ANALYSIS OF PEOs DISCIPLINARY PRACTICES

DAMIR SITE

Judicial officer – Serbia

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Glossary

In this Mission Report the following terms are used with the following definitions:

APEOU	The Association of Private Enforcement Officers of Ukraine
CEPEJ(2009)11E	European Commission for the Efficiency of Justice (CEPEJ) – Guidelines for a better implementation of the existing Council of Europe's Recommendation on enforcement (2009)
CoE	The Council of Europe
ECHR	European Convention on Human Rights (1950)
ECoHR	European Court of Human Rights
Enforcement Act	Statute of Ukraine on Enforcement Proceedings dated September 02, 2016, № 1404-VIII
Enforcement Entities Act	Statute of Ukraine on Bodies and Persons Authorised to Enforce Court Decisions and Decisions of Other Bodies dated June 02, 2016, № 1403-VIII
ICCPR	UN International Covenant on Civil and Political Rights (1966)
MOJ	The Ministry of Justice of Ukraine
PEO	private enforcement officer
PEO Disciplinary panel regulations	Regulations on the Disciplinary Commission of Private Enforcement Officers (Registered with the Ministry of Justice of Ukraine November 28, 2018, No. 1442/31310)
Project	Право-Justice
Rec(2003)17	Recommendation of the Committee of Ministers to member states on enforcement – the Council of Europe
Resolution 1994/41	Commission on Human Rights, Resolution 1994/41 on independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, UN Doc. E/CN.4/1994/132 (4 March 1994)
SES	the State Enforcement Service
UN Basic Principles	UN Basic Principles on the Independence of the Judiciary (1985)
UNCAC	UN Convention Against Corruption (2003)

MISSION ACTIVITIES

During the February 2020 Mission to Kyiv, Ukraine, which was dedicated to the issues concerning Ukrainian PEO disciplinary liability, I had a number of meetings with relevant stakeholders, including Mr. Viacheslav Panasiuk, Pravo-Justice national expert, APEOU Disciplinary commissioner Ms. Olena Ovcharenko, the member of MOJ Disciplinary commission Mr. Alexei Solomko, and Andrii Avtorgov, a Kyiv based PEO.

It is worth noting that since the last change of administration, there were no meetings with the relevant representatives of the Ukrainian Ministry of Justice (MOJ) with respect to the PEO Disciplinary actions. The only meeting with MOJ representatives was the one with Mr. Egor Razorgreev, head of Legal Policy Directorate of MOJ, and MOJ experts Mrs. Natalia Hopaniuk and Mr. Denys Bondarchuk, held on September 24, 2019. During this meeting Mr. Egor Razorgreev had to excuse himself after attending the meeting for not more than 15-20 minutes. The deputy minister of justice and head of the Disciplinary panel, Mr. Andrii Haichenko has shown no interest to communicate with the Project on the issues raised by this report.

BACKGROUND

A number of conclusions on PEO disciplinary liability can be drawn from the relevant information and the so far practice of the current Ukrainian Ministry of Justice (MOJ). It seems that the recent change of administration in that country, within certain political circles, has resulted in somewhat of a shift in the position towards self-employed judicial officers – private enforcement officers of Ukraine (PEOs). It appears that this currently pushed, but not yet wholly adopted PEO policy is based on the idea of safeguarding the monopoly position of the State Enforcement Service (SES), and reducing the significance of PEOs to a rather ornamental position within the Ukrainian judicial system.

Having in mind that at the moment there are no clear statements coming from the relevant regulatory bodies which neither support nor oppose such a conclusion, the abovementioned opinion can only be based on an indirectly originated deduction of the current MOJ activities. The ratio for such MOJ line of actions can be explained by the undesired independent nature of private enforcement officers' service which is not inclined to artificially and unlawfully resort to the stay of enforcement remedy, widely used by the State Enforcement Service whenever "higher cause" would dictate it. This conclusion goes hand in hand with the stubborn MOJ persistence in maintaining the clearly obsolete enforcement moratoria measures, regardless of their harmful and destructive impact to the economy and the well-being of the general population.

