Disciplinary Proceedings in Uniformed Services Subordinated to the Minister of the Interior and Administration with Particular Regard to the Act on the State Fire Service and the Act on the Border Guard

Abstract

The subject of the article is focused on issues related to conducting disciplinary proceedings in Polish uniformed forces. The author draws attention to the fact that a considerable diversity exists in the Polish legal order as regards the disciplinary procedure applicable in individual uniformed services. The main arguments focus on the need of developing a normative act of a comprehensive nature that would uniformly regulate the manner in which disciplinary proceedings are adopted in uniformed services subordinated to the Minister of the Interior and Administration. The final part of the article is the starting point for a broader discussion on the effectiveness of the proposed amendment to the current legal system in the abovementioned area.

Keywords: disciplinary proceedings, Border Guard, State Fire Service, disciplinary spokesperson, disciplinary penalties

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Postępowania dyscyplinarne w służbach mundurowych podległych Ministrowi Spraw Wewnętrznych i Administracji w szczególności na tle ustawy o Państwowej Straży Pożarnej oraz ustawy o Straży Granicznej

Abstrakt

Problematyka artykułu koncentruje się wokół zagadnienia dotyczącego prowadzenia postępowań dyscyplinarnych w polskich służbach mundurowych. Autor zwraca uwagę na istnienie, w ramach polskiego porządku prawnego, dużego zróżnicowania w obszarze dotyczącym procedury discypininarnej, jaka ma miejsce w poszczególnych służbach mundurowych. Zasadnicze wywody sprowadzają się do tego, że istnieje konieczność opracowania aktu normatywnego w randze ustawy, mającego charakter kompleksowy, który w sposób jednolity regulowałby sposób prowadzenia postępowań dyscyplinarnych w służbach mundurowych podległych Ministrowi Spraw Wewnętrznych i Administracji. Końcowa część artykułu stanowi punkt wyjścia do szerszej dyskusji w zakresie skuteczności zaproponowanej nowelizacji aktualnie obowiązującego systemu prawnego w ww. obszarze.

Słowa kluczowe: postępowanie dyscyplinarne, Straż Graniczna, Państwowa Straż Pożarna, rzecznik dyscyplinarny, kary dyscyplinarne

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окремих державних службах. Основні аргументи зводяться до того, що існує необхідність у розробці нормативного акту – закону, всебічного характеру, який би однаково регулював порядок ведення дисциплінарного провадження в державних службах, підпорядкованих міністру внутрішніх справ та адміністрації. Заключна частина статті є відправною точкою для ширшого обговорення ефективності пропонованої поправки до чинної правової системи у вищезазначеній галузі.

Ключові слова: дисциплінарне провадження, Прикордонна служба, Державна пожежна служба, дисциплінарний речник, дисциплінарне стягнення

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1. Introduction

In a review of issues related with execution of disciplinary proceedings in uniformed forces subordinated to the Minister of Interior and Administration (hereinafter: the Interior Minister), it is worthwhile to commence with finding when, towards whom and for what is it possible to instigate such proceedings and what kind of consequences could be caused as an effect. One of the key definitions to which a reference should be made will be the so-called disciplinary tort, in other words also called a misdemeanour or a disciplinary offence and the determination of the possible perpetrator.

Pursuant to the contents of particular competence acts binding in the field of functioning of uniformed forces subordinated to the Interior Minister, i.e. the act on the Police [1], the act on the Border Guards (hereinafter the act on BG) [2], the act on the State Protection Service (hereinafter the act on SPS) [3] the act on the State Fire Service (hereinafter the act on SFS) [4], a disciplinary offence will basically constitute a misdemeanour which is concurrently a crime or an offence – regardless of penal liability, or culpable inappropriate execution of assigned tasks, failure to follow the code of ethical conduct, honour, dignity and good name of the service and any actions contrary to the taken oath. Disciplinary tort may be committed by an officer of the Police, Border Guards (hereinafter BG, State Protection Service (hereinafter SPS) and the State Fire Service (hereinafter SFS). For civilian employees working in those institutions different regulations are applicable to regulate their disciplinary liability. An implication of effectively conducted disciplinary proceedings may be the disciplinary penalty.
2. Formal and legal aspects of penalties of a disciplinary nature

Basically we may distinguish the following disciplinary penalties common for all forces subordinated to the Interior Minister:

1) reprimand;
2) assignment to a task of lower rank;
3) demoting;
4) expulsion from the service.

Apart from the above mentioned common disciplinary penalties, some uniformed forces subordinated to the Interior Minister have their own individualised disciplinary penalties, which are not applied in the remaining service types. Those penalties comprise: sharp rebuke (Border Guards), lowering fixed duty allowances (the State Protection Service) and prohibition of leaving the designated place of stay (the Police).

