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DISCIPLINARY RESPONSIBILITY OF THE EMPLOYEES IN THE MINISTRY OF INTERIOR OF THE REPUBLIC OF MACEDONIA

Summary: States tend to achieve a responsible administration, and in that aspect take numerous measures and activities in order to achieve better quality of administration. In this affection the individual responsibility of officials in the administration is being predicted, and among others the disciplinary responsibility for violation of the working order and discipline is one of the types of administration responsibility.

Certain employees of the Ministry of Interior, as an organ of the state administration, are authorized to use police powers which further determine the specificity of their situation from which arise some specifics for determining disciplinary responsibility from organizational and functional nature.

In the paper despite the theoretical foundations of the disciplinary responsibility of the officials in the administration and in particular of the employees in the Ministry of Interior, the analysis of relevant legislation that regulates this issue will be made as well as the analyses of the proceedings of the Sector for Internal Control and Professional Standards as a responsible organizational unit within the Ministry of Interior, through content analysis of annual work plans and reports in the period 2007 – 2009.

Key words: disciplinary responsibility, authorized officials of the Ministry of Interior, police, the Republic of Macedonia

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Introduction

States tend to achieve responsible administration, for which purpose a number of different measures and activities are being taken especially in terms of improving the administration qualities. Responsible administration among many other things includes self-responsible civil servants (category of employees with special position, different from the one of other employees which is one of the characteristics of the administration). Civil servants are disciplinary responsible for violations or breaking the rules and procedures of employment regulations. Disciplinary (besides misdemeanor and criminal) responsibility and their sanctions are only a certain satisfaction of the parties that indirectly affects the protection of their rights regarding the future work of the administration (Dimitrijevic, 2005:9).

The term responsibility (liability) is connected with the term of competence and specific administrative tasks because responsibility assumes obligation for the execution of work and binds to specific individuals, agencies and organizations. When we speak about responsibility in subjective (psychological) sense, it can be said that it is a feeling of the subject that he/she should take responsibility of his/her actions. It is emphasized that to take responsibility means giving account to others for the actions that are not in compliance with the social rules of behavior and taking concrete consequences for violation of them (Lilic, 2010:357, according to Heck, 1929:76).

So when the government violates its legal obligations there is unlawful condition that must be concluded by the competent authority which itself entails responsibility (material or disciplinary) of the administration. The subjects that are responsible are (public), the administration or the officials that are the perpetrators of specific administrative offense (Lilic, 2010:358).

Different systems for administration responsibility are emphasized. Thus the distinction between objective and subjective responsibility is based on the criteria of condition that led to liability (damage, lawfulness or guilt). The objective responsibility of the administration (the State and the public bodies) is based on the fact that the damage is a result of the behavior of the official, i.e. his/her behavior is against the law. The potential guilt of the official has no importance for determining the responsibility while it can be important only for determining the height and length of the compensation for the possible damage. So, the particular illegal act of the administrative official can be done by intention or by negligence, but this aspect is irrelevant regarding the determination of the guilt. Subjective responsibility means that the state or the public administrative bodies will be responsible for damages

only in situations when guilt of the public official can be determined. This means that if there is not guilt, there is not responsibility (Lilic, 2010:353-356).

As mentioned before the public servants (administrative officials) are subject to various forms of responsibility, such as: disciplinary responsibility, criminal responsibility, material responsibility and political responsibility. Some authors emphasize one more responsibility, which occurs due to violations of moral rules, named "moral responsibility". This does not include all possible rules of morality, but only those who are part of written or unwritten code of administrative moral or civil service ethics (Petrović, 2006).

When we speak of legal responsibility, which is based on violation of the legal regulations the subject of examination is if the particular behavior (which can be done by commissions or omissions) is contrary to the legal commitments. Also, legal responsibility can be material or disciplinary responsibility. The disciplinary responsibility is of particular importance especially in the cases of omissions, the behaving which according to law represents violation of the working duties and obligations that are basis for determining responsibility for not fulfilling the obligations (Димитријевић, 2005:90).

Disciplinary responsibility is determined in cases when the employees (public officials) in administration are responsible for their behavior within the regulations in the administrative body where they perform their duties. The public official is disciplinary responsible for the act that he/she has performed during fulfilling the official duty and by his own guilt. That is a case when public official does not perform his/her duties and working obligations conscientiously and properly, according to a law and other regulation (Гризо, Гелевски, Давитковски, Павловска-Данева, 2008:232).

