



EVALUATION PROCESS OF HELLENIC COAST GUARD PERSONNEL AND DISCIPLINARY LAW. A CRITICAL LEGAL APPROACH

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ABSTRACT

As evaluation is determined the recording of attribution or the proficiency of each executive, who is employed in a concrete work position in the private and public sector, in order to be ascertained if covers the requirements of this concrete work position, namely is examined the sufficiency of the employee and the possibility of his/her further use according his/her qualifications, capabilities and dexterities that presents - develops during the exercise of his/her duties. This process is usually taken place once per year in regular level or even extraordinarily when aids case, based on concrete processes that are forecasted regarding the public sector in legal texts, while in private enterprises and organizations the process and the evaluation process are forecasted in various internal regulations.

Key Words: Hellenic coast guard (HCG), Evaluation process, Military personnel, Disciplinary law, The council of state, Administrative courts of first instance, Administrative courts of appeal

INTRODUCTION

Each executive who is employed in the private or in the public sector is subjected in a initial evaluation, in order to be ascertained if keeps all the preconditions and criteria which is determined by a work position and further to be hired and following is under continuously evaluation by hierarchical levels in which depends, examined his/her sufficiency based on his/her capabilities, qualifications and dexterities that presents - develops during the exercise of his/her duties and consecutively is examined the possibility of his/her further use in superior or other positions relevant with his/her dexterities and his/her qualifications. The evaluation is taking place regularly usually once per year or even extraordinarily. The evaluation can be:

- informal and is supported by the opinion that is expressed by the head of the employer or is,

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- a formal evaluation, which is elected through special scientific studies (Note 1), based on already preexisting processes and methods of supervision and evaluation or is based - supported in processes that are forecasted in legislative texts. Aim of employee evaluation reports that is evaluated for his/her attribution in all the stages of his/her career, is the ascertainment that corresponds in the requirements of work position, the promotion, his/her likely locomotion in other position, ascertainment of likely additional education necessity or/and trainee etc. At the same time each executive ought to enforce depending on the institution in which she/he is employed concrete provisions, in order to be ensured the smooth and unhindered operation services These provisions are reported in the executive relations with third (hierarchically and existing levels) and the way that these are developed, in the relations that keeps - develop with private individuals - citizens at the exercise of his/her duties, the perpetration of concrete offences during the implementation of his/her service, the sentences that are forecasted and the imposition process of these the way of execution etc. These provisions that are stricter in institutions with military organization and discipline as the Hellenic Coast Guard (HCG) (Note 2) constitute law named as disciplinary law. The law in question is reported in internal relations and processes of institutions and executives who serve in them and follows concrete processes concerning the process of its enforcement. Aims of present concise study are, in one department the examination of provisions that are reported in the evaluation of HCG personnel, when these personnel have already been hired and exercise his/her duties in order to be ascertained his/her sufficiency and proficiency in the specific work position that he/she is being employed and the possibility of his/her further use according his/her qualifications, capabilities and dexterities that presents - develops during the exercise of his/her duties.

More specifically will be critically examined the current legal framework that determines the evaluation processes in combination with decisions of responsible Administrative Courts and circulars that have been published by the responsible HCG services in order according to the opinion of these administrative services to be enforced equitably the current provisions. Final aim of this present study is the critical elevation rise of the insufficiencies of the current evaluation system. At the same time in the rest part of the study will be developed also critical the provisions that determine the disciplinary law which governing the HCG personnel in combination with decisions issued by the responsible Administrative Courts and circulars that they have also been published by the responsible HCG services, in order according to the opinion of these services administrative services to be enforced equitably the current provisions. And in this case aim of this present study is the critical elevation rise of the insufficiencies of the current disciplinary law that governs the executives of this particular military institution.