The initial period following the 2019 change of administration in Ukraine can be defined as an improved transitional period in the work of the PEO Disciplinary panel, or by some described as its "honeymoon stage". This period lasted from September 2019 to the beginning of 2020. As already stated in my previous Mission reports, the "inaugural" move signalling the advancement of the PEO disciplinary liability climate was the nomination of Mr. Andrii Avtorgov as an MOJ representative within the Disciplinary panel. The implication of the new administration was more than unequivocal: a member of the PEO profession disbarred by the former "wicked" administration to be metamorphosed into a MOJ nominated PEO Disciplinary panel constituent representative surely had to strike a new tone into the PEO[APEOU]-MOJ relations. Today, it seems to be just a well played PR move.

Hinging on this momentum, the APEOU November 2019 GA meeting nominated a fresh group of its constituent representatives into the PEO Disciplinary panel, among which one even being a member of the advocate profession (Mr. Alexei Solomko). With the "balance of votes" being in slim favour to PEOs (5 to 4), the working atmosphere of the PEO Disciplinary panel evolved from superficial consultation to actual deliberation.

In this period, a number of complaints against PEOs were dismissed, but it doesn't mean that disciplinary violations were not properly handled. When faced with material breach of discipline, the Disciplinary panel did impose adequate sanctions (a number of reprimands, warning, even few one-month long suspensions were inflicted). The Disciplinary panel members (those coming from the PEO background) agree that despite their differences in

oppinions concerning cases brought before them, were doing their best in order to umpire fairly and independently on the merits of the complaint.

Unexpectedly, such working atmosphere led to a rather abrupt and even blunt dismissal of Mr. Avtorgov from the Disciplinary panel by MOJ. Unfortunately, the Avtorgov replacement mise-en-scène has demasked the incapacity of the current MOJ second echelon, which (in this particular event) even failed to secure a quasi-legal *chinovnik* shield, and with no apparent reason attempted to demonstrate a pale one-act of a "Marshal Zhukov charm" approach to public service.

The malodour of the Avtorgov replacement "procedure" rests on its clear violation of legislation, namely Article 39(5) of the 2016 *Enforcement Entities Act* and clause 22 of the *PEO Disciplinary panel regulations*.

Cited statutory provisions set forth that the tenure of a PEO Disciplinary panel member is 2 (two) years. The MOJ delegated legislation on disciplinary panel prescribes that a member of the Disciplinary panel may be excluded from membership in the event of (i) failure to attend the Disciplinary panel session without valid reasons, and (ii) dismissal, suspension or termination of the PEO activities. The decision to exclude a member from the Disciplinary panel is to be taken by a simple majority vote of members present at the session of the Disciplinary panel and drawn up by minutes signed by all attending members. Changes to the membership of the Disciplinary panel are approved by the order of the Ministry of Justice.

The MOJ order of replacing Mr. Andrii Avtorgov from his position in the PEO Disciplinary panel was not issued as a result of a vote of the Disciplinary panel members on their duly set up session and did not match any of the delegated legislation grounds for such a move. More bluntly, the decision was not a result of any kind of voting at all. It was a typical soviet-type arbitrary "ukaz" resting on the *who can stop me?* argument. When confronted with such abuse of power, MOJ resorted to a Facebook post social media arena, providing another textbook example that populism is always a good hiding place in the absence of valid legal grounds. Déjà vu.

The "change in tone" within MOJ in respect of Ukrainian PEOs can also be detected in the analysis of the "textual stratification" (*textstufenforschung*), with respect of the currently

proposed amendments of the 2016 *Enforcement Entities Act* regarding the PEO disciplinary liability. Though a statutory provision setting forth a norm that a Disciplinary panel decision finding violation on the part of the PEO, and imposing disciplinary sanctions, must be coherently and precisely substantiated (explained) is a step in the right direction, it must be noted that this step would be monumental if this were the era of Bismarck's Germany. Establishing a principle that state administration cannot deprive individuals of their given rights without an explicit and clearly expressed legal justification is hardly a big win in the 21st century Europe. Though the current administration has already communicated its understanding that Disciplinary panel's decisions have to be clearly motivated, it has lamentably combined this laudable readiness with a quite uninventive "chronical staff deficiency and operational shortage" wild card excuse.

