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Selected Problems of Disciplinary Proceedings in the Cases of Border Guard Officers in the Perspective of Standards of Human Rights

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SELECTED PROBLEMS OF DISCIPLINARY PROCEEDINGS IN THE CASES OF BORDER GUARD OFFICERS IN THE PERSPECTIVE OF STANDARDS OF HUMAN RIGHTS

Due to the importance of the tasks of the Border Guard, it is worth taking up the subject of the disciplinary status of its officers. The subject of the analysis in this study will be disciplinary proceedings from the perspective of human rights standards. This study will be of contributing nature due to the editorial limits. I will focus my attention on the fundamental issues from the point of view of human rights, especially of certain procedural standards.

CHARACTERISTICS OF DISCIPLINARY PROCEEDINGS OF BORDER GUARD OFFICERS.

I will start my discussion with presenting the sources of law in the disciplinary proceedings of Border Guard officers. From the perspective of the constitutional hierarchy of sources of law¹, it is impossible not to indicate the norms of the Basic Law applicable to the subject matter. In the first place one can refer to Article 2 constituting the rule of law. This clause should be interpreted, as indicated by the case law of the Constitutional Tribunal, as 'a collective expression of

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¹ See M. Haczkowska [in:] M. Haczkowska (ed.), R. Balicki, M. Bartoszewicz, K. Complak, A. Ławniczak, M. Masternak-Kubiak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2014, LEX/el.

rules and principles that, although not included in the written text of the Constitution, immanently result from the axiology and the essence of a democratic state of law². The position expressed in this way is of particular importance from the perspective of procedural fairness standards. They also do not result explicitly from specific legal norms. At this point one should also pay attention to Article 31 (3) of the Constitution stating the principle of proportionality. According to the view adopted in the doctrine, this norm obliges the legislator to apply normative measures that are not only purposeful, and thus allow to achieve the desired state, while not placing excessive burdens over those that are necessary to achieve the goal³. From the perspective of the detained officer, a directive formulated in the Constitutional Tribunal's judgment seems to be particularly important: 'if the aim of legal regulation can be achieved by two means, one of which aggravates the legal situation of the entity to a greater extent than the other, then it is better to choose the more beneficial one for the entity'⁴. On the basis of the presented issue, it is worth recalling the so-called the principle of a friendly interpretation of the provisions on civil rights and freedoms⁵, which can also be used in the case of disciplinary proceedings by officers of the Border Guard.

By definition, a central place in the matter of sources of disciplinary proceedings falls under the Border Guard Act⁶, which can no doubt be classified as service pragmatics, according to the literature it is the status of persons employed in one of the specialized departments of public service⁷. The act can be defined as a comprehensive act in the subject area. It lacks complementarity, as evidenced by the norms regulating the course of disciplinary proceedings. Therefore, in Chapter 14 devoted to criminal and disciplinary liability of Border Guard officers, there are several types of referrals:

- of a special nature – reference to the Penal Code (Article 143a of the Border Guard Act) stating the definition of an order and committing acts prohibited by a soldier;
- of a special nature – reference to the Code of Conduct in offense cases (Article 138 (6) of the Border Guard Act);
- of a special nature – reference to the Code of Criminal Procedure (Article 136c (1) of the Border Guard Act) – which is an empty standard due to the repeal of the provision to which reference has been made.

The Regulation of the Minister of Internal Affairs and Administration of 28 June 2002 on conducting disciplinary proceedings against Border Guard officers should be indicated as the main source of law in the disciplinary proceedings of Border Guard officers⁸. It has, like any legal regulation in the legal order, executive

² See sentence of the Constitutional Tribunal of 21 June 2005., P 25/02, OTK-A 2005, no 6, item 65.

³ See S. Wronkowska, *Zarys koncepcji państwa prawnego w literaturze politycznej i prawnej* (in:) *Polskie dyskusje o państwie prawa*, ed. D. Wronkowska, Warsaw 1995, p. 74 and following

⁴ See sentence of constitutional Tribunal of 31 January 1996., K 9/95, OTK 1996, no 1, item 2.

⁵ See L. Morawski, *Zasady wykładni prawa*, Toruń 2010, pp. 137-138.

⁶ Act of 12 October 1990 on Border Guard, i. e. Journal of Laws of 2016, item 1643.

⁷ Act of 12 October 1990 on Border Guard, i. e. Journal of Laws of 2016, item 1643.

