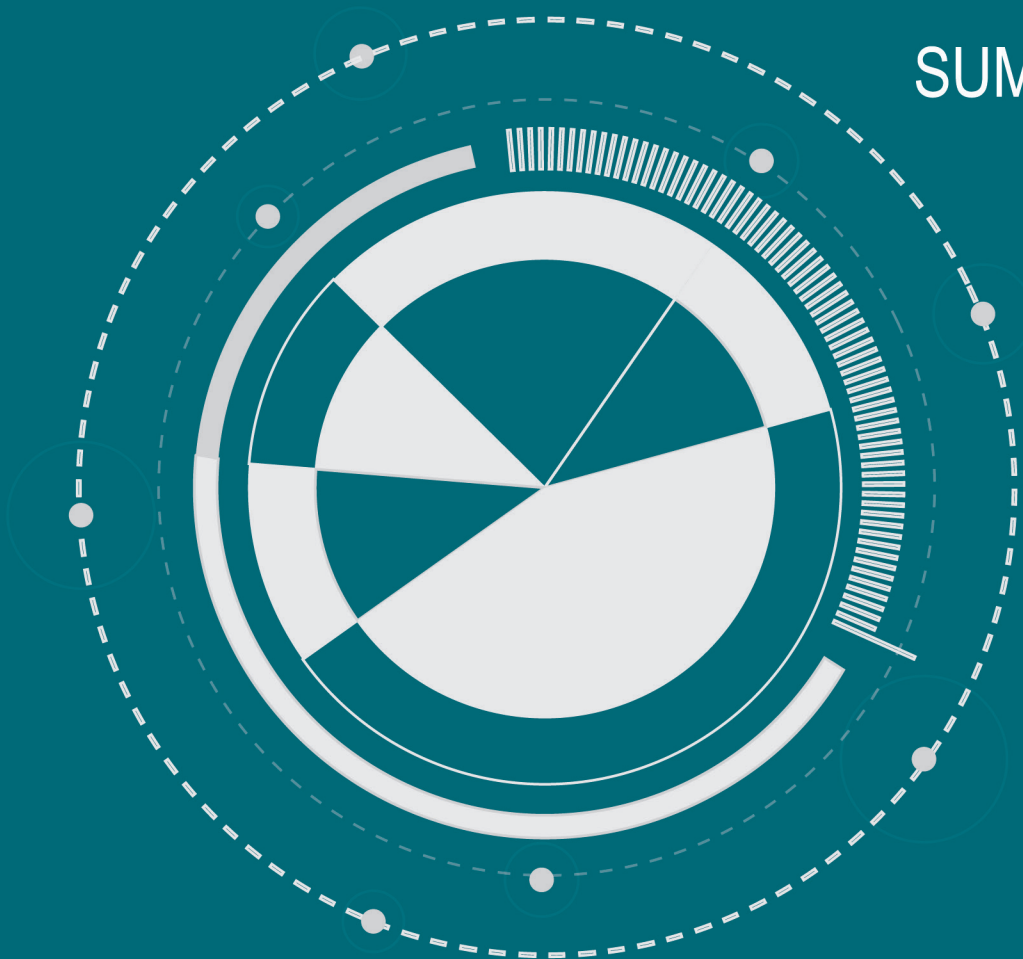


DISCIPLINARY RESPONSIBILITY OF PROSECUTORS IN UKRAINE

SUMMARY



Disciplinary responsibility of prosecutors in Ukraine: Summary / O. Banchuk, M. Kameniev, Y. Krapyvin, B. Malyshev, V. Petrakovsky, M. Tsapok. – K.: Moskalenko O. M., 2019. – 28 p.

This research is dedicated to the study of the practice of bringing the prosecutors to disciplinary responsibility by the Qualification and Disciplinary Commission of Prosecutors during 2017-2018. Publication analyzes various aspects of disciplinary practice: legislative regulation of bringing prosecutors to disciplinary responsibility, compliance of national legislation on bringing a prosecutor to disciplinary responsibility with international standards, organizational aspects of consideration of complaints by the Commission, factors that influence the decision, court practice in this area.

Publication is intended for a wide range of lawyers, scholars, law enforcement officials and all those who are interested in prosecutorial reform.



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CONTENTS

Preface.....	4
Key findings of the research.....	5
1. Standards on disciplinary responsibility of prosecutors.....	7
2. Opening and refusal to open disciplinary proceedings	8
3. Procedure for the implementation of disciplinary proceedings.....	10
4. Closure of disciplinary proceedings.....	15
5. Disciplinary offences by prosecutors	16
6. Disciplinary penalties for the offences by prosecutors	18
Recommendations	23

Entry into force of the provisions of the Law of Ukraine “On the Prosecutor’s Office” regarding disciplinary proceedings and the commencement of work of the Qualification and Disciplinary Commission of Prosecutors in 2017 was a logical follow-up of the prosecutor’s office reform.

In this research, the authors attempted to summarize the first results of the Commission’s work for a year and a half, by way of answering the following questions:

- 1) in which way the idea of a proper disciplinary procedure for prosecutors was implemented in Ukraine;
- 2) how this procedure affects the process of transformation of the prosecutor’s office into the body which is accountable and open to the public;
- 3) how the implemented procedure guarantees the independence of prosecutors in their activities and protection against unlawful persecution within the system.