Reports and Evaluation Process of Hcg Personnel

The legal provisions and the most important points of these which determine the evaluation process of HCG personnel are the following (Note 3):

In article 14 of law 2935/2001 (A' 162) paragraph 1 is determined that: "Evaluation reports are that forms which include these elements with which are evaluated the HCG officers until the rank of HCG Vice-Admiral". In the paragraph 2 of the same article is determined the distinction of evaluation reports on scheduled and extraordinarily, while is determined when they are drafted and under what preconditions. More specifically is determined that the officer under judge should have served at least for two months under the orders of the officer who judged him/her. In paragraph 3 are determined the cases that are not drawn up evaluation report. In paragraph 4[a] are determined the evaluation criteria - substantially qualifications of the officers which are classified in five teams as follows:

- a. - administrative capabilities,
- b. - official relations and behavior,
- c. - knowledge of object and attribution service,
- d. – rest of professional and special qualifications and
- e.- moral - mental and bodily qualifications (Note 4).

In paragraph 4 [b], is determined that the criteria which determine the essential qualifications of judged officers are characterized with chapters letters "[A]", "[B]", "[C]" and "[D]". In case that is used the characterization of evaluation criterion as "[C]" and "[D]" should be accompanied by thorough, explicit and sufficient explanation, that supported in concrete events or real elements, differently the Judgment Council does not take into consideration the reported in the evaluation report unfavorable characterization. The description and the further discriminations of evaluation criteria - essential qualifications are determined by presidential decree (PD) that is published by proposal of minister of Mercantile Marine (MMM) - [now minister of Citizen Protection (MCP)] (Note 5), after relative proposal issued by the responsible Division. In the PD are determined the type of evaluation reports, the way of syntax and submission, the responsible for syntax (evaluators), opinion (opiners) and notification of these to the officers under judge, the proportional enforcement way of the old evaluation system according to the requirements of new way evaluation as well as each other necessary regulation detail.

In paragraph 5, is determined that the substantially qualifications characterization of all officers based on the defined by the evaluation criteria is determined as follows:

- "[A]": EXCELLENT,
"[B]": SUFFICIENT,
"[C]": INSUFFICIENT and
"[D]": NOT ADMISSIBLE.

These provisions are also repeated in the article 23 of law 3079/2002 (A' 311).

In implementation of authorization that was forecasted in the above law was published the PD 56/2002 (A' 49) «Evaluation reports of HCG personnel» (Note 6).

Fundamental points of the above mentioned PD which is constituted by 14 articles, concerning the present study are the following:

In article 1 are determined the significances: "Evaluation report", "Evaluator or writer", "under evaluation" or "Judged" and "Opiners".

In article 2, paragraph 4, is determined that "Evaluation reports are not drawn up provided that the judged has served for time interval smaller of sixty days under the evaluator orders".

In article 3, paragraph 3, is determined that "If the judged disagrees with the opiners evaluation or of the evaluator, is able to submit in subversive deadline of three days starting from the date that he/she was informed, thorough report in which justifies sufficiently the reasons of his/her disagreement. This report is taken a protocol and obligatorily attached in the evaluation report".

In article 6 are determined the obligations of opiners and evaluators. More specifically:

«1. Opiners and evaluators should, during the completion of evaluation report:

- a. to be possessed by impartiality spirit and justice.
- b. to evaluate personnel qualifications only for the interval time in which concerns the report.
- c. to accompany the characterizations of evaluation criteria as "[C]" and "[D]" with thorough, explicit and sufficient explanation, which is supported in concrete events or real elements, differently the Judgment Council does not take into consideration the reported in the evaluation unfavorable characterization.....

2. Opiners formulate their opinion for the evaluation criteria and in the cases that they do not agree with the evaluator judgment they place on side their own evaluation, justifying with concrete elements in favor or against of the judged their disagreement.

The judgment of those who express opinion constitutes the final judged evaluation. Evaluators are compelled to check:

- a. The provisions keeping of this present PD during the evaluation report syntax.
- b. If the characterizations of evaluation criteria as "[C]" and "[D]" are accompanied by thorough, explicit and sufficient explanation, which is supported in concrete events or real elements
- c. If the existing unfavorable or favorable elements were taken into consideration in the evaluation criteria".