In the next section of the paper disciplinary responsibility of the employees in the Ministry of Interior will be analyzed according to different regulations depending on the status of the employees. The specific position of these employees is a result of the specific duties and authorities of the ministry which is a result of the special regulation in this field. Also, the data from the annual reports of the Sector for internal control and professional standards within the Ministry of Interior will be analyzed. Furthermore, there will be made a comparison on the procedural aspects of the disciplinary responsibility of the civil servants on the one and the authorized officials in the Ministry of interior on the other side.

Disciplinary responsibility of the employees in the public administration in the Republic of Macedonia

In the Republic of Macedonia the status of employees in public administration, as well as their responsibility in general is regulated by the Law on Civil Servants (hereinafter: LCS) and the Law on Public Servants (hereinafter: LPS).¹ A civil servant is a person employed in civil service² who performs professional, normative-legal, executive, administrative, administrative supervision, planning, material and financial, accounting, informatics and other activities in administrative body in accordance with the Constitution and law. The employees that perform assisting and technical work for the civil service do not have the status of civil servants (Article 3 of the LCS).

When we speak about the Ministry of Interior (hereinafter: MoI) it can be said that there are some specifics on several grounds. Specific position of the employees in the MoI as such is provided by the applicable regulation in the Republic of Macedonia. According to the Law on the Interior (hereinafter: LI), which is *lex specialis* that defines the position, the organization and functioning of this state organ, the MoI employees have the rights and obligations under the LIA, the Law on Police (hereinafter: LP), LCS, the regulations for employees in general (Labor law and bylaws in this field) and the Collective agreement of the MoI.³ As a result of this specific situation the MoI employees are as follows:

1. Authorized Officials (hereinafter AO), according to LA;
 2. Civil servants, according to LCS;
 3. Employees under Labour law (Article 45, paragraph 1).
- Authorized Official Persons are categorized in few subcategories:
- 1.1 AO for professional or civil affairs;
 - 1.2 AO for Security and Counterintelligence;
 - 1.3 Police officers (Article 29, paragraph 1).

Due to the complexity, type and severity of work and the conditions and manner of its performance, the authorized officer of the MoI has special duties and powers. AO exercises these powers in a manner that is regulated

¹ Law on Civil Servants, *Official Gazette of the Republic of Macedonia*, No. 52/2010, 36/2011, 6/2012.

² Public Service in terms of the LCS is the state and local governments and other state organs established in accordance with the Constitution and law (Article 3, paragraph 2).

³ Law on Internal Affairs, *Official Gazette of the Republic of Macedonia*, No. 92/2009 and 35/2010, Decision of the Constitutional Court of Macedonia No. 58/2010 of September 29, 2010, *Official Gazette of the Republic of Macedonia*, No. 134/2010, Article 45.

by the LI, LP and other regulations. We may conclude that it is not quite clear as to which regulation LI refers regarding the execution of power! Which are these "other regulations"?⁴

Starting from the fact that the employees in the Ministry of Interior have special position and status, different from the one of the public and civil servants, the legislator has decided for the AOP in the MoI to regulate a different procedure for determining disciplinary and material responsibility. These differences are more formal than in relation to their content because the authorized officers of the MoI (after all bases) are responsible for their work, disciplinary and material as well as the civil servants and the public servants.

The disciplinary responsibility of the employees in the Ministry of Interior

Internal Affairs are common term for a number of different activities that are limited in the elimination of certain negative phenomena and the internal security in the country in the broadest sense (Јончар, 2005:31). The LIA⁵ regulates the internal affairs, the organization and the jurisdiction of the Ministry of Interior, the categories, the status and the specific duties and powers of the employees in the Ministry, the control over the work of the Ministry, the rights and obligations of the employees in the Ministry, their duties, the material and disciplinary responsibility. As we mentioned before, there are several categories of employees within the Ministry.