The issue of a statutory catalogue of disciplinary penalties is particularly important because in disciplinary proceedings there are additional tools of a disciplinary nature available (penalties), and even though they had not been classified by the legislator stricte as disciplinary penalties, in practice they give rise to similar legal consequences (they have a significant impact on earlier promotion in rank, distinction or award).

Particular attention is drawn to the quasi-penalty, and namely a discipline talk, which is a solution adopted in Border Guards. The possibility of its applying is assumed by the implementing act to the act on BG, i.e. regulation of the Minister of the Interior of 28 June 2002 on the execution of disciplinary proceedings in relation to officers of the Border Guards (hereinafter regulation) [5]. Pursuant to § 12 par. 5 of the above mentioned regulation, the disciplinary talk consists in reproaching the officer due to his inappropriate conduct and warning him about the possibility of adopting other disciplinary measures as well, and also of instigating the relevant proceedings and imposing a disciplinary penalty in the event of re-perpetration of such a deed, for which the given officer bears disciplinary liability. Should the officer fail to agree with the alleged inappropriate conduct during the disciplinary talk, he may submit to the superior responsible for disciplinary issues an objection in writing within a period of five days since becoming familiar with minutes drawn from the talk. The officer is notified of the right to raising an objection during the disciplinary talk, and the contents of the instruction is contained in minutes drawn up from this talk. If an objection is raised, the superior responsible for disciplinary issues is obliged to instigate disciplinary proceedings. The lack of objection causes that minutes from the conducted disciplinary talk are filed in
the personal file of the officer with whom such disciplinary talk has been conducted. On the other hand, should an objection be submitted, the minutes from the conducted disciplinary talk are filed in the folder related to disciplinary proceedings.

The legislator has not defined the term when a disciplinary talk may be organised. Furthermore, also regulations connected with the actual possibility of instigating of disciplinary proceedings (art. 137 par. 1 and 2 of the act on BG) are not applicable to it either (as reference). Consequently in practice it may happen that a disciplinary talk is held after the period specified in the contents of the above cited regulation i.e. after the lapse of 90 days since receipt by the disciplinary superior of notification of commitment of an offence or transgression of the service discipline or after the lapse of one year after commitment of a disciplinary offence. In such cases due to the objection submitted by the officer the instigation of disciplinary proceedings becomes de facto impossible owing to the lapse of the above mentioned statutory deadline. Such a state of affairs would lead to the necessity of recorded destruction of minutes from the conducted disciplinary talk.

An issue of considerable importance in the above mentioned field is also the fact that a correctly conducted disciplinary talk basically does not become erased, such as is the case for statutory disciplinary penalties. Pursuant to Article 137a of the act on BG, erasing of penalty applies only to a disciplinary penalty and consists in considering the penalty as non-existent, removal from personal file of the officer of the decision on applying the penalty and making the record of committed offence inexistent.

Similar concerns of a legal nature occur in the act on SFS in the context of the penalty of admonition. Pursuant to the contents of Article 118 of the act on SFS, in case of a disciplinary offence of lesser gravity, which does not require the instigation of disciplinary proceedings, the disciplinary superior may decide to impose a penalty of admonition in writing, but this may not happen later than prior to the lapse of three months since becoming informed of the offence. The penalised officer has the right to file an appeal against the penalty of admonition imposed by the disciplinary superior which may be executed to the relevant disciplinary committee. In such a case the committee may not adjudicate to the disfavour of the penalised officer. Given the specific loophole extra legem, which occurs when for the given state of affairs (legal issue) there is no relevant legal standard applicable (legal regulations), the penalty of admonition imposed in accordance with contents of Article 118 of the act on SFS may not be erased. In article 124i par. 1a of the act on SFS the legislator decided that erasing may be applicable only to those disciplinary penalties, which are specified
in Article 117 of the act on SFS. On the other hand, as regards the penalty specified in Article 118 of the act on SFS, the legislator provides no instructions, leaving this area to interpretation or adopted general practice. Contrary to the disciplinary talk as applicable in the Border Guards, the penalty of admonition imposed on the basis of the act on SFS may nevertheless be imposed at any time. However, in this respect the inadequacy of the legislator becomes unfortunately visible. Pursuant to Article 124j of the act on SFS a complaint to the administrative court is applicable to a party with respect to a decision that ends disciplinary proceedings of the second instance. On the other hand, imposing of a disciplinary penalty pursuant to Article 118 par. 1 of the act on SFS causes that once the objection is raised by the penalised officer, disciplinary proceedings are conducted only in one instance, and namely before the relevant disciplinary committee (lack of second instance). Such a state of affairs ex lege rules out the possibility of raising an objection to the administrative court.