Finally in article 7, are reported the cases based on which is taking place the realization of statutory administrative examinations in cases where is ascertained not equitable relative provisions keeping. More specifically in paragraph 3 is determined that: "Statutory administrative examination is ordered, after judged report, in order to be ascertained if unfavorable registrations in the evaluation reports that supported general or certain the published unfavorable decision issued by the secondary judgment council became with not objective judgment, but by personal reasons or by mistaken estimation. The relative report is submitted hierarchically in the HCG Personnel Division (HCGPD) a time for the particular unfavorable judgment and in exclusive deadline of thirty days by its notification"

According to article 17 of law 2935/2001 "1. All the HCG officers are judged by the responsible Councils of the next articles based on the observed in the individual files of each one evaluation reports, as well as the rest favorable or unfavorable official documents - elements from which reveals their general official behavior, attribution and proficiency 2. Evaluation reports syntax and submission, as well as the opinion in them by officers superiors at degree or seniors of the members

of the responsible Judgment Council, do not commit the judgment of the last ones

The HCGPD with the circular No. 1117/71/2002 issued on June 04, 2002 provided directives on the enforcement of the determined in the PD 56/2002 (A' 49). In the circular in question and more specifically in paragraph 4 element IV is determined that: [..... should be noticed that in the case where the opiners has under his/her orders the judged for time interval smallest of sixty (60) days, then he/she can word in the evaluation report, under the place of his/her signature the observation: "She/he did not supplement sixty (60) days under my orders"].

LEGAL REFLECTIONS

From the mentioning above are concluded the following legal reflections:

Based on the provisions that were reported is concluded that the evaluation reports do not bear by themselves any changes in the official situation of HCG personnel, but they recommend simply preparatory elements with opinion character (according to my opinion main elements as all the judgments' of all bodies are supported mainly by them), in order to shape opinion the responsible council or other administrative body concerning the executive appropriateness for promotion or for any other change of his/her official situation. With the appeal of the administrative action which creates official change, is checked by the Supreme Court of Appeal and the council judgment concerning the prestige of evaluation report, in which it supported its decision (Note 7). Thus the evaluation report is deprived exclusiveness and unacceptably is turned against this self-existent cancellation application (Note 8).

In consequence executive that considers that was injustice by evaluator or opiners judgment and reports responsibly on this, is not able to submit appeal and to request the cancellation of the opinion by cancelation application, but he/she must make use of article 7 provision (PD 56/2002) provided that aids case. Taking into consideration the time intervals between the promotions which oscillate between four to five years on average and knowing that the basic criterion of judgment for the executives are the evaluation reports, becomes perceptible that the time functions in favor for these who are making injustice judgment and arbitrary and many times without excuse, because in-depth time they do not face any ratification or control for the judgments' that they have expressed. On the contrary after long time interval the executive will overwhelm effort in order to prove well-granted of his/her claims. Subject is also resealed for the disciplinary responsibility of those who have preceded in judgments on the evaluation reports that later have been cancelled, as also is created subject concerning the compensation of executives that has suffered unfair and arbitrary by their superiors. The legislative frame could forecast that the report of executive that disagrees with the judgment of hierarchically body, recommends remedial appeal submitted hierarchically and the hierarchy (superior bodies) to have obligation to answer in concrete deadline. Consecutively the submit of remedial appeal means that the offended action has execute vines and following the interested individual might submit appeal in the administrative justice and to request its

cancellation. It should be emphasized that judgment criterion throughout the executive career is the seniority, namely the senior judges the inferior on the condition of the grade. In no case are taken into consideration other criteria that should possess the evaluator as also the opiner compared with the executive who is evaluated as for instance having a higher educational level than him/her, having greater operational or staff experience than him/her (Note 9) etc. It should also be noted that PD 56/2002 regulates the HCG evaluation in a better direction compared with corresponding earlier legislation (PD 448/1983, 280/1993, 45/1995, 385/1984, etc.) and especially concerning the procedure, as judged takes known of the evaluation report by his/her signature and can report on its contents, so he/she can submit an appeal or a remedial appeal depending the legal situation etc. (something which was not obvious in earlier legislation). However undoubtedly is needed further elaboration in order to be promoted meritocracy, transparency and equality concerning judging and in particular to be ensured the fair and equitable judgment. For instance must be reported on the evaluation reports and the qualifications of those who evaluate and express opinion (if they have exercised administration and where, what kind of academic qualifications - gained, who have served, etc.). It is not possible that everyone's career to be judged by the subjective view/opinion of someone with many times inferior qualifications than those of who are under judgment. Also it must be justified in detail any judgment that provided in any given criterion. At the same time should not be given the opportunity to the judge to evaluate the evaluator and the opiner and why the judgment should be restricted to inferior executives only and not the judgment to be extended to the superiors by inferiors?