KEY FINDINGS OF THE RESEARCH

1. Since the entry into force in 2017 of the provisions of the Law on the Prosecutor's Office regarding the disciplinary proceedings, the prosecutors have become more protected from unlawful disciplinary persecution and dismissal. During the period under review, the number of prosecutors brought to disciplinary responsibility has halved. The reason for this was the introduction of a new disciplinary procedure, which provides for procedural safeguards to protect the rights of the prosecutor, which they were deprived of in accordance with the former procedure of service investigations and application of disciplinary penalties.
2. Procedures for service investigations and internal inspections, which are not provided by the Law, are still in place. They continue to be used as a tool to find grounds for depriving the prosecutor of bonuses, as well as to verify the circumstances of a disciplinary offense before opening a disciplinary proceeding by the Qualification and Disciplinary Commission of Prosecutors, which creates risks of unlawful influence on prosecutors.
3. Double disciplinary status of military prosecutors violates the principle of the prosecutors' status unity, stipulated by the Law, and undermines the independence of the part of prosecutor's staff.
4. Activities of the Qualification and Disciplinary Commission of Prosecutors on the consideration of disciplinary proceedings in general are based on the requirements of the law, tend to be consistent and predictable.
5. Lack of open access to the decisions of the Commission members about the refusal to open disciplinary proceedings, as well as the lack of possibilities for their appeal, can significantly undermine the trust of legal community and society as a whole in the new mechanism of the prosecutors' disciplinary liability.
6. The competition principle in a disciplinary proceeding is not implemented at an adequate level, since the role of a party responsible for proving the circumstances of a disciplinary offense ("prosecution") remains virtually unoccupied, and the right to cross-interrogation is mostly impossible to exercise.
7. There are no rules of admissibility of evidence in the Commission's activity, which is contrary to the principle of legal certainty. In addition, in order to make decisions in disciplinary proceedings, the Commission unreasonably chose the standard of proof "beyond a reasonable doubt", which is used in criminal proceedings, but for disciplinary proceedings it is excessively strict.

8. The Commission admits violation of the rule of law principle in cases of refusal to bring the Prosecutor General to disciplinary liability, resorting to the practice of closing proceedings and referring directly to the impossibility of imposing disciplinary penalties against him. This approach also undermines the principle of the unity of the prosecutors' status.
9. Analysis of the Commission's practice demonstrates its loyalty to prosecutors of the Prosecutor General's Office of Ukraine, prosecutors in administrative positions and prosecutors from the prosecutor's offices located in the city of Kyiv, as it tends to impose disproportionately light disciplinary sanctions against them. However, unlike the judicial system, where the High Council of Justice brings to the responsibility the judges of appellate and cassation courts only in 14% of cases, the Commission in its turn brings 36% of prosecutors of the regional prosecutor's offices and the Prosecutor General's Office of Ukraine to disciplinary responsibility.
10. Commission follows the position of the High Council of Justice and the Supreme Court in cases of violations of anti-corruption legislation, refusal to open proceedings and granting permission to appeal their decisions. At the same time, such a practice of the High Council of Justice and the Supreme Court limits the powers of the Commission and the applicants' rights, which hampers the process of bringing the prosecutors to disciplinary responsibility.
11. Commission did not establish a consistent practice of considering disciplinary proceedings regarding the failure to perform or improper performance of the duties by prosecutors, in particular due to the lack of criteria for assessing the quality of their work.
12. Commission pays insufficient attention to conducting general preventive activities for the prosecutors. For example, it does not regularly bring to their attention the summarized results of its disciplinary practices in terms of established disciplinary offenses and penalties imposed.

1. STANDARDS ON DISCIPLINARY RESPONSIBILITY OF PROSECUTORS

Main international standards on disciplinary responsibility of prosecutors are the following:

- 1) prosecutor's actions must be assessed in accordance with the law, code of professional conduct and other established standards, and also having in mind that the prosecutor must respect the principles of human dignity and human rights and adhere to the highest standards of integrity;
- 2) urgent and impartial consideration of complaints against prosecutors includes objective consideration of the complaint and assessment of the prosecutor's actions. Compliance with this standard is best achieved through the creation of a separate independent body in the prosecutor's office, which regularly reviews complaints;
- 3) consideration of complaints under a clear procedure defined by the law, which, inter alia, must meet the requirements of fairness and competition. In particular, the prosecutor, against whom the complaint has been received, should be given the right to present his/her legal position;
- 4) prosecutor should have the right to appeal to the court against the imposed disciplinary sanction.

Recommendations of international institutions for improving legislation and practice in the area of disciplinary responsibility of prosecutors in Ukraine include, in particular:

- 1) clear definition in the Law of such a ground for bringing a prosecutor to disciplinary liability as "violation of the prosecutor's ethics rules";
- 2) extension of the list of disciplinary sanctions stipulated by the Law in order to increase their proportionality and effectiveness (for example, reprimands of various degrees, temporary reduction of salary, temporary suspension from the exercise of official authority, etc.);
- 3) increase of the one-year statute of limitations for bringing the prosecutor to disciplinary responsibility;
- 4) establishment of a general period for disciplinary proceedings;
- 5) granting the right to civil society representatives to participate freely in open meetings of the Commission, which deals with issues of disciplinary responsibility of prosecutors.

2. OPENING AND REFUSAL TO OPEN DISCIPLINARY PROCEEDINGS

Any person who has become aware of the commitment by the prosecutor of a disciplinary offense (the applicant) may appeal to the Commission with a disciplinary complaint.

Member of the Commission, by reasoned decision, *refuses to open disciplinary proceedings* if the disciplinary complaint does not contain specific features of the offense, is anonymous, is submitted on the grounds not provided by the Law, or if the person is no longer a prosecutor. An exception is the consideration of a complaint based on the results of the verification of the prosecutor's integrity, since such a complaint is a compulsory basis for opening of disciplinary proceedings against the prosecutor.

In total, for the first year of the Commission's activity (from July 1, 2017 to July 1, 2018), 2,046 disciplinary complaints were registered. They include:

- 1,434 (70%) cases of refusal to open proceedings;
- 514 (25.1%) cases when the proceedings were opened;
- 98 (4.9%) cases when the issue was under consideration as of the date of publication of the report.

Decisions to refuse opening of disciplinary proceedings, adopted by an individual member of the Commission, are not disclosed on its website. However, systematic interpretation of the legislation on access to information leads to the conclusion that firstly, they should be made public, and secondly, personal data of a prosecutor should be indicated therein, taking into account the limitations established by the Law.

Grounds for refusal to open disciplinary proceedings

The most common reason for refusal to open a disciplinary proceeding is a complaint about *the decision, acts or omissions of the prosecutor, which were not challenged within the criminal process*. At the same time, provisions of the CPC of Ukraine determine only 11 cases of appeals against the decision, act or omission of the prosecutor at the pre-trial investigation. All other decisions and actions of a prosecutor may be appealed already during the preliminary court hearings. The purpose of this restriction is to guarantee reasonable time periods of investigation and prevent the pre-trial investigation from transforming into the stage of complete appeals against rulings that are not decisive for the rights and freedoms of individuals and the whole proceedings as a whole.

