

PROBLEMS OF IMPLEMENTATION THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN THE STATUTORY PUBLIC ADMINISTRATION INSTITUTIONS

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Pateikta 2006 m. sausio d., parengta spausdinti 2006 m. kovo 3 d.

Summary. This article is devoted to investigation of problems of implementation of article 6 of the European Convention on Human Rights. On the basis of the social research carried out by the author a presumption has been made that the legislative endows certain social privileges, marks officers of statutory institutions out of other social groups, however, does not give enough attention as to their human and civil rights. The article comprehensively analyses officers' right to defence, moral support during disciplinary proceedings, in when imposing of statutory reprimands (sanctions). A distinguishing feature of the 21st century is united and democratic Europe where fundamental democratic values, supremacy of law and human rights, are respected. Due to peculiarities of institution activities officers inevitably encounter restrictions of their civil rights, although provisions of the Convention are supposed to be fully applied towards them and problems of their implementation are to be solved on the basis of legal acts and recommendations of the community law. Thus, when implementing human rights in internal administration of statutory institutions, it is needed to solve controversial questions where unified powers of scientists and experts of public administration are necessary.

Keywords: statutory public administration institution, law enforcement system, hierarchic subordination, social integrity.

INTRODUCTION

Quite often we read or come across in the media an opinion that officials of internal services are entitled with more social guarantees and this way are marked out from other less socially advantaged categories of citizens. Indirectly it is proved, according to researcher K. Vitkauskas, by other specialists of political sciences who claim that subsidiary pensions and other privileges afforded due acquaintanceships or because of pressure on the authorities are available only for "deserving" social groups, for example, power structures [1, 20], (i.e. police, customs, state border guard service, and other statutory institutions). Can such an opinion be acceptable unreservedly?

A significant part of society members share such point of view and it is not a mere report. Investigation of regulation of public relations from historical angle shows that from a long ago till nowadays officials of in-

ternal services (power structures) traditionally were entitled with particular guarantees. Their particular status is justified by certain criteria typical to authoritarian¹ or democratic states. Maintenance of public order in a democratic state is based on solidarity of society in order to achieve social stability apprehended as social value, as a significant guarantee of human and civil rights. Classical theory of administration in the beginning of the 20th century introduced a model of modern state, justified use of force in maintenance of being together norms in society. For such theorists as J. Jellenik, J. Austin, M. Weber or H. Klens, legal order, and first of all, law enforcement system and state are inseparable notions. In other words, in those times it was already admitted that statutory services were professional insti-

¹ Differences of democratic state and authoritarian regimes the author comprehensively analyses in his monograph, Laurinavičius A. Tarybinė teisė : statutinės valstybės tarnybos teisinis reglamentavimas. – Vilnius: LT, 2003. P. 3655.

tutions, which was a support for a democratic legal state.

Big changes occurred in the second half of the 20th century in regulation of being together norms when these activities were actively joined by international organizations. The European Council is considered a big achievement and the Convention on Human Rights and Fundamental Freedoms adopted in Rome in November 4, 1950. The document is better known as the European Convention on Human Rights. It came into force in 1953 and is the first international agreement which guarantees a respect for human rights for all member states of the European Council. The Convention and protocols adopted later define a common minimum of human rights protection. Moreover, the Court of Human Rights taking decisions in concrete cases and at the same time explaining norms of the Convention and its protocols helps to create a unique jurisprudence. Many scientists and state policy makers analyzing the Convention on Human Rights and a control mechanism it presents (the Committee of Ministers of the European Council, Commission of the European Rights, the Court of Human Rights) come to a conclusion: the Convention has become perfect and the most effective agreement on human rights protection in the world. It has become a constitutional document in the whole Europe [2, 77-83].

A notion of human rights assumed a new meaning due to comprehensive and purposeful cherishing of certain institutions and institutes. It has been perceived that human rights can not be separated into more or less of importance because there are no criteria to decide on the "weight" of human rights importance [3, 28]. It explains a traditionally developed requirement of the public administration of a democratic state- to administer without bias, i.e. notions of rights, policy and morality have to be applied equally to all regardless the conditions which are not concretely related to that particular and basic direction of activity which in this case is public administration. [4, 154-155]. For example, internal administration of a statutory institution has to be defined by certain legal acts considering the status of officials in order to meet their professional and personal needs². Therefore, we can maintain that Western modern democratic world matured perfect preconditions for every person or social formation to make use of fundamental democratic values – the supremacy of law and respect for human rights.