The Armed Forces many years ago, had begun a process of drafting law actions in order to unblock the compartmentalization review system of seniorities, of the yearbook and of the oldest doctrines "every senior is wiser". Thus with this way had been attempted (the process was stopped due to reactions for obvious reasons) to create a system whereby:

- would be provided motives in the personnel for improvement of knowledge outside of service and exploitation of these officially,
- would be created a healthy competitive frame between the executives which would promote the rivalry,
- would be imported methods of private sector executives evaluation in the state defense and security services,
- would be removed the public sector mentality that after the forecasted time interval in the possessed degree all will be promoted,
- would be re-defined the syntax of evaluation reports.

Regarding the circular that was reported above with No. 1117/71/2002 issued on June 04, 2002 by the HCGPD with which were given directives on the application of determined in the PD 56/2002 (A' 49), essential part of this (paragraph 4 element IB) is based in erroneous interpretation of PD 56/2002 relative provisions (something usual in the Hellenic public administration, circulates of which in general are characterized mainly by verbalism). More specifically in article 2 paragraph 4 of PD 56/2002 is determined: "Evaluation reports are not drawn up provided that judged has served

for time interval smaller of sixty (60) days under the evaluator orders”. The Division in question in its circular determines that: [..... should be marked that in the case where the opiner has under his/her orders the judged for time interval smaller of sixty (60) days, then she/he can write in the evaluation report, under the place of his/her signature the observation: “It did not supplement sixty (60) days under my orders”].

The familiar legislation is interpreted grammatically namely is not required the completion of sixty days of administrative - official relation between judged and opiner in order to express opinion on the evaluation report (Note 10) the last one. Of course on the other hand not grammatically formulation can also mean that is considered as obvious that also the second level namely the opiner should have administrative – hierarchical relation of sixty days with the judged. More specifically causes impression the fact that in the first level the evaluator needs time interval of sixty (60) days in order to shape opinion for his/her subordinate, while for the second level of which the opinion is final is not required proportional interval time. Something which comes in straight opposition with the provision of article 6 paragraph 1.[b] of PD 56/2002 in which is determined that “evaluators and opiners should during the completion of evaluation report to evaluate the qualifications of the personnel only for the time interval that concerns the report”. Namely if the judged has served under the evaluator orders for sixty days but under the opiner orders for instance ten days, the opiner has the absolute discreet occasion to judge the executive also for interval which she/he did not serve under his/her orders. This recommends one still originality of Hellenic public administration. Besides of the particular observation also are noticed the following:

a. – According to my opinion, the opiner should has under his/her orders the judged for interval of longer than sixty days. This reveals clearly from the provisions of the mentioned above PD as it is not possible the evaluator to need 60 days in order to shape opinion and the opiner to shape opinion in interval smaller of 60 days.

If it was in effect something like that then it would not be delimited in the evaluator the time restriction of sixty days. Besides in order to exist evaluation report is required time interval of administrative - official relation of 60 days. According to which criteria the opiner is able to shape opinion in less time interval than the evaluator? As a consequence does not exist discreet occasion but legally competence.

b. - The fact that erroneous interpretation is realized by the invocation of explanatory circular on binding reinforcement is wrong. As is known from the circulars lack the element of law rule. The interpretation that gives the circular has no authentic character at all. The recipients of each circular have official and not legal obligation to follow them. Its legality depends by the correctness of interpretation which as reveals in the specific in question case is wrong (Note 11). As it is reported in article 1 of PD 56/2002 the “Evaluation Report” is a confidential document. According to the article 13 of Hellenic Penal Code, “Document is each written that is intended or is expedient to prove fact that has legal importance”. It is obvious and datum that each judgment

which is expressed (which recommends personal estimation) should be completely justified in order to know also the judged in what he/she will be reported and consecutively via the explanation of judgment to be limited the arbitrariness of hierarchical levels (evaluator and opiner), as the judgment is reported in the professional career of executives with obvious in any case legal consequences (Note 12).

