

# The nature of administrative liability of the audit firm and disciplinary liability of the statutory auditor in selected case law of the common and administrative courts

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## Introduction

The formal origins of the profession of the statutory auditor in Poland date back to the Regulation of the President of the Republic of Poland of 22 March 1928 on the Law on Joint Stock Companies (Journal of Laws of 1928, No. 39, item 383)<sup>1</sup>.

The disciplinary liability of the statutory auditor was introduced into the legal order by the provisions of the Act of 19 October 1991 on auditing and publishing financial statements and on statutory auditors and their self-government (Journal of Laws of 1991, No. 111, item 480) for conduct contrary to the principles of law, rules of the profession and professional ethics of the statutory auditor. The Act of 13 October 1994 on statutory auditors and their self-government (Journal of Laws of 1994, No. 121, item 592) introduced further changes regarding disciplinary proceedings. The entry into force of new legislation in 2017 had brought a key change in the form of clarification of the liability for conduct contrary to the provisions of law. The existing Article 31(1) of the Act of 7 May 2009 on statutory auditors and their self-government, entities authorised to audit financial statements, and on public oversight (Journal of Laws of 2009, No. 77, item 649), hereinafter referred to as “the 2009 Act”.

In accordance with the rules in currently force, i.e. Article 139(1) of the Act of 11 May 2017 on statutory auditors, audit firms and public oversight (Journal of Laws of 2017, item 1891), hereinafter referred to as “u.b.r.”, a statutory auditor shall be subject to disciplinary liability, should he/she committ a disciplinary offence. Furthermore, Paragraph 2 of the aforementioned rule defines a disciplinary offence as:

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<sup>1</sup> See E. Pogodzińska-Mizdrak *Zawód biegłego rewidenta – rys historyczny*, *Zaszyty Naukowe* nr 702 Akademii Ekonomicznej w Krakowie, 2006 pp. 83-92 and Wielgórska-Leszczyńska, J., & Zakrzewska, J. B. (2025). *Zawód biegłego rewidenta w Polsce i uzyskiwanie uprawnień w ocenie kandydatów*. *Studia I Prace Kolegium Zarządzania I Finansów*, (206), 9–40.

1. behaviour contrary to the rules regarding:
    - practice of the profession,
    - principles of professional ethics,
    - independence,
    - national professional standards,
- and
2. a breach of the rules regarding exercise of the obligations relating to:
    - membership in the professional self-government of statutory auditors,
    - practice of a business activity in the form of an audit firm as referred to in Article 46 u.b.r., including as a partner in a civil partnership, general partnership, partnership or limited partnership,
    - performance of duties in the management or supervisory bodies of audit firms.

It is assumed that disciplinary liability is a type of criminal liability *sensu largo*, adapted to the needs of a specific professional corporation which has developed its own professional and ethical standards that distinguish it from other groups<sup>2</sup>. The disciplinary liability of the statutory auditor is culpability-based liability for an unlawful act with a social harmfulness greater than negligible.

Despite pre-existing regulations in European law, it was not until Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, pp. 87-107, as amended) that the rules on the operation and liability of audit firms were laid down. In national law, the administrative liability of “entities’ authorised to audit financial statements” (“audit firms” from 21 June 2017) was introduced by the provisions of the 2009 Act.

An audit firm is subject to administrative liability for breaches specified in Articles 55(5), 61(9) and 182(1) u.b.r. or in Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, pp. 77-112, as amended), hereinafter referred to as “Regulation (EU) 537/2014”. Administrative liability is not based on the criterion of the perpetrator’s culpability, but on the fact that a legal duty has been breached. The said liability is based on objectivised measures of conduct, and holding an entity liable does not depend on the imputability of culpability, but on the mere fact that the entity’s action or omission is subject to a negative normative qualification,

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<sup>2</sup> M. Wierzbowski, A. Krysiak, M. Olewiński, J. Żelazek, Rozdział IV *Odpowiedzialność dyscyplinarna biegłego rewidenta* [in:] M. Wierzbowski, A. Krysiak, M. Olewiński, J. Żelazek, *Odpowiedzialność biegłego rewidenta*, Warszawa 2017 after K. Dudka, *Zasady i zakres odpowiedniego stosowania przepisów Kodeksu postępowania karnego w sprawach odpowiedzialności dyscyplinarnej notariuszy. Zasady ponoszenia kosztów postępowania dyscyplinarnego notariuszy na tle regulacji dotyczących innych zawodów prawniczych*, Warszawa 2015, p. 5 ([https://www.iws.org.pl/pliki/files/IWS\\_Dudka%20K.\\_Odp.%20dyscyplinarna%20notariuszy.pdf](https://www.iws.org.pl/pliki/files/IWS_Dudka%20K._Odp.%20dyscyplinarna%20notariuszy.pdf), access: 28 March 2017).

fulfilling the elements described in, inter alia, Article 182(1) u.b.r.<sup>3</sup> This means that an audit firm accepts administrative liability for breaching the law on the basis of strict liability rather than culpability, regardless of the key statutory auditor's liability or the audit firm's civil liability vis-à-vis the audited entity.