3. Desired direction of changes and amendments of binding regulations

Passing on to issues concerning rules and methods of conducting of disciplinary proceedings in particular uniformed forces, attention is drawn to the fact that with the exception of the State Fire Service they appear to be quite similar. In this respect it has been noticed that the only justified solution would be to introduce a new normative act to the legislation applicable to all uniformed forces subordinated to the Interior Minister, which would regulate in a uniform and complex way the implementation of disciplinary proceedings in those forces. In available literature sources Sebastian Maj seems to be a clear propagator of such a solution, and already in 2008 in his book entitled Postępowanie dyscyplinarne w służbach mundurowych (Disciplinary proceedings in uniformed forces) [6, p. 406], which constituted an in-depth comparative study of issues related to functioning of disciplinary proceedings in Polish uniformed forces, in his conclusion stated that: (...) the most appropriate solution aimed at ordering procedural issues appears to be the issuance of a single act pertaining to disciplinary liability applicable to all officers of uniformed forces.

Both S. Maj and other authors (Przemysław Szustakiewicz) [7, pp. 805–814] who speak for the necessity of harmonisation of methods of conducting disciplinary proceedings in Polish uniformed forces suggest that new solutions should be characterised by better objectivism and independence, and should be applicable to all uniformed forces functioning in Poland.
In an attempt at finding the desired direction of changes of a new harmonised act on disciplinary proceedings in Polish uniformed forces, it seems that the best solution would nevertheless be constituted by the so-called block-type harmonisation (within a scope pertaining to the relevant minister) of binding legal regulations. In the author’s opinion such a method of processing is likely to be much more effective than any other attempt at complex regulation of the disciplinary liability of officers of all uniformed forces functioning in Poland.

Consequently to limit our deliberations to the field of disciplinary liability of uniformed forces subordinated only to the Interior Minister, their in-depth analysis allows the presumption that the top position is occupied by regulations of the act on the Police as the most ordered and complete. Nevertheless it is the regulations contained by the act on SFS that are the least perfect in their structure (incomplete and inconsistent) which should serve as a model, on the basis of which legislative works should be undertaken to achieve changes recommended among others by the above cited authors.

Regulations of the act on SFS with respect to disciplinary proceedings have been based fully on civil solutions applied among others in the act on civil service (section 9) [8]. For this reason, as compared to the remaining forces, they best reflect principles of independence and objectivism. In specific situations, the reporting line is not as evident as in the case of regulations applicable in other types of services (the Police, the Border Guards or the SPS). Unfortunately in its present form the act on SFS, despite providing certain important solutions, cannot be considered as a ready model that could be implemented in full. Nevertheless, as has already been mentioned above, it serves as a helpful initial framework for the development of a new act that would cover ways of executing disciplinary proceedings in uniformed forces subordinated to the Interior Minister.

In an attempt at establishing the core assumptions of such a new act, in the first place its four elementary areas should be specified, and namely:

• explanatory proceedings (explanatory activities/verifying proceedings);
• disciplinary proceedings (evidence proceedings);
• proceedings before the disciplinary committee (disciplinary decision);
• appeal procedure (body of the second instance).

None of the currently binding competence acts pertaining to uniformed forces subordinated to the Interior Minister does stipulate in a direct way the meaning of explanatory proceedings (explanatory/verifying activities). It should be emphasised that in the scope not regulated in the above mentioned act, regulations contained in the act on the Police,
the act on SFS and the act on SPS make references to regulations comprised in the act of 6 June 1997 – The code of criminal proceedings [9]. However, attention should be drawn to the fact that the analysed reference only pertains to conducting disciplinary proceedings, and not explanatory/verifying activities. Consequently, basically under explanatory/verifying activities no procedural steps may be implemented, which have been specified in the Code of Criminal Procedures (e.g. hear as witness – art. 307). The situation appears to be slightly different in the case of the act on BG, which transfers the method of implementing of proceedings related to disciplinary issues (including explanatory activities) into the dimension of the implementing act. Pursuant to § 44 of the above mentioned regulation, in issues not regulated by that regulation to be applied are regulations comprised by the act of 14 June 1960 The Code of administrative proceedings [10]. The grammatical interpretation of the indicated legal standard proves that the unconditional reference to regulations of the Code of administrative proceedings is also applicable to explanatory activities. Bearing this in mind one should assume that under explanatory activities there is (at least theoretically) a possibility of conducting proceedings to take evidence, as stipulated by the Code of administrative proceedings (such as questioning as a witness – art. 75 § 1).