⁸ Regulation of the Minister of Internal Affairs and Administration of 28 June 2002 on conducting disciplinary

character⁹; it was issued on the basis of Article 136b (6) of the Border Guard Act. Both in terms of material and personal matter, it corresponds to the scope of the statutory delegation. At this point it should be noted that the Regulation establishes a subsequent reference (§ 42) – to the Code of Administrative Procedure.

They can be described as general, due to the fact that the premise for its application is failure to regulate the matter in the Regulation. This should be treated as the existence of an objective legal loophole. It is worth emphasizing that the application of the Code of Administrative Procedure standards is only of a subsidiary nature, in the sense that before them in the first place universal interpretation rules¹⁰ should be applied that allow eliminating interpretation doubts. Analyzing the referrals and statutory delegations included in the Border Guard Act, it is impossible to omit those addressed to the Commander in Chief of the Border Guard stating the order concerning the Rules of professional conduct of officers of the Border Guard¹¹. Thus, it is a legal act which, like the regulation, does not have an intrinsic character¹².

An issue requiring an analysis and related disciplinary proceedings of officers of the Border Guard is the issue of branch affiliation of the norms regulating them. In particular, the problem arises whether they belong to criminal proceedings (criminal procedural law) or more administrative proceedings or perhaps administrative law. It should be borne in mind that normative phenomena occurring at the border of several areas of law¹³ can be variously classified according to the adopted criteria¹⁴.

The first priority is to consider whether the standards governing the disciplinary proceedings of Border Guard officers can be included in the study of criminal procedural law. According to the classical definition of criminal procedure adopted in the doctrine¹⁵, it does not include disciplinary procedures, as it deals with criminal liability issues¹⁶. However, this does not exclude the fact that selected aspects of disciplinary proceedings cannot be the subject of dogmatic research on the part of the representatives of the criminal procedural law (eg. the principle *in dubio pro reo*). What is more, some institutions of both procedures

proceedings against officers of the Border Guard, Journal of Laws of 2002, No. 118, item 1015 as amended, hereinafter referred to as the Regulation.

⁹ See M. Haczkowska [in:] M. Haczkowska (ed.), R. Balicki, M. Bartoszewicz, K. Complak, A. Ławniczak, M. Masternak-Kubiak, *Konstytucja Rzeczypospolitej..., op. cit.*

¹⁰ See M. Zieliński, *Wykładnia prawa. Zasady. Reguły. Wskazówki*, Warsaw 2002, *passim*.

¹¹ Regulation No. 11 of the Commander-in-Chief of the Border Guard of March 20, 2003 regarding the Rules of professional conduct of officers of the Border Guard, (Journal of Laws of KGSG (Polish Border Guard) of 13 May 2003).

¹² See M. Haczkowska [in:] M. Haczkowska red.), R. Balicki, M. Bartoszewicz, K. Complak, A. Ławniczak, M. Masternak-Kubiak, *Konstytucja Rzeczypospolitej..., op. cit.*

¹³ See W. Gromski, *Kryteria klasyfikacji dyscyplin naukowych w prawoznawstwie. Kilka uwag na przykładzie nauki prawa karnego wykonawczego* [in:] *Prawo karne wykonawcze w systemie nauk kryminologicznych*, ed. T. Kalisz, Wrocław 2011, p. 309 and following.

¹⁴ See W. Gromski, *Kryteria klasyfikacji dyscyplin naukowych w prawoznawstwie. Kilka uwag na przykładzie nauki prawa karnego wykonawczego* [in:] *Prawo karne wykonawcze w systemie nauk kryminologicznych*, red. T. Kalisz, Wrocław 2011, p. 309 and following.

¹⁵ See S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warsaw 2013, p. 21.

¹⁶ See S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu*, Warsaw 2013, p. 21.

contain similar normative mechanisms¹⁷. This is also referred to in the Act on the Border Guard referring to the Code of Conduct in misdemeanor cases.

Another branch of law through the prism of which one should analyze the affiliation of standards devoted to disciplinary proceedings of officers of the Border Guard is administrative proceedings. It is worth noting at the outset that it also covers separate proceedings, in which the provisions of the Administrative Procedure Code find a subsidiary application¹⁸. As indicated by the analyses made previously, selected standards of administrative proceedings may find a complementary application in the proceedings. It can be concluded that the analyzed issues may also be the object of interest in the science of administrative proceedings¹⁹. At this point, it should also be emphasized that the employment of Border Guard officers is *de legelata* administrative and legal in nature²⁰.