Law on Internal Affairs determines the control over carrying out the activities of the Ministry, as internal and external control. According to article 38 of the LIA, the internal control is performed by a special organizational unit for the needs of the Ministry which conducts procedures for evaluation of the legitimacy of the actions of an employee of the Ministry. In order to protect and exercise their rights and when they consider that the actions of the Ministry's employee violated their freedom and rights, the citizens are entitled to submit a complaint to the Ministry. It is Ministry's duty to examine the content of the complaint and to notify the citizen about the outcome and the measures undertaken in a period of time not longer than 30 days from the day of reception of the complaint. The Macedonian Parliament and the Ombud-

⁴ Ivanov, A., Mirceva, S., Legal presumption of inequality in the employment processes in the ministry of the interior of the Republic of Macedonia. *Ohrid: The 20th NISPAcee Annual Conference – Public Administration East and West: Twenty Years of Development*, 2012.

⁵ Law on Internal Affairs, *Official Gazette of the Republic of Macedonia*, No. 92/2009, 35/2010, 36/2011.

sman⁶ perform the external control according to the LIA. The Parliament of the Republic of Macedonia is conducting control, i.e. supervision of the work done by the UBK through an appropriate Commission (Article 40 of the LIA).

The employees in the Ministry are disciplinary responsible for smaller and more serious cases of breaches of the working order and discipline or incompleteness of their tasks. These violations of the rules in the working process are strictly defined by law, collective agreement, rules and regulations of the Ministry and into the employment contract (Article 140 of the LIA).

In the process of determining disciplinary measures number of basis are being evaluated such as: the degree of responsibility of the employee, the circumstances under which the breaches are made upon the working order and discipline or incompleteness of the tasks, the former work and employee's behavior, the seriousness of the breach and its consequences are taken into consideration, the circumstances under which the violation was committed and other mitigating or aggravating circumstances (Article 142 of the LIA).

If the employee within the year after the disciplinary measure is taken upon him repeats the violation of the working order and discipline or does not fulfill the tasks defined by this law, the Minister institutes a measure of conditional termination of the employment contract and at the same time defines that the measure will not be applied if the employee during the time that will be defined by the Minister, that cannot be shorter than six months or longer than a year, commits another violation of the working order and discipline or does not fulfill the tasks (Article 143 of the LIA).

The following represents some of the grounds and procedure for determining disciplinary responsibility of civil servants under the General Law on Civil Servants in the Republic of Macedonia from the one and the MoI employees regulated by special Law on internal affairs on the other hand. That will make possible to perform comparison of the level of specifications in determination of the disciplinary responsibility of the employees in the

⁶ Unlike the parliamentary type of ombudsman with general jurisdiction, such as the People's Attorney (Ombudsman) of the Republic of Macedonia, in some countries there is a special type of Ombudsman which provides protection of certain rights of the citizens when they are violated by specific organs or in this case by the police. One such example is the Police Ombudsman in Northern Ireland, which aims to contribute towards improvement of the quality and efficiency of the police system besides acting on specific complaints and preparing researches for the police system. At the same time Police ombudsman informs the public about the powers of the Police Ombudsman to conduct independent investigations to gain confidence of the public and the police. More in: Акимовска-Малетић, И., *Народен правобранител (омбудсман) на Република Македонија – заштитник на правата и слободите на граѓаните*, Скопје, 2010, p. 102

Ministry of Interior against the general rules for the Civil Servants in Macedonia. This kind of analysis provides an overview and easy visibility of the differences depending on material or formal aspects of the disciplinary responsibility.

In the table below the key point of the Disciplinary proceedings are presented regarding the Civil servants on the one and the employees of the MoI on the other hand.

	Civil Servants according to the Law on Civil Servants	Employee of the Ministry of Interior
Responsible for:	1) Disciplinary irregularity and; 2) Disciplinary offense;	1) Small violation of the work order and discipline; 2) Severe violation of the work order and discipline;
Initiation for the procedure	Any civil servant or any other individual is entitled to submit the initiative and to initiate disciplinary procedure against any civil servant and that should be elaborated.	Sector for internal control and professional standards; The Director of the Bureau of Public Safety; The Director of the Department for Security and Counterintelligence; The Head of the organizational unit where the employee was assigned; Other employees authorized by the Minister;
Proposal to Initiate Disciplinary Responsibility	The direct superior of the civil servant, or the managing servant or official is managing the administrative body.	The Director of the Bureau of Public Safety; The Director of the Department for Security and Counterintelligence; The Head of the organizational unit where the employee was assigned; Other Employees authorized by the Minister;
Expiration on the possibility for initiation of disciplinary procedure	Subjective period of expiration: The direct superior of the civil servant, or the managing servant or official that is managing the administrative body after 30 days finds out about for the act that can be disciplinary responsible. Objective period of expiration: Initiation for disciplinary responsibility	Neither the Law on Internal Affairs, nor the collective agreement (that in details regulates the disciplinary procedure) of MoI signed with the representative syndicate of the employees in the Ministry do not foresee subjective or objective period of limitation. This situation would say that contributes to the possibility for manipulation and abuse of "authorized nominators" for initiation of the