In order to achieve their goals authoritarian regimes try to consolidate strong and loyal system of law enforcement, i.e. to artificially ensure implementation of their politics by giving prominence to the role of bureaucracy or clergy, by applying methods of physical or mental violence instead of using legal powers. Due to

² Need is a desire supposed by entity of social suppositions. Every individual wants to live in a perfect society because it creates preconditions for implanting high standards of human rights. (see: Pumputis A. Europos žmogaus teisių ir pagrindinių laisvių apsaugos konvencija ir jos įgyvendinimo mechanizmas. – Vilnius: LTA, 2000, p. 5- 19; Laurinavičius A. Žmogaus teisės ir policijos veikla.- – Vilnius LTU, 2002. P. 18–24, etc.

this, a deficit of legality contrary to the situation in legal and democratic state appears in public relations. According to A.Vaišvila, such situation is followed by formation of a cult, licence of political powers which proves that relations between the state and citizens are not based on the law and justice but on the violence and outrage. It completely shifts the concept of rule because justice and law are respected whereas violence - worshipped. [5, 30-31]. The principal tool in hands of political powers of authoritarian states is militarized power structures which are used to implement some leading doctrine and administered according to "disciplinary" statutes. According to the Western democratic law, maintenance of militarized discipline is no way related to internal administration of institution based on service law³.

The former USSR is a characteristic example, under suppression of which for long years the Baltic States (Latvia, Lithuania and Estonia) were. Work relations, internal management of power structures were regulated by specific disciplinary statutes and provisions [6, 212-214]. These documents maintained the idea that the leading party is the owner of the state apparatus and governs even state officials, as F. Cordona, the head of European Union PHARE program of public administration reforms in Lithuania pointed [7,12]. An example of requirement for unconditional obedience could be article 1 of the Disciplinary Statute of Internal Bodies:

*a discipline of internal bodies is based on high political consciousness, loyalty to ideal of communism, personal responsibility of every ordinary or leading official (Russian term- nachalstvuiuchevo) for performing his duties and delegated tasks*⁴. This is a reason incarnated in society during long years why law enforcement, statutory state services are distinguished by society as "privileged" social groups. Statutory institutions of a state are professional state services operating according legal grounds defined for their activities. Restriction to participate in political activities for officials of statutory services is defined in laws, e.g. article 4 of the Law on Police Activities, 2000⁵; article 22 of the Customs Law⁶, 2004, and other) however, in consciousness of many people there lives an image of statutory services as supporters of functions of "power bodies". A more complicated situation emerges when solving problems of internal administration of the services. It is often tried to maintain that a strict regulation of hierarchic subordination is a sufficient condition to meet needs of officials, to properly solve questions of legal defense and moral support. In our opinion, a system of treatment

³ Service law systemizes institutions, principals, norms regulating state service by creating suppositions for unified mechanism of regulation of service relations. See: Laurinavičius A. Tarybinė teisė: statutinės valstybės tarnybos teisinis reglamentavimas. – Vilnius: LTU, 2003. P. 89.

⁴ Дисциплинарный устав органов внутренних дел, утвержден Указом Президиума Верховного Совета СССР от 3 Мая 1984 года №. 128-XI.

⁵ The Law on Police Activities of the Republic of Lithuania October 17, 2000. No. VIII-2048.

⁶ The Customs Law of the Republic of Lithuania April 27, 2004.

of status of an official through work relations is an old fashioned authoritarian relic because it defines that status as dependent, which means that an official has those rights, and human rights as well, which are “granted” by the state. Thus, as the made research allows us to conclude that according to a higher staff it is not necessary to apply provisions of the European Convention on Human Rights and other international agreements in administration of statutory institutions.

1. HUMAN RIGHTS AND SOCIAL INTEGRITY

A scientific analysis of development of relations between a democratic state and its citizens precludes that human rights depend on society’s needs which are determined by a political system. In other words, a political system shapes human needs, and the latter – human rights. Having admitted that needs are the basis of human rights formation, we have to also admit that the system of human rights is determined by needs. Therefore, in our opinion, a notion “human rights needs” can be employed applying it in terms of a certain social formation.

Human existence is very complex. The individual encounters a big variety of problems and needs to solve them. In order to apply theories of human rights and needs in practice, it is very important to define a general hierarchy of needs which supposes a level of human rights of a society as a social formation and a statutory service as a separate community. It is quite a complicated task. According to A.Pumpūtis, the scale of needs can be very different – it can be dependable of a stage of historical development or even of geographical conditions [8, p.10]. Therefore, a selection of a phenomenon qualifying features depends upon a research topic.

Statutory services are much more closed than other state services, i.e. regulations of their status includes additional rights, duties, restrictions and bans (e.g. Part II of 2000 Statute on Service in Customs; 2003 Statute on Internal Service). A statutory service officer first of all has a legal status therefore the main criterion for the analysis of internal administration problems are legally regulated procedures of human rights realization. Considering that provisions of the European Convention on Human Rights are applicable equally to all, they have to be implemented by creating special legal procedures, e.g., designed for the customs, police or the state border guard service.