When considering the branch classification of the disciplinary proceedings in question, the administrative law should be taken into account. The doctrine indicates its role as ‘a kind of coordinator and stimulator of human behavior in organized – subject to public administration – human communities’²¹. According to the well-established view²², this is an area of law of which ‘norms establishing mutual rights and obligations of public administration bodies and entities within that administration’. The standards regulating the status of Border Guard officers directly implement the reference range referred to. By referring it directly to the institution of disciplinary proceedings of officers, the area of mutual rights and duties of administrative bodies (e.g. the Commander-in-Chief of the Border Guard in relation to the commanders of the Border Guard units) is *de legelata* completed; as well as entities located inside this administration (e.g. accused).

Summing up the considerations regarding the affiliation of branch disciplinary proceedings in matters of Border Guard officers, it is legitimate to state that they can be the object of analysis of various legal disciplines. Therefore, the subject matter is interdisciplinary and constitutes a kind of research condominium for the three areas of law presented.

¹⁷ See D. Kaczorkiewicz, *Instytucje prawa karnego w postępowaniach dyscyplinarnych* (in:) *Węzłowe problemy procesu karnego*, ed. P. Hofmański, Warsaw 2010, p. 366 and following.

¹⁸ See T. Woś [in:] *Postępowanie administracyjne*, ed. T. Woś, Warsaw 2013, pp. 84-85 and J. Borkowski, A. Krawczyk [in:] B. Adamiak, J. Borkowski, A. Krawczyk, A. Skoczylas, *Prawo procesowe administracyjne*, ed. R. Hauser, Z. Niewiadomski, A. Wróbel, System Prawa Administracyjnego, vol. 9, Warsaw 2014, p. 89 and following.

¹⁹ See S. Pieprzny, E. Ura, *Formacje mundurowe w systemie administracji publicznej* (in:) *Slużby i formacje mundurowe w systemie bezpieczeństwa wewnętrznego Rzeczypospolitej Polskiej*, ed. E. Ura, S. Pieprzny, Rzeszów 2010, p. 17 and following.

²⁰ See M.A. Liwo, *Status służb mundurowych i funkcjonariuszy w nich zatrudnionych*, Warsaw 2012, *passim* and T. Kuczyniski, E. Mazureczak-Jasiniska, J. Stelina, *Stosunek służbowy* [in:] System prawa administracyjnego. Vol. 11, Warsaw 2011, *passim*.

²¹ Z. Duiewska [in:] *Prawo administracyjne materialne: pojęcia, instytucje, zasady w teorii i orzecznictwie*, ed. B. Jaworska-Dębska, Warsaw 2013, p. 29.

²² See Z. Duiewska [in:] *Prawo administracyjne materialne: pojęcia, ..., op. cit.*, p. 32.

SOURCES OF HUMAN RIGHTS IN THE DISCIPLINARY PROCEEDINGS OF OFFICERS OF THE BORDER GUARD

I will start my discussion with reference to the classical notion introduced into the doctrine of law by E. Łętowska, which is about the so-called multicentric system of sources of law²³. This construction refers to one legal area in which there are many equal sources of law that do not establish their hierarchical subordination. In my opinion, the main criterion for the delimitation is the territorial scope of the standards. In this respect, we can distinguish global and continental systems that are simultaneously binding on a given territory at the same time being able to intermingle. In the European dimension there are two main regional systems – at the subjective level – of the Council of Europe and a narrower one- the European Union. Each of them will be taken into consideration as part of deliberations on the influence of international human rights standards on the disciplinary proceedings of Border Guard officers.

The issue of the application of international law standards should start with their distinction in the scope of application. They can be divided into standards in the national legal order (hard law²⁴) and non-binding normative standards (soft law²⁵). Soft law norms can be defined as standards paving the way, which over time can turn from postulative to universally binding ones. And within hard law, one can distinguish those that are self-executing treaties and those that are not self-executing treaties. The first ones can be used directly by individuals as well as by courts and administrative bodies, also as part of the disciplinary proceedings of officers of the Border Guard.