The proposed Bill, apart from lessening the scope of prerogatives already placed on the PEO profession, also attempts to reduce the extension of the judicial review competency related to the Disciplinary panel's decisions, narrowing it to a small number of rather technical reasons. The proposed changes in this respect are in a direct collision with Article 6 of the European Convention on Human Rights fair-trial standard, as defined by the Strasbourg Court.

The incentive which is not directly associated with the disciplinary liability of PEOs, but nevertheless speaks loudly about the current shift in attitude towards the PEO profession deals with the entry to the profession issue, i.e. the nomination of new PEOs. Though the new administration did at the very beginning boldly declare that by the end of 2019 there should be around 800 PEOs, nothing has been done in order to achieve that goal. The delegated legislation of the examination process and the absence of clear support to the new profession by MOJ and other relevant state institutions shows that there is no real incentive to establish a genuinely independent judicial profession (with stress being on: independent) in the area of judgment enforcement. Should this become the main course, the enforcement of judgments in Ukraine will remain the predominant profession of an overpopulated State Enforcement Service (currently about 4,500 agents), with private enforcement officers being synthetically kept under strict control as an undeveloped experiment of some 200 practicing agents.

However, this huge discrepancy in the number of enforcement agents between the State Enforcement Service (numbering around 4,500 officers) and private enforcement officers (currently around 220), creating the proportion of 20 state enforcement officers to 1 PEO, is not at all mirrored in the latest official MOJ comprehensive enforcement effectiveness statistics.

The fact that in a given period 220 PEOs have collected through the means of public auctions a total of 754 million UAH, would suggest that the overall success of the State Enforcement Service should be not less than 20 times bigger than that, or approximately 15 billion UAH. Despite having much stronger logistics, and the de facto readiness of the state apparatus to assist in their judgment enforcement, the final "product" of Ukrainian SES auction professional talent is a shameful 725 million UAH, or nearly 30 million UAH less than the financial restoration effect of newly installed PEOs.

Honesly, it would be extremely unintelligent to hope for more results from the organization directly responsible for the *Burmych* and *Ivanov* decisions of the European Court of Human Rights. Also, one wouldn't really expect that the same, or even remotely similar disciplinary liability harshness is awaiting state enforcement service officers directly responsible for such a fiasco in figures, compared to that constantly hinging over Ukrainian PEOs.

As defined in my previous reports, issues still remaining within the scope of PEO disciplinary liability seem to be the following:

1. *Ultra vires* – Disciplinary panel deals with a number of complaints filed by the debtors outside of its scope of competence: namely, no other authority other than courts have the right to examine judicial (enforcement). Article 124(1) of the Constitution states that the enforcement of the judgments shall be exercised only by the courts ("Justice in Ukraine shall be administered exclusively by the courts."). In the event that there was a violation examined by the court, the Disciplinary panel has to wait for the judicial review to be final.
2. *Admissibility* – there are no clear criteria on how does MoJ define a complaint as an admissible or inadmissible. No clear filtering of cases that are filed merely as delaying tactics is introduced.

3. *Rationale* – At the moment the rationale of the decision are the minutes of the proceudres which are not recorded precisely enough. They have a number of bullet points describing procedure, but there are no real grounds for decision. The Deputy minister of justice did however agree that the decision should defines clear grounds, but he also expressed that at the moment MoJ doesn't have personal resources (staff) for that. The proposed Bill on 2016 *Enforcement Entities Act* does include a provision requesting indicating clear rationale when disciplinary liability is imposed by the Panel.

ANALYSIS

The concept of responsibility is inherent in the rule of law. Namely, the rule of law, *inter alia*, involves mechanisms and procedures prescribed by law regulating the establishment of responsibility, enhancing the transparency, fairness, integrity and predictability of conduct of the state and the institutions thereof. Thus, the issue of accountability of judicial office holders is often mentioned in the context of democratic and / or judicial reforms. The establishment of an efficient judiciary guarantees the independence of its officers, as well as mechanisms for their accountability. However, it does happen that invoking responsibility of judiciary is simply an excuse for an attack on its independence. The central issue pertaining to the creation of an efficient judicial system is how to establish accountability mechanisms for judicial office holders while at the same time respecting their independence.