According to a general hierarchy of needs, the right to defence or the right to fair trial⁷, is ascribed to minimum or basic rights⁸ which sustain the existence of an individual. It is a natural human right to ensure own physical or social security. In a democratic society fundamental rights are expressed as generalized level of individual needs independent of his/her social status. An

⁷ Art. 7 of the Convention of Human Rights and Fundamental Freedoms.

⁸ Fundamental human rights are minimum rights which maintain existence of the individual (e.g. the right to life, to physical or social security, to other guarantees maintaining full human existence).

aspiration to ensure them is the power which keeps the balance between needs of an individual and society. In order to evaluate needs objectively due to their peculiarities special procedures are established for investigation of disputes, irregularities.

What is behind the meaning of this notion from the point of view of human theories?

All agree on that the most human or social formations’ needs can be only satisfied by participating in social life. The 10 preamble of Recommendation of the European Council Rec. (2001) fixes the notion that successful police activities nowadays highly depend on close relations with society and of its support.⁹ It is considered as a condition for cherishing fundamental democratic values – supremacy of law and respect for human rights. Scientific research of social processes maintains that individual, collective or even societal disintegration can be provoked in case needs of one of social groups which is distinguished by its’ ethnic, religious, professional or other features are not met. This one of the reasons why social conflicts break, society does not trust state services and distrust criticism or even professional deformations emerge inside of these services (e.g. corruption, abuse of powers).

Due to specifics of social status of statutory services disintegration can emerge in specific manner, for example, as community’s dissociation from the police. It can become an obstacle which can not be overcome in order to perform vitally significant functions delegated by the state. And the reasons, as it was mentioned earlier, can be very different. One of the many is a faulty treatment of a role of police or other state service (e.g. a syndrome of authoritarianism in internal administration, inherited from the Soviet era).

Another threat is a heightened social tension due to objective reasons. A development of a state welfare, its stability depends on many circumstances therefore it often appears to be changeable. Science has proved that the role of power structures grows when the state appears in social or economic decline. Difficult or even extreme situation in the state echoes to legal, moral consciousness of the society, societal structures undergo transformations, arguments emerge on making priorities on state social policy. As the article 8.2 of the Convention states, statutory and other legal institutions are obliged to defend democratic values of society: security of society, economic welfare of the state, to prevent legal offences or crimes, prevent threat to citizens’ health, to maintain morality, to defend personal rights and freedoms. Moreover, in extreme situations, art 15 of the Convention provides for possible deviation from “obligations according to the Convention”. However, even in such case, social disintegration is to be prevented, solidarity of social formations and society are to be cherished because it is the most reliable way to reestablish stability. [9]. Regulation of administrative relations of

⁹ Recommendation Rec (2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics adopted by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Minister’s Deputies.

modern state institutions (police, customs, state border guard service) in legalization of human rights has to be a landmark to form a civilized state institution and to create conditions for officials to demonstrate public merit.

Thus the social disintegration is an indication human needs are not met sufficiently in some situations. Science has justified sufficiently (R.B.Denham, A.Pumputis, J.Rawls¹⁰, I.U.Zrinyi¹¹ and other) that social disintegration usually manifests itself

- as freezing activities of certain social layers and groups;
- as boiling activities, protests and rebels.

Obviously, in activities of statutory services such phenomena are undesirable. Modern management, applied ethics, has a sufficient armoury of comprehensive knowledge about internal problems and management of institutions and are able to prevent disintegration, to smooth discomfort in communication among officials and to solve other questions of civilized society.

2. METHODS AND RESULTS OF RESEARCH

This article aims to answer the question if physical and social security of statutory services in Lithuania is ensured, if one of the fundamental rights- the right to fair trial (during disciplinary proceedings) - is implemented. According to official figures, every year approximately 550 official investigations are carried out in police institutions. In 2005 there were 33 disciplinary investigations carried out and 68 reprimands issued. In conclusions of investigations it is declared that a big part (one third or 33- 37 per cent) of allegations are partially or fully proved out and officials are issued with reprimands. To lose a job or even a right to work in the future according to obtained educational background is a strict punishment for any person. Therefore, analysis if disciplinary proceedings, procedures of giving official reprimands are in compliance with general notions of the European Convention on Human Rights is very topical.

Similar social research was carried out by the author in 1999. Police and customs officers were respondents in the research¹². The author came back to the human rights issues when the Lithuania's as the European community state's status changed¹³. In the last quarter of 2004 an initial interview was carried out with officers of the state border guard service. The survey in-

cluded a question if officials have the right to legal assistance in case of disciplinary proceedings instituted against them and if this right is exercised in practice.