I will begin my deliberations with the basic act for the universal legal order, which is the International Covenant on Civil and Political Rights²⁶. For the deliberations on the disciplinary proceedings of the Border Guard, the key is Article 14 of the ICCPR, in which two areas can be identified. The first one refers to the stage of judicial disciplinary proceedings and provides for ‘consideration of the case by a competent, independent and impartial court’; and the other area covers all stages of the proceedings, also the service and formulates universal standards. Among these standards, it is worth distinguishing:

- presumption of innocence,
- receiving promptly detailed information in a language that is understandable about the nature and cause of the accusation,
- having the right time and possibilities to prepare the defense and communicate with the chosen defender,
- hearing or making the prosecution witnesses heard and ensuring the attendance and hearing of defense witnesses under the same conditions as the

²³ See E. Łętowska, *Multicentryczność współczesnego systemu prawa i jej konsekwencje*, Państwo i Prawo 2005, no. 4, p. 3 and following; A. Kalisz, A. Kustra, *Polemika. Wokół problemu multicentryczności systemu prawa*, Państwo i Prawo 2006, no. 6, p. 85 and following.

²⁴ SeeP. Halestead, *Human Rights. Key facts. Key cases*, London and New York 2014, p. 9.

²⁵ SeeP. Halestead, *Human Rights. Key facts. Key cases*, London and New York 2014, p. 9.

²⁶ Journal of Laws of 1977 No. 38, item 167, hereinafter referred to as the ICCPR.

prosecution witnesses,

- not forcing to testify against each other or to plead guilty.

The above-mentioned guarantee mechanisms applicable in accordance with the standards of the ICCPR may be *ab exemplo* applied to the stage of the official disciplinary proceedings of Border Guard officers and protect the interests of the accused officer²⁷.

Similar guarantees are included in legal acts operating under the European continental system. A special place here is taken by the Convention for the Protection of Human Rights and Fundamental Freedoms²⁸, which Poland ratified in 1993. The convention contains a direct reference to the values expressed in the Universal Declaration of Human Rights. The doctrine argues that the most important European legal act guaranteeing respect for human rights became law positivity²⁹ in respect of the rights indicated in the Declaration of 1948³⁰. The doctrine explicitly indicates that the regulations of the Convention, including Article 6, also apply to the so-called disciplinary law³¹.

Another international legal act that cannot be omitted in the case of the analysis of human rights standards and disciplinary proceedings of Border Guard officers is the Convention on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment³² adopted by the UN General Assembly on 10 December 1984, and ratified by Poland on July 26, 1989. Article 3 of the Convention is of particular relevance against which *lege non distinguente* arguments can be applied and thus its interpretation of various repressive proceedings, not only judicial ones. According to the position adopted in the Polish doctrine, any inhuman treatment is considered degrading and violating human dignity³³. There is no doubt that these regulations also apply to disciplinary proceedings in the cases of Border Guard officers. According to the case law of the European Court of Human Rights, the key issue associated with degrading treatment is ‘creating a sense of fear leading to humiliation and even a physical or mental breakdown’³⁴. In the analyzed area, it is also worth considering the case law of the European Court of Human Rights based on Article 6 ECHR. According to the literal wording it refers to ‘the accused’. In the case *Mikolajov vs. Slovakia*³⁵ the Court pointed out that the term ‘accused’ can be understood as ‘a person who has been accused by any body of state authority’. In connection with this interpretation, it is impossible not to refer it to the charged officers of the Border Guard. It is worth emphasizing that the presented understanding of the concept of ‘the accused’ according to the ECHR is possible for an officer of the Border

²⁷ See B. Baran, *Postępowanie dyscyplinarne w sprawach funkcjonariuszy Służby Więziennej*, Warsaw 2016, p. 78.

²⁸ Journal of Laws of 1993, No.61, item 284, hereinafter referred as ECHR.

²⁹ Journal of Laws of 1993, No.61, item 284, hereinafter referred as ECHR.

³⁰ Journal of Laws of 1993, No.61, item 284, hereinafter referred as ECHR.

³¹ Journal of Laws of 1993, No.61, item 284, hereinafter referred as ECHR.

³² Journal of Laws of 1989, No. 63, item 378 with Annex.

³³ See Z. Holda [in:] *Kodeks karny wykonawczy ze skorowidzem*, Kraków 2006, p. 31.

³⁴ See Z. Holda [in:] *Kodeks karny wykonawczy ze skorowidzem*, Kraków 2006, p. 31.

³⁵ Judgment ECHR of 18 January 2011, ref. no. 4479/03, <http://echr.ketse.com/doc/4479.03-en-20110118/>, access 18 October 2017.

