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A Minor Disciplinary Breach in the Polish Legal System

Abstract: The aim of the article is to present four models of “a minor disciplinary breach” in some normative acts of the Polish legal system. The author concludes that the interpretation of the concept of “a minor disciplinary breach” should derive from the concept of “a less serious crime” and include components of the term “social harmfulness of an act”. The thesis is to prove that the interpretation of the concept of disciplinary minor offences uses the interpretation of the concept of a less serious crime and includes the components of the term “social harm of the act”. The legislator requires to impose this measure when it is unnecessary to apply stricter sanctions and disciplinary proceedings should not be initiated. In this case, the guilty party should be punished with the mildest disciplinary sanction and he or she may appeal against admonition. The conclusions propose solutions *de lege ferenda* relating to the interpretation of the term of “a minor disciplinary offence” and explain problems associated with appealing against rulings rendered in disciplinary proceedings in the context of some rules of the criminal procedure.

Keywords: minor disciplinary breach, disciplinary sanction, admonition, disciplinary proceedings, the accused, principle of two instances

1. Introduction

Legal procedure experts generally agree that a purpose of criminal proceedings is the requirement to hold a perpetrator criminally liable for a prohibited act he or she has committed. Disciplinary proceedings are generally treated in the literature as criminal proceedings *sensu largo*. For the above reason, referring to the object of disciplinary proceedings, it may be claimed that it is just the requirement to hold a person disciplinary liable for a disciplinary offence he or she has committed. In many Acts envisaging disciplinary liability¹, the Polish legislator most often only

1 There is no comprehensive normative act regulating disciplinary proceedings in the Polish legal system, but this responsibility is provided for in several dozen acts and normative acts of a fundamental rank. It is estimated that the number of such acts is almost 70, and the ordinances

generally regulates disciplinary provisions as they are, in principle, solely limited to a definition of a disciplinary offence, specification of a catalogue of disciplinary penalties and disciplinary authorities and rules of procedure. Other aspects of disciplinary liability are merely regulated by the reference to the appropriate application of the provisions of the Code of Criminal Procedure or, much more seldom, to the provisions of the Criminal Code. Specificity of disciplinary law and scattered sources impede a formulation of categorical statements. Nevertheless, it appears that we may find in disciplinary law the institutions whose sources and inspiration are solutions elaborated in substantive and procedural criminal law.

Furthermore, similar to procedural provisions contained in the Code of Criminal Procedure (CCP) which envisage different ways of criminal liability enforcement, the legislator provides disciplinary law with various ways of disciplinary liability to be borne by a perpetrator. One of them is a penalty imposed under a minor disciplinary breach. Even though this procedure applies to many disciplinary Acts, it is not a subject of profound analysis of the doctrine representatives. Considerations thereon appear only occasionally – to accompany the analysis of a regulation drafted for concrete disciplinary proceedings by the authors of comments to a selected normative act without a specific connection being made to the system of disciplinary and criminal proceedings in the Polish law. Although this study should not be treated as a fully comprehensive work thereon, it still attempts to look at the problem from the perspective of both substantive and procedural disciplinary law².

The article will present the structure of a minor disciplinary offence in selected normative acts. The author attempts to prove that due to conciseness of provisions on minor breaches, one should take advantage of the criminal law representatives' output or achievements while reconstructing the above notion. Moreover, a purpose of the study is to depict the legislator's inconsistency in regulating the proceedings at the moment of implementing the course of a minor disciplinary breach from the perspective of the principle of two-instance proceedings and the ban on worsening a legal status of the accused. The conclusions will propose *de lege ferenda* solution both within the scope of interpretation of the term "a minor disciplinary breach" and explain doubts concerning appealing against rulings rendered under this course.

almost 60. See the enumeration in the work: P. Czarnecki, *Postępowanie dyscyplinarne wobec osób wykonujących prawnicze zawody zaufania publicznego*, Warszawa 2013, pp. 487-525.

2 See also P. Czarnecki, *Model postępowania dyscyplinarnego w polskim systemie prawa*, (in:) P. Czarnecki (ed.), *Postępowanie karne a inne postępowania represyjne*, Warszawa 2016, pp. 253-264.