Judicial independence guarantees exist in order to protect individuals, allowing a fair and impartial judicial procedure (namely: enforcement), and protecting the individual against the abuse of power. Accordingly, judicial office holders shall not act arbitrarily, but have a duty to decide fairly and impartially according to the law. This is secured by the fact that judicial officers are held responsible for all of their actions with all of their possessions (e.g. not like judges whose mistakes are compensated to the engraved individuals by the State budget).

This is one of the means in order to ensure full public confidence in the judiciary as a whole, by maintaining independence and impartiality in exercising their duties.

Ukrainian judicial officers (PEOs) have taken even a step further in this respect by being the first independent judicial profession that adopted its Code of Ethics, a set of rules aiming at conscientious and dignified conduct in performing their duties, thus establishment themselves their own disciplinary accountability in addition to the ones prescribed by statute (namely: *Enforcement Entities Act* 2016).

The Council of Europe (CoE) has been dealing with the issues related to accountability and independence of the enforcement agents in a more specific way, especially after establishing its CEPEJ branch – European Commission for the Efficiency of Justice, more than 15 years ago.

The initial document specific for the area of enforcement of judgments is by the CoE was issued in 2003 (Recommendation of the Committee of Ministers to member states on enforcement – Rec(2003)17). In order to define the enforcement procedure, Rec(2003)17 introduces the concepts of independence and accountability in the following manner:

> *"Enforcement should be carried out in compliance with the relevant law and judicial decisions. Any legislation should be sufficiently detailed to provide legal certainty and transparency to the process, as well as to provide for this process to be as foreseeable and efficient as possible."* (Article III 1 (b))

> *"Enforcement agents should be honourable and competent in the performance of their duties and should act, at all times, according to recognised high professional and ethical standards. They should be unbiased in their dealings with the parties and be subject to professional scrutiny and monitoring which may include judicial control."* (Article IV 4)

Finally, provision that deals specifically with the issue of disciplinary of judicial officers in specific states:

> *"Enforcement agents alleged to have abused their position should be subject to disciplinary, civil and/or criminal proceedings, providing appropriate sanctions where abuse has taken place."* (Article IV 6)

In order to ensure best practice in the efficiency of justice, CEPEJ has created a number of documents dealing with enforcement. One of the most important document is the CEPEJ Guidelines on Enforcement from 2009. According to CEPEJ Guidelines "The enforcement process should be sufficiently flexible so as to allow the enforcement agent a reasonable measure of latitude to make arrangements with the defendant, where there is a consensus between the claimant and the defendant. Such arrangements should be subject to thorough control to ensure the enforcement agent's impartiality and the protection of the claimant's and third parties' interests. The enforcement agent's role should be clearly defined by national law (for example their degree of autonomy). They can (for example) have the role of a "post judicial mediator" during the enforcement stage" (Point 8). "Enforcement agents' status should be clearly defined so as to offer potential parties to enforcement procedures a professional who is impartial, qualified, accountable, available, motivated and efficient" (Point 31).

Recommendations regarding disciplinary liability of judicial officers (enforcement agents), state that

> *"Enforcement agents must bear a responsibility for maintaining confidentiality when secret, confidential or sensitive information comes to their attention in the course of enforcement proceedings. In case of a breach of this duty, measures of disciplinary liability should be applicable, along with civil and criminal sanctions"* (Point 45),

as well as that

> *"Breaches of laws, regulations or rules of ethics committed by enforcement agents, even outside the scope of their professional activities, should expose them to disciplinary sanctions, without prejudice to eventual civil and criminal sanctions. Disciplinary procedures should be carried out by an* ***independent authority****. Member states should consider introducing a system for the prior*

> ***filtering of cases*** *which are filed merely as delaying tactics. An* ***explicit list of sanctions*** *should be drawn up,* ***setting out a scale of disciplinary measures according to the seriousness of the offence****.* ***Disbarment*** *or "striking off" should concern* ***only the most serious offences*** *(the principle of* ***proportionality*** *between the breach and the sanction should be observed)"* (Points 80-82).

