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Yuliia Volkova

Doctor of Law, Professor,
Professor of the Department of Administrative Law and Process
of Taras Shevchenko National University of Kyiv
(Kyiv, Ukraine)
Honorary Associate of University of Liverpool
(Liverpool, Great Britain)
ORCID ID: https://orcid.org/0000-0002-2799-3933
Researcher IDs http://www.researcherid.com/rid/N-1349-2016
zdobuvach@ukr.net

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DISCIPLINARY LIABILITY OF CIVIL SERVANTS IN CERTAIN COUNTRIES OF THE EUROPEAN UNION AND THE WORLD

Abstract. The article analyzes the institution of disciplinary responsibility of civil servants in some countries of the European Union and the world. It is indicated that the existence in the modern world of various models of civil service to a certain extent determines the peculiarities of the legal status of civil servants and is directly reflected in the characteristics of the organization and procedural aspects of the implementation of legal relations related to disciplinary liability. Analysis of foreign practice makes it possible to identify what experience, what reform concepts and to what extent can be applied in our country, allows us to better understand the logic of reforming the domestic model of public service and determine ways to improve its efficiency.

For the states of the European Union, the peculiarities of the organization of the civil service are the tendency to codify legal norms; complex classification of civil servants; detailed regulation of the activities of officials; hierarchy of the civil service; taking into account caste and loyalty to the state; formation of special courts of administrative justice on public service issues.

The purpose of the study is to analyze the institution of disciplinary responsibility of civil servants in the countries of the European Union and the world.

It was concluded that: 1) In the most general sense, disciplinary liability of civil servants is an independent type of legal liability provided for by the legislation governing civil service in foreign countries. Its peculiarity is its intersectoral nature, since this is connected, firstly: in the civil service system of foreign countries, in addition to professional civil servants, there are political officials and employees of government agencies. Secondly, the various models of civil service existing in the modern world to a certain extent determine the sectoral features of the legal status of civil servants, in which in a number of countries the disciplinary liability of civil servants falls under the regime of legal regulation of private law; 2) In foreign countries, detailed regulation of disciplinary liability of civil servants is part of their legal status, and is also due to the need to protect the public legal interest of the service and ensure proper management. It should also be said that the disciplinary liability of civil servants is related to the implementation of the protective function, in view of the fact that it is aimed at preventing arbitrariness in the use by the head of administrative resources in relation to the official appointed by him to the position; 3) In foreign countries, detailed regulation of disciplinary liability of employees for violation of civil service legislation is considered as one of the forms of control of civil servants and a means of preventing and suppressing corruption in the civil service. Thus, if the source of legal regulation of disciplinary liability of employees is internal labor regulations, collective agreements and, less often, laws, then the institution of disciplinary liability of civil servants in foreign countries is regulated in detail by national legislation. The subject of disciplinary liability in the civil service system is an official whose connection with the state is of a public legal nature.

Keywords: disciplinary responsibility; civil servants; civil service; public interest; public service.

The existence in the modern world of various models of civil service to a certain extent determines the peculiarities of the legal status of civil servants and is directly reflected in the characteristics of the organization and procedural aspects of the implementation of legal relations related to disciplinary liability. Analysis of foreign practice makes it possible to identify what experience, what reform concepts and to what extent can be applied in our country, allows us to better understand the logic of reforming the domestic model of public service and determine ways to improve its efficiency.

For the states of the European Union, the peculiarities of the organization of the civil service are the tendency to codify legal norms; complex classification of civil servants; detailed regulation of the activities of officials; hierarchy of the civil service; taking into account caste and loyalty to the state; formation of special courts of administrative justice on public service issues.

The European experience of legal regulation of civil service is constantly in the field of view of domestic scientists. Among the researchers of this issue, we note such as V. Averyanov, V. Bakumenko, I. Berezovska, Yu. Bityak, N. Bohdanova, N. Holobor, N. Honcharuk, I. Hrytsyak, H. Deinega, S. Zagorodnyuk, L. Yermolenko-Knyazeva, Yu. Kizilov, A. Kirmach, M. Klemparskyi, Yu. Kovbasiuk, L. Kornuta, L. Kurnosenko, O. Lysenko, O. Melnikov, A. Mykhnenko, D. Nelipa, O. Obolenskyi, L. Prokopenko, S. Seryogin, N. Skorokhod, T. Sokolova, G. Stratienko, O. Strelchenko, V. Tymoshchuk, A. Fedorova, M. Tsurkan, A. Shkolyk and others.