2. Models of minor disciplinary breaches – a normative aspect

Despite the fact that sources of disciplinary liability are scattered to a large extent, it may be noticed that apart from disciplinary penalties imposed under an ordinary (principal) course, the Polish legislator introduced a possibility of sentencing to disciplinary penalties imposed under the so called simplified course. Apparently, four basic models of disciplinary proceedings may be distinguished: first instance, second instance, judicatory and disciplinary.

The first model (first instance) operating in uniformed services envisages the application of a minor disciplinary breach by a superior who, as a rule, does not initiate disciplinary proceedings but interviews the inferior. The content of the interview is recorded in the form of a note enclosed to the files. The punished person most often may not appeal under the provisions on disciplinary proceedings.

An example of such a regulation is Art. 132 par. 4b of the Act on the Police³, pursuant to which in case of a minor disciplinary offence, the disciplinary superior may renounce from launching proceedings and carry out a disciplinary interview with a perpetrator of a disciplinary offence recording its content in an official note. This note is enclosed into the personal files for one year. Identical regulations bind Border Guard officials (Art. 134a of the Act on Border Guard)⁴, Prison Service officials (Art. 230 par. 6 of the Act on Prison Service⁵) and Customs Service officials (Art. 168 par. 1-3 of the Act on Customs Service)⁶. In the last case, the official note is destroyed after the lapse of six months from the day of a disciplinary interview; whilst upon the perpetrator's request the note can be destroyed even after the lapse of three months.

The doctrine rightly underlines that even though it is common for all above cases to subordinate the officials to the disciplinary superior's authority while individual disciplinary regulations vary only in minor details, or a catalogue of penalties, or courses of procedure in relevant Acts, "minor breaches" are still disciplinary torts within disciplinary liability⁷.

3 The Act of 6 April 1990 on the Police (Journal of Laws of 2016, item 1782, as amended) [Ustawa z dnia 6 kwietnia 1990 r. o Policji (tekst jedn. Dz.U. z 2016 r. poz. 1782 ze zm.)].

4 Act of 12 October 1990 on the Border Guards (consolidated text Journal of Laws of 2016, item 1643, as amended) [Ustawa z dnia 12 października 1990 r. o Straży Granicznej (tekst jedn. Dz.U. z 2016 r. poz. 1643 ze zm.)].

5 The Act of 9 April 2010 on the Prison Service (consolidated text of 2016, item 713 as amended) [Ustawa z dnia 9 kwietnia 2010 r. o Służbie Więziennej (tekst jedn. Dz.U. z 2016 r. poz. 713 ze zm.)].

6 The Act of 7 August 2009 on the Customs Service (consolidated text Journal of Laws of 2016, item 1799, as amended) [Ustawa z dnia 27 sierpnia 2009 r. o Służbie Celnej (tekst jedn. Dz.U. z 2016 r. poz. 1799 ze zm.)].

7 T. Kuczyński, Odpowiedzialność funkcjonariuszy służb zmilitaryzowanych za przewinienia dyscyplinarne mniejszej wagi, „Zeszyty Naukowe Sądownictwa Administracyjnego” 2012, No. 6, p. 27.

In **the second instance model**, a specified one-man authority also imposes a penalty in case of a minor offence after listening to the accused. However, it differs from the first model in that one may appeal against admonition issued by this authority to the collegiate disciplinary body. In this case information about the penalty is also enclosed to the personal files of a perpetrator of a given disciplinary offence.

The above model has been adopted, among others, with reference to academic teachers because pursuant to Art. 141 par. 1-3 of the Act on Higher Education, Rector shall impose admonition for a minor breach after listening to a teacher. Rector may also admonish a teacher at his or her discretion. An academic teacher admonished by Rector may appeal to the University Disciplinary Committee for Academics. An appeal must be submitted within fourteen days from the day a notice of admonition was served while the Committee may not impose a stricter penalty⁸. Similar regulations bind university students and PhD students.

Pursuant to Art. 118 par. 1-2 of the Act on the State Fire Service, the disciplinary superior may impose a written admonition against a fireman for a minor breach not justifying the launch of disciplinary proceedings but not later than before the lapse of three months from the moment he or she became aware of the offence. The punished person may appeal against admonition imposed by the disciplinary superior to a competent disciplinary committee while the committee may not rule against him or her⁹.