The situation is completely different as regards the execution of disciplinary proceedings (with respect to evidence). While in the Police, the STS and BG legal regulations pertaining to this area are relatively consistent (the proceedings are conducted by disciplinary spokesperson or by the assigned officer), in SFS disciplinary proceedings (with respect to evidence) are conducted by an independent body, and namely the disciplinary committee. In the act on SFS the role of the disciplinary spokesperson has been limited to individual tasks. According to the literal interpretation of the act on SFS (Article 123 par. 1) the disciplinary spokesperson may become a prosecutor only in disciplinary proceedings, which are instigated by the disciplinary committee of the first instance. Due to such a state of affairs the spokesperson has no appropriate competencies to implement proceedings to take evidence, as specified in regulations of section 19 of the Code of Criminal Procedures. Consequently he may not undertake any procedural steps similarly as is done by other spokespersons in the remaining uniformed forces, and namely hear as witness, bring charges and hear as an accused or appoint an expert or carry out inspections. Pursuant to regulations of the act, the above specified competencies have been assigned to the disciplinary committee. It is that committee which as a body authorised to instigate disciplinary proceedings may pursuant to reference to regulations of Article 17 of the Code of Criminal Procedures
refuse the instigation of disciplinary proceedings, and discontinue the ones already instigated. Competencies of the committee also comprise setting out a date for a disciplinary hearing, of which the disciplinary spokesperson is notified, as well as the accused and the defence, and should it prove to be necessary witnesses and experts are summoned to the hearing. Also in this respect Article 16 of the Code of Criminal Procedures becomes fully applicable, pursuant to which it is the body that carries the proceedings that is obliged to instruct participants of the proceedings of their obligations and rights. An important legal standard that defines the disciplinary committee as a leading body with respect to disciplinary proceedings and provides authorisation to implement of proceedings to take evidence is constituted by the contents of Article 124g of the act on SFS. The cited regulation serves as a material basis for costs borne by the State Treasury, which may be generated only during disciplinary trial, and for example during verifying activities. For this reason it is the committee, and not the disciplinary spokesperson, which may in a formal and legal way execute proceedings to take evidence, and that could give rise to justified financial claims of persons not being parties to disciplinary proceedings (remuneration of experts for opinion or translation, reimbursement of costs of arrival of witness etc.).

Taking the above into consideration, the role of the disciplinary spokesperson in disciplinary proceedings appears to be of key importance, and as an effect solutions adopted in the act on SFS are absolutely impractical and could not become applicable in the new act regulating issues of disciplinary liability of officers employed in uniformed forces subordinated to the Interior Minister. Also solutions adopted on the basis of the act on BG are not suitable for unconditional implementation. It should be borne in mind that the function of quasi-spokesperson defined in this act, i.e. officer appointed to conduct disciplinary proceedings ad hoc, only for a specific case, appears to be highly ineffective and impractical. Failure to appoint permanent disciplinary spokespersons (similarly as is the case in the Police) for a period planned in advance causes that potential experience arising from practice becomes dispersed onto a broad and absolutely incidental human potential. Due to the lack of cumulated knowledge and experience in several or a few dozen employees within the entire formation such a formation does not have at its disposal the required human resources, which could effectively implement tasks related with execution of disciplinary proceedings. What is more, the lack of experienced staff has a direct impact on possibilities of training, and as an effect on forming the correct awareness in potential candidates applying to act as disciplinary spokespersons.
Taking the above into consideration, under the new act a need arises to adopt solutions that would clearly define the role and tasks of the disciplinary spokesperson appointed for a period fixed in advance, and unequivocal and complete definition of the way in which explanatory activities and disciplinary proceedings could be implemented (with respect to evidence), without any references to regulations comprised by other acts.

It seems that the best solutions in those issues are offered by the current regulations comprised by the act on the Police and the SPS, where the entire evidentiary procedures under disciplinary proceedings have been focused on the disciplinary spokesperson. Nevertheless, there is still a need of regulating the issue concerning explanatory activities and the issue of referring to regulations of other acts in non-regulated issues. At this point it should be noted that full referring to regulations of for example the Code of Criminal Procedures or the Code of administrative proceedings without clear indication of areas to which referring regulations would be applicable, similarly as is presently unfortunately in the case of the act on SFS (Article 124n) and in the implementing act to the act on BG (§ 44 of the regulation), gives rise to serious interpretational consequences. This is due to the fact that in disciplinary proceedings it is impossible to apply for example certain regulations of the Code of Criminal Procedures (appropriately, directly, or by analogy). Those regulations comprise among others regulations pertaining to detaining of a person, searching of a place, item or person, by letter of safe conduct or arrest (including also the European Arrest Warrant).

