LIMITATION PERIOD FOR PUNISHABILITY OF DISCIPLINARY OFFENCE HAVING ELEMENTS OF CRIMINAL OFFENCE AND THE PRINCIPLE OF JURISDICTIONAL INDEPENDENCE OF DISCIPLINARY COURT

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As the period of limitation regarding the punishability and prosecution of disciplinary offences committed by representatives of legal professions[1] (i.e. persons exercising their profession or holding an office) is usually short, the problem of the existence or non-existence of the right of the disciplinary court to establish that the offence 'has the constituent elements of a criminal offence' is particularly significant from the point of view of the effectiveness of disciplinary proceedings, which would allow the adoption of the limitation periods specified in the Criminal Code[2] in relation to a given type of offence, depending on the length of the statutory sentence of imprisonment (Article 108 § 4 LSCC, Article 88 para. 3 LA, Article 70 para. 3 AAL). However, in order to address this issue, it is necessary to discuss the meaning of the quoted phrase, since the use of one of two possible interpretations

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[1] See, for example, Article 108 § 1 of the Act of 27 July 2001: Law on the system of common courts (consolidated text, Dz.U. 2019, item 52), hereinafter LSCC; Article 88 para. 1 of the Act of 26 May 1982: Law on advocates (consolidated text, Dz.U. 2019, item 1513), hereinafter LA; and Article 70 para. 1 of the Act of 6 July 1982 on attorneys-at-law (consolidated text, Dz.U. 2020, item 75), hereinafter AAL.

[2] *Lege non distinguente*, it must be considered that the statement: 'the limitation period provided for in the provisions of the Criminal Code' indicates the need to apply not only Article 101 Criminal Code, but also Article 102 Criminal Code and other provisions on the limitation period; see the Supreme Court resolution of 7 December 2007, SNO 81/07, OSNwSD 2007, item 16; the Supreme Court judgment of 15 June 2011, SNO 25/11, OSNwSD 2011, item 34.

has significant consequences for the scope of the disciplinary court's jurisdictional independence in the situation referred to, inter alia, in Article 108 § 4 LSCC.

According to the first view, represented by some legal commentators, the phrasing: 'has the constituent elements of a criminal offence' should be interpreted as: 'has the constituent elements of a prohibited act'.[3] This is supported by a grammatical interpretation. In accordance with the directive on legal language, the concept of 'constituent elements' refers to a prohibited act specified by law (see Article 115 § 1 Criminal Code, Article 53 § 1 Fiscal Penal Code, Article 47 § 1 Petty Offences Code). As such, it does not relate to other elements of an offence, i.e. unlawfulness, punishability or guilt, which cannot, in any case, be regarded as 'constituent elements'. However, in the light of the directive on a linguistic interpretation – the *per non est* principle – a provision of law cannot be interpreted to such an effect as to render any portion thereof redundant. This, in turn, indicates that adoption of a view other than the one currently presented would make the term of 'constituent elements' redundant.

It is worth noting that whenever this expression is used in the Criminal Code, it is always linked to a specific definition of a prohibited act (cf. Article 11 § 2, Articles 91 § 1 and 91 § 3, Article 115 § 1, Article 231 § 4 Criminal Code). Based on this, it can be assumed that the expression is used specifically for the purposes of emphasising the fact that the prohibited act represents a criminal offence. It should be noted that, from a legal viewpoint, a prohibited act can also be an administrative or civil wrongful act, as well as a misdemeanour.[4] The distinction between a prohibited act and a criminal offence, which has its obvious justification in the Criminal Code, may lead to misunderstandings on the grounds of the law on the system of courts where – as it has already been pointed out – a 'prohibited act' is understood in broader terms than under criminal law *sensu stricto*. It is clear, however, that in order for a prohibited act to constitute a criminal offence, it is necessary that the existence of unlawfulness, punishability, guilt and an adequate degree of social harmfulness be established, and these elements of a criminal offence cannot be described as its constituent elements.

In addition, if the legislator wanted the criminality of an act to be grounds for extending the limitation period for a disciplinary offence under Article 108 § 4 LSCC, they would use the expression 'constitutes a criminal offence' as it is done in certain corporate acts.[5] Moreover, the literature indicates that the purpose of extending the limitation period for a disciplinary offence on the basis of the above provision is to take account of the seriousness of an act, perceived in abstract terms, which constituted the basis for the legislator's decision to criminalise the act, with

[3] See A. Bojańczyk, T. Razowski, *Konsekwencje procesowe przewinienia dyscyplinarnego będącego przestępstwem*, Prokuratura i Prawo 11–12, 2009, pp. 45–50.