However, the crucial issue in these cases is the time limit, since disciplinary penalties may be imposed no later than 1 year from the date of the offence. At the same time, pre-trial investigation in the absence of a suspect may last longer – within the statute of limitations, which are 2, 3, 5, 10 and 15 years depending on the severity of the crime. Therefore, there may be situations when a decision or action of the prosecutor would be declared unlawful during the preliminary court hearing 2 or more years after their adoption/commission, but it would be impossible to bring such a prosecutor to disciplinary responsibility.

Another common reason for refusal to open disciplinary proceedings is the *lack of specific information in the disciplinary complaint about the presence of signs of a disciplinary offense by the prosecutor*. At the same time, the applicant is not obliged to provide legal qualification of the prosecutor's actions, but only to indicate the objective side of the offence (act or omission).

Impossibility of appealing the refusal to open a disciplinary proceeding

A decision to refuse opening a proceeding is taken by a member of the Commission individually and can not be appealed.

According to the practice of the Grand Chamber of the Supreme Court, the lack of a possibility in the national law to challenge a decision refusing to open proceedings as a reasonable limitation in the procedure of prosecutors' disciplinary responsibility is intended not to overload the judicial system.

In addition, according to the Court's opinion, it is the infringed right of a person that is subject to protection, but the Court believes that there is no infringement. At the same time, Article 55 of the Constitution of Ukraine guarantees everyone the right to judicial protection, which provides for the possibility of applying to the court for the protection of any infringed right.

So, currently this matter can be resolved either by the change in the practice of the Supreme Court, or by the decision of the Constitutional Court of Ukraine, which is now considering a constitutional complaint on this issue.

3. PROCEDURE FOR THE IMPLEMENTATION OF DISCIPLINARY PROCEEDINGS

Upon opening of a disciplinary proceeding, a Commission member carries out a verification within the circumstances reported in a disciplinary complaint.

Verification may take up to 2 months and the Commission may extend it for not more than 1 month. However, the Law does not specify the period according to which the disciplinary proceedings must be completed. Analysis showed that in average, disciplinary proceeding lasts about 100 days (the longest lasted 252 days, the shortest – 37 days).

Based on the results of the verification, the Commission member prepares a conclusion, which should contain information on the presence or absence of a disciplinary offense by the prosecutor and statement of the circumstances to prove it. Consideration of the conclusion takes place at the Commission meeting.

Consideration of the conclusion on the presence or absence of a disciplinary offense by the prosecutor takes place on the competition basis. Explanations of the inspecting Commission member, explanations of the prosecutor under disciplinary proceedings and/or his/her representative and, if necessary, other persons, are considered at the meeting.

Proposals by verifying Commission Member are not binding on the Commission. Having considered the conclusion on the presence of a disciplinary offence, the Commission may decide to close disciplinary proceedings due to the absence of a disciplinary offense in the prosecutor's actions or, on the contrary, impose a disciplinary sanction on the prosecutor after consideration of the conclusion that the prosecutor has not committed a disciplinary offense. For example, within the period under review, the Commission imposed disciplinary sanctions on prosecutors 29 times (14% of cases) after examining the conclusions on the absence of disciplinary offenses by prosecutors.

Commission takes a decision in the disciplinary proceeding by a majority of votes from its total membership. Upon availability of an individual opinion, a Commission member puts it in writing and adds it to the case, and the chairman reports thereof at the meeting. Content of an individual opinion is not announced at the meeting.

Copy of the decision of the Commission is provided to the prosecutor, in relation to whom it was approved, or sent to him/her by mail within seven days by a registered letter with a return receipt. In addition, the Commission decision, adopted based on the results of the examination of disciplinary proceedings, is published on its website..

Service investigations, inspections of lower level prosecutor's offices

Disciplinary proceedings against prosecutors are not unified and carried out not only by the Commission. Partly the legislation (in the case of military prosecutors), but mostly the established practice of prosecutor's offices, which dates back to the Soviet era, divide the disciplinary proceedings into several forms (in terms of verifying the circumstances of an alleged disciplinary offense). These are official investigations, as well as inspections of prosecutor's offices and the so-called methodological assistance to lower level prosecutor's offices, which traditionally play the role of such a mechanism. These procedures are beyond the control of the Commission.

According to the General Inspection of the Prosecutor General's Office of Ukraine, an absolute majority of prosecutors have been brought to responsibility on the basis of their disciplinary complaints and complaints from the heads of regional prosecutor's offices and other prosecutors (180 out of 210 persons, or 86% of the total number of prosecutors penalized by the Commission). On the other hand, only 30 prosecutors and investigators of the prosecutor's office (14% of the total number of those brought to disciplinary responsibility) have been prosecuted based on disciplinary complaints by other individuals.

Nevertheless, service investigations virtually duplicate part of disciplinary proceedings (verifying the circumstances of the alleged disciplinary offense) and may be an instrument for interfering with the prosecutor's procedural activity. After all, service investigations have an intra-institutional nature and it is difficult to control them externally.

Although the analysis of the Commission's decisions does not allow concluding that service investigations are massively used to interfere with the procedural activity of prosecutors, some cases undoubtedly should be regarded as interference with the prosecutor's procedural activity, which is by no means based on the provisions of the Law.

The most commonly used method of intervention, which has become systematic, has the form of *checks on compliance with the requirements of the legislation* or organization of work in certain areas in the prosecutor's office. Intervention may also take place under the guise of practical assistance, analytical and/or educational-methodological activities.

According to the disciplinary practice of the Commission, such inspections (activities) resulted in disciplinary penalties for 17 prosecutors, which is 8% of the persons brought to justice. Most of these prosecutors are heads of local prosecutor's offices (15 out of 17), and they were accused of improper organization of the work of subordinate prosecutors in criminal proceedings.

It should be emphasized that the procedure for carrying out such inspections (activities), determined by the order of the Prosecutor General, is in no way based on the provisions of the

3. Procedure for the implementation of disciplinary proceedings

Law. Moreover, in such cases, the prosecutors in respect of which the inspection is being carried out are not endowed with any rights or guarantees.

Evidence in disciplinary proceedings and their sources

Since the majority of disciplinary complaints against the prosecutors comes from prosecutor's offices, in most cases, the sources of evidence are the materials of service investigations. In the case of a pre-trial investigation conducted against the prosecutor, materials of such criminal proceedings are included in the materials of the service investigation.