	cannot be initiated later than 3 months after the act that can be treated as reason for initiation of disciplinary responsibility. If the reason is a criminal offence the period of expiration is 2 years.	disciplinary procedure. Also this condition contributes towards creating a situation of legal uncertainty among employees taking into consideration that perhaps some authorized nominator "keep the initiation in a drawer" object that can be determined disciplinary responsibility which practically do not expires.
Sanctions	1) Public warning; 2) Fine in the amount of 20%, or 30% from the amount of the monthly net income paid in the last month before the violation of the official duty; 3) Deployment of the job in direct lower positions; 4) Termination of employment.	1) Written warning; 2) Fine which cannot be higher than 15% of the last paid monthly net salary in duration between one and six months; 3) Deployment in a position which in accordance with the hierarchy of jobs is specified in the act of systematization of jobs is at two degrees lower than the job from which the employee is being assigned; 4) A conditional cancellation of the employment contract and; 5) Cancellation of the employment contract.
The procedure is led by:	Commission for conducting disciplinary procedure for a disciplinary offense established by the Secretary, or by the Head that runs the administrative body.	Commissions for determination of the disciplinary responsibility appointed by the Minister for Internal affairs.
Composition of the Commission:	1) Managerial civil servant; 2) Two civil servants, one of which in the position in the same group of titles, and the other one in the same position as the servant against who the procedure is being led.	1) President and 2) Two members and their deputies. In the work of the Commission take part a representative from the organizational Unit for internal control and professional standards in the MoI who does not have a right to vote.
Following the applied procedure, the Commission:	Propose appropriate disciplinary measure to the Secretary or the Head of the administrative body;	The Commission for determination of the disciplinary responsibility approaches to counseling and voting on the responsibility of the employee with the majority of votes and prepares a written proposal for the establishment of the

		disciplinary responsibility to the Minister for decision.
Based on the proposal from the Commission:	The Secretary or the Head of the administrative body, based on proposal of the Commission adopts a decision for imposing a disciplinary measure, or makes a decision for rejecting, i.e. stopping the procedure.	The decision for imposing a disciplinary measure by the Minister is adopted upon the proposal of the Commission for determination of the disciplinary responsibility. If the Minister disagrees with the commission's proposal for determination of the disciplinary responsibility the case can be returned for revision if the facts are incorrect or incomplete, or incorrect regulation has been applied or the minister can decide to impose a different disciplinary measure.
Time limit for completion of the disciplinary procedure:	60 days starting from the day when a decision for establishing the Disciplinary Commission has been adopted.	In a period of three months, or at the most in the period of six months.
Appealing regarding the Decision of the Commission:	Decision for the appeal against the Decision of the Secretary or the Head of the administrative body is being applied to the AGENCY FOR ADMINISTRATION, body within the Ministry of Information Society and Administration of the Republic of Macedonia.	Through the Ministry of Interior to the competent Secondary Commission of the Government of the Republic of Macedonia.

Table 1: *Some Differences in determination of Disciplinary responsibility on Civil Servants and Employees of the MIO.*

In accordance with the specific role and the position that has as administrative body, the Ministry of Interior is empowered among other things to apply coercion in the exercise of the legal order and has developed specific mechanisms to control its employees. This control is conditionally divided into internal and external (Article 37 of the LIA).

