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Disciplinary liability in the context of the Constitution of the Republic of Poland and the Convention for the Protection of Human Rights and Fundamental Freedoms

Summary of doctoral dissertation
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The subject of the dissertation is issue of regime of disciplinary liability, which in recent years has become the subject of increasing interest among representatives of science, law practitioners and other members of society. The idea of "responsibility" is interdisciplinary in nature, as its types can be distinguished and different bases from which it results can be demonstrated. One of the types of legal liability is disciplinary liability.

The regime of disciplinary liability, despite many similarities and connections with other types of legal liability, is fundamentally different from them and is separate from them. Even the relative closeness of disciplinary liability and criminal liability, as emphasized by representatives of science, and the assignment of both of them to the group of "repressive liabilities", allows for the statement that disciplinary liability is separate and independent. Therefore, there is no doubt that the statutory regulations on disciplinary liability and the proceedings related to it should meet the standards resulting from the Constitution of the Republic of Poland and the ECHR, which should create national law for the implementation of freedoms and human rights.

While in relation to criminal liability and criminal proceedings there have never been any major doubts that the guarantees arising from the Constitution of the Republic of Poland and the ECHR should be full extent applied to their, the same thesis cannot be made in relation to disciplinary liability and proceedings related to it, because, firstly, there are no such explicit premises, and there is a paucity of studies that meet the needs of legal studies in this area.

For the above reasons, the dissertation in question examined the obligation and scope of application of constitutional and convention guarantees to a regime of legal liability other than criminal liability, which resulted in the adopted research thesis – "The guarantees for criminal liability and criminal proceedings provided for in the Constitution of the Republic of Poland and the guarantees for criminal matters provided for in the ECHR shall apply to disciplinary liability and proceedings relating thereto".

The dissertation consists of an introduction, five chapters and a conclusion, and its structure is not accidental. The well-thought-out structure, expressed through thematic connections between chapters and subchapters, made it possible to answer questions aimed at verifying the assumed thesis. Each chapter ends with a summary, which systematizes the argument after each part of the dissertation.

Obtaining an answer approving or denying the thesis presented above required, in the first chapter of the dissertation, an explanation of basic concepts and terms such as "disciplinary liability" and the related concept of "disciplinary tort". The analysis of its origins allowed for understanding the assumptions of its creation and the history of its development, which helped to properly determine the features, goals, functions and entity of disciplinary liability. Particular attention was focused on examining the limits of disciplinary liability, because despite the existence of many scientific studies on this subject, it is difficult to find a clear position. The limits of disciplinary liability are an extremely interesting issue, because it is assumed that due to the statutory lack of definition of disciplinary torts, they are open in nature, which, at the very beginning of the research, calls into question how the limits of disciplinary liability can be determined and, therefore, whether this liability regime legal entity may be covered by constitutional and conventional guarantees with respect to the foreseeable possibility of being held liable only for a prohibited act under penalty specified in the law in force at the time of its commission.

The second chapter opens with considerations devoted to the terminology of legal liability and the comparison of other regimes of legal liability with disciplinary liability. A significant part of this chapter is devoted to examining the concepts of "repressive liability" and "repressive conduct." Particular attention was paid to demonstrating the correct understanding of criminal liability and criminal proceedings in the light of Art. 42 of the Constitution of the Republic of Poland. The research conducted in this chapter of the dissertation allowed to answer the questions asked in order to verify the assumed thesis and confirm that the concept of criminal liability is autonomous and its terminological scope covers all types of repressive liability. Thus, the idiomatic meaning of the concepts of criminal liability and criminal proceedings under Art. 42 section 1 of the Constitution of the Republic of Poland should be extended to all regimes of legal liability that fit into the conceptual framework of repressive liability. Bearing in mind that disciplinary liability and disciplinary proceedings are included in the autonomous understanding of the concept of criminal liability and criminal proceedings on constitutional grounds, there is a need to cover disciplinary liability and disciplinary proceedings with constitutional standards appropriate for criminal liability and criminal

proceedings. The scope of application of the standards should be appropriately modified, which results from the specificity of disciplinary liability and the proceedings related to it.

The next chapter of the dissertation focuses research on the concept of "criminal accusation", which is decoded from Art. 6 section 1 ECHR. This made it possible to establish the criteria on which the ECtHR determines the classification of a given type of case as a criminal case. The examination of the case law of the ECtHR led to the conclusion that, as a rule, cases of disciplinary liability are not classified by the ECtHR as those to which the existence of a "criminal accusation" can be attributed within the autonomous meaning of the norms of the Convention. The indicated cases are classified as those in which civil rights and obligations are decided. Therefore, disciplinary liability and proceedings related to it are covered only by the guarantee of a fair trial (see Article 6(1) of the ECHR in its civil aspect). Although the constitutional understanding of the concept of criminal liability, the principles of operation of the Polish legal system and the objectives and autonomous interpretation of the standards of the Convention would require the application of the guarantees arising from Art. 6 section 2 and 3 ECHR and Art. 7 ECHR, the conclusions of the hearing in question indicate the impossibility of covering the standards of Art. 6 section 2 and 3 ECHR and Art. 7 ECHR sphere of disciplinary liability. The analysis of the case law of the ECtHR clearly shows the distinction between criminal law and disciplinary law, leaving no doubts in this regard. Disciplinary liability and proceedings related to it, in the conventional sense, are, in principle, a matter related to the determination of civil rights and obligations, therefore disciplinary cases are not covered by the standards of Art. 6 section 2 and 3 ECHR and Art. 7 ECHR.

Determining and characterizing the grounds for incurring it is of fundamental importance for any regime of legal liability. Therefore, in the fourth chapter of the dissertation, the developed conclusions were used to show the material basis of disciplinary liability in the perspective of constitutional and convention standards.

The last chapter of the dissertation presents an outline of the material basis of disciplinary liability and outlines the model of disciplinary proceedings appropriate for judges, prosecutors, attorneys, attorneys-at-law, notaries, teachers, academic teachers and selected representatives of medical professions (i.e. doctors, dentists, pharmacists, nurses and midwives). In this part of the dissertation, an analysis of court decisions was carried out in order to examine whether and how constitutional and conventional standards of disciplinary liability are applied and observed.

The dissertation ends with a conclusion in which partial conclusions are collected in order to verify the thesis put forward in this dissertation using the answers to the exploratory

questions included in the introduction. Based on the considerations carried out on the basis of the hearing in question, the author came to the conclusion that the guarantees for criminal liability and criminal proceedings provided for in the Constitution of the Republic of Poland apply respectively to disciplinary liability and the proceedings relating thereto, while they do not apply to disciplinary liability and the proceedings relating thereto. guarantees provided for in the ECHR for a criminal case, and these proceedings are covered by the convention standard of a fair trial resulting from Art. 6 section 1 ECHR. The research conducted during this dissertation also made it possible to determine whether the assumed goal of the dissertation had been achieved and to formulate *de lege lata* comments, *de lege ferenda* demands, as well as proposals for legislative changes to provisions which, in the author's opinion, require intervention from the legislator. It should contribute to the development of science and further research in this matter.

The dissertation takes into account the legal status as of 29th March 2024.