Guard only from the moment when at the official stage of the proceedings he/she will be informed about issuing a decision to institute disciplinary proceedings, which is immediately served on the charged person³⁶. This means that the indicated regulations of the ECHR will apply to the charged officer of the Border Guard, in particular³⁷:

- promptly receiving detailed information in a language that he/ she understands about the nature and cause of the accusation against him/ her (Article 6 (3a) of the ECHR),
- having sufficient time and possibilities to prepare a defense (Article 6 (3b) of the ECHR);
- defending himself or herself through a lawyer he/ she has set up, and if he/ she does not have sufficient funds to pay for defense costs, free use of the assistance of a legal counsel when it is required by the good (Article 6 (3c) of the ECHR);
- hearing or making the prosecution witnesses heard and ensuring the attendance and hearing of defense witnesses under the same conditions as the prosecution witnesses (Article 6 (3d) of the ECHR).

Against the background of the presented legal norms, an analysis should be made as to how they coincide with the norms governing disciplinary proceedings contained in the Act on the Border Guard and the Regulation of the Minister of Internal Affairs and Administration of 28 June 2002 on conducting disciplinary proceedings against Border Guard officers. Some of the aforementioned guarantees are expressed directly in the statutory standards; other standards should be reconstructed from several provisions – such as the possibility of defense carried out in person or by a designated defender (Article 136a of the Border Guard Act). At this point it is worth noting that among the analyzed norms there is no explicit presumption of innocence, which *de legeferenda* should take place.

THE PRINCIPLE OF THE RIGHT OF DEFENSE IN THE DISCIPLINARY PROCEEDINGS OF BORDER GUARD OFFICERS

The right of defense is one of the fundamental procedural justice directives, according to which the accused has the right to defend his or her interests in disciplinary proceedings and the right to use the assistance of a professional defender. In the analyzed procedure one can distinguish two aspects of defense – material and formal³⁸. It is worth noting that according to the view represented in the doctrine, the right to defense is possible in the form and limits set by the

³⁶ See § 13 (1) of the Resolution.

³⁷ See § 13 (1) of the Resolution.

³⁸ See P. Wiliński, *Zasada prawa do obrony w polskim procesie karnym*, Kraków 2008, p. 196-197; P. Kruszyński, *Zasada prawa do obrony w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka w Strasburgu - zagadnienia wybrane* (in:) *Gaudium in litteris est. Księga jubileuszowa ofiarowana Pani Profesor Genowefie Rejman z okazji osiemdziesiątych urodzin*, Warsaw 2005, p. 585-586.

legal system³⁹. On the basis of the provisions of the Border Guard Act, the notion of ‘rights of defense’ is not explicitly indicated, while specific rights covering them are highlighted. This means that in the disciplinary proceedings of Border Guard officers rights related to the right of defense are indicated enumeratively.

I will begin my analysis with the material aspect of the right of defense, or actions that the accused may take during the proceedings. On the basis of the norms governing disciplinary proceedings, these are:

- submitting explanations (*a contrario* to § 17 item 1 (1) of the Regulation);
- submission of motions as to evidence (§ 17 item 1 (2) of the Regulation);
- reviewing files and making notes from them (§ 17 item 1 (3) of the Regulation);
- lodging appeals (§ 17 item 1 (4) of the Regulation).

At this point it is worth mentioning that the form of the right to defense is also the right of silence in accordance with the principle of *nemo se ipsum accusare tenetur* (no one has the right to accuse himself/ herself⁴⁰). Considering the possibility of refusing to submit explanations guaranteed in § 17 item 1 (1) of the Regulation, an accused officer is also entitled to refuse to answer questions during a hearing, which also results from the analysis of existing norms in the light of a *fortiori* argument in the *maiori ad minus*. It remains a matter of dispute whether the accused is entitled to present false content under the rights of the defense. In my opinion, due to the vow, under which the officer also undertakes to ‘comply with the rules of conduct of the Border Guard official’ (Article 33 of the Border Guard Act), he/ she cannot give false testimony, because then he/ she exposes himself/herself to disciplinary liability for making false statements.

Analyzing the right of silence one should pay attention to its wider contact which is the right to passive behavior during the proceedings. This means that the accused officer is not obliged to participate in evidence activities, including those related directly to him/ her, such as e.g. body examinations. In the provisions of the Border Guard Act, as well as the Regulation there is no such obligation for an accused officer.