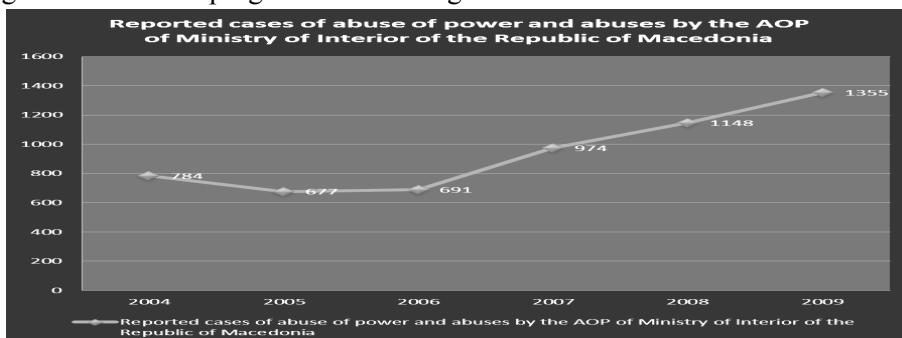
Internal control in terms of this procedure refers to taking action by the employees in the Sector for Internal control and professional standards (SICPS) in relation to act upon received oral or written submission (hereinafter referred to as complaint) submitted by a citizen or other entity (hereinafter referred to as petitioner), for determination of the truthfulness and the allegations, eventually authorized for giving proposal for initiating a procedure for

determining responsibility for violations of work order and discipline and determination of material, professional, misdemeanour or criminal responsibility for workers in all cases of their unlawful conduct.⁷

The Sector for Internal Control and Professional Standards (SICPS) as a separate unit has a specific role and position related to the determination of the disciplinary responsibility of the employees in the MOI. Taking into consideration the organizational position of the SICPS within the Ministry (managed by the Assistant Minister, not dependent from the Directors of the organizational unit within the ministry), the jurisdiction of the SICPS to act on different grounds, at the same time has authority to initiate determination of disciplinary responsibility.

In the past few years "opening to the public" has been noticed and positive steps in this regard can be observed as continuous reporting of the public once a week about disciplinary actions taken towards employees of the Ministry. In 2007 the Rulebook of Procedures of Internal Control and Professional Standards was made unclassified (in each case it is inconceivable to be classified!).

In this sense, the public was informed through severe forms with a certain degree of statistical processing and analysis. Annual reports observing statistical processing and analysis were published by the SICPS for 2007, 2008 and 2009. Annual programs for work and action programs against corruption were also published. But, at the same time we must note that in the last two years, i.e. 2010 and 2011 there is a negative trend in this sense and it can be concluded that this practice for publishing the annual reports, programs and action programs are missing.



Grahic 1: *Reported cases of abuse of power by the Employees of the Ministry of Interior of the Republic of Macedonia.*

⁷ Rulebook for carrying out activities of the Sector for Internal control and Professional standards of the Ministry of Interior, Article 2. Available: www.moi.gov.mk. <http://www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=130>, Accessed: 30. 1. 2012.

The graphic that is presented reflects the total numbers of reported complaints and cases related to abuse of powers of the authorized officers in the Ministry of Interior. We can notify that in the course of the above observed period there is continuous growth of the total numbers of reported abuses. We perceive these data as encouraging especially having in mind the presence of general sense of fear from reporting to the police. Taking into account that the number of reported abuses in 2006 declined in relation to 2004, we can conclude that the growth is even greater in comparison with 2006 (in 2006 we labeled the index as value of "100") the increasing is 96.09 index points. This is practically double of the abuses in 2009 in relation to 2006, or increasing of almost 100%. These data are encouraging in terms of achieving access to police structures and civil control, which is not quite the characteristic of these relatively speaking, "limited" organizational systems, such as the Ministry of Interior.

Table 2, presented below, graphically displays the structure of the complaints received and acted by the SICPS. It is noticeable from that displayed out of continuity, except in the last 2009, there is significant growth in the number of reported cases from citizens, so from 225 in 2006 there is increase of 496 in 2007, 594 in 2008 and 493 in 2009. In 2009 compared to 2006 the growth of 119 index points was recorded compared to 2006 and 164 index points compared to 2008, a growth of more than three times or 300%. These figures are encouraging, although we would say perhaps still insufficient to gain control of civil society in the true sense. The question of whether the issue of achieving the optimal level of received complaints from the citizens is a matter for deeper analysis, certainly one of the criteria for full completion would be the process of full independence of the Sector for Internal Control and Professional Standards in the independent state body. Although this is not a specific subject of the paper this idea could be used for some future legal solutions. It is noticeable in the graphic display that the growth of the total number of received complaints is based on all grounds.