If we assume the above model to be the optimum approach to be adopted in disciplinary issues, it should be considered that its further consequence would be the introduction of the necessity of adjudicating a disciplinary penalty by the disciplinary committee, and not by the disciplinary superior, as this is presently done in the act on the Police, the act on BG and the act on SPS. In this particular case using solutions comprised by the act on SFS as a basis appears to be evident, because it is the only act that allows for principles of independence and objectivism. The relation that arises from the reporting line between the disciplinary superior and the accused may in specific cases give rise to justified objections resulting from the so-called conflict of interests. Should such a conflict occur (e.g. in a situation of direct subordination – commandant of an organisational unit versus head of organisational unit) the disciplinary superior has no statutory possibilities of refraining from adjudicating. The lack of legal conditions that would prevent the possibility of occurrence of an existing, potential or even suspected conflict of interests, and in reality the possibility of transgression of the principle of objectivism constitutes a gross violation of basic citizens’ rights, which are
specified in the constitution. For this reason in response to expectations not only of the interested parties (i.e. the officers), but also pursuant to the concept of a democratic state, it should be presumed that adjudicating of disciplinary penalties, and as a result also the appeal procedure in those issues, should be comprised by competencies of autonomous bodies. Such a body could be constituted by disciplinary committees of the first and second instance, which have been described in detail in the act on SFS.

In order to enable a complex development of a procedure connected with conducting disciplinary proceedings in uniformed forces subordinated to the Interior Minister there is additionally a need of clarifying such issues, as: disciplinary liability for deeds stipulated in other acts, disciplinary liability after termination of employment and the right to defence.

Disciplinary proceedings are of an autonomous nature, which means that they are independent of other proceedings, such as for example the penal one, or in a case of a misdemeanour, which may be implemented concurrently with disciplinary proceedings. However, in the case at hand there are certain doubts as to the necessity of instigating disciplinary proceedings in relation with information that there are penal proceedings underway in relation to the given officer or in a case of misdemeanour, in particular given the contents of binding applicable regulations. Pursuant to Article 134 the act on BG, Article 208 par. 1 of the act on SPS and Article 115 par. 2 of the act on SFS, the officer shall bear disciplinary liability for committed crimes and offences – regardless of penal liability. The mentioned reservation concerns the interpretation of the term “committed” in the context of presumption of innocence, which is applicable not only pursuant to the penal proceedings, but also under disciplinary proceedings conducted for example on the basis of the act on the Police (Article 135g). It is interesting that the act on the Police contains no provision that would indicate disciplinary liability for the committed offence or misdemeanour. Pursuant to the literal wording of Article 132 par. 4 of the act on the Police, regardless of penal liability, disciplinary liability consists of a deed considered to be a disciplinary offence, which also meets criteria of a crime, misdemeanour or fiscal offence or fiscal misdemeanour. The essence of disciplinary liability is accordingly constituted by a disciplinary offence, which may concurrently meet criteria of a misdemeanour or a crime, and not misdemeanour or crime as such. Not every misdemeanour or crime would concurrently meet the criteria of a disciplinary offence.

Depending on the adopted interpretation the above mentioned regulations may lead to a situation in which disciplinary proceedings for the offence or crime “committed”
by the officer would only be instigated once the disciplinary superior has obtained information concerning a legally binding judgement of conviction for the officer for its “committing” and not after receiving information, e.g. as a result of a formal notice informing that a given officer was a perpetrator of a certain misdemeanour or crime. Such conduct may cause the limitation period of disciplinary liability to lapse.

For this reason there is a need of deciding whether the adoption of such solutions, which apart from a disciplinary offence that concurrently meets the criteria of a crime or misdemeanour, would allow for an independent legal regulation with respect to the possibility of making such officer considered as having disciplinary liability for a committed crime or misdemeanour, but not before a judgement has come into force in a criminal investigation, misdemeanour investigation, or in a civil procedure (e.g. for violation of personal goods). Such a solution would allow better reflection of the rule assuming the presumption of innocence, simultaneously not remaining in contrast to objectives and values applicable in the given force. Such proceeding methods would limit the possibility of instigating and automatic suspension of proceedings for commitment of an offence that would not be considered a disciplinary offence, but would instead stricte meet criteria of a criminal act (i.e. crime or misdemeanour). One should also bear in mind that if a serious crime or misdemeanour is committed, which would clearly collide with the good name of the uniformed formation, and the perpetrator’s fault would be unmistakable, the disciplinary superior could make use of other instruments to guarantee the preservation of ethos and values of the service (e.g. expulsion from service in administrative mode) without the necessity of executing disciplinary proceedings.