In a disciplinary proceeding initiated upon the complaint of a defense lawyer, judge, representative of a legal entity or individual, the sources of evidence normally include: procedural documents of criminal proceedings; correspondence with the prosecutor him/herself or the prosecutor's office/pre-trial investigation agency; written explanations of an applicant and/or witnesses; audio records of the court hearings.

In most cases, the prosecutors that are subject to disciplinary proceedings give their explanations (in writing or directly at the Commission meeting). There are occasions when witnesses appear at the Commission meetings. However, the presence of witnesses is more an exception to the rule. Such a situation may change with the introduction of costs reimbursement to witnesses or introduction of videoconferencing system, similar to that established in courts of general jurisdiction. Such a system can be used both for questioning witnesses and for the participation of an applicant and/or prosecutor during the proceedings. This greatly facilitates the applicants' access to the Commission, frees up the time of prosecutors, and reduces the time period for considering disciplinary complaints.

Results of covert investigative actions as evidence in disciplinary proceedings

Analysis of the Commission's practice has shown that disciplinary proceedings have repeatedly used the information received by law enforcement agencies secretly (in 25 cases out of 196 decisions on imposition of penalties). In most cases (16 out of 25) this was due to suspicions that prosecutors received unlawful benefits.

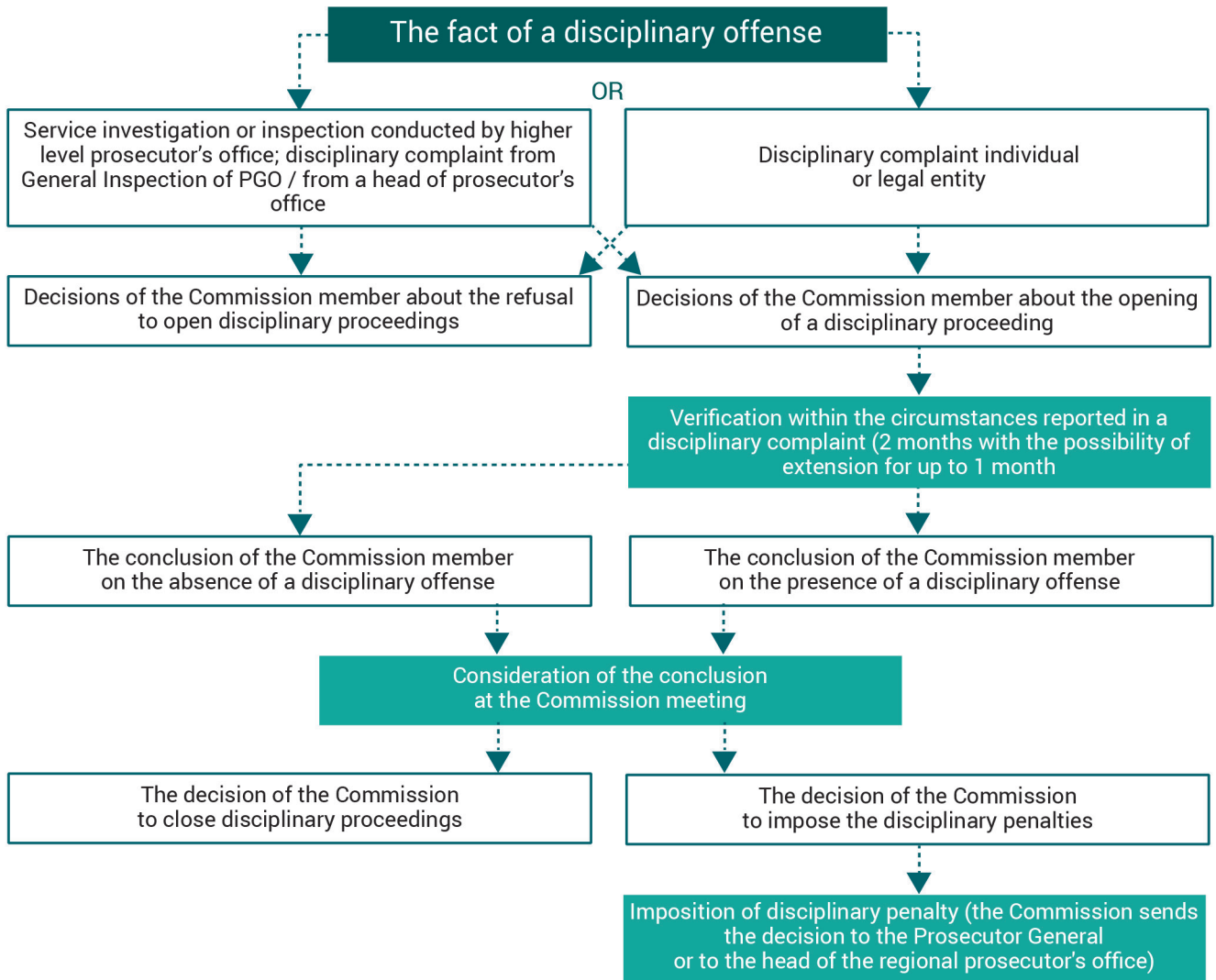
It is important to note that the Commission continued to take into account such information when making decisions on bringing the prosecutors to disciplinary responsibility even after the High Council of Justice and the Supreme Court took a fully justified position that the results of covert actions of the law enforcement agencies may be used only in criminal proceedings.

Standard of proof “beyond a reasonable doubt”

In the course of disciplinary proceedings, the Commission prefers the standard of proof “beyond a reasonable doubt”. Commission has chosen this standard of proof in view of the practice of the European Court of Human Rights, namely the case *Grinenko v. Ukraine*. However, such an approach is difficult to accept due to the fact that this is not provided by the Law; this standard is inherent in the criminal process; it is the highest of all known standards and is unlikely to be appropriate when considering disciplinary proceedings.

Given the nature of the offences and their legal consequences, disciplinary proceedings do not require such a strict standard of proof.

DISCIPLINARY PROCEEDINGS AGAINST A PROSECUTOR*



*statute of limitations – 1 year

4. CLOSURE OF DISCIPLINARY PROCEEDINGS

Commission is authorized to close disciplinary proceedings in the absence of grounds for the imposition of a disciplinary penalty.

The most widespread cases of closure by the Commission of disciplinary proceedings are: failure to establish the facts of violation of anti-corruption legislation by the prosecutor; failure to perform or improper performance of certain official duties; violation of the principles of political neutrality; violation of the presumption of innocence, as well as violation of the rules of professional ethics.