[4] See, for example, Article 1 § 2(2)(b) of the Act of 26 October 1982 on procedure in juvenile delinquency cases (consolidated text, Dz.U. 2018, item 969), where the legislator also understands a minor offence as a prohibited act.

[5] See Article 64 para. 4 of the Act of 2 December 2009 on medical chambers (Dz.U. 2009, No. 219, item 1708, as amended, consolidated text, Dz.U. 2019, item 965); Article 46 para. 4 of the Act of 1 July 2011 on self-government of nurses and midwives (Dz.U. 2011, No. 174, item 1038, consolidated text, Dz.U. 2018, item 916).

regard to which it is not required to establish unlawfulness, punishability or guilt, as well as *in concreto* a sufficiently high degree of social harmfulness.[6]

A different view, supported by no less relevant arguments, was presented in the Supreme Court resolution of 28 September 2006,[7] which was approved of by some legal commentators.[8] The court stated that the expression 'has the constituent elements of a criminal offence' implies an obligation to establish the criminality of an act and, as such, also the unlawfulness, punishability, guilt and a sufficiently high degree of social harmfulness. In other words, the expression 'has the constituent elements of a criminal offence' is tantamount to 'constitutes a criminal offence'. In support of its view, the Supreme Court pointed out that under the Criminal Code the limitation period is related to the concept of a criminal offence and not to the concept of a prohibited act, and – more specifically – the appropriate limitation periods are prescribed in the context of a specific criminal offence, especially the severity of the penalty it carries. After all, one cannot speak of the limitation period for a prohibited act. The court also pointed out that since 'in disciplinary proceedings, concerning legal professions, the legislator explicitly allows the possibility of staying these proceedings pending the conclusion of criminal proceedings regarding the same act, this undoubtedly will not undermine the assumption that it is reasonable of the legislator to allow this possibility also in disciplinary proceedings against judges (public prosecutors, notaries), by staying, in the same circumstances, disciplinary proceedings on the basis of Article 22 § 1 of the Criminal Procedure Code applied *mutatis mutandis*'.[9]

The Supreme Court elaborated on its position in its judgment of 25 July 2013.[10] In this case, parallel criminal proceedings were pending, in which the appellate court reversed a judgment whereby the trial court conditionally discontinued the proceedings and dismissed the criminal case due to a negligible degree of social harmfulness of the act. Against this procedural background, the Supreme Court held that there were no grounds for considering that the limitation period applicable to the offence was effective in the examined case (Article 70 para. 3 AAL). It emphasised that the phrase 'has the constituent elements of a criminal offence' should be interpreted as comprising the requirement of establishing that the act is criminal which, in addition to meeting the constituent elements of a prohibited act specified in the criminal law, also includes unlawfulness, guilt and a degree of social harmfulness greater than negligible. The court added that this view – due to the vagueness of the concept of 'constituent elements of a criminal offence' in the

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[6] Compare A. Bojańczyk, T. Razowski, *supra* n. 3, p. 49.

[7] I KZP 8/06, OSNKW 2006, No. 10, item 87, OSNwSD 2006, item 118.

[8] W. Wróbel, *Zasada domniemania niewinności – wybrane zagadnienia na marginesie uchwały Sądu Najwyższego z dnia 28 września 2006 r. (I KZP 8/06)*, Studia i Analizy Sądu Najwyższego, Vol. I, ed. K. Ślebzak, Warszawa 2007, pp. 112–129.

[9] OSNwSD 2006, item 118, p. 369. However, it should be noted that with regard to the latter argument, Antoni Bojańczyk and Tomasz Razowski submit that the absence of an appropriate regulation in the Law on the system of common courts should lead to the opposite conclusion, i.e. it should invite a more prudent approach when considering the question of applying the institution of stay of disciplinary proceedings (see A. Bojańczyk, T. Razowski, *supra* n. 3, p. 52).

[10] SDI 13/13, OSNwSD 2013, item 49, LEX No. 1375237.