It can be read from the explanatory memorandum of the draft u.b.r. that the regulations in the sphere of administrative law were to define the entities on which administrative sanctions could be imposed, the catalogue of breaches resulting in administrative liability and the catalogue of administrative sanctions. The legislator's intention was not only to specify the breaches and the entities liable for them, but also the entities on which administrative sanctions could be imposed. The administrative liability of the audit firm provided for in the provisions of u.b.r. was directed towards exercising the repressive and preventive functions in connection with the administrative sanctions imposed.

As can be seen from the above review, not only have the rules of access to the statutory auditor profession changed over several decades, but so have the liability of persons who practise it and entities within which it is practised. The evolution of liability rules and the extension of the scope of public oversight of statutory auditors, their self-government and audit firms may have raised questions about the nature of the liability incurred and the possibility of combining the audit firm's criminal-administrative liability<sup>4</sup> with the quasi-criminal liability, i.e. the disciplinary liability of the statutory auditor. All the more so because, unlike other professions of public trust, administrative liability has been extended to entities that are not natural persons (audit firms). Although the selected case law also relates to breaches committed under the previous state of law, i.e. under the regime of the 2009 Act, the theses contained in the reasoning of the judgements and rulings presented herein remains valid under the current u.b.r.

## **Administrative liability – selected rulings of the Supreme Administrative Court**

Administrative liability is objective in nature, which does not imply automatism in actions of the authority and does not exempt it from the obligation to correctly, i.e. in accordance with the principle of objective truth, establish the facts of the case,

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<sup>3</sup> M. J. Zieliński [in:] *Ustawa o biegłych rewidentach, firmach audytorskich oraz nadzorze publicznym. Commentary*, ed. K. Ślebzak, M. Ślebzak, Warszawa 2018, art. 182.

<sup>4</sup> The judgement of the Constitutional Tribunal of 20 June 2017 (case P 124/15) - "In relation to the system of sanctions taking the form of pecuniary sanctions, sanction charges, increased charges and other similar punishments of a financial nature imposed ex post and, as a rule, without the possibility of waiving their enforcement, the term **"administrative and criminal law"** is sometimes used (D. Szumila-Kulczycka, op. cit., p. 29; L. Wilk, op. cit., p.160)."

make a comprehensive assessment of those facts<sup>5</sup> and impose a proportionate sanction. To this end, the legislator set out the directives for the assessment of the sanction which included, inter alia, verification of the breaches committed so far which could be subject to an administrative sanction under a decision of the Polish Agency for Audit Oversight or the National Council of Statutory Auditors. In this context when determining the sanction imposed on the audit firm, emerged also the question of taking into account the disciplinary record of the auditor who performed the contested audit on behalf of the audit firm. **This doubt was resolved and thoroughly described in the reasoning of the judgement of the Supreme Administrative Court of 11 October 2022 (court file no. II GSK 857/19) and the reasoning of the judgement of the Voivodeship Administrative Court in Warsaw of 5 December 2018 that preceded it (court file no. VI SA/Wa 1477/18).**

The above case concerned breaches committed under the regime of the 2009 Act. The National Council of Statutory Auditors imposed a pecuniary sanction of PLN 60,000 on a company, as a sanction for the irregularities found during the audit conducted by the National Oversight Commission with regard to the internal quality control system, remuneration charged for audit, and irregularities with regard to the auditing activities performed, including compliance with applicable auditing standards and independence requirements.

In its appeal, the company requested that the decision of the National Council of Statutory Auditors be either revoked in its entirety or revoked and the case be referred back to the first instance authority for reconsideration, alleging, inter alia, misinterpretation and misapplication of the provisions regarding the development and effective implementation of an internal quality control system and remuneration for auditing activities through the imposition of a pecuniary sanction despite the lack of grounds for doing so.

The Audit Oversight Commission, acting as a body of appeal, decided to annul the aforementioned resolution of the National Council of Statutory Auditors in its entirety and imposed a pecuniary sanction of PLN 56,018 on the company. The company appealed against this decision to the Voivodeship Administrative Court in Warsaw, requesting that the complaint be upheld and the decision (i.e. the resolution of the Audit Oversight Commission) be annulled. The Voivodeship Administrative Court in Warsaw dismissed the company's complaint on the grounds that the nature of the shortcomings found by the inspectors of the National Oversight Commission, in particular consisting of incorrect documentation of the audits performed, led to the conclusion that the purpose of the internal quality control system at the audit firm (authorised to audit financial statements) had not been fulfilled. The company filed a cassation appeal against the judgement, requesting that the contested judgement be annulled in its entirety and that the case be referred back to the court of first instance.