Another issue of equal importance is the possibility of withdrawal from instigation of disciplinary proceedings or discontinuation of one that had already been started if the deed that constituted a disciplinary misdemeanour concurrently meets criteria of a misdemeanour, but of lesser gravity, or if a perpetrator of a misdemeanour has been penalised by a fine. A decision concerning potential withdrawal from instigation of disciplinary proceedings or discontinuance of one already instigated is taken optionally by the relevant disciplinary superior. If such a decision is made, the officer would not have to bear any other penalty. The situation is different in the event of withdrawal from instigation of disciplinary proceedings towards a perpetrator of a deed considered a disciplinary misdemeanour of lesser gravity. If in such a case a decision is to be made on withdrawal from disciplinary proceedings, the disciplinary superior has to conduct with the perpetrator of a disciplinary misdemeanour a disciplinary talk duly documented by a note (statutory obligation).
The above mentioned solutions do not occur in consideration of the act on SFS. As regards a deed considered a misdemeanour, a firefighter will always have to bear disciplinary liability, even for a misdemeanor committed as a result of execution of a formal order. What is more, although the act on SFS assumes the option of withdrawal from instigation of a disciplinary procedure for a disciplinary misdemeanor of lesser gravity, the disciplinary superior may not withdraw from imposing a disciplinary penalty, because pursuant to Article 118 par. 1 of the act on SFS he is obliged to impose a penalty of admonition in writing. What is more, a necessary condition for such activity is time. The disciplinary superior may make use of the above mentioned right, but no later than before the lapse of three months since learning of the misdemeanor.

Taking all the above into consideration, once again the act on SFS points to the desired model of preferred conduct. When formulating disciplinary regulations in particular uniformed forces subordinated to the Interior Minister, the legislator has failed to keep consistency, in such a way causing different levels of their privileges. However, at this point it should be emphasised that the lack of clarity of regulations indicating the possibility of withdrawal from instigation of disciplinary proceedings or their discontinuance in the event when a disciplinary misdemeanor has been committed that concurrently meets the criteria of a misdemeanor of lesser gravity, may give rise to considerable opportunities to abuse. The absence of a legal definition for the concept of “misdemeanour of lesser gravity” may in practical terms cause its incorrect interpretation, and what is even more important, an inconsistent way of executing procedures within the whole formation. Even bigger opportunities for manipulation have been foreseen by the legislator in the event of penalisation of a perpetrator for the committed misdemeanor by a fine. In such an event the appraisal of the type of fine should be left to the discretion of the disciplinary superior who is to decide what kind of fine (e.g. as to its value or type of misdemeanor) would be applicable for withdrawal from instigation of disciplinary proceedings or discontinuance of one already started. Actions of the disciplinary superior may lead for example to violation of the principle of equality in relation to the law. Based on one’s own subjective assessment, adopting different gradation of cases (misdemeanours), the disciplinary superior may treat their perpetrators in different ways. Two different forms of conduct (misdemeanours), of the same social harmfulness, may lead to additional adjudicating a disciplinary penalty in relation to a perpetrator, and not to another one.

Taking the above into consideration, pursuant to principles of legislative methodology, which impose the application of correct expressions in their elementary and
universally adopted meaning, including avoidance of polysemous language structures, in the new wording statutory regulations should pay more attention and care over solutions that already exist in this issue contained in the act on SFS.

When making a review of regulations connected with the disciplinary liability of officers employed in uniformed forces subordinated to the Minister of the Interior, it is also worthwhile to draw attention to the disciplinary liability of academic teachers serving concurrently as officers of the Police or the SFS. The analysed issue is applicable only to a very narrow group of people, nevertheless clearly points to specific loopholes that directly affect constitutional guarantees of elementary rights and freedoms of the citizens.

Pursuant to the contents of art. 440 of the act of 20 July 2018 – Law on higher education and science [11], regulations comprised by this act are applicable to government sector higher school institutions acting on the basis of competence acts (this applies to the Police Academy in Szczytno operating on the basis of Article 4 par. 3 item 1 in connection with Article 4 par. 3a of the act on the Police and the Main School of Fire Service operating based on Article 8 par. 1 item 4 in connection with Article 17 par. 1 of the act on SFS). Given Article 439 par. 5 of the act on higher education a person acting for example as a rector of a government sector higher school institution and a person fulfilling a managerial function in such an institution responsible for implementation of school’s tasks as an organisational unit of the relevant force is concurrently an academic teacher, and consequently regulations pertaining to disciplinary liability of academic teachers are applicable to such a person, which is directly stipulated by Article 275–306 of the act on higher education, as well as regulations of the regulation of the Minister of Science and Higher Education of 25 September 2018 on specific methods of carrying our mediations, explanatory proceedings and disciplinary proceedings related to issues of disciplinary liability of academic teachers, as well as methods of implementing disciplinary penalties and their erasing issued pursuant to Article 306 of this act [12].

