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## **Justification of Judgments of the Advocacy Disciplinary Tribunal**

**Abstract:** The subject of this article is jurisdiction of decisions of the Advocacy Disciplinary Tribunal. The author focuses on the independence of the Law on Advocates and the Criminal Practice Rules. Appropriate application of the provisions of Criminal Practice Rules might take one of the following forms – 1) when the appropriate provision of Criminal Practice is applied directly, without any changes, 2) when the provision of Criminal Practice is modified wherever appropriate, 3) when the provision cannot be applied. The article also discusses various different issues of minimum requirements that are met by the justification of the disciplinary tribunal.

**Keywords:** justification of judgment, Disciplinary Tribunal, judgment, Advocacy

Disciplinary liability is one of the types of legal liability understood as “the principle of an entity bearing negative consequences envisaged by the law for the events or state of affairs that are subject to negative normative qualification and legally attributed to a given entity in a given legal order<sup>1</sup>.”

We will not find a uniform definition of disciplinary law in the literature<sup>2</sup>. Some representatives of the doctrine<sup>3</sup> claim that disciplinary law is identical to criminal law because a legal position of a person subject to disciplinary liability is the same as a position of a citizen breaching legal order. T. Bojarski, among others, is of a different opinion thinking that disciplinary proceedings are not a part of criminal

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1 W. Lang, *Struktura odpowiedzialności prawnej (Studium analityczne z dziedziny teorii praw)*, „Zeszyty Naukowe Uniwersytetu Mikołaja Kopernika w Toruniu. Nauki Humanistyczno-Społeczne” 1968, No. 31, p. 12.

2 See. P. Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, Warszawa 2013, pp. 23-24; R. Gietkowski, *Odpowiedzialność dyscyplinarna w prawie polskim*, Gdańsk 2013, p. 19 and following.

3 H. Kelsen, *Podstawowe zagadnienia nauki prawa państwowego*. Tom II, Wilno 1936, pp. 253-280.

law because there is no common disciplinary law<sup>4</sup> (each professional group has their own distinct regulations concerning disciplinary liability, e.g. advocates, judges, doctors, etc.).

For the needs of this study it will be sufficient to assume that disciplinary proceedings are legal provisions regulating the issues of liability for acts infringing professional duties as well as types of penalties for those acts. Above all, disciplinary proceedings fulfil a controlling function. They should also have a preventive function – protecting potential clients against unreliable or dishonest advocates and assuring moral satisfaction to injured clients. These proceedings also determine the principles and course of procedure in case of the violation of professional duties resulting from the practice of a specific profession. In other words, disciplinary liability forces a person to perform his or her profession reliably.

Pursuant to the Act on the Advocacy<sup>5</sup>, a disciplinary tribunal of the Bar Council and Higher Disciplinary Tribunal resolve disciplinary cases against advocates and advocate trainees. A disciplinary tribunal of the Bar Council hears all disciplinary cases as the first instance court except cases against members of the Polish Bar Council and Regional Bar Councils. Higher Disciplinary Tribunal is a second instance court in cases heard in the first instance by disciplinary tribunals of the Bar Councils and a first instance court in disciplinary cases against members of the Polish Bar Council and Regional Bar Councils.

A disciplinary tribunal of the Bar Council is composed of President, Deputy President and from six to twenty three members and three deputies elected by the Bar Council's Meeting for a three-year term of office. Higher Disciplinary Tribunal is composed of President, twenty three members and three deputies elected for three years by the Polish Congress of the Bar. Disciplinary tribunals of the Bar Council and Higher Disciplinary Tribunal as a first instance court hear cases in the panels composed of three persons. Higher Disciplinary Tribunal hears appeals in a three-person panel too. The exception to this rule is hearing appeals against its own decision rendered in the first instance proceedings. Then Higher Disciplinary Tribunal hears the case in a five-person panel excluding those persons who took part in passing a decision under challenge.