The second instance model is also applied to attorneys. Pursuant to Art. 85 par. 1-2 of the Act on the Advocacy¹⁰, if admonition is a sufficient disciplinary measure to punish an attorney or attorney trainee without the need to impose a disciplinary penalty in the light of the circumstances or in case of a minor breach, Dean of District Bar Council may reduce penalty imposed on an attorney or attorney trainee to dean admonition upon Disciplinary Ombudsman's request. Disciplinary Ombudsman may also submit such a motion after the decision refusing to open disciplinary proceedings or discontinuing such proceedings has become final. Dean may not impose punishment *ex officio*. Imposing dean admonition, Dean may concurrently oblige the attorney or attorney trainee to apologize to the injured party or to another appropriate conduct. Pursuant to Art. 85 par. 3 of the Act on the Advocacy in connection with Art. 48 of the above quoted Act, one may appeal against dean

8 The Act of 27 July 2005 – the Law on Higher Education (consolidated text Journal of Laws of 2012, item 572, as amended) [Ustawa z dnia 27 lipca 2005 r. Prawo o szkolnictwie wyższym (tekst jedn. Dz.U. z 2012 r. poz. 572 ze zm.)].

9 The Act of 24 August 1991 on the State Fire Service (Journal of Laws of 2016, item 603, as amended) [Ustawa z dnia 24 sierpnia 1991 r. o Państwowej Straży Pożarnej (tekst jedn. Dz.U. z 2016 r. poz. 603 ze zm.)].

10 The Act of 26 May 1982 – the Law on the Bar (consolidated text of 2015, item 615, as amended) [Ustawa z dnia 26 maja 1982 r. Prawo o adwokaturze (tekst jedn. Dz.U. z 2015 r. poz. 615 ze zm.)].

admonition to a competent disciplinary tribunal within seven days from the day on which the admonition was awarded. Almost analogical solution was envisaged in Art. 66 par. 1-3 of the Act on Legal Advisors¹¹. Furthermore, Art. 53 par. 1-2 of the Act on Research Institutes stipulates that Director imposes admonition for minor disciplinary offences after listening to a research worker or research technician while the employee may appeal to a disciplinary committee within fourteen days from the day on which a notice of punishment has been served whilst the committee may not impose a stricter penalty¹². The same solution has been adopted in Art. 109 par. 1-3 of the Act on the Polish Academy of Sciences¹³.

Nearly analogical solution has been applied in Art. 55a par. 1-2 of the Act on the General Counsel to the Treasury¹⁴. President of the General Counsel may issue a written caution for a minor disciplinary offence not justifying the launch of disciplinary proceedings after listening to a legal advisor. A legal advisor may request the Employment Tribunal competent according to the main seat of the General Counsel to repeal the caution. One is not entitled to cassation against the second instance tribunal's decision. A certain modification of this solution has been applied in Art. 97b of the Act on the Supreme Audit Office¹⁵.

The third model (judicatory) is to reduce discomfort experienced by the accused who committed a minor disciplinary offence even though a collegiate authority – most often a disciplinary committee – is then to decide about it.

This solution was applied to doctors because pursuant to Art. 82 par. 2, Medical Court may discontinue proceedings in case of a minor breach or if the penalty imposed by the ruling was apparently futile due to the type and seriousness of the penalty imposed by a valid judgment for the same act in other proceedings envisaged by the Acts in so far as the injured party's interest does not preclude this¹⁶. In this case,

11 The Act of 6 July 1982 on Legal Advisors (consolidated text Journal of Laws of 2015, item 615, as amended) [Ustawa z dnia 6 lipca 1982 r. o radcach prawnych (tekst jedn. Dz.U. z 2015 r. poz. 615 ze zm.)].

12 The Act of 30 April 2010 on Research Institutes (consolidated text Journal of Laws of 2016, item 371 as amended) [Ustawa z dnia 30 kwietnia 2010 r. o instytutach badawczych (tekst jedn. Dz.U. z 2016 r. poz. 371, ze zm.)].

13 The Act of 30 April 2010 on the Polish Academy of Sciences (consolidated text Journal of Laws of 2016, item 572, as amended) [Ustawa z dnia 30 kwietnia 2010 r. o Polskiej Akademii Nauk (tekst jedn. Dz.U. z 2016 r. poz. 572 ze zm.)].