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<sup>5</sup> Judgement of the Supreme Administrative Court of 11 September 2019, II GSK 784/18, LEX no. 3167830.

The Supreme Administrative Court found that the argumentation that was contained in the grounds of the cassation appeal was insufficient to challenge the legality of the judgement. In the opinion of the Supreme Administrative Court, “the reasoning of the cassation appeal was limited to a general polemic against the assessment of the facts, not supported by any specific grounds or legal arguments”, which was considered insufficient to challenge the legality of the judgement of the Voivodeship Administrative Court in Warsaw. In particular, the Court did not recognise the plea raised in the reasoning of the cassation appeal challenging the severity of the violations found and the failure to discipline (by the disciplinary ombudsman) the person responsible for the breaches found in this case.

In the opinion of the Supreme Administrative Court, which was also aptly argued by the Audit Oversight Commission in its position on the compliant’s arguments, the specific nature of administrative liability must be emphasised: “... in this case we are dealing with a pecuniary sanction for a breach of a public law obligation by the cassation complaint, and therefore with an administrative sanction. This is a separate type of liability, not based on culpability, but on an objective basis. The grounds for this liability and its prerequisites are different from the disciplinary liability to which individual statutory auditors are subject, as the Court rightly pointed out in the appealed judgement”. The Voivodeship Administrative Court in Warsaw, explained in its reasoning that “these are therefore independent proceedings in which the conduct of other entities is assessed and on a different basis, albeit having its origin in the present case in the findings of a single review proceeding”.

**This position was confirmed by the judgement of the Supreme Administrative Court of 9 February 2023 (court file no. II GSK 1413/19).** That case also concerned breaches committed under the regime of the 2009 Act and conducted in accordance with the u.b.r. on the basis of the rules hitherto in force, which resulted in the imposition of a pecuniary sanction of PLN 12,300 by the National Council of Statutory Auditors for the types and scope of irregularities found during an audit of the National Oversight Commission. The irregularities concerning the audit actions performed indicated that the company’s internal quality control system was not functioning properly. The party appealed against the aforementioned resolution in its entirety, challenging that it had been issued without any legal or factual basis, and requested that the resolution be annulled and the the proceedings on the imposition of the pecuniary sanction be discontinued. On considering the appeal, the Audit Oversight Commission upheld the contested resolution in its entirety. Furthermore, in its justification, it explained that the legislator, in a transitional provision (Article 265 of u.b.r.), indicated that entities authorised to audit financial statements on the basis of the provisions hitherto in force (the 2009 Act) had become audit firms and that the irregularities in the functioning of the party, as an entity authorised to audit financial statements, found in the course of the review, as well as their nature and extent, justified the application of the sanction. In the opinion of the Audit Oversight Commission, there was no

circumstance of the company having been previously punished for the same conduct for a criminal offence, a fiscal offence, a misdemeanour or a fiscal misdemeanour. In addition, no repeated breaches or irregularities of the same type were found that would affect the amount of the sanction.

The Audit Oversight Commission, referring to the Party's allegation, pointed out that the discontinuation of the disciplinary investigation against the statutory auditors did not mean that the irregularities found in the course of the review of the company had not existed. Consequently, it held that the question of discontinuing two disciplinary proceedings against one of the auditors and not doing so against the other had not affected the outcome of the case.

The company appealed against this decision to the Voivodeship Administrative Court in Warsaw, requesting that the complaint be upheld and the decision be annulled. Both the Voivodeship Administrative Court in Warsaw<sup>6</sup> and the Supreme Administrative Court dismissed the Party's appeals. In the opinion of the Supreme Administrative Court, both the Voivodeship Administrative Court and the Audit Oversight Commission rightly assumed that the arguments of the cassation complaint, repeated on numerous occasions in the course of the administrative and administrative court proceedings, about the lack of legitimacy of conducting administrative proceedings and imposing a pecuniary sanction on it as an audit firm in the situation of discontinuation of disciplinary proceedings in the cases regarding one auditor, and the continuation of the proceedings (and therefore lack of a resolution) in relation to the other auditor, had no justified grounds.

In the above judgement, the Supreme Administrative Court also addressed the issue of the possibility of admitting as evidence in administrative proceedings rulings and documents from disciplinary proceedings, indicating that "taking additional evidence-gathering measures from rulings and documents that arose in proceedings before the Disciplinary Ombudsman would not affect the content of the decision and would lead to an unjustified prolongation of the proceedings". The circumstances of a particular case may therefore indicate that it is reasonable to dispense with such evidence if the relevant facts have been clarified.