According to paragraph 1 a. of article 6 of the above PD “evaluators and opiners should at the completion of evaluation report [a].to be possessed by spirit of impartiality and justice

”. In paragraph 2 of the same article 6 is determined that “opiners formulate their opinion for the evaluation criteria and in cases that they do not agree with the evaluators they place near their own evaluation, justifying with concrete elements in favor or at against of judged their disagreement”. It is obvious that this is overlooked in the HCGPD circular, namely that the author of the PD has placed obligatory rule with the above formulation, namely the opiners to formulate their opinion for the evaluation criteria (as they are determined in article 8 paragraph 1) and in cases where they do not agree with the evaluator to place near their own evaluation, justifying with concrete elements in favor or at against the judged their disagreement. In article 6 of PD 56/2002 is determined, that independently of “[C]” and “[D]” and the obligations that create these characterizations and the control in which is compelled to proceed the opiner, in any case that the opiner does not agree with the evaluator places near his/her own evaluation, justifying with concrete elements in favor or at against judged disagreement (if e.g. “[A]” of evaluator judged as “[B]” or “[B]” as “[A]” by the opiner should be justified with concrete elements each judgment of opiner as of course is determined clearly in the grammatical formulation of lawful action in question).

It is not limited only in “[C]” the “[D]” the specifically argued judgment as was previously reported based in concrete elements and special facts, which level of opiner has obligation to check, but in the different judgment that in any case has the opiner concerning the evaluator. Because in favor or at against the judged disagreement should be justified in the frames of virtuous administration, the good faith as the judgment in document as the evaluation report has legal consequences for the judged. E.g. if the first level has proceeded in crisis with “[A]” or “[B]” and the second level proceeds in comparison with the judgment of first level in “[B]” or “[A]”, the judgment is different and as such requires explanation. It is marked that in the PD under publication by the MCP/HCG Headquarters (Note 13) titled “Hierarchy, promotions, transpositions, discharge, special obligations and prohibitions of HCG personnel”, concisely remains the fact that for the judgment formulation issued by the second level is not required the completion administrative - official relation of sixty days, changes the judgment from “[A]”, “[B]”, “[C]”, “[D]” in numbers from 1 until 10, is not required explanation if different judgment issued by the opiner while as positive step is considered the submission of remedial appeal by the judged in case that disagrees with the judgment of superior levels. It must be reported that also in

the past, before the enforcement of PD 56/2002 the judgment was impressed in numbers. It would have interest to be notified the thoughtful reintroduction in the previous evaluation system. Finally is remarkable the fact that afterwards the split of HCG services from 2009 and then (Note 14) by their subordination in two ministries, was not realized any modification to the relative legislation in order to be covered this negative original administrative reform of Hellas. Namely the executives' evaluations that are substantially out of their natural hierarchy should have been evaluated by superior executives who served in other ministry.

DISCIPLINARY LAW OF HCG PERSONEL

Chronologically the most important legal provisions that determine the disciplinary law which conditions the HCG personnel are as follows:

With the law 5464/1932 (A' 1932), was attempted the authentic interpretation of article 21 paragraph 2 of Legislative Decree (LD) of 27 May, 1927 (A' 104) "Administration of Mercantile Marine and addition of relevant provisions". More specifically with the only one article was determined that: "The true significance of article 21 paragraph 2 of the LD of May 27, 1927 "Administration of Mercantile Marine" is that HCG is conditioned under the provisions being in effect each time for the Officers, Petty Officers and Sailors (blue jackets) of Navy to whom are assimilated, concerning the situation, penal jurisdiction, discipline, the limit of age, the retired right, the handing-over of superior degree in retirement, the registrations, the acceptances, the walking expenses, the expenses of hospitalization and funeral, pensions, the attendance to the Participial Fund and the Navy Funds of Mutualism and to the Maritime Retiring Fund (MRF-NAT), unless if otherwise is determined for the HCG".