legal language, where the notion of 'constituent elements' should be construed as referring to a prohibited act specified in the criminal law rather than to a criminal offence, the determination of which requires that other grounds of criminal liability be established – may give rise to doubts; these, however, can be dispelled using other methods of interpretation. Given the ambiguity of the result of the grammatical interpretation, reference should be made to a systemic and dynamic interpretation (in line with the current legislator's intention), while establishing the meaning of the provision of Article 70 para. 2 AAL (currently, Article 70 para. 3) based on the wording of analogous regulations in more recent corporate acts, i.e. the Act of 2 December 2009 on medical chambers and the Act of 1 July 2011 on self-government of nurses and midwives. In these statutory instruments, the functional equivalents of Article 70 para. 2 AAL, i.e. Article 64 para. 4 Act on medical chambers and Article 46 para. 4 Act on self-government of nurses and midwives, contain the phrasing of 'constitutes a criminal offence', which indicates that the meaning of a similar regulation under the Act on attorneys-at-law should also be interpreted this way as this corresponds to the current legislator's intention. Although the above decision was made on the basis of the Act on attorneys-at-law, the same application of the problematic expression 'contains the constituent elements of a criminal offence' is also significant for disciplinary proceedings conducted pursuant to the Law on the system of common courts and other acts containing provisions parallel to those set out in Article 70 para. 3 AAL and Article 108 § 4 LSCC.

It must be acknowledged that the first of the presented views seems to be much more favourable from the point of view of implementing of the principle of disciplinary court jurisdictional independence, which can be derived from Article 8 of the Criminal Procedure Code in conjunction with Article 128 LSCC. If the discussed expression were to be interpreted this way, i.e. narrowly, the disciplinary court could freely decide whether a given alleged conduct of the defendant met the constituent elements of a prohibited act, without going into the question of further grounds for criminal liability which, once established, could be regarded as overriding the constitutional principle of the presumption of innocence (Article 42 para. 3 of the Polish Constitution).[11]

In turn, in the interpretation made by the Supreme Court in the above-mentioned decisions, the provision of Article 108 § 4 LSCC (Article 70 para. 3 AAL, etc.) will constitute a bar to the adoption of full jurisdictional independence of disciplinary proceedings, as stipulated e.g. in Articles 119 and 120 LSCC.[12] If it is assumed that a disciplinary court, when called upon to examine whether there are grounds for applying Article 108 § 4 LSCC, will have to establish whether a given act constitutes a crime, then – in the Supreme Court's view – this will violate the principle of presumption of innocence. Therefore, as indicated in the resolution I KZP 8/06, 'it must be accepted that in disciplinary proceedings, the finding that a disciplinary offence contains the constituent elements of a criminal offence must be based on a final and non-appealable conviction for the offence whose constituent elements

[11] See more in W. Wróbel, *supra* n. 8, pp. 112–129.

[12] See also Article 86 LA, Article 67 para. 1 AAL.

are present in the alleged disciplinary offence.'[13] However, the problem is that the period during which a final and non-appealable decision is issued by a criminal court typically exceeds the limitation period for punishability and prosecution of a given act with a view to its being considered a disciplinary wrongful act. This will imply the necessity to discontinue disciplinary proceedings that have been stayed in connection with pending criminal proceedings, due to the expiry of general limitation periods set out, e.g. in Article 108 § 1 or Article 108 § 2 LSCC, in the event of a discontinuance of criminal proceedings or an acquittal, while such a decision does not necessarily have to be issued in disciplinary proceedings where the same act is subject to legal evaluation in the light of different criteria.

An important argument supporting the adoption of the resolution I KZP 8/06 is the risk of a double legal and criminal assessment being made in respect of the same act.[14] In the said resolution, the Supreme Court stressed that 'where criminal and disciplinary proceedings are pending at the same time and involve the same subject matter and individuals, the disciplinary courts should, when deciding whether to continue disciplinary proceedings, always consider the extent to which the risk of different decisions being issued in disciplinary and criminal proceedings is actually real. High probability of conflicting decisions should lead to the interruption or postponement of the hearing or even to the stay of disciplinary proceedings in order to mitigate the risk of two different decisions being issued in separate proceedings relating to the same factual and legal background'.[15]

Therefore, it seems that the proposition provided in the Supreme Court resolution of 28 September 2006 does not imply that disciplinary courts must be absolutely limited in hearing cases regarding acts that have the constituent elements of a criminal offence, even though such a view was taken in a number of subsequent cases before the Supreme Court. For example, in case no. SNO 39/09,[16] the Supreme Court, in its decision of 26 May 2009, referring to the above-mentioned resolution, held that 'in a situation where a disciplinary offence have the constituent elements of a criminal offence, it is necessary to stay disciplinary proceedings pending a final and non-appealable judgment of the criminal court, while applying *mutatis mutandis* Article 22 § 1 Criminal Procedure Code in conjunction with Article 128 Law on the system of common courts'.[17] Meanwhile, in the last sentences of the reasons for the above-mentioned resolution, the Supreme Court admitted that the issue of staying disciplinary proceedings was primarily a matter for the court hearing the case since the resolution should be examined – as it has been pointed out earlier – in the context of the circumstances of a specific case. In formulating the final position, less firm than it would appear from earlier arguments, the court found that 'since the provisions of the Criminal Procedure Code are applied *mutatis mutandis* in

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[13] OSNwSD 2006, item 118, p. 368.