**Another ruling, which at the same time demonstrates the formation of a uniform line of jurisprudence regarding the nature of the audit firm's liability, is the judgement of the Supreme Administrative Court of 29 March 2023 (court file no. II GSK 1085/19), in the reasoning of which the court addressed the issue of the effect of the statute of limitations for disciplinary breaches on administrative liability.**

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<sup>6</sup> Judgement of the Voivodeship Administrative Court in Warsaw of 4 July 2019, VI SA/Wa 457/19.

In the case in question, the National Council of Statutory Auditors ruled to impose a pecuniary sanction of PLN 1,000 on the complaint for breaches committed under the regime of the 2009 Act identified in the course of a review carried out by the inspectors of the National Oversight Commission. The appeal body (the Audit Oversight Commission) annulled the contested resolution in its entirety and referred the case back to the body of first instance for reconsideration.

The National Council of Statutory Auditors, ruling again, imposed a pecuniary sanction of PLN 1,900 on the complaint. The Audit Oversight Commission again annulled the contested resolution of the National Council of Statutory Auditors in its entirety due to the breach of the limit on the amount of the pecuniary sanction specified in Article 27(1)(3)(a) of the 2009 Act and imposed a sanction in the new amount of PLN 1,731. The appeal by the party contesting the Audit Oversight Commission's resolution for breach of the aforementioned rule was dismissed by the Voivodeship Administrative Court in Warsaw<sup>7</sup>.

Considering the cassation appeal against the said judgement, the Supreme Administrative Court annulled the contested judgement in its entirety and annulled the contested decision. When assessing the allegations raised by the Party in the cassation appeal, the Court found as unjustified the cassation allegation consisting in the failure to apply the rule (Article 35(4) of the 2009 Act) in the administrative proceedings, which stipulated that the punishability of a disciplinary offence ceases if 5 years have elapsed since it was committed.

Emphasising the distinctiveness of the proceedings, the Supreme Administrative Court stated that "(...) both types of proceedings are independent mechanisms for drawing legal consequences in relation to an entity that is granted a special status by law, most often the status of a person of public trust". The Supreme Administrative Court also noted that the proceedings (administrative and disciplinary) take place under different legal regimes, and for this reason they cannot be combined in the manner set out in the cassation allegation which indicates that an administrative breach is time-barred when a disciplinary offence is time-barred.

An exception limiting disciplinary liability and, at the same time, its transfer to the administrative law regime is the situation of a statutory auditor who runs a single person business. Pursuant to Article 140 u.b.r., disciplinary proceedings shall not be initiated, and initiated proceedings shall be discontinued, in respect of an act for which a statutory auditor entered on the list referred to in Article 46(1) u.b.r. (i.e. a business activity carried on by the statutory auditor on their own behalf and for their own account) may face the administrative sanction referred to in Article 183(1) u.b.r.

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<sup>7</sup> Judgement of the Voivodeship Administrative Court in Warsaw of 16 April 2019 (file no. VI SA/Wa 1878/18).

As pointed out by M. J. Zieliński “(...) this provision indeed establishes a negative procedural prerequisite in the disciplinary proceedings of statutory auditors that is additional to the grounds provided for in the Code of Criminal Procedure (see Article 17 of the Code of Criminal Procedure). (...) As it transpires from the explanatory memorandum of the draft law under comment, the purpose of the regulation in question is to avoid double punishment of statutory auditors who are simultaneously registered on the list of audit firms”<sup>8</sup>.

## **Disciplinary liability against the background of selected rulings of common courts**

### **1) Liability of a person who has been removed from the register of statutory auditors for a disciplinary offence committed when practising the profession.**

This issue was considered by the National Disciplinary Court in disciplinary proceedings for failure to comply with the mandatory obligation of continuing professional development against a person **removed from the register of statutory auditors**.

The National Disciplinary Court found that the defendant had failed to fulfil his mandatory obligation of professional development and ruled to impose the sanction of the notice. In his appeal against this ruling, the defendant alleged errors in the factual findings, i.e. the failure to take into account the statement on resignation from the membership in the profession and a breach of procedural rules. **In the reasoning of its judgement of 25 May 2022 (court file no. II AKa 40/21)**, the Court of Appeal in Gdańsk, while not sharing all the allegations, nevertheless pointed to the existence of an absolute ground for appeal specified in Article 439 § 1(9) of the Code of Criminal Procedure in conjunction with Article 17 § 1(11) of the Code of Criminal Procedure, in conjunction with Article 171(1) u.b.r. The Court of Appeal thus did not share the position of the National Disciplinary Court, indicating that “if a person (...) is therefore no longer a statutory auditor as a result of being removed from the register of statutory auditors, they cannot be subject of disciplinary liability”.