The case law of the European Court of Human Rights in Strasbourg, has been dealing with the disciplinary liability of civil servants in a number of applications, thus establishing a number of violations of the Convention with respect to disciplinary proceedings.

The Court has defined that Article 6 is applicable to disciplinary proceedings before professional bodies:

i) where the right to practice the profession is at stake (*Le Compte, Van Leuven and De Meyere v. Belgium*; *Philis v. Greece* (no. 2));
ii) a negligence claim against the State (*X v. France*);
iii) an action for cancellation of an administrative decision harming the applicant's rights (*De Geouffre de la Pradelle v. France*);
iv) administrative proceedings concerning a ban on fishing in the applicants' waters (*Alatulkkila and Others v. Finland*);
v) proceedings for awarding a tender in which a civil right – such as the right not to be discriminated against on grounds of religious belief or political opinion when bidding for public-works contracts – is at stake (*Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*; contrast *I.T.C. Ltd v. Malta* (dec.)).

According to *Vilho Eskelinen and Others v. Finland* [GC], disputes relating to public servants do not fall within the scope of Article 6 when two criteria are met: the State in its national law must have **expressly excluded** access to a court for the post or category of staff in question, and the exclusion must be **justified** on objective grounds in the State's interest (§ 62). That was the case of a soldier discharged from the army for breaches of discipline who was

unable to challenge his discharge before the courts and whose “special bond of trust and loyalty” with the State had been called into question (*Suküt v. Turkey* (dec.)).

In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in Pellegrin, a “special bond of trust and loyalty” between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. There can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question (*Vilho Eskelinen and Others v. Finland*).

It is important to note that the fact that it performs many functions (administrative, regulatory, adjudicative, advisory and disciplinary) cannot in itself preclude an institution from being a “tribunal” (*H. v Belgium*). Likewise, the fact that the duty of adjudicating is conferred on professional disciplinary bodies does not in itself infringe the Convention. Nonetheless, in such circumstances the Convention calls for at least one of the following two systems: either the professional disciplinary bodies themselves comply with the requirements of Article 6, or they do not so comply but are subject to subsequent review by “a judicial body that has full jurisdiction” and does provide the guarantees of Article 6 § 1 (*Albert and Le Compte v. Belgium*; *Gautrin and Others v. France*). Judicial body that have not been considered to have “full jurisdiction” is a court which heard appeals on points of law from decisions of the disciplinary sections of professional associations, **without having the power to assess whether the penalty was proportionate to the misconduct** (*Diennet v. France*; *Mérigaud v. France*).

With respect to the **national legal framework**, Article 124(1) of the Ukrainian Constitution stipulates that justice in Ukraine shall be administered exclusively by the courts.

Disciplinary liability of judicial officers (PEOs) is defined by Articles 38-41 of the *Enforcement Entities Act 2016*. Article 38(2) prescribes that a disciplinary offence of the private

enforcement officer shall be the following: the fact of being involved to the activity incompatible with that of a private enforcement officer; violation of a private enforcement officer's ethics; disclosure of professional secrecy or commitment of actions that resulted in its disclosure; failure to perform or to perform properly his/her duties; and failure to follow the statute or the provisions of the Association of Private Enforcement Officers of Ukraine. A. disciplinary breach is established by a Disciplinary panel established by the MoJ. The members of the Disciplinary panel are nominated by the MoJ (3 members), the Association of PEOs (3 members), and one member coming from the judiciary. Disciplinary sanctions are warning; reprimand; suspension of a private enforcement officer's activity for up to six months; and termination of a private enforcement officer's activity.

Delegated legislation on the issue of disciplinary actions against judicial officers (PEOs) doesn't add much to the statutory provision.

RECOMMENDATIONS

The principal recommendation, based on good faith and common sense, would be to simply duly implement the laws of the country.