Commission also began to close the proceedings and *refuse to establish the facts of committing offenses by the Prosecutor General*. The reason for this, in the Commission's opinion, is the impossibility to apply penalties on the Prosecutor General after deciding on the presence of a disciplinary offense in his actions. In our opinion, the Commission's position violates a number of important constitutional principles: the principle of equality of citizens before the law; the principle of legality. The law clearly distinguishes between "imposition" and "application" of disciplinary penalty. Commission is the body responsible for the "imposition" of a disciplinary sanction, therefore, its power in the case of disciplinary proceedings against the Prosecutor General in no way is questioned by the Law. Consequently, the issue of "application" of disciplinary sanction to the Prosecutor General is outside the competence of the Commission.

In 2017, the failure to establish the fact that the prosecutor committed a violation of anti-corruption legislation was the most common reason for the closure of disciplinary proceedings. In 2018, disciplinary practice in these cases was changed. Commission adheres to the position of the Supreme Court and believes that verification of the content of the prosecutor's declaration filed in accordance with the Law of Ukraine "On Prevention of Corruption" is not within its authority. This is the exclusive authority of the National Agency on Corruption Prevention. That is, the Commission's competence does not include establishing the fact of entering/non-entering or incorrect entering of specific information. Therefore, these proceedings are simply not initiated.

Less common grounds for closing disciplinary proceedings include the failure to establish a violation of the principle of presumption of innocence and the principle of political neutrality, or even the closure of proceedings due to insignificance of offence.

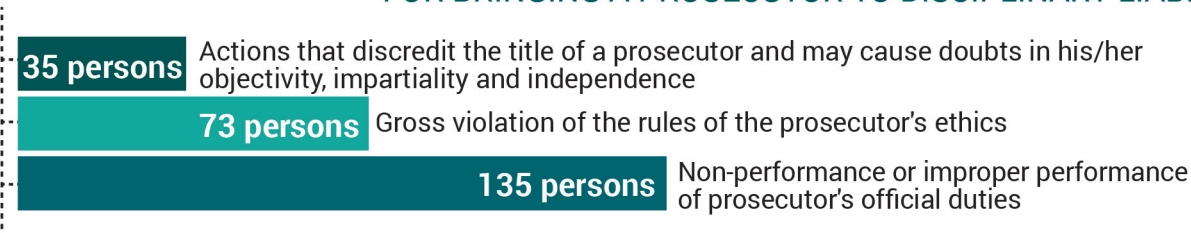
5. DISCIPLINARY OFFENCES BY PROSECUTORS

The most widespread type of violations detected by the Commission at present is the offenses by prosecutors related to *non-performance or improper performance of their official duties*. Out of the 210 persons brought by the Commission to disciplinary responsibility during the period under review, for 135 of them (65%), at least one fact of this type of violation was established in their actions.

The second most prevalent are disciplinary offenses consisting of a *gross violation of the rules of the prosecutor's ethics*. During the period under review, the Commission brought 73 persons (35%) to disciplinary responsibility for violating ethical rules.

The third most widespread category of disciplinary offences is *actions that discredit the title of prosecutor and may cause doubts in his/her objectivity, impartiality and independence*. For the period under review, these offenses were committed by 35 persons (or 17% of the total number of persons brought to justice).

THE MOST WIDESPREAD GROUNDS FOR BRINGING A PROSECUTOR TO DISCIPLINARY LIABILITY



Problems of qualification of prosecutors' disciplinary offenses

First of all, attention should be paid to the Commission's observance of the *principle of legality* in establishing the fact of commitment by the prosecutor of a disciplinary offense, since it takes into account the provisions of the orders of the Prosecutor General which have not passed the state registration and, in accordance with the requirements of the Law, can not have binding effect for prosecutors.

Other problems include:

- *bringing to disciplinary responsibility of the investigators of the prosecutor's offices* (the Commission has no authority to consider proceedings against investigators under the Law);

- *correlation between disciplinary offences and inadequate performance by the prosecutors of their authority in the administrative position* (head or deputy head of the prosecutor's office) (Commission does not apply a special procedure for addressing the Council of Prosecutors or the head of a regional or local prosecutor's office);
- *correlation between criminal offense (crime) and disciplinary offence* (partial extension of the practice of dismissal of prosecutors who are suspected in criminal proceedings);
- *lack of clear certainty as regards the qualification of certain disciplinary offences* (for example, receipt or extortion of unlawful benefits; leaving the courtroom without court authorization; non-return (untimely return) to holders of temporarily seized property; driving a vehicle by the prosecutor in the state of alcohol intoxication; unlawful actions with drugs, staying in the workplace in the state of alcohol intoxication).

6. DISCIPLINARY PENALTIES FOR THE OFFENCES BY PROSECUTORS

The law provides for the possibility of imposing three types of penalties on the prosecutor: reprimands, prohibitions on transfer to a high-level prosecutor's office for a specified term, dismissal. It should be proportional and imposed within 1 year from the date of committing the offence. Proportionality provides for the need to take into account the nature of the offence, its consequences, personality of the prosecutor and the degree of his/her guilt, circumstances that affect the choice of the type of disciplinary penalty.

Decision of the Commission as a result of considering disciplinary proceedings is the basis for a decision by the Prosecutor General or the head of the regional prosecutor's office on the application of disciplinary penalty to the prosecutor concerned.

Statistics on the imposition of disciplinary penalties on prosecutors

After entry into force of the Law and the commencement of the work of the Qualification and Disciplinary Commission of Prosecutors, as it was expected, the number of prosecutors brought to disciplinary responsibility has been significantly reduced.

In particular, during the Commission's activity from August 1, 2017 to December 1, 2018 (16 months of work), 210 persons were brought to disciplinary responsibility. For comparison: in 2015, 381 prosecutors and investigators were brought to disciplinary responsibility, in 2016 there were 329 persons.

The reason for this situation is the introduction of a new disciplinary procedure based on the Law, which provides for procedural safeguards to protect the rights of the prosecutor who is brought to responsibility.

During the Commission's work, *reprimands were applied in 94 cases* (45% of the total number), decisions *to prohibit the transfer or appointment were made in 64 cases* (30%) and *52 persons* (25%) *were dismissed*.