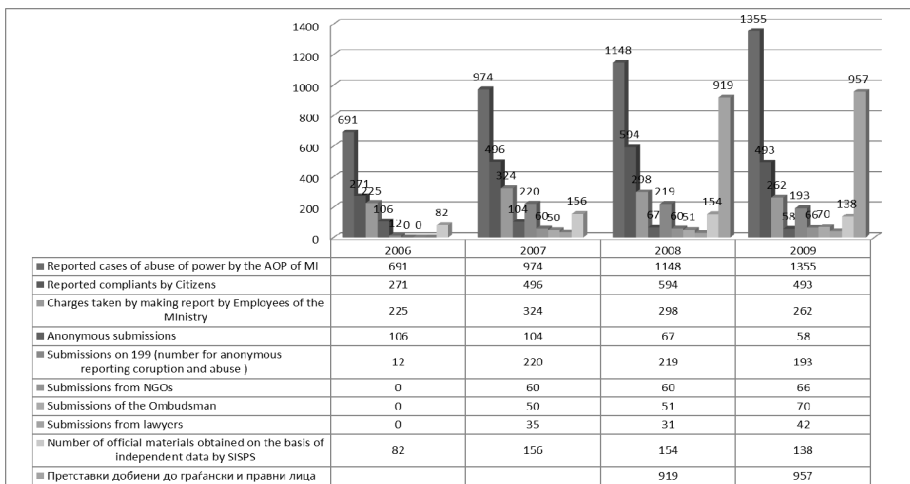


Table 2: Number of submissions on abuse of the police powers based on different grounds according to the records of the SICPS.

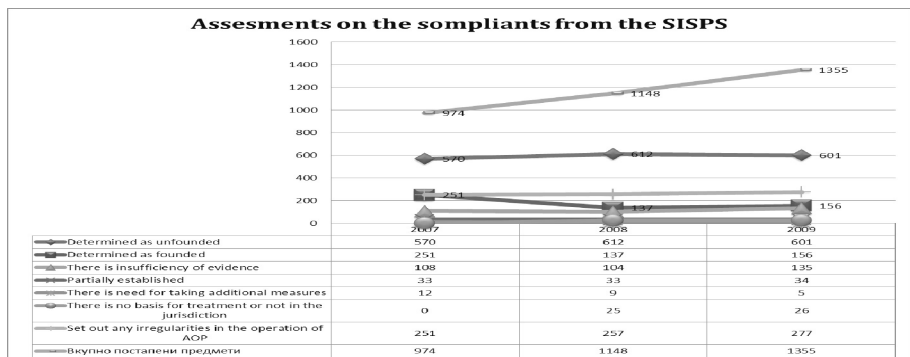
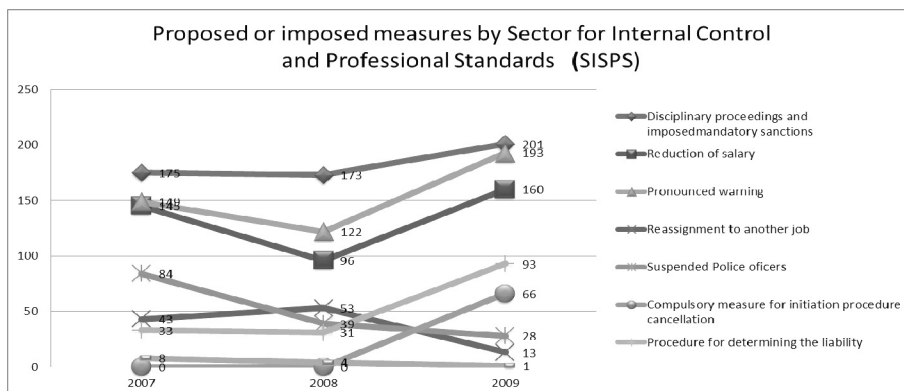


Table 3: Assessments on the complaints from the SICPS.

The third graphic display, we can say, is of particular importance. The disproportionality between total number of reported abuses on one side, and the founded ones on the other side is of particular importance. The question that results from this situation is if the citizens are becoming even "arrogant" in their courage; so even for frivolous forms of possible abuse they are taking initiative for determining disciplinary responsibility? The police subculture and the fact that SICPS is a part of the MoI reopen the question of the consistency of the control regarding the petitions. Further analysis of the activities of civil law suits against the authorized officers of MoI could help in determining the factual situation and can contribute to bring scientifically based conclusions.