The purpose of the study is to analyze the institution of disciplinary responsibility of civil servants in the countries of the European Union and the world.

Basically, foreign countries, as sources of legal regulation of service discipline and measures of responsibility in case of its violation, accept internal regulations, as well as collective agreements, only with rare exceptions do issues of service discipline partially receive legislative regulation, as for example in France. At the same time, there is a widespread condition that there is a legal basis for any disciplinary action, which should be based on the current norms of legislative or local acts.

Over the past decades, a trend has developed in modern European employment law to establish an obligation for the employer to provide detailed written information about the disciplinary rules applicable at the place of work. The practice of legal regulation of disciplinary liability at the local level, which has spread in recent years through the adoption of "personnel books," deserves special attention. It is in such books that discipline measures and disciplinary procedures are prescribed.

The constitutions of some foreign countries establish the need to issue laws on the status of civil servants, which necessitates the need to legislate rules governing the disciplinary liability of civil servants in these countries (this is, for example, article 103 of the Constitution of Spain, article 33 of the Basic Law of the Federal Republic of Germany, article 27 of the Constitution of the Kingdom Denmark, etc.).

In a number of countries, at the constitutional level, the mandatory creation of Civil Service Commissions is enshrined, which are vested with basic powers in matters of organizing and monitoring the activities of the civil service,

including the power to impose disciplinary sanctions on guilty civil servants, up to and including their dismissal from service; these are Articles 124–125 of the Constitution of the Republic Cyprus and Articles 109–115 of the Constitution of the Republic of Malta[1].

In foreign countries, the disciplinary liability of employees is regulated in detail by national legislation, taking into account the characteristics of various types of state public service (police, military, fire service and administrative institutions, municipal employees).

In foreign countries, similar to domestic law and practice, disciplinary liability arises for committing a disciplinary offense, usually related to work activity. In some countries, such as Canada, the USA, France, the UK and a number of others, an employee may be subject to disciplinary action even when the interests of the service are damaged. Japan has gone even further on this issue, since civil servants (they are considered servants of the public) can also be subject to disciplinary penalties for offenses that are not related to service, but may cause damage to public interests.

It is no less interesting that in different countries there is a significant difference in the grounds for applying disciplinary measures to employees, which is determined by the regulation of specific types of disciplinary offenses. In particular, Belgium and Japan have adopted rules on the regulation of all types of disciplinary offenses in special legal acts. In other countries, where, although there is a requirement for legislative codification of types of disciplinary offenses (Great Britain, Germany, Austria, Switzerland), they follow the path that the employer, as an exception, is given the right to hold employees accountable for those offenses that are not defined in legislative acts. According to the laws of the USA, Canada, France, Australia and New Zealand, disciplinary liability is also allowed for offenses that are not directly stated in regulations.

At the same time, in few countries there are no legally formulated disciplinary offenses for civil servants, but in controversial cases they are determined by the court. In the UK, the main disciplinary violations are usually failure to comply with orders, negligence, absence from work without good reason, and systematic tardiness. In Spain, as well as in a number of other countries, the legislation defines only serious disciplinary offenses.

In the legislation of foreign countries, disciplinary liability of employees is applied in the form of disciplinary sanctions, among which the most often imposed are reprimands, reprimands, demotion or prohibition of promotion, transfer to a lower position with a reduction or retention of wages, disciplinary dismissal without warning and without payment of a day off. benefits. Most countries also apply a fine, subject to the following conditions: the amount of the fine is limited (for example, in Italy, four hours' earnings); secondly, the collected fine goes to the fund of a government agency or for charitable purposes.

[1] В Зеленський, 'Особливості правового регулювання конкурсного відбору на державну службу за трудовим законодавством європейських країн' [2015] 32 (2) Науковий вісник Ужгородського національного університету. Серія: Право 129–32.

In matters of organizing the civil service, Germany is closest to Ukraine, since the domestic science of administrative law arose on the basis and under the direct influence of German administrative legal thought[2].

Germany is a federal state whose public service system includes the federal civil service, the civil service of the federal states and the municipal service. The civil service consists of: employees of government bodies, budgetary institutions and organizations (education, health care, social insurance), employees of the police, border and customs services, institutions and public funds that are under the control of the Federation, federal states and communities.