[14] This was in particular noted by Wiesław Kozielewicz; see *idem*, *Odpowiedzialność dyscyplinarna sędziów. Komentarz*, Warszawa 2005, p. 89.

[15] OSNwSD 2006, item 118, p. 369.

[16] OSNwSD 2009, item 52.

[17] See decision of the Supreme Court – Disciplinary Chamber of 5 October 2010, SNO 44/10, OSNSD 2010, item 53.

disciplinary proceedings in cases involving judges, taking into account the specific nature of both the disciplinary proceedings and the disciplinary liability itself, then – where criminal and disciplinary proceedings are pending at the same time and involve the same subject matter and individuals and the disciplinary court considers it necessary to stay the disciplinary proceedings until the conclusion of the criminal proceedings – there are no reasonable grounds to exclude such a possibility'.[18]

Therefore, it seems that the proper understanding of the resolution of 28 September 2006 should be essentially a matter of endorsing jurisdictional independence in the context of disciplinary proceedings (first sentence of the thesis of the resolution setting out this principle) and accepting the admissibility of applying Article 22 § 1 Criminal Procedure Code in the context of disciplinary proceedings, in particular due to the procedural economy or the fact that criminal and disciplinary proceedings are pending at the same time and involve the same subject matter and individuals, in light of the need to adopt a longer limitation period under Article 108 § 4 LSCC. These provisions can only be regarded as optional exceptions to the principle that a court decides on factual and legal issues on its own and is not bound by decisions of any other court or authority.[19]

Therefore, it should be considered that a disciplinary court, due to the different grounds for disciplinary and criminal liability for the same act, may conduct proceedings parallel to criminal proceedings, unless it sees a risk of different decisions being issued, which – given a non-exhaustive list of the grounds for the application of Article 22 § 1 Criminal Procedure Code – may be regarded as a long-lasting obstacle preventing proceedings from being conducted. In addition, the stay of proceedings may be expedient where it proves necessary to base the findings of facts on complex or extensive evidence that can effectively be obtained in criminal proceedings (for reasons of procedural economy) in order to issue a disciplinary decision. The third circumstance, the least evaluative (which is left *ad casum* to the discretion of the disciplinary courts), but at the same time the most arguable, is the stay of proceedings when there is a need to apply the institution specified in Article 108 § 4 LSCC.

However, it is worth considering whether it will always be necessary to stay criminal proceedings when the duration of the disciplinary proceedings approaches or exceeds the limitation period for a disciplinary offence. This seems to be necessary if the court has to wait for evidence to be collected in criminal proceedings or – which is also related to the assessment of the evidence – finds it highly probable that different decisions as to whether or not the act constitutes an offence will be made. This issue is important in disciplinary proceedings themselves, but it is also relevant after a disciplinary decision has become final and non-appealable in cassation proceedings.[20]

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[18] OSNwSD 2006, item 118, p. 370.

[19] It seems that such view was presented, among others, in the decision of the Supreme Court – Disciplinary Chamber of 15 January 2014, SNO 38/13, OSNwSD 2014, item 13.

[20] For example, in proceedings concerning the examination of a cassation appeal in cases regarding defendant notaries (where Article 52 § 2 Law on notaries has the same wording as Article 108 § 4 LSCC), the Supreme Court stayed cassation proceedings for reasons of procedural

It seems that on the basis of the analysed problem a compromise solution can be proposed for the views presented at the beginning of this paper in relation to the interpretation of Article 108 § 4 LSCC, where their advantages are reconciled and mutual disadvantages eliminated. More specifically, it can be said that the phrasing 'has the constituent elements of an offence' implies the requirement for the disciplinary court to establish the fulfilment of the statutory elements of an offence and to assume a high probability that such conduct will be considered criminal by the criminal court. This also entails the need to consider that the disciplinary court should not make a different factual and legal assessment of a defendant's act subject to criminal proceedings.