A model of disciplinary proceedings may be called quasi judicial two-tiered proceedings carried out by authorities composed solely of advocates that are subject to judicial control exercised by the Supreme Court. The currently valid solution has been found in compliance with Art. 45 of the Polish Constitution by the

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4 T. Bojarski, *Polskie prawo karne. Zarys części ogólnej*, Warszawa 2001, pp. 27-28.

5 The Act of 26 May 1982 (*Journal of Laws* od 1982, No. 16, item 124) [Ustawa z dnia 26 maja 1982 r. Prawo o adwokaturze, *Dz.U. z 1982 r. Nr 16 poz. 124*].

Constitutional Tribunal<sup>6</sup>. Disciplinary proceedings are repressive proceedings that force observation of ethical norms<sup>7</sup> and professional deontology.

Disciplinary proceedings are bound by the principle of jurisdictional autonomy of disciplinary tribunals. Art. 89 of the AA stipulates that a disciplinary tribunal hears cases autonomously and resolves emerging legal issues independently passing a sentence upon the conviction based on free assessment of all evidence including circumstances both in favour of and against the accused. The above quoted Art. provides “disciplinary tribunals with full independence of sentencing and exclusive subordination within this scope to the Act and to lower legal acts only if they are issued on the basis of the Act and are not contradictory to it”<sup>8</sup>.

A fundamental source of disciplinary procedural law is the Act on the Advocacy and the Code on Criminal Procedure. Nevertheless, these are not the only legal acts regulating disciplinary proceedings. Provisions of the Code of Civil Procedure, Code of Administrative Procedure as well as internal provisions of the advocates’ self-government will apply here too. The application of the provisions of the Code of Criminal Procedure results directly from Art. 95n of the AA specifying that the provisions of the Code of Criminal Procedure apply appropriately to the matters not regulated in this Section. According to L. Morawski, “appropriate application of the provision may involve its direct application, application with suitable modifications, or a refusal to apply it due to specific differences. In order to establish which of the above situations occurs, the interpreter should rely on the systemic and functional interpretation”<sup>9</sup>. Hence appropriate application of the provisions of the Code of Criminal Procedure may occur in three forms. Firstly, we may apply a given provision directly without any changes. Secondly, a provision may be applied with necessary modifications; and thirdly, we may deal with a situation when a provision of the Code of Criminal Procedure might not be applied in pending disciplinary proceedings (e.g. the provision on the application of temporary custody). These assumptions are also confirmed by the Supreme Court’s judgment, according to which “intending to apply the provisions of the Code of Criminal Procedure appropriately, the court hearing a disciplinary case against a judge must first establish which provisions of the Procedural Act shall be “appropriately applied” in disciplinary proceedings; and secondly, their content should not be modified to adapt a concrete provision of the Code of Criminal Procedure to the proceedings’ specificity whose object is

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6 The Judgment of the Constitutional Tribunal of 25 July 2012., Sygn. akt K 9/10.

7 The Resolution No. 2/XVIII/98- A set of Principles of Barrister’s Ethics and Dignity of Profession (Code of Barrister’s Ethics) of 10 October 1998 r.

8 W. Kozielowicz, *Odpowiedzialność dyscyplinarna sędziów, prokuratorów, adwokatów, radców prawnych i notariuszy*, Warszawa 2012, p. 245.

9 L. Morawski, *Zasady wykładni prawa*, Toruń 2010, pp. 244-245.

disciplinary liability belonging to the category of repressive liability. The above principles by all means refer to disciplinary proceedings against advocates too<sup>10</sup>.

Furthermore, we will deal with reference to the Code of Criminal Procedure also with regard to giving reasons to a decision rendered by a disciplinary tribunal because the Act on the Advocacy does not regulate this issue.

Giving reasons is an instrument reflecting the court's opinion in the public discourse<sup>11</sup>. Giving reasons is "a more or less complicated mental operation finishing with a statement that according to specific criteria of finding sentences true or likely to be true that are adopted in a given environment, a certain sentence should be found legitimate. These criteria are a certain cognitive paradigm (the paradigm of legitimacy)<sup>12</sup>.