Following with the law 3674/1957 (A' 40) "Penal and disciplinary prosecution of HCG personnel (men)", was regulated subjects related to the penal and disciplinary prosecution of HCG personnel (men) and more specifically the entrusting with Decisions issued by the minister of Mercantile Marine to the General Director of MMM as Head of HCG the right to exercise the relative prosecution. Afterwards with the LD 530/1970 (A' 100) and more specifically with article 4 was regulated the subject situation - discipline of Harbor Guard for who was determined that are enforced the provisions that are being in effect each time for the Petty – Officers of HCG.

With the PD 514/1982 (A' 94) "Disciplinary jurisdiction of HCG military personnel", which was published in implementation of article 33 of LD of May 27, 1927 was determined the disciplinary jurisdiction of HCG military personnel. More specifically in the article 33 of the LD in question is determined that: "The disciplinary jurisdiction, authorizations and uniform of HCG as also the constitution of disciplined councils of inferior personnel are regulated with decree".

With article 4 paragraph 1 of law 2109/1992 (A' 205) were determined subjects concerning disciplinary prosecution of Officers, Warrant Officers, Reservist and Epicurus Officers, Reservist

Cadets Officers, Petty Officers, Students of Military Faculties, Permanent and Volunteer Soldiers which are exercised by the Minister of National Defense. This competence can be transmitted in inferior levels of hierarchy by a decision by him/her.

With the PD 210/1993 (A' 89) "Provisions of Navy", which were published according to authorization of article 5 paragraph 8 and article 18 paragraph 1, verse of law 660/77 (A' 218) "Ministry of National Defense and Bodies of Maximum Administration and Control of Armed Forces", were regulated subjects - regarding the present study - that are reported in the disciplinary sentences (Chapter 17) and in the submission of complaints and individual reports (Chapter 18) (Note 15). With the Ministerial Decision (MD) No. 5221.1/2/04 (B' 1342/2004) was regulated the [Transfer of signature right "with command of Minister" in inferior levels of MMM], concerning the disciplinary prosecution of HCG personal and more specifically subjects that are related with the call in plea for disciplinary infringements and the imposition of usual disciplinary sentences in the Officers and in the rest of HCG personnel.

Finally in article 46 paragraph 7 of law 2935/2001 (A' 162) with provision that was repeated and in the article 120 of law 3079/2002 (A' 311) was determined that: "HCG is military corps and the personnel of this is conditioned under the provisions that are being in effect each time for the Officers, Petty Officers and Sailors (blue jackets) of Navy to whom are assimilated, concerning the situation, penal jurisdiction, discipline, the limit of age, the retired right, the handing-over of superior degree in retirement, the registrations, the acceptances, the walking expenses, the expenses of hospitalization and funeral, pensions, the attendance to the Participial Fund of Navy unless is determined differently in provisions of this Code. For the Harbor Guards by their classification in the Cadets Faculty are enforced proportionally the provisions which are being in effect each time for the Petty Officers of HCG, unless is determined differently in the provisions of this Code". It is observed that the provision in question repeats the content of provisions that have been reported previously, and specifically in law 5464/1932 (A' 1932) with which was attempted the authentic interpretation of article 21 paragraph 2 of LD of May 27, 1927 (A' 104). Concerning the character of HCG Services relative is also the article 4 of law 3922/2011 (A' 35), more specifically in paragraph 1 is determined: "HCG is armed security corps, military organized, the uniformed personnel of which has the attribute of military man according to Hellenic Military Penal Code (HMPC-SPK). In its personnel are enforced the provisions that concern the other armed corps, provided that this is determined specifically by the law, as well as the provisions of article 129 of HCG Personal Code (HCGPC) which was ratified by the law 3079/2002 (A' 311).

At the same time in law 3079/2002 (A' 311), and in the article 106 were determined subjects concerning disciplinary prosecution of HCG personnel and competence transfer. Regarding the competence transfer, is marked that the disciplinary prosecution of HCG personnel as well as their reference in front of the Interrogative Councils is enforced by the minister of Mercantile Marine, who can with his/her decision to transmit these competences in military hierarchy levels (paragraph 1 [b]). Concerning subjects of constitution process and convergence of first degree Interrogative

Councils and subjects regard to them (paragraph 1 [b]) are determined by PD that is published by proposal of minister of Mercantile Marine.