Unfortunately, the latest developments indicate that we still haven't gone far from the *Burmych* and *Ivanov* ambience. The clearly unflattering so far practice of the PEO disciplinary liability combined with the latest incident of deposition (or more accurately: deportation) of Mr. Avtorgov from the PEO Disciplinary panel do not leave much room for *prima facie* optimism of possible substantial change in the approach to the disciplinary liability of self-employed judicial professionals in Ukraine. Disciplinary action is still considered to be a toolbox aimed at punishing PEOs and not a mechanism for their professional refinement and improvement.

Nevertheless, there is always room for improvement and betterment.

The advancement of the Ukrainian PEO disciplinary actions rests on authentic implementation of relevant domestic legislation supported by the consistent practice as defined by the Council of Europe. Minimal European standards with respect of the disciplinary liability of both state and self-employed enforcement agents were defined almost two decades ago (in 2003) by the *Recommendation of the Committee of Ministers to member states on enforcement* – Rec(2003)17, a legal instrument further developed by the 2009 CEPEJ Guidelines on enforcement.

At this moment I would like to emphasise just a few points that seem to need urgent care in the Republic of Ukraine when it comes to the disciplinary liability of PEOs.

First of all, CEPEJ Guidelines define that "[d]isciplinary procedures should be carried out by an **independent authority**." Each Ukrainian MOJ administration that I had the privilege to cooperate with seamed to be having quire a serious struggle with this simple requirement. The Disciplinary panel, statutory construed as a forum equally representing the regulator (MOJ) and the profession (PEOs), with the addition of one representative of the judiciary, in reality has most of the time acted as an unison vocal channel of MOJ. Various creative MOJ ideas were displayed in order to satisfy this inelegant aspiration, among which the latest was the petty Avtorgov replacement episode.

Though future MOJ gymnastics attempts cannot be easily wiped out (and let's face it, they are probably a trade mark of every bureaucracy), advanced independency safeguards of the PEO Disciplinary panel have to be implemented. These safeguards inevitably include the independence and some sort of immunity of the PEO Disciplinary panel members (e.g. exception from MOJ inspections while holding the office of a Panel member and six months after that, nominating Panel members outside of the PEO profession, etc.), and the increase of transparency of the Disciplinary panel's actions (e.g. online streaming of the Disciplinary panel proceedings, online publication of the Panel's decisions including all of the descending opinions, etc.).

Secondly, CEPEJ Guidelines propose that "[a]n explicit list of sanctions should be drawn up, setting out a **scale of disciplinary measures** according to the seriousness of the offence." While an explicit list of sanctions already exists in the relevant primary legislation (Article

41(1) of 2016 *Enforcement Entities Act*), compatible MOJ delegated legislation failed to set up a scale of disciplinary measures according to the seriousness of the offence. Such protocol should be created in cooperation between the APEOU and MOJ, after involving consultations from relevant stakeholders, including but not limited to the representatives of the judiciary, the academia and the relevant international community. The statutory set of disciplinary sanctions could be expanded with a monetary fine (specifying the minimum and the maximum amount).

An extremely important issue is the prerequisite of **proportionality**, especially with respect to implementation of disbarment. CEPEJ Guidelines suggest that "[d]isbarment or 'striking off' should concern only the most serious offences (the principle of proportionality between the breach and the sanction should be observed)". As being the Disciplinary panel's favourite sanction, the implementation of disbarment should be carefully and precisely conditioned by a set of clear and unambiguous terms. In the event of its unlawful sentencing (if imposed without satisfying all of the such "disbarment checklist criteria") the PEO in question should be in a possition to file a civil lawsuit for damages, on the basis of direct liability, against Disciplinary panel members voting in favour of such disbarment. Ultimately, based on the abovementioned ECoHR case law of Article 6 of ECHR, an MOJ order of disbarment based on a disciplinary action against a PEO cannot be implemented before becoming effective (final) or the appropriate court appeal procedure has been completed.