Taking the above into consideration, as regards disciplinary liability a person working as an academic teacher in a government sector higher school institution who concurrently works as an active officer of the Police or the SFS is subordinated both to regulations of the act on the Police (Article 132 and subsequent ones) or the act on SFS (Article 115 and subsequent ones) and regulations of the act on higher education (Article 275 and subsequent ones). Due to such a state of affairs for the same deed meeting the criteria of a disciplinary tort, regulations of two different normative acts and two different disciplinary procedures are applicable to one person, for which two different disciplinary
penalties may be adjudicated. There is still a need of considering the issue, the so-called prerequisites for *res iudicata*, nevertheless owing to the contents of Article 275 par. 3 of the act *on higher education*, the situation connected with the implementation of two parallel disciplinary proceedings towards the same person related to the same deed is basically more than possible.

While on the one hand disciplinary procedures arising from regulations of the act *on the Police* or the act *on SFS* towards an academic teacher in state universities acting as a rector of that university and concurrently working as an officer of the Police or SFS do not give rise to any significant concerns, yet disciplinary procedures in relation to the same person, which are nevertheless implemented pursuant to regulations of the act *on higher education*, were found to have certain grave inadequacies. This is due to the fact that under Article 277 par. 3 of the act *on higher education*, the disciplinary spokesperson responsible for deeds of academic teachers employed as rector is appointed by the minister from among academic teachers. The reference to the “minister”, pursuant to the act *on higher education* should point to the minister for higher education and science, and not the Minister of the Interior. This is directly indicated by Article 435 par. 1 of the act *on higher education*, the contents of which omit art. 277 par. 3 of the act *on higher education* as one that could constitute an exception suggesting that the minister indicated in Article 277 par. 3 of the act could be a minister other than the one responsible for higher education and science, and hence for example the Minister of the Interior. Furthermore, pursuant to Article 457 par. 1 of the cited act, in issues pertaining to disciplinary liability of academic teachers acting as rector and head of the university disciplinary committee, employed among others in government sector higher school institutions, the disciplinary spokesperson commences implementation of the case at the order of the minister supervising the university school, i.e. the Minister of the Interior, and not the minister responsible for higher education and science. Furthermore, pursuant to Article 457 par. 2 of the act *on higher education* it is the Minister of the Interior who has relevant procedural rights in the event of issuance of a decision on discontinuance of explanatory proceedings by the disciplinary spokesperson.

The above indicated dual nature as regards methods of operation of particular ministers gives rise to unnecessary chaos, and as regards implementation of double disciplinary procedures it also seems that it violates the constitutional principle of equality towards the law.

On the other hand, as regards issues related to potential disciplinary liability after termination of employment of officers of the Police, BG, SPS or SFS, it is once
again necessary to refer to regulations comprised by the act on SFS, because from the formal viewpoint this is the only formation where the specified liability does exist. The remaining uniformed forces (the Police, the State Protection Service) in their competence acts have provisions pointing to the possibility of discontinuance of disciplinary proceedings if it should prove to be unjustified for another reason.

In regulations pertaining to the BG, pursuant to contents of § 24 par. 1 and 2 of the regulation, disciplinary proceedings are discontinued if the penalised officer ceases to be subordinated to disciplinary case-law. However, if the penalised officer submits a written notification of immediate withdrawal from the service, disciplinary proceedings may be discontinued if they concern a deed for which the officer in question only bears disciplinary liability.

The situation is completely different in the case of SFS. Pursuant to Article 124d of the act on SFS, in the event of termination of employment of a firefighter in the course of disciplinary proceedings, the proceedings would continue. In the context of all standards that define methods of executing disciplinary proceedings in the SFS the indicated regulation appears to be, nevertheless, internally contradictory. The above mentioned regulation gives rise to significant doubts connected not only with the lack of good will of the accused and his will of further participation in the conducted disciplinary proceedings, but first of all with whether the accused is still subordinated to disciplinary case-law. This arises from the fact that according to regulations contained in the act on SFS, disciplinary liability applies only to a “firefighter”, i.e. a person under employment. Regardless of the above, certain concerns are also raised by the legitimacy of continuation of disciplinary proceedings due to the effectiveness of feasible disciplinary penalties, e.g. penalty of expulsion from service. If the accused has already been fired (in connection with his submission of a written request for being released from service – Article 43 par. 2 item 5 of the act on SFS), then implementation of the penalty consisting in expulsion of the officer from service already after his expulsion from service becomes ineffective by law.

Nevertheless it seems that the possibility of conducting disciplinary proceedings, even after termination of employment (after formal expulsion of an officer from the service) for example for a penalty related with demotion in the event of a gross violation of service discipline, is not only legally and actually admissible, but also socially justified.