The general position of German civil servants is determined by the German Basic Law of May 23, 1949 das Grundgesetz für die Bundesrepublik Deutschland and the Federal Employees Act of June 17, 2008 (Bundesbeamtengesetz) (hereinafter referred to as the Federal Employees Act), and the mechanism for their disciplinary liability enshrined in the German Disciplinary Law of July 9, 2001 (Bundesdisziplinargesetz) (hereinafter referred to as the Disciplinary Law).

Federal employees of Germany, like civil servants of Ukraine, are subject to disciplinary, administrative, civil and criminal liability. The German disciplinary law determines the grounds for liability of a civil servant for official misconduct, disciplinary measures, the basis of the legal status of participants in the disciplinary process, the procedure for proceedings in the event of federal employees committing official misconduct and criminal offenses.

It is noteworthy that the basis of German disciplinary law is the public interest in preserving the functioning of the civil service and its prestige.

The concept of official misconduct is defined in paragraph 1 § 77 of the German Federal Employees Act as a culpable violation by a federal employee of the duties assigned to him. Misconduct committed outside the performance of official duties is considered to be the actions of an employee that significantly affect the interests of his department or affect the reputation of the person or the trust in him by his superior.

For federal employees who are retired, according to paragraph 2 § 77 of the German Federal Employees Act, the following are considered official misconduct: 1) speaking against a democratic state governed by the rule of law; 2) threats to external and state security; 3) violation of the obligation of non-disclosure of information or prohibitions to engage in certain activities or receive gifts; 4) in the case of early assignment of a temporary pension, failure to fulfill the obligation to undergo treatment, medical examination, retraining due to health conditions, or failure to apply for reinstatement to service if such an opportunity exists. The following disciplinary measures are provided for federal employees of Germany for violations of the law:

1. Written censure of certain behavior of a federal employee (§ 6 of the German Disciplinary Law). A verbal reminder of duty or reprimand is not disciplinary action.

2. A monetary fine (§ 7 of the German Disciplinary Law) can be imposed in the amount of up to one month's salary or the amount of additional payments per

[2] А Чаркіна, 'Принципи державної служби в країнах європейського союзу (на прикладі Польщі та Німеччини)' (2016) 16 Інвестиції: практика та досвід 95–9.

month. If a federal employee only receives benefits, a fine of up to € 500 may be imposed.

3. Salary reduction (§ 8 of the German Disciplinary Law) – can reach a maximum of up to one fifth of the salary for a period of up to three years and applies to all positions filled during this period of time. Applies from the calendar month following the month when such a decision came into force. While this measure is in effect, no additional monetary incentives will be awarded to the federal employee, and he or she may not be promoted. In the event that a federal employee retires, if this measure has not expired, his pension is reduced until the end of the decision to reduce wages and in the same amount.

4. Demotion (§ 9 of the German Disciplinary Law) – a federal employee is transferred to a lower position in the same professional area with a lower salary, including losing official powers in his previous position. The validity period of this penalty is up to five years. The legal consequences of demotion remain when transferred to another position.

5. Dismissal from public service (§ 10 of the German Disciplinary Law). A federal employee loses the right to remuneration and benefits, including survivor benefits, as well as the right to have an official (honorary) title and title assigned by the department, and to wear a uniform. A federal employee who is dismissed from government service receives a six-month maintenance allowance equal to 50 % of his remuneration. If a federal employee voluntarily resigns before the termination is applied, the termination will not apply. If an official is dismissed from public service for official misconduct, he cannot be rehired[3].

In Germany, disciplinary measures are applied to federal employees at the discretion of the authorized leader or the court, taking into account the severity of the offense, the personality of the federal employee, the degree of loss of trust and public opinion (paragraph 1 § 13 of the German Disciplinary Law). The immediate superior has the right to apply written reprimand; the immediate superior or a superior person (administrative body) has the right to impose a monetary fine. More severe disciplinary measures against persons in public service are applied only by the disciplinary court (§ 33 of the German Disciplinary Law)[4]. The pension reduction can be carried out by the head of the department. A federal employee who, as a result of committing a serious misconduct, has lost the confidence of his employer, or if his misconduct has caused widespread public outcry, is subject to dismissal.