As the basis for its reasoning, the Court of Appeal took the catalogue of sanctions listed in Article 159(1) u.b.r. adapted to persons with the status of a statutory auditor. With regard to the first sanction in this catalogue, i.e. the sanction of the notice, the imposition of which requires the imposition of an obligation to cease irregular conduct and to refrain from such conduct in the future, the Court of Appeal explained that “it is impossible to consider that someone who is no longer a statutory auditor, and therefore no longer performs the duties associated with

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<sup>8</sup> M. J. Zieliński [in:] *Ustawa o biegłych rewidentach, firmach audytorskich oraz nadzorze publicznym. Commentary*, ed. K. Ślebzak, M. Ślebzak, Warszawa 2018, art. 140.

that profession, could cease specific [irregular - D.S.] conduct. At the same time, it cannot be assumed that a reasonable legislator would have wished to exclude the possibility of imposing the mildest sanction, i.e. the sanction of the notice provided for in Article 159(1)(1), on persons who have lost their status of a statutory auditor while allowing only the possibility of imposing a more severe sanction, i.e. a pecuniary sanction. It is also worth noting that the sanctions in Points 3 to 7 [prohibition sanctions: Article 159(1) u.b.r. – D.S.] would have no relevance to persons who have ceased to practise as statutory auditors as a result of being removed from the register”. As part of systemic interpretation, the Court of Appeal noted that regulations similar to those concerning the possibility for retired judges or bailiffs to be held liable in the event of resignation from duties were not included in u.b.r.

## **2) Disciplinary liability for a disciplinary offence of a greater degree than negligible corporate harmfulness.**

Criminal liability can be incurred for an act that is socially harmful to a degree greater than negligible, and under disciplinary liability for an act that is corporately harmful. In assessing the degree of harmfulness, the subjective and objective elements are taken into account. As noted by **the Supreme Court in its decision of 5 June 2024 (court file no. II KK 378/23)**, an act with a negligible degree of social harmfulness, as opposed to a minor case, does not constitute a crime. “It is only when the borderline of negligibility is exceeded that the social harmfulness of a criminal act can be assessed, in the context of certain circumstances characterising the object and subject of the act, constitutive of its being considered a minor case. The assessment indicating that a given act may be qualified as a minor case is therefore determined only by those circumstances which affect the assessment of the degree of social harmfulness of the act. This precludes an act whose social harmfulness is negligible from being considered a minor case whose degree of social harmfulness must be greater than negligible, and vice versa. An act whose degree of social harmfulness is greater than negligible precludes the possibility of concurrent recognition that its social harmfulness is negligible”, reads the decision of the Supreme Court.

On the other hand, in disciplinary proceedings against a statutory auditor, “a negligible degree of social harmfulness of the act excludes the possibility of initiating disciplinary proceedings, and if it is established in the course of the proceedings that the degree of social harmfulness of the act is negligible, the proceedings should be discontinued”<sup>9</sup>. It should be added that corporate harmfulness is defined in case law “as (...) social harmfulness within the meaning of the premises of criminal law, assessed in the light of the harm to the professional community concerned. Corporate harmfulness is the effect that results from the conduct of a given entity in a manner contrary to the accepted model duty of behaviour for the corporation

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<sup>9</sup> M. Wierzbowski, A. Krysiak, M. Olewiński, J. Żelazek, 2.6. *Spoleczna szkodliwość czynu* [in:] M. Wierzbowski, A. Krysiak, M. Olewiński, J. Żelazek, *Odpowiedzialność biegłego rewidenta*, Warszawa 2017.

to which that entity belongs”<sup>10</sup>. The degree of harmfulness of a disciplinary offence is determined by, inter alia, subjective factors concerning the perpetrator, as well as by factors of an objective nature, i.e. the extent of the harm, the manner and circumstances in which the act was committed, and the type and significance of the rules of professional conduct breached. According to disciplinary jurisprudence<sup>11</sup> in cases of involuntary lack of prudence, relevant are: the type of prudential rules breached violated and the degree to which they have been breached, i.e. the circumstances of an objective nature<sup>12</sup>.

**In the reasoning of the judgement of 8 February 2022 (court file no. II AKa 176/21), the Court of Appeal in Warsaw** pointed out that “no one can be found guilty of a disciplinary offence if the act that a person is alleged to have committed is characterised by negligible corporate harmfulness”. The subject of the disciplinary proceedings concerning a key statutory auditor initiated by the National Disciplinary Ombudsman was the breaches concerning the audit of consolidated financial statements identified during a review by the National Oversight Commission. The National Disciplinary Court discontinued the disciplinary proceedings pursuant to Article 171 u.b.r. and Article 17 § 1(3) of the Code of Criminal Procedure (negligible corporate harmfulness of the act), while finding the defendant guilty of the alleged act.