14 The Act of 8 July 2005 on the General Counsel to the Treasury (consolidated text Journal of Laws of 2016, item 1313, as amended) [Ustawa z dnia 8 lipca 2005 r. o Prokuraturii Generalnej Skarbu Państwa (tekst jedn. Dz.U. z 2016 r. poz. 1313 ze zm.)].

15 The Act of 23 December 1994 on the Supreme Audit Office (consolidated text Journal of Laws of 2015, item 1096, as amended) [(Ustawa z dnia 23 grudnia 1994 r. o Najwyższej Izbie Kontroli (tekst jedn. Dz.U. z 2015 r. poz. 1096 ze zm.)].

16 The Act of 2 December 2009 on Chambers of Physicians (consolidated text Journal of Laws of 2016, item 522) [Ustawa z dnia 2 grudnia 2009 r. o izbach lekarskich (tekst jedn. Dz.U. z 2016 r. poz. 522)].

discontinuation of disciplinary proceedings due to “a minor breach” is analogical to the discontinuation of criminal proceedings because pursuant to Art. 414 § 1 of the CCP, the court is obliged to discontinue proceedings if it finds “the case to be trivial” (Art. 17 § 1 point 3 of the CCP).

An interesting institution has been envisaged in Art. 109 § 5 of the Act on Common Courts Organization. It stipulates that a disciplinary tribunal may reduce penalty without restriction in case of a disciplinary offence or a minor offence¹⁷. An analogical solution has been envisaged with regard to proceedings against patent agents (Art. 62 par. 3 of the Act on Patent Agents)¹⁸ and prosecutors (Art. 142 § 5 of the Act on Prosecutors)¹⁹. According to these regulations, reducing penalty without restriction, a disciplinary tribunal finds that a perpetrator committed a disciplinary offence but imposing any disciplinary penalty from the binding catalogue of penalties is futile.

In **the fourth model**, the legislator does not formally qualify a minor breach as a disciplinary punishable tort but rather as a manifestation of disciplinary liability. Therefore penalty in this model is not a disciplinary penalty but a sanction for a specified trivial offence. A measure of this response is admonition, i.e. the least painful measure in the system of disciplinary liability.

An example the above model are provisions concerning judicial probation officers. Pursuant to Art. 53 par. 1-2 of the Act on Judicial Probation Officers, President of the Regional Court imposes a disciplinary sanction in the form of admonition on a district probation officer and his or her deputy while President of the District Court – on other probation officers. A probation officer may appeal to Minister of Justice or President of the Regional Court, respectively, within three days from the day he or she was notified about the above punishment. Penalty is imposed in a written form and enclosed to the files. A similar regulation binds civil servants (Art. 35 of the Act on Civil Servants)²⁰ and a certain modification of this solution has been envisaged in Art. 72 of the Act on National Labour Inspectorate²¹. According to Art. 72 par. 1-2 of

17 The Act of 27 July 2001 – the Law on the Law on the Organisation of Common Courts (consolidated text Journal of Laws of 2015, item 133, as amended) [Ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych (tekst jedn. Dz.U. z 2015 r. poz. 133 ze zm.)].

18 The Act of 11 April 2001 on Patent Attornies (consolidated text of 2016, item 221, as amended) [Ustawa z dnia 11 kwietnia 2001 r. o rzecznikach patentowych (tekst jedn. Dz.U. z 2016 r. poz. 221 ze zm.)].

19 The Act of 28 January 2016 – the Law on the Public Prosecutor’s Office (Journal of Laws, item 177, as amended) [Ustawa z dnia 28 stycznia 2016 r. Prawo o prokuraturze (Dz.U. poz. 177 ze zm.)].

20 Act of 16 September 1982 on Employees of State Offices (consolidated text Journal of Laws of 2016, item 1511) [Ustawa z dnia 16 września 1982 r. o pracownikach urzędów państwowych (tekst jedn. Dz.U. z 2016 r. poz. 1511)]. See E. Baran, K. Baran, Status prawny urzędników prokuratury, „Prokuratura i Prawo” 2001, No. 11, p. 102, who indicate that the perpetrator must be heard.

21 Act of 13 April 2007 on the National Labour Inspectorate (consolidated text Journal of Laws of 2015, item 640, as amended) [Ustawa z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy

the above Act, written admonition is imposed by Chief Labour Inspector or Regional Labour Inspector by the Chief Labour Inspector's authorization. The punished employee may challenge the admonition with Chief Labour Inspector within seven days from the day this punishment was imposed on.