The statute of limitations for applying disciplinary measures is established by § 15 of the German Disciplinary Law. For written reprimand it is 2 years; for a monetary fine, salary reduction and pension reduction – 3 years; for demotion – 7 years. These deadlines are suspended during disciplinary or criminal proceedings.

[3] Vorschriftensammlung Disziplinarrecht P 24 40. Disziplinar Richtlinien Anlage 8 <https://www.verwaltungsvorschriften-im-internet.de/pdf/BMF-ZA4-20090819-KF01-A999.pdf> (accessed: 06.10.2023).

[4] Verwaltungsgerichtsordnung <https://www.gesetze-im-internet.de/vwgo/BJNR000170960.html> (accessed: 06.10.2023).

For those federal employees who are retired, only two disciplinary measures are provided: reduction of the pension amount (§ 11 of the German Disciplinary Law) and refusal to pay a pension (§ 12 of the German Disciplinary Law)[5].

If there is sufficient evidence of a violation of discipline by a federal employee, a disciplinary process is initiated by a written order from a superior (paragraph 1 § 17 of the German Disciplinary Law). Suspicions of commission of official duty must be justified. The superior manager and the highest body of the department, within the framework of their powers, ensure the fulfillment of this responsibility and can enter into the disciplinary process at any time. A federal employee has the right to independently apply to his immediate supervisor or a higher-ranking head of service with a request to conduct a disciplinary investigation in order to refute suspicions that he has committed official misconduct (paragraph 1 § 18 of the Disciplinary Law of the Federal Republic of Germany)[6].

The procedure for carrying out disciplinary proceedings is regulated by the Disciplinary Law of the Federal Republic of Germany, the procedure for applying the rules of which is explained in the Guidelines for Disciplinary Proceedings of September 25, 2003. (Richtlinien für das Disziplinarverfahren / Disziplinar-Richtlinien).

To clarify all the circumstances of the disciplinary case, a disciplinary investigation is carried out (§ 21 of the German Disciplinary Law), during which the circumstances of the commission of the offense must be established, including the grounds for termination of the proceedings and circumstances mitigating responsibility. A disciplinary investigation is typically ordered by the agency responsible for appointing the federal employee. The manager is obliged to initiate a disciplinary investigation in accordance with paragraph 1 § 17 of the German Disciplinary Law and appoint a person conducting a disciplinary investigation, who collects and verifies information (except in cases where the facts do not require further verification), and also draws up the investigation materials. The fact of the start of the investigation is recorded in documents (paragraph 1 § 17 of the German Disciplinary Law)[7].

In Germany, as a general rule, disciplinary investigations are carried out promptly (§ 4 of the German Disciplinary Law), and the entire procedure must be completed within 6 months (26 weeks). The procedure for further proceedings depends on whether the federal employee testifies orally or provides written explanations. The consent of a federal employee to give oral testimony must be obtained within two weeks after his notification of a disciplinary investigation (paragraph 2 § 20 of the Disciplinary Law of the Federal Republic of Germany). The period for providing written explanations to federal employees is one month. If there are insurmountable obstacles to meeting the deadline, the federal employee must immediately advise of the need to extend the deadline. The decision to extend the period for providing explanations is communicated to the federal employee.

[5] Bundesdisziplinargesetz <https://www.gesetze-im-internet.de/bdg/BJNR151010001.html> (accessed: 06.10.2023).
[6] Ibid.
[7] Ibid.

When considering cases of disciplinary misconduct, the principle of favor is applied and the relevant manager has the right to refuse to apply disciplinary measures to the perpetrator, including in cases where the fact of commission of an official misconduct has been proven (clause 1 paragraph 1 § 32 of the Disciplinary Law of the Federal Republic of Germany)[8]. An employer may make such a decision for various reasons, for example, for family reasons, when a federal employee is transferred to another department, or because of the possibility of a deterioration in the social status of the federal employee due to the application of disciplinary measures against him. This rule allows for an objective assessment of minor misconduct and other unethical behavior on the part of a federal employee on a case-by-case basis. In addition to disciplinary measures, the employer may apply civil penalties.

The disciplinary investigation is reflected in the investigation report. The Federal employee or his authorized representative shall review the investigative report after its approval. The contents of the investigation report serve as the basis for making the final decision. A federal employee may object to the investigative record orally or in writing.