An appeal was lodged by the defendant’s defence counsel, alleging an infringement of procedural rules that could have affected the content of the ruling in terms of an internal contradiction in the judgement consisting in finding the defendant guilty of the alleged act and, at the same time, discontinuing the proceedings due to the negligible social harmfulness of the act. The Court of Appeal amended the contested ruling by eliminating the term “culpability” from the text of the judgement, because “no one can be found guilty of a disciplinary offence if the act allegedly committed by the person concerned is characterised by negligible corporate harmfulness”. The remaining part of the ruling of the National Disciplinary Court was upheld (discontinuation).

In the view of the Court of Appeal, one had to agree with the position of the court of first instance (the National Disciplinary Court), from which it followed that the failure to indicate in which items of the financial statements information relating to the content of the explanatory note was disclosed, could not make it impossible to find such content in the statements. The reasoning stated that “the obligation to include relevant references is of a purely technical nature and does not affect the assessment of the fairness of the audit carried out. It therefore has no negative

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<sup>10</sup> Decision of the SC of 8 December 2017, II DSI 31/18, LEX No. 2642152, judgement of the SC of 20 July 2011, SNO 31/11, LEX No. 1288859; judgement of the SC of 25 October 2016, SNO 42/16, LEX No. 2149216.

<sup>11</sup> Judgement of the SC of 15 February 2019, SDI 30/14, LEX No. 1554338.

<sup>12</sup> Indeed, social harmfulness extending beyond a give law corporation, and thus relating directly or indirectly to the society as a whole, can only be assessed when the defendant in the disciplinary proceedings is accused of committing a tort which is also a criminal act.

consequences from the perspective of the purpose of the financial statement analysis. It should also be noted that such behaviour was unintentional and that the defendant admitted his mistake, which will help to eliminate such shortcomings in the future. Taking into account the quantifiers of social harmfulness from Article 115 § 2 of the Criminal Code<sup>13</sup>, one should share the position regarding the insignificant corporate harmfulness of the defendant's conduct, and thus on the legitimacy of the decision on the discontinuation of the disciplinary proceedings against him”.

### **3) Attribution of culpability in disciplinary offence committed by a statutory auditor.**

Proceeding to a consideration of how a disciplinary offence may be committed, it should first be noted that criminal doctrine and jurisprudence have defined the conditions for the attribution of culpability at the time of the offence. These are:

- the perpetrator's capacity for culpability as determined by age (Article 10 § 1 and 2 of the Criminal Code) and sanity (Article 31 of the Criminal Code),
- the possibility of recognising the unlawfulness of the act (Article 30 of the Criminal Code) and the absence of an excusable error as to a circumstance excluding unlawfulness or culpability (Article 29 of the Criminal Code),
- the requirement of lawful conduct in the context of Article 26 § 2 of the Criminal Code,

and furthermore

- the intentionality or unintentionality of the perpetrator's act.<sup>14</sup>

Against this background, a change in the case law of the Court of Appeal in Wrocław deserves to be presented.

**In its rulings of 5 June 2024 (court file no. II AKa 404/23) and 26 September 2024 (court file no. II AKa 270/24)**, the Court of Appeal in Wrocław held that in order for a disciplinary tort to be attributable under u.b.r. the act must be intentional.

In the first of the aforementioned cases, the Regional Court in Wrocław, in its ruling of 19 September 2023 (court file no. III K 145/22) found the defendant guilty of a disciplinary offence under u.b.r. and imposed a pecuniary sanction. The key auditor's infringements included, inter alia, deficiencies in the audit documentation as regards audit planning and deficiencies in the collection of audit evidence and documentation of compliance and assurance procedures as regards significant items of the financial statements. In the appeal, the defendant's defence counsel alleged errors in the factual findings, breach of procedural rules affecting the ruling, and breach of substantive law. In its appeal, the Polish Agency for Audit Oversight alleged an error in the factual findings adopted as the basis of the contested ruling

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<sup>13</sup> The author's commentary - the Act of 6 June 1997 on the Criminal Code (Journal of 2025, item 383 as amended).

<sup>14</sup> W. Kozieliwicz, *Rozdział VI Podstawowe instytucje dyscyplinarnego prawa materialnego* [in:] *Odpowiedzialność dyscyplinarna sędziów, prokuratorów, adwokatów, radców prawnych i notariuszy*, Warszawa 2023.

which had an impact on its content as regards deviation from the obligation to publicise and the gross disproportionality of the disciplinary sanction. In its ruling of 5 June 2024 (court file no. II AKa 404/23), the Court of Appeal in Wrocław amended the contested ruling, acquitting the defendant and holding that a disciplinary offence by a statutory auditor may only be committed through wilful misconduct.

In the second of the aforementioned cases, the Regional Court in Wrocław, in a ruling of 24 May 2024 (court file no. III K 353/23), found the defendant guilty of a disciplinary offence under Article 31(1) of the 2009 Act and imposed a pecuniary sanction. The key auditor's breaches included, among others, failing to collect sufficient and appropriate audit evidence during the audit. An appeal against the ruling was lodged by the defendant's defence counsel, alleging a breach of substantive law and, alternatively, a breach of procedural rules, errors in the factual findings and a breach of substantive law. The Court of Appeal in Wrocław ruled on 26 September 2024 (court file no. II AKa 270/24) amended the contested ruling, acquitting the defendant and raising in its reasoning the same arguments as those indicated in the ruling of 5 June 2024 (court file no. II AKa 404/23).

