

I. Zadoia
Candidate of Law Sciences,
Associate Professor at the Department of Civil and Labour Law,
Odessa National Maritime Academy

TYPES OF THE DISCIPLINARY PENALTIES OF ADVOCATES: PROBLEMS OF LEGISLATIVE ADJUSTING

This article describes the types of disciplinary penalties envisaged by the current legislation of Ukraine: 1) caution; 2) suspension of the right to practice law for a period from one month to one year; 3) disbarment with further exception from the Single Register of the Advocates of Ukraine – for the advocates of Ukraine and exception from the Single Register of the Advocates of Ukraine – for the advocates of the foreign states. It is determined what kind of the disciplinary penalty is imposed on the advocate for that or other breach of the discipline.

However, adequacy and efficiency of the types of the disciplinary penalties for prevention of the breaches of the discipline by the advocates is questionable. It is determined that they are not effective enough, and in some cases even ineffective. For the improvement of the legal adjusting of the system of the disciplinary penalties, the foreign experience of the legal adjusting of this question is studied in such countries as the Republic of Austria, the Kingdom of Spain and the Republic of Finland.

As a result of the research propositions for amendments to the national legislation are made:

1) to supplement Part 1 of the Art. 35 of the Law of Ukraine “On the Bar and Legal Practice” (hereinafter – the Law), with the following paragraphs: “1) a ban on teaching trainees for three years after the imposition of a disciplinary penalty; 2) a fine in amount from 1,000 UAH to 10,000 UAH”;

2) to supplement Part 2 of the Art. 35 with the following: “An advocate against whom a decision on imposing a disciplinary penalty in the form of suspension of the right to practice law is made, for the period specified in the decision is deprived of the right to practice law, the right to provide legal assistance and to act as a representative or defender of a person”;

3) to supplement the Commercial and Procedural Code of Ukraine with the Article 28¹, and supplement Art. 41 of the Civil Procedural Code of Ukraine and Art. 57 of the Code of Administrative Proceedings of Ukraine with the Part three having the following content: “An advocate, whose right to practice law was suspended for the period specified in the decision, or who was disbarred, can not be a representative.”