

## **Disciplinary offences of the Security Forces members**

The title of the thesis is "Disciplinary offences of the Security Forces members". Disciplinary offence is meant to be a disciplinary offence under § 50 of the Service Relationship of the Security Forces Members Act No. 361/2003 Coll. as amended (the „Service Relationship Act“), with the provisions of § 1, the Law states that the security forces are the Police of the Czech Republic, the Fire Brigade of the Czech Republic, the Customs Administration of the Czech Republic, the Czech Prison Service, the Security Intelligence Service and the Office for Foreign Relations and Information.

The aim of the thesis is to understand thoroughly the subject of disciplinary offence and disciplinary punishment, both according to the theory of administrative punishment and secondly from the perspective of service as a legal relationship *sui generis*. This is a generally theoretical thesis, which is not based on extensive statistics or researches. The descriptive method of analytical and comparative methods has been chosen as the methodology.

The thesis consists of the following eleven chapters: Administrative disciplinary punishment and administrative offences; A historical excursion - a disciplinary offence of some security forces since 1945; Characteristics of the service and disciplinary law; Characteristics of a disciplinary offence; Termination of one's responsibility for a disciplinary offence; An act with elements of an offence; Disciplinary punishment; Degradation in rank as a form of disciplinary punishment; Disciplinary remuneration; Convention for the Protection of Human Rights and Fundamental Freedoms and a disciplinary offence; Comparison with the regulations of disciplinary misconduct in the security forces of the Slovak Republic.

While becoming closely acquainted with the respective legislature, I find out its current text highly problematic because it literally disallows to apply disciplinary power in full. The problem is caused by the condition for the termination of liability for a disciplinary offence, namely the Institute of subjective and objective limitation period. Furthermore, conditions for imposing disciplinary punishment are even more complicated by the fact the legislator "failed to remember" to set them in the way the previous legislation posed them.

Complications of the procedure for imposing disciplinary punishment for a disciplinary offense occur mainly in unclear cases, in which a legal qualification is yet to be found outside the competence of service officials with personnel power, as it happens in the cases of investigation carried out by law enforcement authority management. Equally problematic is to adjudge in time, that is within two months from the date when the service official learned of an act bearing the characteristics of a disciplinary offense, in the cases where the accused member is represented by a lawyer, and especially where the assessment of the case requires a measure of evidence again outside the competence of service officials with personnel power (e.g. questioning of witnesses, expert opinion).

The only solution is to change the rules - § 186, paragraph 9 of the Act so that the deadline for the imposition of disciplinary punishment is set not only for an act bearing elements of an offense, but for a disciplinary offense, too. The provisions of § 36 paragraph 1, prior to the Staff of Law, which attend to cases where a service-member commits a disciplinary offense abroad and set the beginning of the time limit reserved for the decision-making process on the day following the date of his or her return from abroad may serve as a model. In a contingent legislative process the Previous Service Act should serve as inspiration also in the Institute of misprision of disciplinary punishment. Existing

legislation for the service of members of security forces does not provide any way to misprision disciplinary punishment, and thus poses as discriminatory in comparison, for example, to professional soldiers, but also those common citizens who are found guilty of an offense in a judicial punishment process.

Contribution of the thesis lies in its practical focus, the linkage between the letter of the law and the decision-making processes of judicature. The achieved knowledge can be used in the practices of security forces - the issuing of disciplinary decisions, reviewing the disciplinary decisions and presenting an expert opinion in legal proceedings.

klíčová slova - key words

služební poměr - service relationship

disciplinární přestupek - disciplinary offence

disciplinární trest - disciplinary punishment