The above quoted Acts do not enumerate cases involving minor breaches; they have been merely presented here to indicate the models applied in the Polish legal system. Mutual similarities between these regulations trigger attempts at these provisions' unification. Although the creation of at least one model of minor disciplinary offences appears possible, it is not an easy task still requiring legislative initiative²².

3. Criteria for determining minor offences

The legislator has not answered the question which criteria qualify a case as a "minor breach" in any of the above presented normative acts. We should remember that disciplinary proceedings belong to the group of repressive proceedings whilst criminal liability in the meaning of Art. 42 par. 1 of the Polish Constitution is the notion embracing disciplinary liability²³. Due to similarities between criminal law and disciplinary law, it is apparently worth invoking criminal law structures such as "a trivial case" (Art. 115 § 2 of the Criminal Code), or "a minor case" occurring in numerous provisions of the CC, or even the definition of a minor case included in Art. 53 § 8 of the Criminal Fiscal Code, to establish the meaning of a minor disciplinary offence. Pursuant to Art. 115 § 2 of the CC, it should be noticed that "assessing triviality of an act, the court shall consider a type and character of infringed rights, the size of infliction or threatened infliction of harm, a manner and circumstances of the committed act, perpetrator's motifs, a type of violated principles of precaution and a degree of their violation". It is assumed that even though the catalogue of these circumstances is closed, triviality of cases is subject to gradation. Yet, the assessment itself cannot be limited to generalizations and it is necessary to indicate concrete criteria even though they should not be identified with a set of circumstances included in sentencing²⁴.

On the other hand, a "minor" offence in the meaning of the Criminal Code occurs when the case is «trivial»²⁵ due to "subjective and objective circumstances

(tekst jedn. Dz.U. z 2015 r. poz. 640 ze zm.).

22 See the proposals in this respect in the cited work: P. Czarnecki, *Postępowanie dyscyplinarne*, pp. 389-472.

23 K. Mamak, *Konstytucyjne wyznaczniki postępowania represyjnego*, (in:) P. Czarnecki (ed.), *Postępowanie karne a inne postępowania represyjne*, Warszawa 2016, p. 4.

24 W. Wróbel, A. Zoll, (eds.), *Kodeks karny. Część ogólna. Tom 1. Komentarz*, Warszawa 2016, pp. 946-949.

25 T. Bojarski (ed.), *Kodeks karny. Komentarz*, Warszawa 2016, p. 390.

of a given factual state”, or “subjective and objective circumstances of an act”²⁶, or “subjective and objective features of an act with particular inclusion of these elements that are characteristic of a given offence”²⁷.

Comparing the definition of “triviality” and “minor breach”, it should be emphasized that the above mentioned gradation may be accomplished only on the basis of the features of a concrete offence; all circumstances must not be provided in an abstract manner, i.e. separated from the circumstances of a given offence being committed. There are no reasons to differentiate this situation on the basis of disciplinary provisions other than strictly criminal provisions. What is more, it seems that a repressive function of disciplinary liability, and sometimes even a reference to apply provisions of the CC and CCP, allow to use the directives of sentencing under Art. 53 of the CC while assessing a minor breach. A large number of these criteria is identical with the criteria of Art. 115 § 2 of the CC. A minor offence occurs when a specified authority believes that admonition or disciplinary interview with a perpetrator shall be sufficient discomfort and formalized proceedings do not have to be initiated.

It appears that a minor disciplinary offence is “such a disciplinary offence (disciplinary tort) which on account of subjective and objective circumstances in a concrete case is characterized by a relatively lower degree of violation of deontological rules, or provisions of law binding representatives of professions where disciplinary or professional liability has been distinguished in relation to a disciplinary offence”. Yet it should be assumed that a nature of an offence is not affected by the circumstances external to the act (e.g. the perpetrator’s previous criminal record or conduct after committing the act).