In total, the distribution of all penalties imposed by the Commission by the level of prosecutors' office, where prosecutors are employed is as follows: 64% (134 persons) brought to justice are prosecutors of local prosecutor's offices, 25% (53 persons) – prosecutors of regional prosecutor's offices and 11% (23 persons) prosecutors of the Prosecutor General's Office.

At the same time, according to the results of the Commission's work, *the share of strict disciplinary sanctions applied to prosecutors has significantly increased*.

Thus, in 2015, 335 reprimands (88% of the total number of sanctions) were imposed and 46 persons (12%) were dismissed, in 2016 there were 287 reprimands (87%) and 42 persons (13%) dismissed. In addition, based on the results of service investigations, employees were deprived of bonuses: in 2015 – 62 times, in 2016 – 78 times.

STATISTICS ON THE DEPRIVING OF BONUSES OF PROSECUTORS
AND INVESTIGATORS OF THE PROSECUTOR'S OFFICES BASED ON THE RESULTS
OF SERVICE INVESTIGATIONS



At the same time, according to the Prosecutor General's Office, a *parallel practice of additional disciplinary measures* (deprivation of bonuses) is still in place. What draws attention is the fact that the number of cases of deprivation of bonuses in 2018 (compared with 2015 and 2016) increased almost threefold.

Unfortunately, the Commission legitimizes the existence of this practice in its decisions, referring to the previous facts of deprivation of bonuses for committing certain violations to characterize the personality of a prosecutor, who is brought to responsibility.

Severity of the Commission's approach to punishing prosecutors is also reflected in the choice of time periods for the prohibition of the prosecutors' transfer or appointment. In most of the cases, (25 times or 39% of all cases of imposing this penalty) the Commission has chosen the longest prohibition period of 12 months; 23 times (36%) the prohibition period was 6 months and 15 times (23%) – 3 months. Only once the Commission set a time limit for the prosecutor for 4 months.

Attention is drawn to the fact that disciplinary proceedings were conducted against all the management members of the Prosecutor General's Office, including the Prosecutor General. Two deputies of the Prosecutor General have got a disciplinary penalty (in the form of reprimand).

Grounds for imposition of disciplinary penalties and their proportionality

Practice of *dismissing prosecutors* based on the results of disciplinary proceedings shows that this sanction is primarily applied for actions that discredit the title of prosecutor and violate ethical

6. Disciplinary penalties for the offences by prosecutors

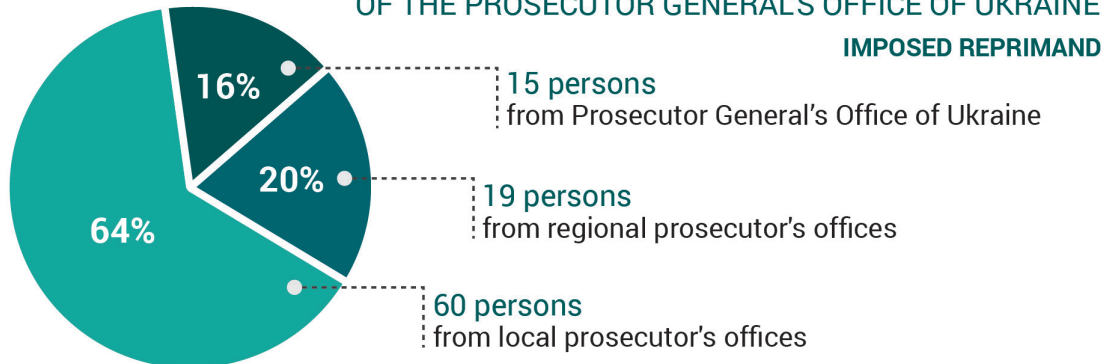
rules, less often – for violating internal rules and regulations and interfering with the official activities of another prosecutor.

At present, a prosecutor can be dismissed from the prosecutor's office by the Commission only for committing actions that in their essence undermine the authority of the prosecutor's office or violate public interest. However, in cases of *violation of certain rights of a person* (right to freedom, to protection, to access to materials of proceedings, to privacy, property rights, etc.), the Commission usually does not intend to impose the most severe penalty to the prosecutor.

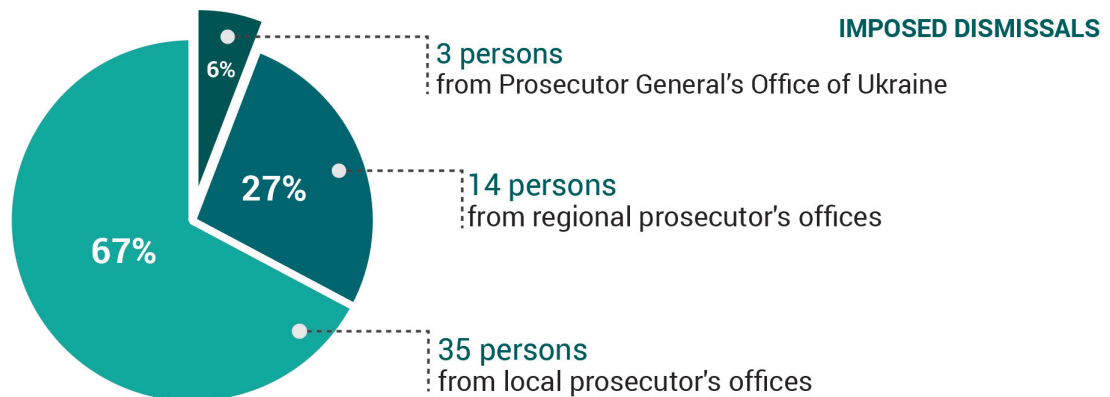
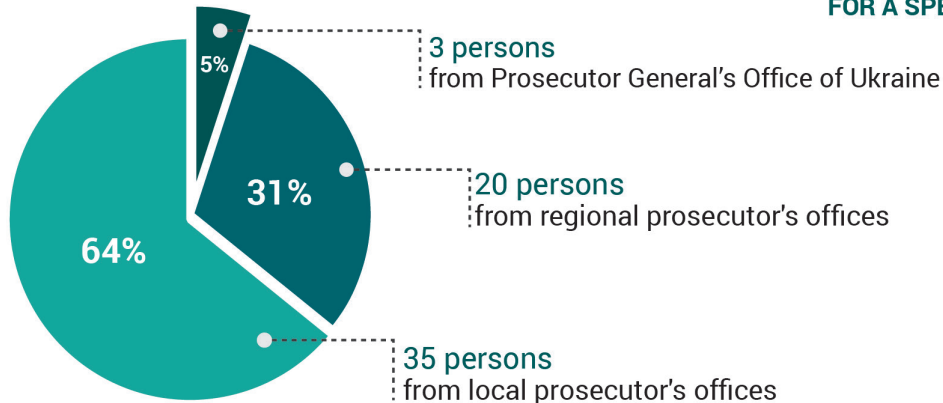
There is also *in the imposition by the Commission of a penalty* in the form of dismissal of the prosecutor for driving a vehicle in the state of alcohol intoxication. As a rule, commission of this offense results in the dismissal of the prosecutor, but there are exceptions.