Section 24 of the German Disciplinary Law defines the types of evidence and the procedure for obtaining them. In particular, evidence includes: 1) official information in written form; 2) testimony of witnesses, expert opinions that may be made public, or these persons may be heard; 3) other documents, interim decisions, including those obtained as a result of court hearings.

The person carrying out the disciplinary proceedings (investigator) and the court have the right to request the necessary documents in writing (§ 26 of the German Disciplinary Law). The head of the service is obliged, upon request, to issue the documents specified in § 26 of the German Disciplinary Law within a specified period of time. Failure to comply with the decision to issue documents is appealed to the administrative court. The decisions of the investigator in the collection of evidence are not subject to independent appeal[9].

The court may order a search and seizure of documents from a federal employee or a third party. On the collection of relevant evidence, protocols are drawn up in accordance with § 168a of the German Criminal Procedure Code of September 12, 1950. (Strafprozeßordnung).

At the end of the proceedings, a final hearing is held. After the investigation report is read, the federal employee has the right to speak. Following the hearing of a disciplinary case, if there are no grounds for its termination, the manager may himself apply simple disciplinary measures or transfer the case materials to a person with greater disciplinary power (§ 31 of the Discipline Act). A federal employee may be required to pay the costs of a case in accordance with § 37 of the German Disciplinary Law.

[8] Personal im öffentlichen Dienst in Deutschland bis 2017 <https://de.statista.com/statistik/daten/studie/12910/umfrage/entwicklung-des-personalbestandes-im-oeffentlichen-dienst-in-deutschland/#statisticContainer> (accessed: 06.10.2023).

[9] Bundesdisziplinargesetz (n 5).

A mandatory written form of the act on the application of a disciplinary measure has been established, with a copy of it being handed over against receipt. The German Disciplinary Law establishes the procedure and time limits for appealing a decision to apply a disciplinary measure. The decision of the immediate superior to apply a disciplinary measure can be appealed to a higher manager within two weeks from the date of its receipt, and the decision of a higher authority in a disciplinary case can be further appealed within a month to the administrative court of the relevant instance.

The competence of administrative courts to consider public disputes is determined by the Law on Administrative Proceedings of January 21, 1960. (Verwaltungsgerichtsordnung)[10]. In this case, a mandatory condition for filing a complaint with the court is the rejection of the complaint about the unjustified application of disciplinary measures by a superior manager (authority). Deadlines for filing a complaint missed for a valid reason may be reinstated.

According to paragraph 1 § 32 of the German Disciplinary Law, disciplinary proceedings are terminated if: 1) the fact of commission of official misconduct has not been proven; 2) the use of disciplinary measures is inappropriate; 3) disciplinary measures cannot be applied in accordance with § 14 or § 15 of the German Disciplinary Law (the statute of limitations has expired, criminal liability measures have already been applied for this act or a fine has been imposed for a misdemeanor); 4) the use of disciplinary measures is unacceptable for other reasons.

In accordance with paragraph 2 § 32 of the German Disciplinary Law, disciplinary proceedings are also terminated in the following cases: 1) death of a federal employee; 2) termination of public service relations due to the dismissal or resignation of a federal employee; 3) retirement; 4) as a result of a court decision to reject a disciplinary claim[11].

Based on § 45 of the German Disciplinary Law, judicial review of cases of official misconduct is carried out by administrative courts. The total duration of the proceedings is six months (§ 62 of the German Disciplinary Law).

According to paragraph 1 § 52 German Disciplinary Law, a disciplinary action must be submitted to the court in writing. The statement of claim must indicate the circumstances characterizing the personal and professional qualities of the federal employee, information about the disciplinary offense (official crime), previously established facts and collected evidence relevant to the decision. When filing a disciplinary claim in court, a federal employee has the right to present his objections (§ 41, § 75 of the German Disciplinary Law).

Based on the results of a public hearing of the case by the court, according to paragraph 2 § 59 of the German Disciplinary Law, the administrative court decides on the claim and may decide that it is necessary to apply disciplinary measures or reject the disciplinary claim. When appealing a disciplinary sanction, the court considers, in addition to the legality, the expediency of the contested decision (paragraph 3 § 52 of the German Disciplinary Law).

[10] Verwaltungsgerichtsordnung (n 4).
[11] Bundesdisziplinargesetz (n 5).