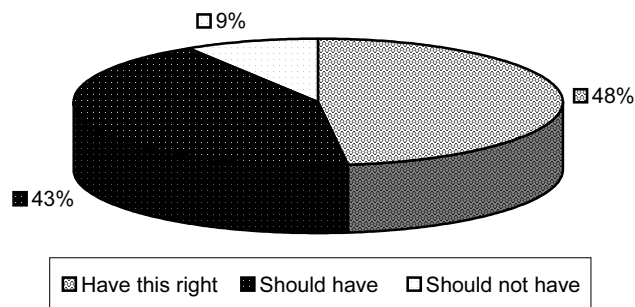


Figure 1. Opinion of officers of the state border guard service about their right to legal defence

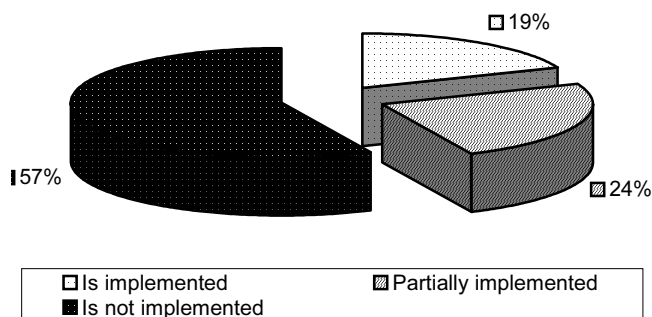


Figure 2. Opinion of the state border guard service about implementation of their right to legal defence

The primary quantitative stage of research revealed the complexity of the problem. Nearly every second respondent (43 per cent) was sure that the right to defence during the official investigation and in taking certain decisions should be established in the future; every tenth respondent (9 per cent) was of the opinion that this right did not apply to officers of, for example, the state border guard service. Therefore, the initial research induced for more thorough analysis of the problem, and served for making research topics more focused. We have to admit that this fundamental topic of needs for human rights in statutory services has been poorly analyzed and an ignored sphere of civil relations by scientists and practitioners.

The goal of the quantitative survey of officers was to understand their true to life problems, to determine their attitude towards protection of human and civil rights. To analyze the situation a group interview method was applied [12, 468]. At the end of 2004 and in the first quarter of 2005 there was a survey carried out of police officers who had been working no less than three years in various Lithuanian police institutions and had higher education or were finishing their extramural

¹⁰ Rawls J. A. Theory of Justice. – Cambridge, MA: The Belknap Press of Harvard University Press, 1971.

¹¹ Zrinyi I.U. Moralinės kultūros tendencijos postkomunistinėse visuomenėse // Dalykinė etika. – Kaunas: VU. P. 229–247.

¹² Results of the research are analyzed in Laurinavičius A. Statutinių pareigūnų karjeros problemos // Jurisprudencija: mokslo darbai. – Vilnius: LTU, 2002. T.36(28). P. 44–58; Laurinavičius A. The paradigm of the administration of the career processes in the service of the state//Die polizeilicheaus- undfortbildung. International wissenschaftlich-praktische konferenz. – Riga, 2003. P. 140–151.

¹³ In May 1, 2004 Lithuania became a member of the European Union. The goal of this research is to analyze changes of need for human rights in statutory services after the countries membership in the European Union.

Bachelor studies of Law and Police activities study programs in the Mykolas Romeris University were chosen as respondents. Over 400 officers who met requirements were questioned. A part of questionnaires were spoiled (answered partially). Data of 310 respondents were analyzed. In order to make a more thorough analysis of the problem the received data were analyzed by dividing respondents into groups according to the term they had been working in police institutions:

- 1) 3- 5 year term of experience in police office – 90 respondents;
- 2) 5- 9 year term – 90 respondents;
- 3) 9- 13 year term- 90 respondents;
- 4) 13-22 year term- 40 respondents. That was experts group, comprised of persons who due to their professional and life experience had the highest competence and could provide with reliable and comprehensive information about the analyzed problem.

It has to be mentioned that officers were also asked a question on persons' rights to legal defence, i.e. it was attempted to establish if police officers realize their role as a one of the most significant guarantee of human rights. As to this, respondents did not encounter a bigger uncertainty. About 5 per cent of the respondents presented their separate opinion on the right to legal aid in case of committed crimes that involved violence or other serious crimes. Moreover, they maintained they had problems in performing certain service tasks¹⁴, however all were aware of the right to the fair trial and other rights and fundamental freedoms provided in the European Convention on Human Rights.