**Meanwhile, in a ruling of 21 July 2025 (court file no. II AKa 462/24)** issued after considering the appeal of the Defendant's defence counsel against the conviction by the Regional Court in Wrocław. **The Court of Appeal in Wrocław** did not share the view expressed by the aforementioned Regional Court in its earlier rulings that a statutory auditor could commit a disciplinary tort only intentionally.

In this case, the Regional Court in Wrocław, in its ruling of 18 October 2024 (court file no. III K 350/22), found the defendant guilty of a disciplinary offence. An appeal against this ruling was lodged by the defendant's defence counsel, who alleged errors in the factual findings, a breach of procedural rules affecting the ruling and a breach of substantive law. The allegations included, inter alia, procedural shortcomings of the review by the Polish Agency for Audit Oversight, as well as the Regional Court's lack of competence in accounting when assessing the auditors' (inspectors') opinions and statements, and its partial acceptance of the auditors' statements contained in the prepared opinion. The Court of Appeal in Wrocław changed the pecuniary sanction to the sanction of the notice, but contrary to the existing case law, it found that a disciplinary offence could also be committed unintentionally.

The Court of Appeal explained that a disciplinary offence could be committed by a statutory auditor both intentionally and unintentionally. In view of a number of case law and doctrinal views on various public trust professions cited by the Regional Court and the prosecutor (the Polish Agency for Audit Oversight), the Court of Appeal saw no need to refer the legal question to the Supreme Court in connection with the application by the Polish Agency for Audit Oversight. The view that a disciplinary offence under u.b.r. can only be committed intentionally was

found by the Court of Appeal to be isolated and not supported by other rulings or the views of the doctrine.

According to the Court of Appeal, “undoubtedly, the content of the cited rulings and the presented doctrinal positions make it possible to assume that also the disciplinary offences referred to in u.b.r. can be committed not only intentionally, but also unintentionally. (...) Since the Act on statutory auditors does not directly specify this, it must be assumed that it provides for the disciplinary liability of statutory auditors for both intentional and unintentional misconduct. (...) Clearly, among the reprehensible behaviour that can happen to statutory auditors, there is also behaviour which is characterised by unintentionality and which should not be outside the regime of disciplinary responsibility (...)”.

The Court of Appeal further elaborated on the view, noting that there was no objective indication that the acts of statutory auditors subject to disciplinary liability could relate only to behaviour of an intentional nature: “then a whole range of reprehensible behaviour of an unintentional nature, which after all should also be subject to disciplinary responsibility, would remain outside the criminal sanction”.

In the context of the aforementioned judgement it should be noted that, just as in the case of disciplinary offences of judges (see judgement of the Supreme Court of 26 April 2017, SNO 6/17, LEX No. 2288135), medical doctors or other persons practising other professions of public trust, when it comes to the disciplinary liability of statutory auditors, u.b.r. does not distinguish between the form of fault by which a statutory auditor may commit a disciplinary offence. This means that it is possible to commit a disciplinary offence also through unintentional fault. It may also be recalled after W.Kozielewicz that the Supreme Court - the Disciplinary Court in its judgement of 4 September 2003, SNO 51/03, OSNSD 2003/2, item 54, stated that from the subjective side, any type of fault, including unintentional fault, is sufficient to attribute a disciplinary offence to a judge.<sup>15</sup> In its judgement of 28 May 2008, the Supreme Court (SNO 32/08, LEX No. 1288860) emphasised that “a disciplinary offence may, in fact, also be committed unintentionally, as a result of a breach of obligations arising from the official pragmatics, the oath taken or the principles of professional ethics of judges, which prescribe the conscientious performance of duties”.

The cited case law also confirms the view of the doctrine which assumes that a disciplinary offence by a statutory auditor can be committed intentionally as well as unintentionally: “the intentional or unintentional manner of conduct will indeed be relevant in assessing the degree of social harmfulness of the act. The fulfilment of the condition of culpability must be examined at the very end of the analysis of whether a disciplinary offence has been committed, i.e. after it has been

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<sup>15</sup> W. Kozielewicz, *Rozdział VI Podstawowe instytucje dyscyplinarnego prawa materialnego* [in:] *Odpowiedzialność dyscyplinarna sędziów, prokuratorów, adwokatów, radców prawnych i notariuszy*, Warszawa 2023.

established that the act in question fulfils the elements of such an offence (e.g. that it is contrary to national professional standards or the principle of independence) and after it has been established that the degree of social harmfulness of such an act is greater than negligible”<sup>16</sup>.