Graphic 2: *Proposed or imposed measures by the Sector for internal control and professional Standards (SICPS).*

Table 4 presents the measures taken by the SICPS, noting growth in 2009 on basically all the grounds. The taken measures by the SICPS are rising throw the years but far less than the example at the rapid increasing of the number of complaints seen in the previous tables. This practically means that the measures taken are not in proportional relation with growth present in the total number of complaints, or they are too insignificant to be received of importance and determine as of significance trend.

Conclusion

Unfavorable situation regarding the determination of the disciplinary responsibility in the Ministry of Interior is present especially regarding the lack of limitation of the period when disciplinary responsibility could be initiated. This condition is encouraging for abusing the positions, especially on those senior police officers who are authorized for initiating the procedure.

Also the period of six months as deadline for decision making in determining the disciplinary responsibility is not complementary. According to the previous conclusions, it could be said that this situation provides legal uncertainty among the employees which negatively impacts their position, especially in terms of self-performing their working obligations and doing that with integrity.

Regarding the disciplinary procedures in the MoI, some characteristics are present. Particular characteristic is present regarding the initiation of the

disciplinary procedure and the proposition of the proceeding. Senior officials are authorized to initiate the procedure, i.e. the competent official of the employee that under suspicion for disciplinary responsibility, but the authorization for making proposal for start of the disciplinary responsibility is given to the "authorized nominators" defined by law. Unlike the MoI, the Law on Civil servants only predicts that every citizen is entitled to initiate disciplinary responsibility and the proposal for starting procedure is made by the directly competent official in the Ministry. This makes the "authorized nominators" special solution regarding the disciplinary responsibility in the Ministry of Interior.

Also, additional differences can be concluded. Particularly differences related to the explicit inclusion of the Syndicate when it comes to the procedure for employees of the MoI, then, the absence of subjective and objective time limit regarding the initiation of procedure for determining disciplinary responsibility of a particular individual within the MoI. This situation when practically there is not time period when procedure can be started (after which period initiation could not be done) is extremely unfavorable for employees, the condition which ultimately contributes to providing legal uncertainty and opens opportunities for manipulations by the "authorized nominators" who are competent for initiation. Another difference for the employees of the MoI is that the disciplinary procedure can be initiated by "authorized nominators", unlike the situation with the civil servants where every individual can initiate procedure for determining disciplinary responsibility on elaborated proposal. If we directly interpret the Law of Internal Affairs where citizens have the right to a complaint related to the work of the Ministry and its employees that can be related to getting information for determining the concrete disciplinary responsibility of the employee of the Ministry could be said that in the case of the Ministry of Interior each citizen can initiate disciplinary proceeding, but in a different form that is being subject to several levels of control on its justification.

Finally we have to say that unfortunately, the good practice of the SICPS for publishing the annual reports on the web site of the Ministry of Interior is not continued after 2009. That probably means that this kind of reports for 2010 and 2011 are not published which certainly has an impact on the achievement of full transparency in the operations of the Ministry of Interior that aims to.

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Дисциплинска одговорност запослених у Министарству унутрасњих послова Републике Македоније

Сажетак: Државе настоје да успоставе одговорну управу, и у том аспект у предузимају бројне мере и активности у циљу постизања бољег квалитета администрације. У том процесу, као лична одговорност функционера у администрацији предвиђа се, између осталог, дисциплинска одговорност за повреду радне дисциплине и реда. Поједини запослени у Министарству унутрашњих послова, као органу државне управе, имају право да користе овлашћења поли-

ције, када се може указати потреба за утврђивањем дисциплинске одговорности, организационе и функционалне природе. Уз теоријску анализу релевантног дела законодавства који регулише ово питање, у раду ће бити приказан и преглед рада Сектора за унутрашњу контролу и професионалне стандарде, као одговорне организационе јединице у оквиру Министарства унутрашњих послова, кроз анализе садржаја годишњих планова рада и извештаја у периоду 2007-2009. године.

Кључне речи: дисциплинска одговорност, овлашћења службеника Министарства унутрашњих послова, полиција, Република Македонија