It should be remembered that "giving reasons is a vital element of the administration of justice"<sup>13</sup>. It is also a decisive element of "the right to a fair criminal trial"<sup>14</sup> as the structurally protected right of an individual. Fairness of judicial proceedings is a guarantee of the state's rule of law and protection of both human rights and freedoms. Pursuant to Art. 45 of the Polish Constitution: "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court"<sup>15</sup>. Moreover, the right to a fair trial is regulated in Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (...)"<sup>16</sup>.

J. Wróblewski underlines that giving reasons to a judicial decision fulfils the following functions:

- 1) it fulfils a legal obligation to provide the grounds of a decision being taken,
- 2) it provides a base for controlling the decision's accuracy,

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10 The Judgment of the Supreme Court of 29 October 2009, SDI 22/09, OSN-SD 2009, issue. 132.

11 E. Łętowska, *Udział władzy trzeciej w dyskursie społecznym – sądy i trybunały w najwyższych instancjach*, (in:) R. Hauser, L. Nawacki, *Państwo w służbie obywateli: księga pamiątkowa Jerzego Świątkiewicza*, Warszawa 2005, p. 38.

12 M. Zieliński, Z. Ziemiński, *Uzasadnianie twierdzeń, ocen i norm w prawoznawstwie*, Warszawa 1988, p. 95.

13 R. Broniecka, *Uzasadnianie wyroku w polskim postępowaniu karnym*, Warszawa 2014, p. 35.

14 The Judgment of the Supreme Court of 28 May 2013, II KK 308/12, Lex No. 1319257, see: A. Błachnio-Parzych, J. Kosonoga, H. Kuczyńska, C. Nowak, P. Wiliński, *Rzetelny proces karny*, Warszawa 2009.

15 The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws od 1997, No. 78, item 483) [Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. z 1997 r. Nr 78, poz. 483].

16 Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Journal of Laws of 1993, No. 61, item 284).

- 3) it may play a persuasive role in relation to the decision's addressees and other entities as well as adjudicating authorities hearing appeals,
- 4) it fulfils further functions of comprehensive reasoning – an element affecting development of the practice of precedence and predictability of decisions as well as shaping evaluative attitudes among judges and possibly in the society; considered by the lawmaker, the reasons may constitute resources which will affect changes of the legal status,
- 5) its function is descriptive when it should correspond to a decision-making process by the adjudicating authority<sup>17</sup>.

These functions, i.e. the function of adjudicating authority's self-control as well as explanatory-interpretative, controlling and legitimizing functions, have been reflected in the Constitutional Tribunal's decision of 11 April 2005<sup>18</sup>. In this decision, the Tribunal underlined that the above described functions of giving reasons result from the principle of the state of law, human dignity and the efficient right to a trial. The author believes that such functions should also be fulfilled by reasons given by a disciplinary tribunal, yet to the slightest extent. It would contribute to the improvement of the quality of decisions rendered by disciplinary tribunals.

The function of adjudicating authority's self-control forces self-control of judges passing a sentence in order to assure its substantive and formal accuracy<sup>19</sup>. This function is closely related to the principle of free assessment of evidence, which was presented in Art. 89 par. 2 of the AA: "A disciplinary tribunal resolves emerging legal issues independently and passes a sentence upon the conviction based on free assessment of all evidence including circumstances both in favour of and against the accused". The invoked Article fails to determine the meaning of free assessment of evidence; that is why we should refer here to Art. 7 of the CCP, according to which investigating authorities shall make a decision on the basis of their own conviction, which shall be founded upon evidence taken and appraised at their own discretion, with due consideration to the principles of sound reasoning, state of knowledge and life experience. "Judicial bodies must explain themselves why they based their conviction on this and not other evidence and why they did not accept evidence to the contrary"<sup>20</sup>.

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17 J. Wróblewski, *Sądowe stosowanie prawa*, Warszawa 1988, pp. 306-308.