Supervision over the issues of bringing officials to disciplinary liability is carried out by senior managers and the highest body of the department. The Supreme Administrative Court of the Federal Republic of Germany reviews the legality and expediency of the final decision being appealed, while the possibility of conducting additional investigations is allowed, but the filing of new charges is excluded (§ 21–29 of the German Disciplinary Law). The decision of the German Supreme Administrative Court in a disciplinary case is final[12].

Thus, the following conclusions can be drawn. In Ukraine and Germany, the following issues of disciplinary liability of civil servants are similarly regulated:

1. The general procedure established by law for bringing employees to disciplinary liability.

2. Regulatory definition of the concept of disciplinary (official) misconduct.

3. The written form of disciplinary proceedings, the obligation to conduct an internal audit and the regulatory procedure for regulating it.

4. The right of an employee in disciplinary proceedings to defend himself by all legal means.

5. Imposition of a disciplinary sanction taking into account the severity of the disciplinary offense committed, the degree of guilt of the employee in its commission, the circumstances under which the disciplinary offense was committed, and the previous results of the employee's performance of his official duties.

6. The possibility of challenging the imposed disciplinary sanction in administrative and judicial proceedings.

In addition, disciplinary proceedings against federal employees of Germany are characterized by the following features:

1) legal regulation of disciplinary liability and disciplinary proceedings in relation to civil servants of all types (with the exception of military personnel) by a special federal law;

2) a broad definition of the concept of official misconduct;

3) high severity of disciplinary sanctions, usually of a property and organizational nature;

4) criminal procedural model of the disciplinary process;

5) legislative regulation of all stages of proceedings and individual procedural actions, including the procedure for considering a case of a disciplinary offense;

6) consolidation of the principles of proceedings in disciplinary cases;

7) publicity of the proceedings and the right to defense at all stages of the proceedings;

8) the obligation to explain to the person who committed the offense what act he is suspected of committing, his rights and obligations and the proposed disciplinary measure;

9) the possibility of terminating the proceedings at any stage and not bringing the perpetrator to justice at the discretion of the manager;

10) mandatory pre-trial appeal of the manager's decision to impose disciplinary liability;

[12] Bundesdisziplinargesetz (n 5).

11) a civil servant may be dismissed from service only by decision of an administrative court;

12) the possibility of imposing an obligation on a person brought to disciplinary liability to reimburse the costs of the case;

13) the right of a person brought to disciplinary liability to a pardon.

According to the analysis of the measures of influence applied to civil servants in foreign countries, it can be concluded that disciplinary sanctions are similar in different countries. In particular, the following are highlighted: warning; comment; rebuke; various types of monetary penalties (fines, deprivation of regular wages or bonuses); reduction in wages, reduction or deprivation of pension; limitation of career growth: demotion, slowdown in promotion, transfer to another job with change of residence; temporary suspension from office; dismissal.

It is worth noting, in part, disciplinary offenses concerning serious violations are dealt with by special government bodies, in particular: the Disciplinary Council (Luxembourg), the Administrative Commission (France). And the official can appeal the decision to apply a disciplinary sanction to the Disciplinary Appeal Board. Moreover, when, after the expiration of the period established by law, no decision is made to impose a penalty on the official, the latter is reinstated in his previous position.

Based on the above, the following conclusions can be drawn:

1. In the most general sense, disciplinary liability of civil servants is an independent type of legal liability provided for by the legislation governing civil service in foreign countries. Its peculiarity is its intersectoral nature, since this is connected, firstly: in the civil service system of foreign countries, in addition to professional civil servants, there are political officials and employees of government agencies. Secondly, the various models of civil service existing in the modern world to a certain extent determine the sectoral features of the legal status of civil servants, in which in a number of countries the disciplinary liability of civil servants falls under the regime of legal regulation of private law.

2. In foreign countries, detailed regulation of disciplinary liability of civil servants is part of their legal status, and is also due to the need to protect the public legal interest of the service and ensure proper management. It should also be said that the disciplinary liability of civil servants is related to the implementation of the protective function, in view of the fact that it is aimed at preventing arbitrariness in the use by the head of administrative resources in relation to the official appointed by him to the position.

