

SUMMARY OF THE DISSERTATION

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Title *"Application of the provisions of criminal procedural law in disciplinary proceedings"*

The dissertation is dedicated to the problem of the application of the provisions of criminal procedure law to the types of existing disciplinary proceedings.

The purpose of the study is to verify the thesis according to which it is possible to develop the foundations of the Model Disciplinary Proceedings, the regulations of which would be universal and flexible enough to be applicable in all proceedings in the field of disciplinary liability, regardless of the type of entity being its subject, and whose basis would be formed by the institutions of the criminal procedural law.

The doctoral dissertation is primarily theoretical, however, individual considerations are supported by examples of judgments dedicated to specific factual situations as well as procedural and material-legal issues, thanks to which it was also possible to draw conclusions regarding the practice of the application of disciplinary provisions and the problems resulting therefrom. Chapters I and II contain the presentation and systematization of the existing theoretical knowledge about the meaning, the axiology and the origin of disciplinary liability as one of the forms of legal liability. The issues discussed therein illustrate not only the individual characteristics of disciplinary responsibility but also the multiplicity and diversity of the research material, the sources of which are different from the sources of procedural criminal law. Chapters III and IV provide a comparative analysis of selected procedural elements that determine the nature of the individual disciplinary proceedings; the elements were later used to form the Model Proceedings – a universal model of proceedings with regard to disciplinary liability. The dissertation is summarized by conclusions presented in a graphical form, showing, in a simplified way, the course of the disciplinary proceedings for the analysed subject groups and the process of the developed universal model of conduct, discussed in detail in the final part of this work.

Presented below is the detailed outline of the dissertation:

The first chapter discusses the issues that introduce the subject of disciplinary law, which present the objectives and functions pursued by disciplinary proceedings and determine the very nature of the disciplinary proceedings. The possibility of isolating disciplinary liability from the broader concept of legal liability results from the individual character of its features, which include: its non-uniformity, narrow scope of the entities that are subject to it, the specificity of the subject of and grounds for disciplinary liability, independence from other proceedings, and the separate regulation of the issue of the time limits in disciplinary prosecution. The specific functions and objectives pursued by disciplinary proceedings, the nature of disciplinary sanctions, resulting in the impossibility of equating disciplinary proceedings with criminal proceedings and sanctions, and the independence of legal and disciplinary sources (including the requirement that the grounds for disciplinary liability be regulated by a statute), justify the separation of disciplinary law, comprising both substantive and procedural aspects, as an autonomous discipline of law, whose etymology should be sought equally in administrative law and in criminal procedural law. The separation of disciplinary law should be perceived as an outcome of the progressive institutionalization (juridization and creation of an organizational structure) of the procedure during which the fulfilment of the conditions for disciplinary liability of its subjects is evaluated.

It resulted in the formation of the specific features of "corporate" repressive law, as a consequence of the natural normative development of this field of law.

The second chapter presents an outline of the genesis of disciplinary law and discusses selected legal acts (e.g. systemic acts which regulate disciplinary proceedings, in which the legislator refers to the *mutatis mutandis* application of the provisions of the Code of Criminal Procedure in the matters not regulated by the relevant systemic act) that constitute the sources of disciplinary and procedural standards.

The third chapter is dedicated to considerations on the scope of the application of criminal procedural law in the analysed disciplinary proceedings. Comparing the referring provisions contained in the analysed normative acts, the author indicated the types of references contained therein, their number and the wording of the reference that defines the scope of auxiliary application of the provisions taken from the Code of Criminal Procedure, assessed whether the nature of the references is systemic or individual with regard to a given subject group, discussed the risks resulting from the existing variety of solutions used, taking into account the consequences of the legislator indicating one of the court procedures as appropriate for auxiliary use in a specific model of disciplinary proceedings, and indicated the benefits of

choosing criminal procedure as the preferred solution that would provide the parties to disciplinary proceedings with the broadest guarantees of procedural security.

In order to verify the main hypothesis, i.e. the possibility of constructing the Model Disciplinary Proceedings based on the institutions taken from the Code of Criminal Procedure, it was necessary to compare the legal regulations shaping the currently used types of disciplinary proceedings, to select the potential common features and to assess whether it would be possible to replace them with model regulations, which have been standardised to meet the needs of those who are subjects of any disciplinary proceedings. Such issues are considered in the Chapter IV, which discusses numerous provisions of law that shape the individual types of disciplinary proceedings in order to determine whether it is really possible to distinguish such elements on the basis of which it would be feasible to construct even the most simplified Model Disciplinary Proceedings – they are analysed in relation to the institutions and solutions taken from the Code of Criminal Procedure that could serve as their supplement or their model. Subsequent issues are discussed in blocks, using the systematics proposed by Z. Leoński, i.e. in four subject groups, within which subgroups are sometimes also distinguished. The subsequent blocks discuss the issues related to the method of initiating disciplinary proceedings, the entities performing the function of prosecuting in disciplinary proceedings and the parties to such proceedings and their representatives, as well as the stages of disciplinary proceedings. Further on the issues of conducting procedural activities, in particular evidence-gathering, the forms of concluding ongoing disciplinary proceedings, the methods of resolving incidental issues in disciplinary proceedings, the types of authorities adjudicating in disciplinary proceedings, and the possible involvement of a factor from outside the given environment are discussed. The adopted method turned out to be necessary due to the extensiveness of the researched matter and numerous amendments that have been introduced in the recent years - this entailed the need to verify the previously formulated conclusions and to redraft them. Chapter four, along with the preceding chapter three, are the *clou* of the research on the chosen subject.

As a result of the considerations carried out in the submitted study, a conclusion was formulated according to which it is possible to develop a common model of disciplinary proceedings, although the legislator has recently adopted a different direction of legislative changes and currently it is more difficult than it was assumed at the beginning of the research. Nevertheless, it is not impossible. Consequently, within the framework of the Model Disciplinary Proceedings, developed for the purpose of achieving the objectives of disciplinary responsibility, the following phases were distinguished: explanatory proceedings, proceedings

before a disciplinary adjudicating body of the first instance; proceedings before the appellate body; enforcement proceedings and renewal proceedings. It was also found that the set of procedural norms regulating the procedure of the disciplinary liability proceedings is governed by specific principles that can be said to give it a specific character and to shape its model (pattern). These include the principles of: *ex officio* prosecution, legalism, material truth, directness, impartiality, objectivity, speed of proceedings, presumption of innocence (*in dubio pro reo*), right of the accused to defence, equality of arms and adversarial system, jurisdictional independence, impartiality, accusatorial procedure, cooperation, free assessment of evidence, instructing and informing participants about their rights and obligations. It seems that in view of the principle of equality before the law and the need to ensure an appropriate level of observance of procedural guarantees, individual disciplinary proceedings should not differ drastically, which will be reflected in the use of the common model - the Model Disciplinary Proceedings. Taking into account the level of securing procedural guarantees and the direct reference of the individual constitutional acts to the relevant application of the provisions of the Code of Criminal Procedure to matters not regulated by them, it is recommended that the procedure to which the Model Disciplinary Proceedings should relate to is the criminal procedure.

The last part of the submitted doctoral dissertation contains the graphic materials that reflect the final conclusions drawn from the analysis of the types of disciplinary proceedings relevant for the studied subject groups and the bibliography of the sources.