18 SK 48/04, OTK-A 2005, No. 4, issue 45.

19 P. Hofmański, Z. Zabłocki, *Elementy metodyki pracy sędziego w sprawach karnych*, Warszawa 2011, p. 271; The Judgment of the Constitutional Tribunal of 16 January 2006, SK 30/05, OTK-A 2006, No. 1, issue 2.

20 S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warszawa 2013, p. 257.

The explanatory-interpretative function is closely related to Art. 424 of the CCP<sup>21</sup>. Reasons given to the judgment should include a brief (and not exhaustive as it was specified previously in the September amendment) reference to the facts the court has found to be proved, the evidence upon which the court has relied on in this matter, and the reasons why the evidence to the contrary has been dismissed by the court. Moreover, the reasons should specify legal bases and circumstances taken into account by the court in the process of imposing penalty, in particular in cases in which an extraordinary mitigation of penalty or preventive measures have been applied and other resolutions contained in the judgment.

The subject literature as well as courts' case law provide three concepts referring to the nature of giving reasons to a judgment. The first concept assumes that giving reasons has a reporting nature. S. Śliwiński supported this concept saying that "a document containing the reasons to a judgment is a reporting document whose task is to acknowledge (report, document) what the court was motivated by when passing a sentence"<sup>22</sup>. J. Wróblewski<sup>23</sup> held the same opinion. The above concept of a reporting nature of the reasons to a judgment is further confirmed by the Supreme Court's judgment: "The structure of the reasons, being the only reporting document allowing to find out what the court was motivated by when passing a concrete sentence, requires special precision of expressing thoughts because legal transactions are bound by not what the court intended to write down but by what the court actually wrote down"<sup>24</sup>. A reporting nature of giving reasons is also confirmed by the judgment of the Administrative Court in Łódź, according to which: "As a document reporting judges' deliberation on a judgment, the reasons should generally present in a well organized form facts established by the court and assessment of collected evidence indicating which evidence individual findings have been based on and explaining why other evidence cannot be the base of findings to the contrary. The established facts must be accurate enough to assure that the legal assessment of the act attributed to the defendant does not evoke any doubts in their light, especially from the perspective of substantive elements constituting this offence. Therefore it is important to present precisely the alleged event in accordance with the proved version of the chain of events. The satisfaction of the above conditions allows to avoid contractions between the judgment's conclusion, in particular in relation to the description of the accused person's act adopted therein and its reasons with regard to the factual grounds of the ruling"<sup>25</sup>.

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21 Art. 424 of the Act of 27 September 2013 (Journal of Laws of 2013, item 1247, as amended, Journal of Law of 2015, item 396).

22 S. Śliwiński, *Polski proces karny przed sądem powszechnym. Zasady ogólne*, Warszawa 1959, p. 509.

23 J. Wróblewski, *Sądowe stosowanie prawa*, Warszawa 1988, p. 308.

24 The Decision of Supreme Court of 15 June 2005, III KK 225/04, Lex No. 152469.

25 The Judgment of the Appeal Court in Łódź of 12 August 2008, II AKa 99/08, Lex No. 491929.

The second concept supports a logical meaning of giving reasons to a judgment. This concept was supported by M. Cieślak and Z. Doda<sup>26</sup>, among others. It assumes that “reasons to a judgment should prove a logical process upon which the court found the defendant guilty or innocent. Hence the court should indicate in the reasons which facts it has found to be established, the grounds of individual findings, why it has dismissed evidence to the contrary, and what conclusions has been drawn upon the court’s established findings. The content of the reasons must establish *a posteriori* the chain of reasoning which occurred during deliberation before the verdict was passed. Drafting the reasons to a judgment accordingly is of fundamental importance to the parties’ procedural actions because the appellant may then oppose the claims made by the court in the reasons to the judgment in order to persuade a court of appeal that the ruling included in the judgment’s conclusion is defective since it derives from defective or mistaken prerequisites. Invoking arguments against the reasons, the appellant opposes the ruling itself as a result of reasoning included in the reasons. Accuracy of the reasons to a judgment affects not only a correct formulation of claims in an appeal but also correct control of the appeal”<sup>27</sup>.