In the case of *imposing the lightest disciplinary penalty* (reprimand), the Commission sometimes demonstrates excessive humanity towards prosecutors, which is in fact disproportionate to the danger of the violation committed by the prosecutor. In this context, there are numerous cases when serious violations of the constitutional rights of persons (to the inviolability of private and family life, to liberty) had very insignificant consequences for the prosecutors in the form of imposing reprimand.

'LIGHTNESS' OF DISCIPLINARY SANCTIONS AGAINST PROSECUTORS OF THE PROSECUTOR GENERAL'S OFFICE OF UKRAINE

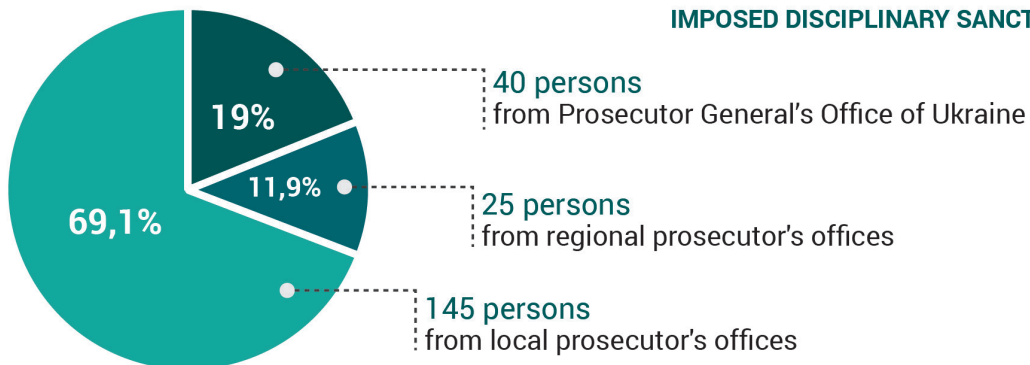


IMPOSED PROHIBITIONS ON TRANSFER TO A HIGH-LEVEL PROSECUTOR'S OFFICE FOR A SPECIFIED TERM

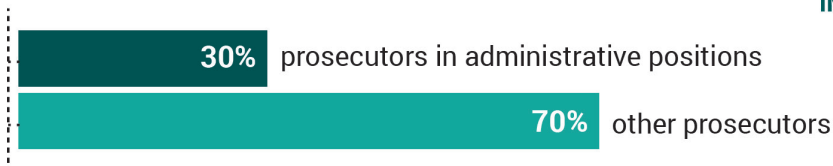


'LIGHTNESS' OF DISCIPLINARY SANCTIONS AGAINST PROSECUTORS IN ADMINISTRATIVE POSITIONS

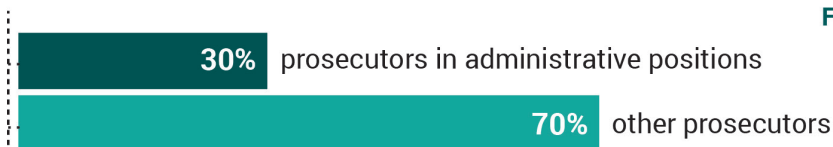
IMPOSED DISCIPLINARY SANCTIONS



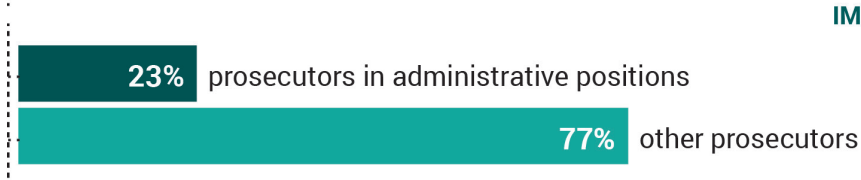
IMPOSED REPRIMANDS



IMPOSED PROHIBITIONS ON TRANSFER TO A HIGH-LEVEL PROSECUTOR'S OFFICE FOR A SPECIFIED TERM



IMPOSED DISMISSALS



To the Verkhovna Rada of Ukraine:

- 1) unify the disciplinary status of military prosecutors with the status of other prosecutors;
- 2) improve, in accordance with international standards, the definition of such a ground for bringing a prosecutor to disciplinary responsibility, as “violation of the prosecutor’s ethics rules”;
- 3) expand the list of disciplinary penalties in order to increase their proportionality and effectiveness (adding reprimands of various degrees, temporary reduction of salaries, temporary suspension from the exercise of official duties, etc.);
- 4) increase the one-year statute of limitations for bringing the prosecutor to disciplinary responsibility;
- 5) determine the general period of disciplinary proceedings.

To the Supreme Court – revise the practice in the following areas:

- 1) provide for the possibility of challenging the decisions on refusal to open disciplinary proceedings against the prosecutor;
- 2) provide for the possibility of bringing prosecutors to disciplinary responsibility by the Commission for violating the financial control requirements in the absence of the appropriate decision of the NACP.

To the High Council of Justice – revise the practice in order to allow the Commission to bring prosecutors to disciplinary responsibility for violating the financial control requirements in the absence of the appropriate decision of the NACP.