Sometimes along official practicality of the doctrine or case law, determinants of a minor breach are attempted to be reconstructed. An example thereof may be the Supreme Court’s judgment on judges, according to which “it involves situations where mitigating elements of a subjective and objective nature prevail, particularly if they are trivial for the maintenance of judicial service, whereas a degree of guilt is insignificant. Circumstances external to the act (...) do not affect qualification of a disciplinary offence as a minor breach. A degree of triviality impacts the alleged disciplinary offence too”²⁸. With regard to police officers, it has been pointed out that: “Disciplinary offences which are incidental, objectively unintentional and do not result from the police officer’s malice, as in the above case, may be qualified as minor breaches; hence the Police authorities should treat them accordingly in relation to

26 R.A. Stefański (ed.), *Kodeks karny. Komentarz*, Warszawa 2015, p. 1679.

27 M. Filar (ed.), *Kodeks karny. Komentarz*, Warszawa 2016, p. 1496-1497.

28 The judgment of the Supreme Court of 10 October 2014, SNO 38/14, Lex No. 1537566.

the applicant's complaint"²⁹. A minor offence is a peculiar type of a warning for the perpetrator not to continue specific conduct because more painful measures may be enforced in the future. Furthermore, one of the recent rulings acknowledged that "treating a case as a minor breach settles the act's legal qualification, which cannot be connected with or depend on the accused person's personality, his or her attitude, conduct before and after the committed act as well as other circumstances affecting sentencing but external to the act"³⁰.

It can be claimed that if a one-man authority (Rector, Superior or Dean) issues admonition, they also decide whether a given offence is a minor breach or not. Such authorities are not formally bound by any provisions, i.e. their decisions are taken arbitrarily. However, it should be assumed that they should follow the above mentioned criteria including specificity of a disciplinary offence's description adopted for a given professional group. Thus a minor offence shall be a point located on the axis between quite trivial offences and aggravated offences. However, if a one-man authority decides that the criteria are fulfilled, then it is bound to apply provisions on a minor breach. Hence, even though its decisions are discretionary, they are by all means not random. Moreover, they shall most often be subject to control in the appeal.

4. The course of proceedings in case of a minor disciplinary offence

It should be concluded from the above considerations that sanctions for a minor breach are imposed in special disciplinary proceedings. Therefore it can be claimed that sentencing by a one-man authority for the above offence is a disciplinary procedure. Two questions arise here: firstly, whether principles of ordinary (model) disciplinary proceedings should apply to such a procedure and, secondly, whether a ruling issued in the course of a minor breach may be appealed against.

Referring to the first of the above issues, it should be acknowledged that even though relevant provisions are in so far concise, it seems that such rules will generally be binding, yet not fully. For instance, a person who shall be admonished will have to be heard first; that is to say he or she has the right to defence and to counteract the accusation brought by a Disciplinary Ombudsman. Furthermore, he or she may be supported here by Defence Counsel as it is not forbidden by the law since admonition is most often issued after the closure of investigative proceedings. The authority imposing admonition is obliged to follow the principle of objectivism and assumed innocence.

29 The judgment of the Regional Administrative Court in Warsaw of 9 February 2012, II SA/Wa 2173/11, Lex No. 1121552.

30 The judgment of the Supreme Court of 1 October 2015, SNO 58/15, Lex No. 1813482.

On the other hand, the issue of an appeal against the ruling issued under the course of a minor breach is much more complicated because disciplinary provisions scattered all along the Polish legal system envisage various solutions thereon. Generally, it may be recognized that the first instance model does not envisage appeals. Yet it results from the fact that punishment under the course of a minor breach is not treated in this model as disciplinary proceedings but rather as a form of the corporate power or a requirement to subordinate to the superiors.

In the remaining three models, control in the form of an appeal has been envisaged. Yet it is generally a form of control within disciplinary proceedings. Therefore disciplinary admonition may be appealed against to the court/tribunal (disciplinary committee) which, in principle, may not aggravate a disciplinary ruling. Finding the appeal justified (reasonable), it may uphold a decision of the authority issuing a minor breach. If it finds this decision to be too hasty, it may acquit the person.

Nevertheless, another question arises here: may the ruling issued by a disciplinary committee in the case of admonition imposed by a one-man authority be appealed against? The legislator has not offered one solution. It is most often not implied *expressis verbis*, or provided very rarely. For instance, in the regulations on attorneys (Art. 85 par. 4 of the Act on the Advocacy) or legal advisors (Art. 66 par. 4 of the Act on Legal Advisors), the legislator has straightforwardly indicated that “Disciplinary Tribunal’s ruling on the appeal mentioned in par. 3 may not be challenged at all”. Unfortunately, in most cases the legislator remains silent. For instance, it does not result from the content of Art. 140 of the Act on Higher Education if academic teachers are entitled to the appeal even though it is deemed admissible in practice³¹.