The third concept takes a mixed form because it is a combination of the two above described concepts. Z. Świda believed that all reasons must precisely reflect arguments taken into account by the court when a sentence was passed. She also claimed that in the reasons the court could invoke motifs that were not discussed but which resulted from the Act and affected a final ruling<sup>28</sup>. It should be remembered that “the reasons are neither a shorthand note unfolding deliberation over a verdict nor a report on its course but a study created after passing a verdict which must depict in an organized manner arguments taken into account during deliberation as well as those dismissed but grounded in evidence, and provide a logical and exhaustive answer why such and not other verdict was passed in a given case”<sup>29</sup>.

The function of external control *sensu stricto* will depend on the stage of disciplinary tribunal’s proceedings. The same as in criminal proceedings, the constitutional principle of second instance applies to disciplinary proceedings, which allows to challenge a decision of disciplinary procedural authorities (Art. 425 of the CCP in connection with Art. 95 of the AA). In disciplinary cases against advocates

26 See: M. Cieślak, Z. Doda, Przegląd orzecznictwa Sądu Najwyższego w zakresie postępowania karnego (II półrocze 1979 roku), „Palestra” 1980, vol. 11-12, p. 103; M. Cieślak, Glosa do wyroku SN z dnia 12 listopada 1962 r., I K 568/61, „Nowe Prawo” 1963, No. 4-5, p. 601.

27 The judgment of the Appeal Court in Rzeszów of 18 March 2010, II AKA 22/10, Lex No. 1016944; compare: the judgment of the Supreme Court of 6 October 2009, WA 31/09, Lex No. 598223.

28 Z. Świda-Łagiewska, Zasada swobodnej oceny dowodów w polskim procesie karnym, Wrocław 1983, p. 303304; as also R.A. Stefański, (in:) Z. Gostyński, R.A. Stefański, S. Zabłocki (eds.), Kodeks postępowania karnego. Komentarz. Tom 2, Warszawa 2004, p. 862.

29 The judgment of the Supreme Court of 4 November 2003, V KK 74/03, Lex No. 84219.

appealing control over disciplinary tribunals' decisions is vested in one court of appeal – Advocacy Higher Disciplinary Tribunal.

Each reasons to a judgment, whether they are issued by the first or second instance court, must satisfy statutory requirements while a difference between the reasons to judgments of the first and second instance courts is a consequence of differences and type of procedure before these courts. Hearing a case “within the limits of indictment”, the first instance court must justify its verdict fully in accordance with the guidelines contained in Art. 424 of the CCP whereas the court of appeal, generally hearing a case within the limits of the appeal, must justify its verdict in accordance with the rules specified in Art. 457 § 2 of the CCP by providing its motivation to pass just such a verdict, in particular motivating its attitude to the appeal's claims and conclusions (...). The Supreme Court has already many a time accurately specified standards that the reasons given by a court of appeal must satisfy in order to be recognized as meeting at least minimum requirements contained in these provisions. The Supreme Court has particularly emphasized that “the reasons cannot be a superficial response to the claims raised in the appeal; they cannot be limited to general declarations and quotes of the judicature's output concerning general procedural rules or principles of drafting reasons. The reasons must present substantial arguments providing a clear answer why concrete claims and arguments of the appeal have been assessed as unfounded; while they must present the chain of reasoning in a manner not evoking any doubts as to the fact that all vital issues have been considered and assessed (...)”<sup>30</sup>. “Let us finally say that when drafting reasons to judgments in appeal proceedings, we should also refrain from a too preachy tone. We should not mistake care for the quality of rulings of our younger Colleagues with cheap didactics and, most often, absolutely useless show of our possible intellectual advantage or, even less debatable, predominance of our life experience. Such a patronizing tone is especially blatant when a decision under challenge has been upheld. It just could not be then burdened with more serious defects”<sup>31</sup>.