The formal aspect of the right of defense concerns the possibility of the defendant appointing a defender in the proceedings in question. This was explicitly indicated in the statutory regulations in Article 136a of the Border Guard Act⁴¹. The scope of the power is optional – it depends on the defendant’s decision. It is worth emphasizing that this regulation does not establish the so-called compulsory representation by a lawyer, consisting of using the help of a legal representative.

Analyzing the issue of the right of defense in the light of the norms of the Border Guard Act, it is essential that the material and formal aspects are permeated

³⁹ See M. Cieślak, *Polska procedura...*, *op. cit.*, p. 302.

⁴⁰ See Z. Sobolewski, *Samooskarżenie w świetle prawa karnego (nemo se ipsum accusare tenetur)*, Warsaw 1982, *passim*.

⁴¹ See S. Maj, *Komentarz do art.136(a) ustawy o Straży Granicznej* (in:) *Postępowanie dyscyplinarne w służbach mundurowych. Komentarz*, Warsaw 2008, LEX/el.

and remain in strict coincidence. An example of this diffusion is laid down in § 17 (2) of the Regulation, the norm according to which the authority to take action in the course of disciplinary proceedings assigned to the defendant is also possible to be performed by the legal representative. At the same time, *de lege ferenda* I postulate the introduction of a provision stating that the participation of a defense lawyer in the disciplinary proceedings does not exclude the personal action of the defendant⁴².

THE PRINCIPLE OF CONTROL IN DISCIPLINARY PROCEEDINGS OF BORDER GUARD OFFICERS

A fundamental issue related to the idea of procedural fairness is the possibility to verify the issued decision. It is connected with the principle of control consisting of the verification both in the positive (actions, e.g. decisions issued) and negative (e.g. negligence) dimension. In the analyzed disciplinary proceedings, it has two dimensions – internal character and external character. The first one refers to the one carried out by the Border Guard authorities, the other refers to administrative courts.

It should be pointed out that the principle of right to appeal of proceedings is reflected in international legal acts guaranteeing basic human rights such as, e.g. Article 14 § 5 of the International Covenant on Civil and Political Rights. According to the legal norm there, it is possible to ‘revise, on the basis of the Act, a decision of guilt and punishment of anyone who has been found guilty of committing a criminal offense’⁴³. This principle can be referred *per analogiam* to the stage of professional disciplinary proceedings of officers of the Border Guard. When transferring the principle of right to appeal of proceedings to the ground of the Border Guard Act, one should consider Article 136 b (3) and (4). Although this principle is not expressed *expressis verbis*, as is the case e.g. in the Act on the Prison Service⁴⁴, it is possible to reconstruct it on the basis of the above-mentioned provision. Thus the legislator guarantees the accused officer the possibility of verifying a legal measure ruling on his or her punishment.

In my opinion, internal control modes included in regulations on disciplinary proceedings of Border Guard officers require closer analysis. First of all, one should indicate the sources of its initiation. According to the principle of complaint, it can be carried out on request and in accordance with the principle of a review of the Court’s own motion⁴⁵. In general, according to the terminology adopted in law, they can be described as appeals. Their subject matter may be any decision made in the proceedings – the provisions and the rulings. The regulation also provides a kind of appeal, which is a written objection to a note documenting a disciplinary interview, at the same time constituting an impulse

⁴² See B. Baran, *Postępowanie dyscyplinarne w sprawach...*, *op. cit.*, p. 118.

⁴³ See R. Wieruszewski (ed.), A. Gliszczyńska-Grabias, K. Sękowska-Kozłowska, W. Sobczak, L. Wiśniewski, *Międzynarodowy pakt praw obywatelskich (osobistych) i politycznych. Komentarz*, Warsaw 2012, LEX/el.

⁴⁴ Por. B. Baran, *Postępowanie dyscyplinarne w sprawach...*, *op. cit.*, s. 118.

⁴⁵ See H. Knysiak-Molczyk [in:] T. Woś (ed.), *Postępowanie administracyjne*, Warsaw 2013, p. 245.

to obligatory instigation of disciplinary proceedings by the superior competent in disciplinary matters (§ 12 (5 b) of the Regulation).