3. In foreign countries, detailed regulation of disciplinary liability of employees for violation of civil service legislation is considered as one of the forms of control of civil servants and a means of preventing and suppressing corruption in the civil service. Thus, if the source of legal regulation of disciplinary liability of employees is internal labor regulations, collective agreements and, less often, laws, then the institution of disciplinary liability of civil servants in foreign countries is regulated in detail by national legislation. The subject of disciplinary liability in the civil service system is an official whose connection with the state is of a public legal nature.

REFERENCES

Bibliography

Journal articles

1. Charkina A, 'Pryntsypy derzhavnoi sluzhby v krainakh yevropeiskoho soiuzu (na prykladi Polshchi ta Nimechchyny)' (2016) 16 Investytsii: praktyka ta dosvid 95–9 (in Ukrainian).
2. Zelenskyi V, 'Osoblyvosti pravovoho rehuliuvannia konkursnoho vidboru na derzhavnu sluzhbu za trudovym zakonodavstvom yevropeiskykh krain' [2015] 32 (2) Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia: Pravo 129–32 (in Ukrainian).

Юлія Волкова

ДИСЦИПЛІНАРНА ВІДПОВІДАЛЬНІСТЬ ДЕРЖАВНИХ СЛУЖБОВЦІВ В ОКРЕМИХ КРАЇНАХ ЄВРОПЕЙСЬКОГО СОЮЗУ ТА СВІТУ

Анотація. У статті проведено аналіз інституту дисциплінарної відповідальності державних службовців в окремих країнах Європейського Союзу (ЄС) та світу. Вказано, що існування у сучасному світі різноманітних моделей державної служби певною мірою визначає особливості правового статусу державних службовців і безпосередньо відображається на характеристиці організації та процесуальних аспектах реалізації правовідносин, пов'язаних із дисциплінарною відповідальністю. Аналіз зарубіжної практики дає змогу виявити, який досвід, які реформаторські концепції та в якому обсязі можна застосувати в нашій державі, дозволяє краще зрозуміти логіку реформування вітчизняної моделі державної служби та визначити шляхи підвищення її ефективності.

Для держав ЄС особливостями організації державної служби є тенденція до кодифікації правових норм; комплексна класифікація державних службовців; детальна регламентація діяльності посадових осіб; ієрархія державної служби; врахування кастової приналежності та лояльності до держави; утворення спеціальних судів адміністративної юстиції з питань державної служби.

Метою статті є дослідження інституту дисциплінарної відповідальності державних службовців у країнах ЄС і світу.

Зроблено висновок, що: 1) у найзагальнішому розумінні дисциплінарна відповідальність державних службовців є самостійним видом юридичної відповідальності, передбаченої законодавством про державну службу в іноземних державах. Його особливістю є міжгалузевий характер, оскільки це пов'язано, по-перше, з тим, що в системі державної служби зарубіжних країн, крім професійних державних службовців, є політичні чиновники та працівники державних установ. По-друге, існуючі в сучасному світі різноманітні моделі державної служби певною мірою визначають галузеві особливості правового статусу державних службовців, у яких у низці країн дисциплінарна відповідальність державних службовців підпадає під режим правового регулювання приватного права; 2) у зарубіжних країнах детальна регламентація дисциплінарної відповідальності державних службовців є частиною їх правового статусу, а також зумовлена необхідністю захисту публічно-правових інтересів служби та забезпечення належного управління. Слід також зазначити, що дисциплінарна відповідальність державних службовців пов'язана з реалізацією захисної функції, оскільки спрямована на недопущення свавілля у застосуванні керівником адміністративного ресурсу щодо посадової особи, яка призначила його на посаду; 3) у зарубіжних країнах детальне врегулювання дисциплінарної відповідальності службовців за порушення законодавства про державну службу розглядається як одна з форм контролю за державними службовцями та засіб запобігання і припинення корупції на державній службі. Так, якщо джерелом правового регулювання дисциплінарної відповідальності працівників є правила внутрішнього трудового розпорядку, колективні договори і рідше закони, то інститут дисциплінарної відповідальності державних службовців у зарубіжних країнах детально регулюється національним законодавством. Суб'єктом дисциплінарної відповідальності в системі державної служби є посадова особа, зв'язок якої з державою має публічно-правовий характер.

Ключові слова: дисциплінарна відповідальність; державні службовці; державна служба; публічний інтерес; публічна служба.