To the Qualification and Disciplinary Commission of Prosecutors:

- 1) regularly publish reports on disciplinary practice in terms of types of detected disciplinary offences and penalties imposed;
- 2) publish on the official website all decisions of the Commission members on the refusal to open a disciplinary proceeding with deleting the data which allow identification of individual or legal entity;
- 3) open disciplinary proceedings:
 - upon complaints from individuals and legal entities, regardless of the indication of all signs of offences;
 - regarding decisions, acts or omissions of the prosecutor, committed within the framework of criminal proceedings and unchallenged to an investigating judge, if their appeal is not provided for in part 1 of Article 303 of the CPC of Ukraine;

- regarding decisions, acts or omissions of the prosecutor in a criminal proceeding, which were canceled (found to be illegal) by an investigating judge or the court;
- 4) introduce the possibility of participation of prosecutors and other persons in the Commission session through video conferencing system;
- 5) refrain from using in disciplinary proceedings information obtained as a result of covert investigative actions of law enforcement agencies, and as a result of interference with the prosecutor's procedural activities in the course of inspections by the higher level prosecutor's office of compliance with the requirements of legislation and/or the organization of work at the lower level prosecutor's offices;
- 6) elaborate criteria for assessing the violation by the prosecutors of the presumption of innocence, as well as the principle of political neutrality;
- 7) consider the facts of groundless removal of a prosecutor from the procedural leadership due to his/her ineffectiveness as the intervention of the leadership in the procedural activities of the prosecutor;
- 8) notify the Council of Prosecutors of Ukraine of every detected fact of intervention with the prosecutor's procedural activities in the course of a high-level prosecutor's office inspection of compliance with the requirements of legislation and/or the organization of work in the prosecutor's offices, which provide for access to pre-trial investigation materials, that are still ongoing as a threat to independence of prosecutors;
- 9) consider the facts of obtaining by prosecutors of the certificates granting the right to exercise certain types of professional activity (defense lawyer, notary, etc.) as a violation of the rules of ethics instead of violation of prohibition to hold more than one office;
- 10) refrain from using the standard of proof "beyond a reasonable doubt" in the disciplinary proceeding in favor of a less strict standard;
- 11) standardize the form of its decisions in the disciplinary proceedings;
- 12) review the practice in order to:
 - introduce the possibility of bringing the Prosecutor General to disciplinary responsibility;
 - refrain from bringing investigators of the prosecutor's offices to disciplinary responsibility;
 - refrain from recognition of improper performance by the prosecutor of authority in an administrative post as a disciplinary offence;
 - refrain from recognition of the fact of the person's charge of committing a crime as a disciplinary offense;
 - refrain from recognition of the loss by a prosecutor of a service ID as a disciplinary offense;

- 13) recognize as disciplinary offences only those violations by the prosecutors of their official duties that are expressly provided for by the law or bylaw, which has passed the established procedure of state registration;
- 14) ensure the consistency and uniformity of the qualifications of disciplinary offenses, paying special attention to obtaining or extortion of unlawful benefits; leaving the courtroom without a court authorization; non-return (untimely return) to owners of temporarily seized property; driving a vehicle by a prosecutor in a state of alcohol intoxication; illegal activities with drugs and staying in the workplace in the state of alcohol intoxication, etc.;
- 15) adhere to the principle of equality in the imposition of disciplinary penalties without distinction in the prosecutors' positions and the region of service;
- 16) ensure the consistent imposition of penalties for the same types of offences, in particular, violation of anti-corruption restrictions and violation of the prosecutor's ethics rules;
- 17) refrain from disproportionately light disciplinary penalties for gross violations of the constitutional rights of individuals established in the actions of prosecutors;
- 18) during the consideration of cases not to take into account the facts of deprivation of bonuses as a circumstance that negatively characterizes the prosecutor concerned;
- 19) adhere to the one-year statute of limitations prescribed by law for the imposition of disciplinary penalty.

To the Prosecutor General:

- 1) ensure the state registration at the Ministry of Justice of all regulatory orders of the Prosecutor General's Office of Ukraine, both approved before the entry into force of the Law on the Prosecutor's Office and approved from 2015;
- 2) abandon the practice of conducting service investigations concerning prosecutors, instead provide support to a member of the Qualification and Disciplinary Commission of Prosecutors, who verifies the circumstances of the disciplinary complaint reported therein;
- 3) bring the procedure of inspections on compliance with the requirements of legislation and/or the organization of work in the prosecutor's offices of a lower level in accordance with the rules and limitations regarding the subordination of prosecutors and the execution of orders provided for in Article 17 of the Law on the Prosecutor's Office;
- 4) refrain from making decisions on the deprivation of bonuses of prosecutors as a measure of disciplinary influence;
- 5) execute the decisions of the Qualification and Disciplinary Commission of Prosecutors on imposition of disciplinary penalties within reasonable time;
- 6) develop and submit for approval by the All-Ukrainian Conference of Prosecutors a system for assessing the quality of prosecutors' work, which will become an objective basis for

the Commission to assess non-performance or improper performance of official duties by prosecutors.

To the Courts – address the Qualification and Disciplinary Commission of Prosecutors with disciplinary complaints against prosecutors in case of their absence in court hearings for no valid reasons.

To the General Inspection of the Prosecutor General's Office of Ukraine – refrain from using service investigations as a tool for the application of such measures of influence on the prosecutor as deprivation of bonuses and dismissal until the procedure for conducting service investigations by the Prosecutor General is improved.

To the heads of regional prosecutor's offices:

- 1) refrain from making decisions on the deprivation of bonuses of prosecutors as a measure of disciplinary influence;
- 2) execute the decisions of the Qualification and Disciplinary Commission of Prosecutors on imposing disciplinary penalties within reasonable time.

To the prosecutors of the Prosecutor General's Office of Ukraine and regional prosecutor's offices – strictly adhere to the rules and restrictions on the subordination of prosecutors and the execution of orders envisaged by Article 17 of the Law on Prosecutor's Office, while checking the state of compliance with the requirements of legislation and/or the organization of work in the lower level prosecutor's offices.

This research is dedicated to the study of the practice of bringing the prosecutors to disciplinary responsibility by the Qualification and Disciplinary Commission of Prosecutors during 2017-2018. Publication analyzes various aspects of disciplinary practice: legislative regulation of bringing prosecutors to disciplinary responsibility, compliance of national legislation on bringing a prosecutor to disciplinary responsibility with international standards, organizational aspects of consideration of complaints by the Commission, factors that influence the decision, court practice in this area.

Publication is intended for a wide range of lawyers, scholars, law enforcement officials and all those who are interested in prosecutorial reform.