In this context, it is worth making a few remarks concerning the nature of a disciplinary court's finding that a given act to be subject to disciplinary and legal evaluation constitutes a criminal offence, which is significant in light of the Supreme Court's view endorsing such a broad understanding of the grounds stemming from Article 108 § 4 LSCC, as set out in the resolution I KZP 8/06 and in case SDI 13/13. It is clear that the disciplinary court is not competent to establish that an act is a criminal offence since only a criminal court is competent to do so by way of a judgment.[21] It is for this reason that the disciplinary court can at most make an assessment in respect of the fulfilment of the constituent elements of a prohibited act and a probabilistic assessment of the likelihood of establishing the criminality of an act. This view respects the principle of the jurisdictional independence of disciplinary courts and the principle of the presumption of innocence when establishing a criminal offence. At the same time, this does not preclude the disciplinary court from staying the proceedings if it considers that the issuance of a decision carries too high a risk of different decisions being made with regard to the assessment related to the criminality of the act, determining the subjective and substantive identity of the criminal and disciplinary proceedings. It is clear that a range of behaviour constituting a disciplinary wrongful act is not equivalent to a catalogue of criminal offences, since the legal assessment of a given act is based on the criteria which are the same as to the type but differ as to the quality.[22]

This is particularly evident in the assessment of the substance of an act. Although corporate harm is a derivative of social harm under criminal law, the application of Article 115 § 2 Criminal Code may only be appropriate, and thus take into account the specificity of disciplinary liability, i.e. liability in the context of the professional activity of a defendant within a given corporate government and obligations related

economy and the presumption of innocence (see the Supreme Court decision of 9 August 2012, SDI 19/12, LEX No. 1228608), stressing the need to wait for a judgment of the criminal court establishing the existence of the grounds referred to in Article 52 § 2 of the Law on notaries (see the Supreme Court decision of 9 August 2012, SDI 13/12, unpublished).

[21] See W. Wróbel, *supra* n. 8, p. 125.

[22] In a situation where only a part of the alleged disciplinary misconduct of the defendant is subject to criminal proceedings, it may be necessary to stay disciplinary proceedings in full, even if the disciplinary offence and the criminal offence the defendant is charged with are not the same, when there is a strong time and contextual connection and a causal link between the individual conduct of the defendant; see the decision of the Supreme Court – Disciplinary Chamber of 15 January 2014, SNO 38/13, OSNwSD 2014, item 13.

to the exercise of a specific profession (an advocate, a notary, etc.) or the exercise of office (a judge, a public prosecutor). Therefore, it will not always be the case that a criminal court's finding of a negligible social harm of an act will oblige the disciplinary court to accept the same assessment of the degree of corporate harm of the same act as a disciplinary offence, since these assessments are based on similar but nonetheless non-identical criteria. The *signum specificum* is the context of specific conduct which for the criminal liability has a social dimension, while for the disciplinary liability – a corporate dimension. As indicated in the body of judicial decisions, what is called corporate harmfulness, which is an element of an offence specified in Article 107 § 1 LSCC, means social harmfulness within the meaning of ordinary criminal law, supplemented by elements of harmfulness measured against the judge's professional environment, taking into account the protection of the prestige of the judiciary and the repute of the courts and judicial authorities as well as individual judges. The extent of this harmfulness is also determined by subjective factors concerning the defendant, the extent of the damage, the manner and circumstances in which the act has been committed, and the nature and significance of the rules infringed.[23] This, in turn, seems to support the need for the disciplinary court to recognise an act that fulfils the constituent elements of a criminal offence, even if the court in a criminal case established the absence of the grounds under Article 1 § 2 Criminal Code. This possibility would naturally open up when a narrow understanding of the expression 'has the constituent elements of an offence' is accepted. It should also be noted that the criminalisation of an unintentional misdemeanour does not automatically mean that a disciplinary court will consider such conduct as a disciplinary offence. As indicated in the case law on the disciplinary liability of judges (which *mutatis mutandis* can be applied to other legal professions), 'the dignity of the judge's office is compromised when the judge is a perpetrator who has breached the law, and in particular when he or she commits a criminal offence. However, not every such conduct implies "violation of the dignity of the office". In the case of an unintentional misdemeanour, its nature and seriousness, as well as the manner and circumstances in which it has been committed, must be assessed from the point of view of the socially acceptable standard of the judge's profession. In unintentional offences, including traffic offences, the type of rules of reasonable conduct that have been violated and the extent to which they have been violated shall be a determining factor.'[24]

The fact that the grounds for disciplinary and criminal liability do not completely match is an important argument in favour of the jurisdictional independence of disciplinary courts, since not every finding of a criminal offence will mean that a disciplinary offence can be punished and, at the same time, not every disciplinary offence must be a criminal offence. This is all the more important as in the event of acquittal or discontinuance of criminal proceedings, or even the expungement

[23] Decision of the Supreme Court – Disciplinary Chamber of 20 July 2011, SNO 31/11, OSNSD 2011, item 4.