Using the classic delimitation formula, I propose to distinguish between ordinary and extraordinary appeals⁴⁶. In the first of these categories an appeal, a complaint and a request for reconsideration may be qualified. As part of extraordinary measures an application may be made to resume disciplinary proceedings. The dividing line between the two categories is within the validity and invalidity of judgments from which they can be filed. It is worth emphasizing that on the basis of regulations concerning disciplinary proceedings of Border Guard officers, it is possible to initiate a review of the Court's own motion⁴⁷. It should take place in situations where statutory norms do not directly constitute appeals, and the authority should review its own motion due to new circumstances arising in the case. They can be a kind of impulse for the authority to take appropriate review actions.

The other dimension of the implementation of the principle of review is the external mechanism of verification of decisions made in the disciplinary proceedings of the Border Guard officers. It is implemented in the mode of Article 136 b (5) of the Border Guard Act. This provision allows the possibility of lodging a complaint to the administrative court against a decision terminating the proceedings in the case. This institution implements not only the regulations of international legal acts, but also the right of audience guaranteed in Article 45 (1) and Article 77 (2) of the Constitution of the Republic of Poland⁴⁸.

The administrative court verifies the lawfulness⁴⁹ of the decision issued in the disciplinary proceedings of officers of the Border Guard. This is a kind of review exercised by the administration of justice over decisions issued by public administration bodies, which should take place in three dimensions:

- a) assessing the compliance of a decision (decision or other act) or action with substantive law;
- b) complying with the procedure required by law;
- c) respecting of the rules of competence⁵⁰.

CONCLUSIONS

To conclude, I confirm that legal regulations that constitute the course of disciplinary proceedings of Border Guard officers respect the basic standards

⁴⁶ See B. Adamiak [in:] B. Adamiak, J. Borkowski, A. Krawczyk, A. Skoczylas, *Prawo procesowe administracyjne*, ed. R. Hauser, Z. Niewiadomski, A. Wróbel, *System Prawa Administracyjnego*, vol. 9, Warsaw 1975, p. 201-231 and A. Krawiec (in:) T. Woś (ed.), *Postępowanie administracyjne, op. cit.*, p. 377.

⁴⁷ See A. Matan [in:] G. Łaszczycza, C. Martysz, A. Matan, *Kodeks postępowania administracyjnego. Komentarz*, Warsaw 2010, p. 504.

⁴⁸ For more details see A. Ławniczak (in:) *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. M. Haczkowska, Warsaw 2014, LEX/el. And W. Piątek, *Podstawy skargi kasacyjnej w postępowaniu sądowoadministracyjnym*, Warsaw 2011, LEX/el.

⁴⁹ See A. Kabat [in:] B. Dauter, A. Kabat, M. Niezgódka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warsaw 2016, LEX/el.

⁵⁰ See A. Kabat [in:] B. Dauter, A. Kabat, M. Niezgódka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi...*, *op. cit.*, LEX/el.

of human rights and the standards of procedural justice correlated with them. The doubts from the point of view of the idea of the rule of law are aroused by the fact that a significant part of the disciplinary regulations of Border Guard officers is in the legal act of executive rank (i.e. in the Regulation). I suggest *de legeferenda* that, in the course of the amendment to the Border Guard Act, one should determine the rights of Border Guard officers as part of the disciplinary procedure and include them in statutory acts of a statutory rank.

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Summary: The article discusses selected international human rights standards applied in the disciplinary proceedings of the Border Guard officers. The issues of branch affiliation of the norms regulating this disciplinary proceeding, the sources of law binding in it, the guaranteed rights of defense and the principle of control were elaborated.

Keywords: disciplinary proceedings, Border Guard, officers, human rights, right to defense, the principle of control.

WYBRANE PROBLEMY POSTĘPOWANIA DYSCYPLINARNEGO
W SPRAWACH FUNKCJONARIUSZY STRAŻY GRANICZNEJ
W PERSPEKTYWIE STANDARDÓW PRAW CZŁOWIEKA

Streszczenie: Tematyką artykułu jest analiza wybranych międzynarodowych standardów praw człowieka przestrzeganych w postępowaniu dyscyplinarnym w sprawach funkcjonariuszy Straży Granicznej. Szczegółowo opracowane zostały zagadnienia przynależności gałęziowej norm regulujących to postępowanie dyscyplinarne, źródeł prawa w nim obowiązujących, zagwarantowanego prawa do obrony oraz zasady kontroli.

Słowa kluczowe: postępowanie dyscyplinarne, Straż Graniczna, funkcjonariusz, prawa człowieka, zasada prawa do obrony, zasada kontroli