On the other hand, a review of regulations concerning the right to defence under disciplinary proceedings conducted in uniformed forces subordinated to the Interior
Minister, connected with the possibility of violating the rule of equality of parties to the proceedings becomes visible. The above mentioned aspect is particularly noticeable in the act on SFS. Due to the amendment of the act on SFS from 2008, which broadened the right of the accused to defence by an additional catalogue of persons representing him (lawyer and legal counsellor), in disciplinary proceedings the equality of parties to those proceedings has been disrupted. It should be borne in mind that persons accused of committing a disciplinary offence increasingly frequently benefit from the assistance of professional attorneys (lawyer or legal counsellor) appointed at their own cost. What is more, on the side of the prosecutor, including also in the disciplinary committee, there may be persons without the required substantive and practical preparation appointed as professional defenders by the accused. It should be borne in mind that the nature of tasks implemented by the SFS does not require the firefighters to have direct legal education. What is more, owing to the reference made in the act on SFS in the nonregulated scope to regulations of the Code of Criminal Procedures hearing of evidence before the disciplinary committee is fully based on regulations comprised by the Code of Criminal Procedures. Consequently the lack of experience and knowledge in this respect shown by persons serving as spokesperson and being members of the disciplinary committee makes them naturally unequal in relation to the remaining participants of disciplinary proceedings. Similar issues may be analysed in the case of the remaining uniformed formations subordinated to the Minister of the Interior.

An additional issue that is directly connected with the adoption for needs of disciplinary proceedings of the possibility of making use of professional defenders is an obvious protraction of those proceedings. Given the short period of limitation applicable to disciplinary liability (a year since commitment of a disciplinary offence) one of the potential lines constituting the basis of defence is the so-called stalling for time. As regards SFS and the SPS, which do not implement directly tasks based on regulations of the Code of Criminal procedures (concerning the execution of preparatory proceedings in the form of an investigation) and basically they lack the experience and knowledge indispensable in this respect, and so activities executed by professional defenders may bring about measurable effects.

Consequently the restoration of initial solutions applicable to disciplinary proceedings conducted in uniformed forces subordinated to the Interior Minister could turn out to be justified not only because of the disrupted rule of equality of parties to contentious proceedings, but also owing to the ethical aspect. Nevertheless, as activ-
ities of the legislator who has made relevant amendments of competence-related acts have been imposed by a decision of the Constitutional Court\(^1\) of 19 March 2007 [13]. It appears that a certain potential solution could be assured by establishing a pool of public defenders. They would comprise for example officers of particular forces working full-time, whose main task would be to provide legal assistance to officers in relation to whom disciplinary proceedings had been instigated. Such a solution would help eliminate also current problems related with reimbursement of costs borne for services of chosen defender as an example in the event of acquittal. However, in this respect there is still a need of reviewing the issue of independence of the above mentioned officers. The aspect of independence in relation to the disciplinary spokesperson and adjudicating committees has been taken up by S. Maj who pointed to the necessity of having those persons comprised by legal protection comparable to the one that is applicable in relation of trade union activists.

4. Summary

To recapitulate, given the currently binding organisational solutions, including the present development directions of particular uniformed formations subordinated to the Minister of the Interior, a presumption may be made that development of legislative solutions which would regulate in a complex, homogenous and ultimate way issues elated with implementation of disciplinary proceedings in the above mentioned uniformed services, is only a matter of time.

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\(^1\) In the opinion of the Ombudsman depriving of the possibility of appointing as defender in a disciplinary procedure of a professional proxy – lawyer or legal counsellor and leaving the defence to an officer of the Border Guards, Customs Service or the Police (unprofessional proxy) may cause the lack of appropriate defence for the accused in disciplinary proceedings. The petitioner has drawn attention to the fact that an officer acting as defender fulfils this function in addition to his basic duties arising from the specific nature of the service, pursuant to the reporting line. Those circumstances may affect his activity during the ongoing disciplinary proceedings.

(…) Pursuant to the cited statements of the Constitutional Court a thesis may be posed about the legislator’s obligation of such formulation of regulations that normalise all types of disciplinary proceedings that similarly as in criminal proceedings they should guarantee the appropriate level of the right to defence, in the material and formal dimensions. Based on this presumption it becomes clear that the right to defence, as specified by Article 42 par. 2 of the Constitution, is an adequate model of the control of constitutional nature of regulations comprised by the acts on Border Guards, the Police and the Customs Service disputed in the case at hand.
References:

[12] Regulation of the Minister of Science and higher Education of 25 September 2018 on specific methods of carrying our mediations, explanatory proceedings and disciplinary proceedings related to issues of disciplinary liability of academic teachers, as well as methods of implementing disciplinary penalties and their erasing (Polish Journal of Laws/Dz.U. from 2018 item 1843).
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