[24] Decision of the Supreme Court – Disciplinary Chamber of 26 May 2009, SNO 37/09, OSNwSD 2009, item 6, LEX No. 1288878.

of a conviction,[25] it is possible, in certain circumstances, to hold the offender liable in disciplinary terms. This, in turn, leads to the conclusion that it is not always necessary to await the decision of a criminal court, which, as already indicated earlier, may lead to the expiry of the limitation period for a disciplinary offence. It is worth noting that in the event when the assessment of actual conduct differs in light of the criteria applied to criminal and disciplinary proceedings, it is possible to resume the latter (e.g. in cases of judges under Article 126 LSCC), which is a kind of a safe option that eliminates the situation of two conflicting judgments. There may also be situations in which it is the disciplinary court that makes a proper legal assessment of an act, combining the issue of criminal and disciplinary liability.[26]

In conclusion, it appears that, in affirmation of the principle of jurisdictional independence of disciplinary courts, it is appropriate to support the view allowing disciplinary proceedings regarding an act which is subject to parallel criminal proceedings to be conducted also after the expiry of the limitation period for a disciplinary offence, provided that this is not precluded by reasons of procedural economy and limited capacity of the disciplinary court as regards evidence-gathering, and that the disciplinary court does not find it highly probable that a decision other than that of the criminal court will be made in respect of the commission and the legal qualification of the defendant's act in the context of its criminal nature. The adoption of this view is in favour of the efficiency of disciplinary proceedings, which could otherwise be 'paralysed' by the course of criminal proceedings. At the same time, it poses a minimum risk of violating the principle of the presumption of innocence, though only based on axiological grounds and not on formal and legal grounds, which all the more supports the view that the disciplinary court should be allowed to make legal and criminal assessments that are, after all, made only for the purposes of applying a longer limitation period to the punishability of a disciplinary offence.

BIBLIOGRAPHY

Bojańczyk A., Razowski T., *Konsekwencje procesowe przewinienia dyscyplinarnego będącego przestępstwem*, Prokuratura i Prawo 11–12, 2009.

Kozielewicz W., *Odpowiedzialność dyscyplinarna sędziów. Komentarz*, Warszawa 2005.

Wróbel W., *Zasada domniemania niewinności – wybrane zagadnienia na marginesie uchwały Sądu Najwyższego z dnia 28 września 2006 r. (I KZP 8/06)*, Studia i Analizy Sądu Najwyższego, Vol. I, ed. K. Ślebzak, Warszawa 2007.

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[25] See decision of the Supreme Court of 4 January 2011, SDI 29/10, OSNwSD 2011, item 56, OSNKW 2011/5/40.

[26] See e.g. a judgment of the Supreme Court – Disciplinary Chamber of 27 February 2008, SNO 7/08, OSNwSD 2008, item 31, in which, referring to the principle of jurisdictional independence, the Supreme Court made a different assessment of the causal link between the act of the defendant judge and the traffic accident, stating that 'since, in the light of the experts' opinion, the victim violated the elementary road traffic rules and the defendant's conduct consisting in exceeding the speed limit was not linked to the consequence of the accident, there are no grounds to reasonably consider that he violated the dignity of the judge's office'.

LIMITATION PERIOD FOR PUNISHABILITY OF DISCIPLINARY OFFENCE HAVING ELEMENTS OF CRIMINAL OFFENCE AND THE PRINCIPLE OF JURISDICTIONAL INDEPENDENCE OF DISCIPLINARY COURT

Summary

This paper addresses the issue of jurisdictional independence of a disciplinary court in terms of the possibility of assessing an act under investigation in the context of the grounds of criminality of an act. The issue is of particular importance in view of the rules on limitation periods for disciplinary offences, which require the adoption of limitation periods for criminal offences where the act constitutes a criminal offence. Such a solution may lead to a conflict between the principle of jurisdictional independence of the disciplinary court and the principle of the presumption of innocence, since this presumption can only be rebutted by a final and non-appealable judgment of a criminal court. In turn, the stay of disciplinary proceedings and waiting for a final and non-appealable judgment of the criminal court may have a negative impact on the decision concerning the issue of disciplinary liability. This study proposes a compromise solution which, according to the author, would respect both principles.