Yet we cannot ignore the Supreme Court's guidelines, which specified in of the SC's judgments that: “The reasons to a judgment of an appellate court should correspond to the requirements laid down in Art. 457 § 3 of the CCP, i.e. they should provide motifs upon which the court has rendered the judgment and specify why the court has found the appeal's claims and conclusions relevant or irrelevant. However, if it is a judgment altering a decision, the obligation to draft the reasons in a manner specified in Art. 424 § 1 of the CCP becomes valid, i.e. providing a brief indication which facts the court has found to be proved or unproved, the evidence upon which the court has relied on in this matter, and the reasons why the evidence to the

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30 The judgment of the Supreme Court of 18 November 2004, SDI 55/04.

31 P. Hofmański, S. Zabłocki, *Elementy metodyki pracy sędziego w sprawach karnych*, Warszawa 2011, p. 323.



contrary has been dismissed by the court. Hence if the second instance court alters a judgment under challenge as to the essence of the case, the court is obliged not only to demonstrate in the reasons to the judgment the implementation of the order resulting from Art. 457 § 3 of the CCP but also fulfil the duty resulting from Art. 424 § 1 and 2 of the CCP (compare, e.g., the Supreme Court's judgment of 9 December 1997, V KKN 25/97, OSNKW 1998, v. 3-4, item 150). Thus when a court of appeal rules alternatively as to the essence of the case, a motivational part of its decision should include a detailed analysis and assessment of the collected evidence. It cannot be limited to the indication of fallacy of previous findings and assessments<sup>32</sup>.

Each judgment of the court must be duly reasoned because it determines a possibility of a proper review in judicial proceedings. A judgment whose reasons contain defects cannot be subject to a proper review, which results in repealing or referring the case for re-examination.

All reasons should "satisfy a persuasive function at least minimally, i.e. depict the reasons for a decision so that the parties could be convinced about its fairness and legitimacy (...)"<sup>33</sup>. The reasons should persuade each recipient, i.e. litigants as well as Advocacy Higher Disciplinary Tribunal and third parties, about the legality, legitimacy and fairness of the rendered judgment thus preventing its futile challenge. What is more, "the reasons play not only a procedural function but also enhance respect for the administration of justice and develop external conviction about the judgment's fairness"<sup>34</sup>.

As indicated in the introduction, the functions of giving reasons to disciplinary tribunal's judgments are identical with the functions determined by the Constitutional Tribunal in the decision of 11 April 2005. Since issues related to giving reasons to a judgment are not regulated in the Act on the Advocacy, the provisions of the Code of Criminal Procedure apply thereto. However, the issue of drafting and serving the reasons to judgments evokes some doubts. Do they have to be drafted and served in accordance with Art. 88a of the AA, or under the provisions of the Code of Criminal Procedure?

Higher Disciplinary Tribunal interpreted the above scope in the decision of 15 June 2013<sup>35</sup>. According to it, disciplinary tribunals draft reasons to judgments *ex officio* and serve them to the parties and Minister of Justice *ex officio* too.

Such interpretation is also supported by a considerable number of doctrine representatives<sup>36</sup>, who believe that disciplinary tribunals should draft and serve reasons

32 The judgment of the Supreme Court of 2 March 2012, SDI 4/12.

33 The decision of the District Court in Wrocław of 24 June 2013, IV Kz 470/13; as also the Decision of the Appeal Court in Kraków of 24 June 2000, II AKz 219/00, Lex No. 41740.