Much more difficult situation emerges when analyzing data about human rights situation in services (see diagrams 3-5). Every fifth or sixth respondent doubted if there was a need for this right for police officers at all, every fourth respondent knew that the right to defence was implemented, whereas three of four participants of the survey had no thorough knowledge about how officers' rights to defence were regulated when disciplinary infringements were investigated. It is worth mentioning that the data received from the "expert" group were much different from those of the general group. Only 8 per cent of them maintained that such a right was not exercised in their institutions (see diagram 3, in average- 40 per cent) and every second respondent had nothing to say about the issue (average- 35 per cent). The question is – why? And it can only be answered after having carried out a thorough research. The research is not sufficiently comprehensive and is more oriented to quantitative indicators and in our opinion allows making a conclusion that these problems are not only encountered in police, state border guard service but in other

statutory institutions too. At the end of 2005 and in January 2006 the same questions were submitted to customs officers. Answers of 280 respondents were analyzed. For that purpose 70 questionnaires were divided into 4 similar groups.

Diagram 3. Level of implementation of the right to defence

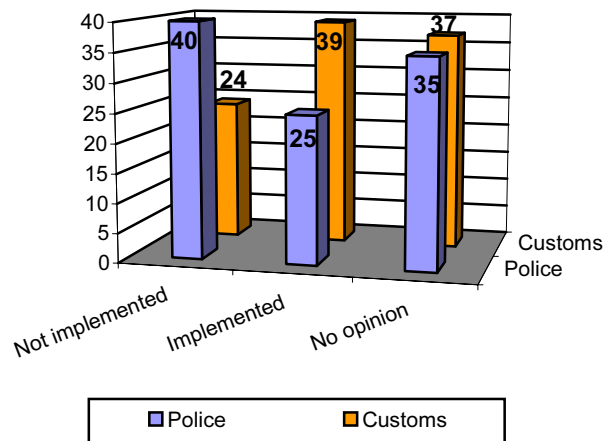
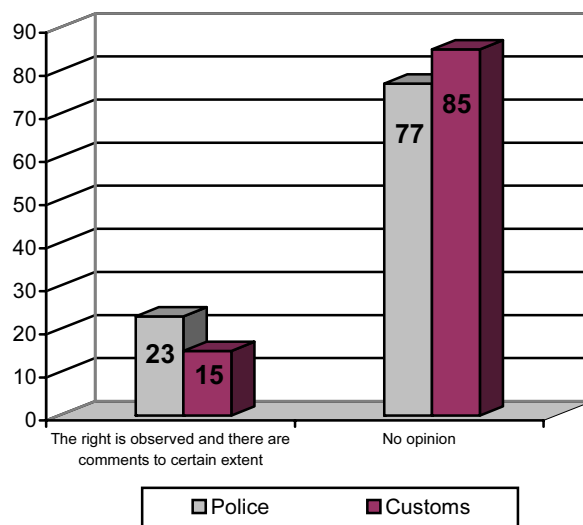


Diagram 4. Level of implementation of the right to defence according to international recommendations on internal administration issues for law institutions.



The analysis of the received data dividing police group respondents into several different groups based on service term did not reveal big differences of opinions. There are no indications that the term of service in police would impact on recognition of officers' rights: nobody is privileged in services for this reason, an attitude towards human rights in police does not change significantly, etc. However having compared the group of respondents with the 3- 5 years of experience in the service and those of 13- 22 years of professional experi-

¹⁴ The author together with the Police Department officers and a lecturer of the Mykolas Romeris University E. Misiūnas carried out comprehensive research on the issue and on the basis of the collected material worked out a methodological publications. See: Laurinavičius A. Žmogaus teisės ir policijos veikla. – Vilnius: LTU. 2002 Laurinavičius A., Misiūnas E. Žmogaus teisių įgyvendinimo problemos ir jų sprendimo kriterijai policijos veikloje. – Vilnius: PD prie LR VRM, LTU. 2004.

ence, we noticed that answers were obviously different concerning their right to defence when disciplinary offences were investigated. To compare the answers of the respondents with a shorter work experience and those of “experts” the former indicated that their rights were more restricted (respectively, 45 and 8 per cent).

Only every fifth officer (20 per cent) from those who have been working in police all year of the Independence is of the opinion that he has no right to defence in his institution and every second officer (52 per cent) has no opinion if the right to defence is exercised in their institutions. The largest part of them (85 per cent) is not aware of international instruments, recommendations are considered as the methodological basics regulating police activities and police officers rights.

The situation in the customs should be analyzed more thoroughly. The situation in the customs is better to compare that in the police. Every second officer maintained that the right to defence was not implemented when disciplinary infringements were investigated and almost 40 per cent answered that the right was implemented in full or partially (see diagram 3).