Keywords: disciplinary proceedings, period of limitation, disciplinary offence, disciplinary judiciary, prohibited act, principle of jurisdictional independence, presumption of innocence

PRZEDAWNIENIE KARALNOŚCI PRZEWINIENIA DYSCYPLINARNEGO ZAWIERAJĄCEGO ZNAMIONA PRZESTĘPSTWA A ZASADA SAMODZIELNOŚCI JURYSDYKCYJNEJ SĄDU DYSCYPLINARNEGO

Streszczenie

Niniejsze opracowanie porusza problematykę samodzielności jurysdykcyjnej sądu dyscyplinarnego w zakresie możliwości dokonywania oceny czynu będącego przedmiotem postępowania przed tym sądem w kontekście warunków przestępności czynu. Doniosłość tego zagadnienia jest szczególna z uwagi na unormowania dotyczące terminów przedawnienia dyscyplinarnego, które nakazują przyjąć terminy właściwe dla przedawnienia przestępstw, jeżeli czyn stanowi przestępstwo. Takie rozwiązanie prowadzić może do kolizji zasady samodzielności jurysdykcyjnej sądu dyscyplinarnego z zasadą domniemania niewinności, albowiem domniemanie to może być obalone jedynie prawomocnym wyrokiem sądu karnego. Z kolei zawieszenie postępowania dyscyplinarnego i oczekiwanie na prawomocny wyrok sądu karnego może przynieść negatywne skutki dla rozstrzygnięcia o kwestii odpowiedzialności dyscyplinarnej. W przedmiotowym opracowaniu zaproponowano kompromisowe rozwiązanie, które – w przekonaniu autora – respektowałoby obie wskazane zasady.

Słowa kluczowe: postępowanie dyscyplinarne, przedawnienie, przewinienie dyscyplinarne, sądownictwo dyscyplinarne, czyn zabroniony, zasada samodzielności jurysdykcyjnej, domniemanie niewinności

PRESCRIPCIÓN DE INFRACCIÓN DISCIPLINARIA QUE CONTENGA ELEMENTOS DE DELITO Y EL PRINCIPIO DE AUTONOMÍA JURISDICCIONAL DEL TRIBUNAL DISCIPLINARIO

Resumen

La presente obra versa sobre la problemática de autonomía jurisdiccional del Tribunal disciplinario en cuanto a la posibilidad de enjuiciar el hecho que sea objeto del proceso ante este Tribunal desde la perspectiva de condiciones criminales de hecho. La importancia de esta cuestión es especial, debido a la regulación de plazos de prescripción de infracción disciplinaria que obligan aplicar plazos previstos para la prescripción de delitos, siempre y cuando el hecho sea constitutivo de delito. Tal solución puede producir la colisión entre principio de autonomía jurisdiccional del Tribunal disciplinario con el principio de presunción de inocencia, ya que la presunción puede ser negada sólo a través de la sentencia firme del Tribunal penal. La suspensión de proceso disciplinario y la espera a la sentencia firma del Tribunal penal puede conducir a consecuencias negativas en cuanto a la resolución sobre la responsabilidad disciplinaria. En la presenta obra se propone una solución de compromiso que – según el autor – respeta ambos principios señalados.

Palabras claves: procedimiento disciplinario, prescripción, infracción disciplinaria, jurisdicción disciplinaria, hecho prohibido, principio de autonomía jurisdiccional, presunción de inocencia

СРОК ДАВНОСТИ В ОТНОШЕНИИ ДИСЦИПЛИНАРНОГО ПРОСТУПКА, СОДЕРЖАЩЕГО ПРИЗНАКИ ПРЕСТУПЛЕНИЯ, И ПРИНЦИП ЮРИСДИКЦИОННОЙ НЕЗАВИСИМОСТИ ДИСЦИПЛИНАРНОГО СУДА

Аннотация

В статье затрагивается вопрос юрисдикционной независимости дисциплинарного суда относительно его способности дать оценку деянию, которое рассматривается в данном суде и в котором имеются признаки состава преступления. Важность данного вопроса обусловлена, в частности, положениями о сроках давности по дисциплинарным делам, согласно которым, если деяние представляет собой преступление, следует принять сроки давности, предусмотренные для преступлений. Такое решение может привести к коллизии между принципом юрисдикционной независимости дисциплинарного суда и принципом презумпции невиновности, поскольку презумпция невиновности может быть опровергнута только вступившим в силу приговором уголовного суда. С другой стороны, приостановление дисциплинарного разбирательства до вступления в силу решения уголовного суда может негативно повлиять на решение вопроса о дисциплинарной ответственности. Автор предлагает компромиссное решение, которое, по его мнению, удовлетворяет обоим вышеуказанным принципам.