It should be mentioned in a side note that this issue has been very divergently interpreted in the courts’ case law with regard to firemen. Nevertheless, it has been eventually assumed that rulings issued by the committee with regard to admonition may be appealed against to an administrative court³². How can this dilemma be resolved if the legislator remains silent?

On the other hand, it may be claimed that due to the constitutional right to a trial in disciplinary cases (the standard under Art. 42 par. 1 and Art. 45 par. 1 of the Polish Constitution apply to these cases), court control over minor breaches should be admitted even if admonition has been verified by the collegiate authority. If admonition imposed for a minor disciplinary offence and admonition issued under an ordinary course evoke the same effects, the same rules of appealing against these decisions should be binding.

31 H. Izdebski, J. Zieliński, *Prawo o szkolnictwie wyższym. Komentarz*, Warszawa 2015, p. 418.

32 The resolution of the Supreme Administrative Court (7) of 10 January 2011, I OPS 4/10, „Orzecznictwo Sądów Polskich” 2011, No. 7-8, item 73.

On the other hand, it may be argued that if a one-man authority may impose solely the most lenient penalty and sometimes be satisfied with listening to a perpetrator, control before a common court should be refused. It should be remembered that revising one-man authority's ruling, the appeal committee may not aggravate the penalty imposed by and thus worsen the accused person's legal status. Moreover, if an appeal against the ruling to a common court is admitted, the accused person will, in principle, have more instances (by one) to challenge the settlement than in the ordinary course of proceedings. Paradoxically, the accused is invalidly provided with an additional measure of appeal in a less serious case. For these reasons, the second opinion should rather be approved of.

5. Conclusion

In the light of the above considerations, the ensuing conclusions can be treated as a general summary of the discussed subject matter.

First of all, a minor disciplinary offence is an institution embracing one of the alternative ways (courses) of disciplinary liability enforcement; yet in cases that are generally more trivial (less socially harmful). The provisions on minor offences may be solely applied to conduct or behaviour satisfying features of a disciplinary offence. It refers only to such minor offences where a degree of violation of obligations or duties by a representative of a given profession is slight, or professional dignity of the practiced job has not been seriously breached. Although the above mentioned stipulations are evaluative and unspecified, a disciplinary authority is obliged to consider whether given conduct is characterized by such a minor breach in the course of pursued proceedings.

Secondly, minor disciplinary offences express the legislator's trust in disciplinary authorities which may qualify a given conduct as an example of such a minor breach in the context of the freedom of requested or imposed penalty. It should be strongly emphasized that even though disciplinary authorities are free to decide about the qualification of a given conduct as a minor case, they do not enjoy full discretion in this respect. The legislator has clearly defined a degree of a disciplinary response to a given category of an act whilst disciplinary authorities should qualify minor disciplinary offences on the basis of all subjective and objective circumstances of a given disciplinary offence taking into account the directives of sentencing referring to them.

Thirdly, although not all disciplinary Acts contain a formulation of the appropriate application of provisions of the Criminal Code or Code of Criminal Procedure, remembering that disciplinary law derives from a wide stream of repressive law, interpreting the term of "a minor breach", it is worth relying on the achievement of criminal law science in the context of such institutions as social

harm of an act, triviality of an act (slight social harm), directives of sentencing, or minor cases. Disciplinary law's discomfort interferes with civil rights by applying disciplinary sanctions; it is generically close to criminal law, or it even partly is its special branch. Nevertheless, specificity of disciplinary law should be taken into account in each case even though the circumstances of the structures of typical criminal law institutions are generally identical.

Fourthly, analyzing the structure of a minor disciplinary offence, we cannot forget about procedural consequences of this institution. Since the discussed notion is a manifestation of peculiarly interpreted opportunism and, additionally, it can be applied to such attitudes that are not characterized by a serious degree of social harm, the right to challenge decisions to a common court may be limited. The above mentioned inconsistencies within this scope should be resolved by the legislator who should determine the conditions of instances in the discussed context more accurately.

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