34 The judgment of the Supreme Court of 4 November 2003, V KK 74/03, Lex No. 84219.

35 The decision of the Higher Disciplinary Court of 15 June 2013, WSD 140/12.

36 Report from the conference of the Disciplinary Department of the Bar, 12 April 2014, Warszawa, www.adwokatura.pl.

to judgments *ex officio*. R. Baszuk disagrees with such interpretation of Art. 88a of the AA claiming he does not see a connection between Art. 88a of the AA and the obligation to give reasons to judgments and serve them *ex officio*. In his opinion, the above quoted provision does not relate to giving reasons to judgments *ex officio* and the obligation to serve them *ex officio* at all. Art. 88a of the AA sets forth that: “The parties and Minister of Justice may appeal against judgments and decisions terminating disciplinary proceedings within fourteen days from the day on which a copy of the judgment or decision together with the reasons thereto and instructions on a time limit and procedure of submitting an appeal has been served”. We should agree with R. Baszuk that a ban on the application of the CCP *mutatis mutandis*, i.e. Art. 422 of the CCP, does not ensue from the words “instructions on a time limit and procedure of submitting an appeal”. “The provision of Art. 422 of the CCP does not determine the norm differently from Art. 88a of the AA regulating appellate proceedings. The scope of its regulation is different; what is more, it is a provision included in the system of procedural norms concerning first instance proceedings. Provisions of the Act regulating disciplinary proceedings with regard to first instance proceedings are limited to Art. 90, 91 par. 2 and 4 first sentence, 92, 95, 95a, 95d, 95e, 95j, none of which regulates the issue of drafting and serving the reasons to judgments”<sup>37</sup>. Since the AA does not regulate this issue, pursuant to Art. 95n of the AA, Art. 422 § 1 of the CCP should be applied<sup>38</sup> – within a final time limit of seven days from the day on which a verdict was pronounced, the party and victim (if a judgment conditionally suspending proceedings was issued in a meeting) may submit a motion for drafting reasons to the judgment in writing and serving them. The above provision ensues that the first instance disciplinary tribunal drafts the reasons to a judgment exclusively upon the party’s request. Under Art. 90 point 2 and 2a of the AA, Minister of Justice may also submit a motion for drafting and serving reasons to a judgment. Drafting the reasons *ex officio* does not exempt the party and victim from submitting a motion for serving the reasons. Such a motion is submitted in writing.

The issue of drafting and serving reasons to decisions terminating disciplinary proceedings looks different even though the provisions of the CCP will also apply here appropriately – Art. 94 § 1 point 5 and Art. 98, because this issue is not regulated in the Act on the Advocacy. Art. 94 § 1 point 5 of the CCP stipulates that a decision should include the reasons unless the Act exempts from this requirement. Whereas Art. 98 of the CCP sets forth that the reasons to a decision shall be made in writing together with the decision itself. “The provision assumes the obligation to give reasons *ex officio* only with regard to decisions, which is a continuation of the requirements indicated

37 The commentary to the decision of the High Disciplinary Court of the Bar of 15 June 2013, WSD 140/12.

38 K. Kanty, T. Kanty, Komentarz do przepisów o postępowaniu dyscyplinarnym adwokatów, Warszawa – Gdańsk 2013, p. 194.

in Art. 94 § 1<sup>39</sup>. Drafting reasons to a decision may be postponed up to seven days if the case is complicated, or for other important causes. If the court decides to take advantage of a possibility of postponing drafting reasons to a decision, it results in: firstly, the need to provide orally the most important causes of the decision (Art. 100 § 4) and, secondly, the need to serve the parties with the decision together with the reasons thereto after drafting it (Art. 100 § 3)<sup>40</sup>. It should be mentioned here that “Art. 94 § 1 point 5 of the CCP and Art. 98 § 1 of the CCP do not precisely specify the conditions the reasons to a decision should correspond to. Nevertheless, according to the opinion that has been well established in the case law, it results from the essence of the reasons that they should indicate all crucial prerequisites upon which an authority issued a decision. In consequence thereof, the reasons should, above all, exhaustively explain factual grounds of a decision and provide legal prerequisites as well if necessary. (...) Hence the reasons should, as a rule, contain elements determined in Art. 424 § 1 point 1 and 2 of the CCP even though this norm relates directly only to giving reasons to a decision passed in the form of a judgment”<sup>41</sup>.

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39 T. Grzegorzczak, *Kodeks postępowania karnego oraz ustawa o świadku koronnym*, Warszawa 2008, p. 300.

40 P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego*. Tom I. Komentarz do artykułów 1-296, Warszawa 2011, p. 645-646.

41 The decision of the Supreme Court of 15 February 2001, III KKN 595/00, Lex No. 51949.

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