Completely different situation was observed in the police and customs in concerning international regulations of human rights. Customs officers have very little knowledge about how they could make use of regional European human rights system when defending their as officers rights. More over, the years spend in the office are also of importance in this respect. Those who are in the office for the last five years are of the least knowledge about implementation of human rights (51 per cent have no knowledge). Whereas only 20 per cent of those who have been working for 12 and more years have problems related to the discussed issue. Thus, we can presume that this circumstance gives an answer to a question why only 19 per cent of customs officers who have been working for only five years think that this right is not implemented in their institution and as much as 35 per cent of those who have been working for more than 12 years admit this problem. The parallel situation was observed in these survey groups when level of implementation of the right to defence according to international recommendations on internal administration issues for law institutions was analyzed (no knowledge, respectively, 92 and 77 per cent). The primary analysis of survey data of personnel in certain institutions motivates for mutual efforts of statutory institutions administration to thoroughly analyze this problem and encourages looking for a solution of these and other issues related to human rights.

3. THE RIGHT TO FAIR EVALUATION OF BEHAVIOUR OF THE OFFICER

Article 6 of the European Convention on Human Rights “The right to the fair trial” is one of the fundamental human rights which guarantee basic human rights. We have to pay attention to certain circumstances. First of all, the Convention was adopted with an aim within the shortest possible way to secure *universal and effective recognition and observance* of the rights

declared in the Universal Declaration of Human Rights¹⁵ (hereinafter- the Declaration). One of these truths – is that *everyone has the right to recognition everywhere as a person before the law* (Article 6 of the Declaration).

Another important circumstance in implementation of the Convention is article 14 of the Part III of the International Covenant on Civil and Political Rights (herein after- the Covenant) which lays down comprehensively criteria for pre trial investigation and hearing by tribunal in terms of human rights. Article 14 para. 1 reads that *in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal*. Moreover, article 14 para.3 establishes that minimum guarantees that ensure human rights and fundamental freedoms. These guarantees are based on inheritance from European states’ law and traditions; they broaden article 6 para.3 of the European Convention of Human Rights. These criteria for establishing justice are applicable when evaluating all civil relations in terms of human rights. It allows declaring that hypothesis of article 6 para. 1 of the Convention is applicable *to everyone in the determination of his civil rights and obligations or of any criminal charge against him*. As we know, service law is complex. For instance, during the official investigation if an officer is charged with disciplinary offence, it can be related with prosecution or other form of legal responsibility. Therefore, these requirements are fully applicable when deciding on the responsibility of officers of statutory services. Therefore, an officer just like any other person during the investigation of disciplinary offences should be entitled to the following minimum guarantees:

- informed promptly and in detail of the nature and cause of the charge against him;
- to have adequate time and facilities for the preparation of his defence;
- to defend himself through legal assistance of his own choosing, and without payment by him in any such case if he does not have sufficient means to pay for it;
- both sides (statutory institution and the suspect) are provided with equal possibilities to examine witnesses both for the prosecution and the defence.

4. CONCEPTION RECOMMENDED BY THE EUROPEAN COUNCIL FOR INVESTIGATION OF POLICE SERVICE CASES

Service law (internal administration of statutory institutions) as a sphere of civil relations, is regulated by special legal acts and is influenced by international agreements, recommendations intended for concrete legal system. For example, during the recent decades,

¹⁵ The Universal Declaration on Human Rights was adopted by the United Nations General Assembly in December 10, 1948.

several agreements were signed, international organizations adopted many documents directly or partially regulating activities of police- as a special state institution. That means that a common conception of administrating of police activities in democratic states is formed by unified efforts of Western countries.

The first international document devoted to regulation of police activities is the Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly (resolution 34/169) in December 17, 1979. In May 8, of the same 1979 year, Parliamentary Assembly of the Council of Europe by the Resolution 690 (1979) adopted the Declaration on the Police (hereinafter- the Resolution).

As it was already mentioned, European regional mechanisms of protection of human rights are more effective and therefore- more important to us. The Resolution defines the role of police in implementation of the European Convention on Human Rights. It expresses a belief of the international community based on experience that *the European system for the protection of human rights would be improved if there were generally accepted rules concerning the professional ethics of the police which take account of the principles of human rights and fundamental freedoms*¹⁶; i.e. by improving internal administration of services. Police is considered as professional service which has specific activities, and it is recommended to maintain the provision that police officers have to be entitled to exercise rights similar to those of state officials working in other state institutions.

The 2nd European Police Union Council Congress evaluated changes in implementation of the Code of Conduct for Law Enforcement Officials and the Declaration on the Police and stressed the most significant democratic development that in the states of the European Council police become more the citizens' power instead of the power to govern citizens and the guarantee for protection of human rights and fundamental freedoms. On the basis of the recommendations formulated by the Congress the European Council Committee for Human Rights and Legal Affairs in August 25, 1993 adopted Police Officer European Charter (hereinafter- the Charter) which concretely defines the individual and professional status of the police officer in a democratic state. The Charter as a legal act of the European Council establishes recommendations for member states:

- police officers must be entitled to receive proper training to perform their professional tasks;
- police officers have the right to receive legal assistance;
- police officers must be entitled to an appropriate social protection;
- police officers must be entitled to form and actively participate in trade union activities and expect their moral support.

