insolvency officers; Code of Ethics for insolvency officers; decisions of the self-regulatory agency of insolvency officers related to the activities of insolvency officers.

Violation of the professional ethics of the insolvency officer and non-compliance with the statutes and decisions of the self-regulatory organisation of insolvency officers are disciplinary offences, the commission of which is a basis for holding the insolvency officer disciplinarily liable (Law of Ukraine No. 2597-VIII "Code of Ukraine on Bankruptcy Procedures, 2018).

The current legislation on bankruptcy does not define the concept of "professional ethics" in terms of ethical norms and standards of professional activity of insolvency officers. The legislator has therefore placed the establishment and regulation of this norm within the competence of the self-regulatory organisation of insolvency officers. As a general rule, professional ethics is a code of rules governing the conduct of a specialist in a service environment, norms, standards that comply with current laws and regulations, professional knowledge, teamwork and a strong awareness of moral responsibility for performance of professional duties (Donkov *et al.,* 2020).

The insolvency officer, in the exercise of his professional activity, has a duty, sometimes excessive, towards the participants in the bankruptcy proceedings (bailiffs and creditors in the first place); courts, the bankruptcy authority and other state authorities; other insolvency officers and professionals in the field of insolvency; the public in general.

In his or her activity, the insolvency officer shall be guided by such basic principles as ensuring competence; independence and objectivity; contributing to increasing the value of the competition and liquidation proceedings; respect for confidentiality; and good faith.

The professional ethics of the insolvency officer is the proper behaviour of the insolvency officer prescribed by the corporate rules in cases where the legal regulations do not establish specific rules of conduct for him or her.

The NAIOU at its statutory meeting on November 21, 2019 approved the Code of Ethics for Insolvency Officers, but as of today it can be stated that it has only a basic form, contains only the general principles of ethics of professional activity of insolvency officers and does not regulate all the rules of professional activity of insolvency officers.

No doubt, violations of ethical rules can and should lead to the imposition of disciplinary sanctions. At the same time, it is clear that not every ethical violation should lead to the imposition of disciplinary penalties. Only gross, obvious violations that are incompatible with the status of the insolvency officer should lead to disciplinary liability.

An examination of the disciplinary practice concerning violations of ethical rules by judges reveals that such violations include, for example, driving while being intoxicated, inappropriate statements about trial participants, publications in the press, where the judge grossly violates the presumption of innocence and allows personal attacks on other individuals, etc. The disciplinary practice of judges today does not consider violations (even obvious and gross violations of the requirements of procedural law that are allowed in the administration of justice) as violations of ethical norms.

The Ukrainian Council of Insolvency Officers of Ukraine of October 2, 2020 the Procedure for Control by the National Association of Insolvency Officers of Ukraine over the Activities of Insolvency Officers, which was developed in accordance with the Bankruptcy Procedures Code of Ukraine, was adopted, Code of Ethics for Insolvency Officers and acts of the National Association of Insolvency Officers of Ukraine (The Ukrainian Council of Insolvency Officers of Ukraine, 2020).

The NAIOU control procedure specifies the number of persons entitled to apply to the NAIOU for filing a complaint or an appeal. This number is limited to the participants in bankruptcy proceedings as defined in the

Bankruptcy Procedures Code of Ukraine as well as to the persons who monitor the bankruptcy.

Conclusion

Thus, disciplinary liability in the profession of insolvency officers in Ukraine has a mixed nature. In its essence, it is partly civil, partly – disciplinary and administrative liability and is not clearly regulated by the current legislation. On the one hand, it has elements of civil liability taking into account the facts of bringing insolvency officers to disciplinary liability even for a single violation of the current legislation.

On the other hand, insolvency officers are brought to disciplinary liability, whose actions have the corpus delicti of criminal offenses, although in this case the specified violations of the law should be the subject matter of law enforcement agencies.

Unfortunately, insolvency officers are not immune from criminal prosecution, and quite often minor misconduct by insolvency officers leads to the initiation of criminal proceedings against them. In Ukraine, there is a lack of sufficient regulation and coordination of the actions of law enforcement agencies and disciplinary control agencies over the activities of insolvency officers.

Insolvency officers, who are subject to disciplinary liability, shall be liable for violation of the law, the rules of the organization of their professional activities, the rules of professional ethics, the regulations of self-regulatory organizations. This entails substitution of the notion of *disciplinary offense* with the notion of *gross misconduct*, which is not clearly defined and is applied in a voluntary and subjective manner. Violations found as a result of inspections and referred to the Disciplinary Commission are generally classified by the inspection agencies as "gross violations".

Such violations are often the basis for disqualification of insolvency officers. However, there is no clear definition and list of gross violations in the regulatory legal acts. Therefore, in our opinion, it is necessary to introduce amendments to the current legislation in order to modify the conceptual apparatus and eliminate collisions in regard to bringing insolvency officers to disciplinary liability.

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