Finally, CEPEJ Guidelines define that "[m]ember states should consider introducing a system for the prior filtering of cases which are filed merely as delaying tactics." In order to avoid the overload of PEO disciplinary related activities, prior **filtering mechanism** of the cases filed merely as delaying tactics, especially debtors, could be performed outside MOJ (probably by APEOU, or another trusted third party), so that the disciplinary cases actually being brought to MOJ would have some merits, i.e. carry substantial procedural grounds.

In the **short upcoming period** following steps are recommended in order to complete the set objectives:

- Preparing a **general overview** of the so far practice of the PEO Disciplinary panel, including information on the names of the Panel members, their changes, the number of sittings, the number of dismissed cases, the number of decisions with sanctions

imposed, the statistics of the various sanctions, the presented grounds for imposed sanctions, etc. The general overview and its graphical presentation should be available online and otherwise distributed. The general overview should be prepared by the Disciplinary ombudsman or a PEO member of the Disciplinary panel.

- Organizing a **round table** on the disciplinary liability of self-employed judicial professions in Ukraine (notaries, advocates, PEOs), with the participation of relevant stakeholders (MOJ, the judiciary, the academia, the relevant international community), aiming to present the current legal framework and the practice of the relevant disciplinary bodies, with clear suggestions for improvements. The round table should allow considerable time for Q&A session.
- Preparing a **publication**, including the above prepared general overview of the so far PEO disciplinary actions statistics, with contributions from relevant stakeholders (participants of the round table) on the status and possible ways of development of the disciplinary liability of the self-employed judicial professions in Ukraine, and comparing it with the best European standards and practices.
- Setting up a **workshop** for the PEOs (with a practical approach) exploiting the best practice of conduct if being subjected to the disciplinary proceedings, the pros and cons of cooperation with the Disciplinary ombudsman, etc. The workshop should include presentation from the Disciplinary ombudsman, the appellate judiciary on the PEO disciplinary decision, and PEO constituent member(s) of the Disciplinary panel.
- Preparing an **internal APEOU non-paper** on the best practice of its constituent members of the PEO Disciplinary panel, including but not liited to the standards of disciplinary actions that they have to comply with, the principles of the PEO professional disciplinary liability and the scope of their internal accountability should they fail to comply their activities with the set non-paper.

In the **medium term** following steps are recommended in order to complete the set objectives:

- Inspection and disciplinary action methodology has to be defined by the Project;
- Inspection regulations and procedures by MoJ have to be reassessed;
- Preparation of draft amendments of PEO inspection regulations;

- Creating clear statutory borderlines for distinguishing disciplinary action competences in relation to judicial (civil and criminal) jurisdictions;
- Creating a clear legal framework (primary and secondary legislation changes) that would limit the discretionary powers of the Disciplinary panel, consolidating its decision making to a sole number of pre-defined options;
- Communication with PEOs on the necessity of compliance with set disciplinary rules and creating an overall climate of professionalism and accountability with PEOs, as a means of their niche market strategy – as opposed to the inherent bureaucratic nature of the state enforcement service;
- Creating clear qualification, compatible experience and other relevant eligibility criteria for nominating Disciplinary panel members;
- Assisting the office of the Disciplinary ombudsman in creating and publishing an APEOU database on conducted disciplinary actions and their outcome ('disciplinary case-law' review);
- Advocating compliance with the set Council of Europe standards on disciplinary proceedings;
- Organized exchange of practice on European PEO disciplinary standards for MoJ, APEOU and the judiciary, through various field trips and scientific/professional visits, especially involving the APEOU disciplinary ombudsman;
- Open communication with the Ukrainian judiciary on issues related to disciplinary liability of PEOs;
- Academic scrutiny of PEO disciplinary actions by legal scholars and established national and international authorities (law faculties, comparative law institutes, CEPEJ, European Court of Human Rights, Court of Justice of the EU, etc.);
- Immediate changes to the legal framework of enforcement costs, introducing clear scale of enforcement costs that have to be paid by the enforcement creditor (claimant), which in the event that the enforcement has to be declared ineffective should cover the fees and the costs of the self-employed private enforcement officer in any single file that (s)he worked on.