¹⁶ Parlamentinės Asamblėjos Deklaracija dėl policijos // Žmogaus teisės. Regioninių tarptautinių dokumentų rinkinys. –Vilnius: Mintis, 1993. P.141.

That means that police officers against whom disciplinary or penal proceedings are instituted must have the right to be assisted by a lawyer. During the performance of their professional duties, even when their guilty neglect or breach of rules has been evidenced, Police officers must have the right to expect legal defense from the State. Indication of the level of democracy of police just like other social formations is the right to establish public professional formations (unions, communities, etc.). Activities of professional unions must be regulated by law; they have to be entitled with the right to represent interests of an officer in defending his professional and civil rights, in solving questions of individual welfare. In case of disputes, public professional institutions analyze the situation and take an in-between role to decide them.

Innovative police administrating conception which meets the requirements of the democratic state is established in the European Police Ethic Code (Rec (2001) 10) adopted by the European Council Committee of Ministers¹⁷ (herein after- the Code). The Code is a part of the entity of international legal acts which model the attitude of the 20th century towards the police in the public administration. These are methodological recommendations formulated by the European Council which are aimed to implement the European Convention on Human Rights. One of the main categories of the Code is the *rule of law*. The analysis of the instrument proves that the substance of this notion is revealed through common principals of the European Community law.

Para. IV.4 of the Code “Rights of the Police Personnel” gives us the answer to a complicated question how to harmonize specific requirements for police personnel and imperatives of the European Convention on Human Rights on the basis of doctrine basics of the European Community law. The document reads that *police staff shall as a rule enjoy the same civil and political rights as other citizens*. However, bearing in mind the peculiarities of the functions delegated by the state (to defend human rights and freedoms in extreme conditions), certain reservations provided in the European Convention on Human Rights are justified in administration of statutory services, i.e. some rights are absolute, others can be derogated under special conditions. Absolute or basic rights are natural and vital (the right to life, the right to physical and social security, and other). Therefore, unconditional guarantees of these rights are the indication of a high culturally developed society. Article 33 of the Code provides for a reliable safeguard- means of disciplinary proceedings has to be controlled by some independent institution or court. Article 6 of the Convention provides for the right to fair trial.

¹⁷ The European Code of Police Ethics. Recommendation (2001) 10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001.

Thus, what is the doctrine of the European Council¹⁸ formulated on the basis of the experience of the European countries, what are basic provisions as to officers' right to the fair trial of disciplinary proceedings?

- Restrictions of civil and political rights of service personnel are provided by the law which meets the requirements of the European Convention on Human Rights and Fundamental Freedoms in order to create conditions to properly perform delegated functions;
- Disciplinary proceedings and disciplinary sanctions should be instituted impartially there should be a possibility dispute imposed sanctions not only before the court but also other institutions which can defend the personnel from partial decisions of the authorities;
- Guarantees of social security and moral support can be provided by the professional unions¹⁹; other representative institutions which have special status due to the specifics of statutory service activities;
- Efficiency of the control is ensured by the coordinated state power control, i.e. by establishing clear accountability to the state authorities (the legislative, executive, and judiciary).

Therefore, the Code is not a declarative document – it is an instrument of practical use, therefore it is important that it is implemented in a creative manner and its provisions are incorporated into national legal acts and dissemination of the principals of the Code and their application is ensured.

CONCLUSIONS AND RECOMMENDATIONS

The article presents the hypothesis that the legislative mark out officers of the statutory law enforcement institutions as a social group due to specifics of internal administration of these services. Such treatment which means inobservance of human rights can result in social disintegration. The topic of administration is very wide one, therefore the author analyses more comprehensively the question if officers can exercise their right to legal defence and moral support when disciplinary or penal proceedings are instituted, sanctions imposed. The survey proved that officers know their obligation to implement the European Convention on Human Rights in their practical activities however there are numerous problems in implementation of this international instrument in the internal administration of statutory institutions.

¹⁸ Doctrine – (lat. *Doctrina* – teaching, science) in this particular case it is intended to be read as an entity of views to a phenomenon of law.

¹⁹ Police officers' right to establish professional formations is covered in article 5 of the European Social Charter (the European Social Charter was adopted by the Council of Europe in October 18, 1961, in Turin). Member states of the European Council are rather free to interpret implementation of this principle, however restriction to participate in representative organization is treated as a violation of the Charter.