Ключевые слова: дисциплинарное расследование; срок давности; дисциплинарный проступок; дисциплинарные суды; запрещенное действие; принцип юрисдикционной независимости; презумпция невиновности

DIE VERJÄHRUNG DER STRAFVERFOLGUNG VON DISZIPLINARVERGEHEN UND DER GRUNDSATZ DER GERICHTLICHEN UNABHÄNGIGKEIT DES DISZIPLINARGERICHTS

Zusammenfassung

Diese Studie befasst sich mit der Frage der Unabhängigkeit der Gerichtsbarkeit von Disziplinargerichten hinsichtlich der Möglichkeit einer Bewertung der verfahrensgegenständlichen Zuwiderhandlung vor diesem Gericht im Kontext der Bedingungen der Strafbarkeit. Diesem Thema kommt aufgrund der Vorschriften über die Verjährungsfristen für die disziplinarische Verfolgung, nach denen – sofern es sich bei der Zuwiderhandlung um eine Straftat handelt – die für Straftaten geltenden Verjährungsfristen festgelegt werden müssen, besondere Bedeutung zu. Bei dieser Lösung kann zu einem Konflikt zwischen dem Grundsatz der Unabhängigkeit des Disziplinargerichts und dem Grundsatz der Unschuldsvermutung führen, da die Unschuldsvermutung nur durch ein endgültiges, rechtskräftiges Strafurteil überwunden werden kann. Die Aussetzung des Disziplinarverfahrens und das Warten auf ein rechtskräftiges Urteil des Strafgerichts können sich wiederum nachteilig auf die Entscheidung über die Frage der disziplinarrechtlichen Haftung auswirken. In der vorliegenden Studie wird eine Kompromisslösung vorgeschlagen, die nach Ansicht des Autors beiden Grundsätzen Rechnung tragen würde.

Schlüsselwörter: Disziplinarverfahren, Verjährung, Disziplinarvergehen, Disziplinargerichte, strafbare Handlung, Grundsatz der Unabhängigkeit der Gerichtsbarkeit, Unschuldsvermutung

PRESCRIPTION DE LA RESPONSABILITÉ PÉNALE POUR LES INFRACTIONS DISCIPLINAIRES ET PRINCIPE DE L'INDÉPENDANCE JURIDICTIONNELLE DU TRIBUNAL DISCIPLINAIRE

Résumé

Cette étude aborde la question de l'indépendance juridictionnelle du tribunal disciplinaire dans le cadre de la possibilité d'apprécier l'acte faisant l'objet d'une procédure devant ce tribunal dans le contexte des termes de l'infraction. L'importance de cette question est particulière en raison de la réglementation relative aux délais de prescription disciplinaire, qui exige que des délais de prescription des infractions soient adoptés si l'acte constitue une infraction pénale. Une telle solution peut conduire à un conflit entre le principe de l'indépendance juridictionnelle du tribunal disciplinaire et la présomption d'innocence, cette présomption ne pouvant être réfutée que par un jugement définitif d'un tribunal pénal. À son tour, la suspension de la procédure disciplinaire et l'attente d'un jugement définitif d'un tribunal pénal peuvent avoir des effets négatifs sur la détermination de la question de la responsabilité disciplinaire. Dans la présente étude, une solution de compromis a été proposée qui, de l'avis de l'auteur, respecterait ces deux principes.

Mots-clés: procédure disciplinaire, prescription, infraction disciplinaire, juridiction disciplinaire, acte défendu, principe d'indépendance de juridiction, présomption d'innocence

PRESCRIZIONE DEL REATO DISCIPLINARE CONTENENTE ELEMENTI COSTITUTIVI DI REATO E PRINCIPIO DELLA GIURISDIZIONE AUTONOMA DEL TRIBUNALE DISCIPLINARE

Sintesi

Il presente elaborato tratta la problematica della giurisdizione autonoma del tribunale disciplinare nell'ambito della possibilità di valutazione dell'azione che costituisce l'oggetto del procedimento innanzi a tale tribunale, nel contesto delle condizioni di punibilità. La rilevanza di tale questione è particolare a motivo delle norme riguardanti i termini di prescrizione disciplinare, che impongono di assumere i termini applicabili per la prescrizione dei reati, se l'atto costituisce reato. Tale soluzione può portare alla collisione dei principi di giurisdizione autonoma del tribunale disciplinare con il principio di presunzione di innocenza, poiché tale presunzione può essere confutata unicamente da una sentenza del tribunale penale passata in giudicato. D'altra parte la sospensione del procedimento disciplinare e l'attesa della sentenza del tribunale penale passata in giudicato può portare conseguenze negative per la pronunciazione sulla questione della responsabilità disciplinare. Nell'elaborato in oggetto si è proposta una soluzione di compromesso che secondo la convinzione dell'autore rispetterebbe entrambi i principi indicati.

Parole chiave: procedimento disciplinare, prescrizione, infrazione disciplinare, magistratura disciplinare, reato, principio di giurisdizione autonoma, presunzione di innocenza

Cytuj jako:

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