#### **4) The nature of breaches committed in a disciplinary offence misconduct by a statutory auditor.**

The statutory auditor’s liability is also affected by an assessment of the nature of the breaches. Criminal law distinguishes between substantive offences (those whose statutory elements include the occurrence of a specific effect) and formal offences (those whose elements do not include an effect and are committed when the perpetrator behaves as described in the Act). In the course of disciplinary proceedings, there may have been doubts as to whether the statutory auditor’s breach of the rules set out in the professional standards requires the demonstration of an effect and, if so, what form that effect takes in order to qualify the irregular action as a disciplinary offence. This issue was the subject of one of the recent judgements. In the reasoning for **a ruling decision of the Court of Appeal in Łódź of 13 October 2025 (court file no. II AKa 234/25)**, the Court clearly indicated that disciplinary offences of the statutory auditor are formal in nature.

In the case in question, the Regional Court in Płock, in its ruling of 12 March 2025 (court file no. II K 5/24), taking into account the opinion of the court expert appointed in the case, found the key statutory auditor guilty of a disciplinary offence and imposed a pecuniary sanction, and further ordered that the first name, surname and number from the register of statutory auditors be made public and stated that the audit reports did not meet the requirements of Article 83(3)(a) in conjunction with Article 84 u.b.r. The breaches included, inter alia, deficiencies in the audit documentation, and lack of sufficient and appropriate evidence of certain procedures. The judgement was appealed by the defendant’s defence counsel alleging violation of substantive law, procedural rules, error in the factual findings and gross disproportionality of the punishment and repressive measure. The Court of Appeal upheld the contested decision.

The Court of Appeal noted that the defence’s principal line of argument was that the breaches of the regulations governing the conduct of the statutory auditor, as identified by the court expert, were of a purely formal nature and did not have the effect of rendering the opinion on the audited report unfair. In the Court’s view, the defence counsel overlooked that, like criminal offences, disciplinary torts can be formal and from abstract exposure, and provided the following reasoning: “the definition of a disciplinary offence under u.b.r. (...) indicates that the offence in question is of a formal nature and from an abstract exposure. Its elements do not

<sup>16</sup> M. Wierzbowski, A. Krysiak, M. Olewiński, J. Żelazek, 2.5. *Odpowiedzialność na zasadzie winy* [in:] M. Wierzbowski, A. Krysiak, M. Olewiński, J. Żelazek, *Odpowiedzialność biegłego rewidenta*, Warszawa 2017.

include the effect and the bringing in of immediate danger. **The tort was committed at the minute the accused breached the rules of professional conduct”.**

The Court of Appeal also pointed out that social corporate harmfulness in the case of formal offence from abstract exposure can also result in a breach of the good in their course, “as long as the state of threat can turn into a breach, so there is the danger”. It can therefore be assumed that failure to comply with the mandatory rules when carrying out an audit creates, in itself, a threat to the good that is the security of economic transactions, through the loss of public trust in the quality of the audit work carried out by the statutory auditor and, consequently, may lead to a loss of confidence in the reliability of the verification of the financial data of economic entities.

The Court of Appeal also highlighted the special legal circumstances of the statutory auditor profession as a profession of public trust: “it is specifically regulated in terms of how the services are provided. The standards of professional conduct are mandatory for all members of the corporation. The defendant’s breach of the regulations requiring the statutory auditor to comply with certain acts is particularly deserving of punishment, given the area the auditor was auditing”.

## **Conclusions**

The profession of the statutory auditor is the only profession of public trust that is so specifically regulated in terms of how the services must be provided. Audit firms are the only entities operating in the area of public trust professions on which law imposed requirements regarding their operation and organisation. The consequence of these regulations is the administrative (criminal-administrative) liability of audit firms and the disciplinary (quasi-criminal) liability of statutory auditors. The application of the principles of liability in both legal regimes requires taking into account the acquis of the science of administrative law (objective liability) and criminal law, disciplinary liability on the basis of both intentional and unintentional guilt, a degree of corporate harm higher than negligible, for disciplinary offences that are in the nature of formal violations, irrespective of whether they have actually produced effects.

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- Act of 13 October 1994 on statutory auditors and their self-government (Journal of Laws of 1994, No. 121, item 592).
- Act of 6 June 1997 the Criminal Code (Journal of Laws of 2025, item 383, as amended).
- Act of 6 June 1997 on Code of Criminal Procedure (Journal of 2025, item 46 as amended).
- Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC laid down the rules on operation and responsibility of audit firms (OJ L 157, 9.6.2006, pp. 87-107, as amended).
- Act of 7 May 2009 on statutory auditors and their self-government, entities authorised to audit financial statements, and on public oversight (Journal of Laws of 2009, No. 77, item 649).
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