The aspect of officers' defence, moral support still is not objectively assessed – professional unions, their role in defending officers' social and human rights. Statutes of services provide for the for officers to participate in activities of professional unions and authorized representatives of professional unions to take an active role in solving officers problems and in taking decisions on imposing sanctions for disciplinary infringements. However other legal acts narrow these rights and the suspect is permitted to submit only a written explanation and to appeal against the decision to the court according to the Law on Administrative Proceedings. It only proves that legal acts do not ensure implementation of the fundamental democratic values- the supremacy of law and respect for human rights.

A short analysis of the conditions of implementation of article 6 of the European Convention on Human Rights in internal administration of statutory institutions and the results of our sociological research allow us to provide with a few general recommendations.

- To introduce certain amendments in laws on statutory services, statutes and other legal acts;
- To complement study programs in higher education institutions which train future officers of statutory institutions with subjects devoted to analysis of the implementation of human and civil rights in the internal administration of these institutions;
- To carry out comprehensive research by unified powers of administration specialists and scientists in order to establish problems in internal administration of statutory services. To prepare strategy for qualification improvement of leading staff so that the doctrine of European human rights is implemented.

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EUROPOS ŽMOGAUS TEISIŲ KONVENCIJOS NUOSTATŲ ĮGYVENDINIMO PROBLEMOS STATUTINĖJE VALSTYBĖS TARNYBOJE

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S a n t r a u k a

Straipsnyje nagrinėjamos Europos žmogaus teisių konvencijos 6 straipsnio įgyvendinimo teisės saugos institucijų vidaus valdyme problemos. Autorius gvildena visuomenės ir mokslo literatūroje keliamą hipotezę, kad statutinių teisės saugos institucijų pareigūnus įstatymų leidėjai išskiria kaip socialinę grupę dėl tarnybų vidaus valdymo išskirtinumo. Socialinių mokslų įrodyta, kad išskyrimas, reiškiantis žmogaus teisių ignoravimą, gresia socialine dezintegracija.

Valdymo tema labai plati, todėl išsamiau nagrinėjamas autoriui rūpimas klausimas, ar pareigūnai, kai jų atžvilgiu yra atliekamas tarnybinis patikrinimas, priimamos drausminės sankcijos, gali naudotis teisine gynyba ir gauti reikiamą mora-

linę paramą. Autoriaus atliktos apklausos patvirtino, kad pareigūnai žino savo tarnybinę priedermę įgyvendinti Europos žmogaus teisių konvenciją savo praktinėje veikloje, tačiau daug problemų kyla dėl jos taikymo tarnybų vidaus administravime.

Iki šiol nepakankamai objektyviai vertinamas pareigūnų gynybos, moralinio palaikymo aspektas, t. y. profesinės sąjungos, jų vaidmuo ginant pareigūno socialines bei žmogaus teises. Tarnybų statutai numato pareigūnų galimybę dalyvauti profesinių sąjungų veikloje. Profsąjungų įgaliojimai gali dalyvauti tiriant ir priimant sprendimus dėl pareigūnų tarnybinių pažeidimų. Tačiau kiti įstatymai šia teisę siaurina, nes įtariamajam drausmės pažeidėjui suteikiama viso labo teisė rašyti pasiaiškinimą bei nuobaudą apskusti teismui Administracinių bylų teisenos įstatymo nustatyta tvarka. Tai reiškia, kad teisės aktai, reglamentuojantys pareigūnų teisę į gynybą ir moralinę paramą, nėra svarbios prielaidos įgyvendinti pamatines demokratijos vertybes – įstatymo viršenybę ir pagarbą žmogaus teisėms.

Trumpa Europos žmogaus teisių konvencijos 6 straipsnio dėl teisės į teisingą bylos nagrinėjimą sąlygų, sprendžiant drausmės problemas statutinėse tarnybose, taikymo analizė bei autoriaus atlikto sociologinio tyrimo duomenys leidžia teikti bent keletą bendro pobūdžio siūlymų.

- Atsižvelgiant į pareigūnų vadybines, etines problemas ir siekiant sparčiau demokratizuoti tarnybų valdymą, statutinių tarnybų įstatymus, statusus ir kitus teisės aktus bei tarnybinės etikos kodeksus padaryti atitinkamas pataisas, papildymus.

- Papildyti teisės saugos pareigūnų rengimo aukštojoje mokykloje programas įvedant vadybos ir etikos disciplinas, nagrinėjančias žmogaus ir pilietinių teisių įgyvendinimą šių įstaigų vidaus administravime.

- Bendromis administravimo specialistų ir mokslininkų pajėgomis, siekiant apibrėžti tarnybų vidaus valdymo problemas, atlikti išsamius tyrimus ir parengti Europos žmogaus teisių doktrinos įgyvendinimo projektą, skirtą vadovaujančių statutinių pareigūnų kvalifikacijai kelti.

Pagrindinės sąvokos: statutinės valstybės institucijos, teisės saugos sistema, hierarchinis pavaldumas, socialinė integracija.