Very important provision recommends the paragraph 3 of the article in question (106) in which is determined that “The disciplinary jurisdiction, the disciplinary infringements and their prescription, the types of disciplinary sentences imposed in the HCG personnel (except the statutes), the reasons and the imposition height of these, the imposition process of these, statement and registration of disciplinary sentences, keeping in HCG services defaulters book, the way of sentences executing, each submission of complaints and individual reports, as well as any necessary detail for the enforcement of the present paragraph, are determined by presidential decree, which is published by proposal of Minister of Mercantile Marine”. HCGPD with the circular No. 1117/146/06 issued on June 09, 2006 and subject “Process of Disciplinary Control” gave directives to the heads of Central and Regional Services of former MMM (now MCP) for the legislative frame being in effect and the process of disciplinary control, attaching models of “Call in plea” and “Decision of Disciplinary Sentence Imposition”.

In the attachment models is ascertained the use of the following legal texts:

Articles 106 and 129 of law 3079/2002 (A’ 311), Chapter 17 and 18 of PD 210/1993 (A’ 89), PD 514/1982 (A’ 94) and the MD with No. 5221.1/2/04 (B’ 1342) issued by the Minister of Mercantile Marine.

In the paragraph 4 of the circular in question are written the following: “It is reminded that in the article 129 of law 3079/02 are forecasted expressly that the HCG is a military corps and the personnel of this are conditioned by the provisions which are being in effect each time for the Officers, Warrant Officers and Petty Officers of Navy, to which is assimilated regarding the discipline, namely is 1 be enforced proportionate PD 210/93 “Provisions of Navy” (A’ 89) and concrete the Chapter 17 and 18 as these are in effect. As a consequence in the disciplinary competence are subjected all the Officers, Warrant Officers, Petty Officers of HCG and Harbor Guard, while the disciplinary jurisdiction (right of HCG Officers who are exercised administration to impose disciplinary sentences in the offenders who serve under their orders), the type and the duration of imposed disciplinary sentences are determined by the PD 514/82 “Disciplinary jurisdiction of HCG military personnel” (A’ 94). Additionally in the paragraph 8 of the circular in question is determined that: “The right of complaints submission, inside subversive deadline of 15 days starting from the date of decision receipt of disciplinary sentence imposition , is enforced according to the determined in the Chapter 18 of PD 210/93”.

In conclusion with the circular in question is impressed that in the HCG personnel is enforced combination of provisions which are in effect for the Navy personnel and where do not exist respectively provisions that would be reported directly for the HCG personnel. Substantially minor the MD with No 5221.1/2/04 (B’ 1342/2004) with which was regulated the Transfer of signature

right “with command of Minister” in MMM inferior levels, concerning the disciplinary prosecution of HCG personal, the PD 514/82 “Disciplinary jurisdiction of HCG military personal” (A’ 94) and article 73 of law 3079/2002 titled “Disciplinary sentences”, do not exist other provisions that would be reported directly in the HCG personal and for this reason are enforced in order to be covered legally voids the provisions that are in effect for the Navy personnel.

LEGAL REFLECTIONS

As has already been reported in the article 106 of law 3079/2002 were determined subjects of disciplinary prosecution and competence transfer that are reported in the HCG personnel. Most important provision recommends the paragraph 3 of the article in question in which is determined that “the disciplinary jurisdiction, the disciplinary infringements and their prescription, the disciplinary sentences types imposed in the HCG personnel (except the statutes), the reasons and the height of imposition of these are determined by presidential decree, which is published by proposal of Minister of Mercantile Marine”.

More specifically is forecasted by the publication of PD which is published by proposal of Minister of Mercantile Marine the regulation of following subjects:

- A. - the disciplinary jurisdiction,
- B. - the disciplinary infringements and their prescription,
- C. - the types of disciplinary sentences which are imposed in the HCG personal (except the statutes),
- D. - the reasons and the height of their imposition, the process of their imposition, statement and registration of disciplinary sentences,
- E. – the registered in HCG services defaulter’s book,
- F. - the way of sentences executing,
- G. – the submission of complaints and individual reports, as well as any other necessarily detail concerning the enforcement of this specific paragraph.

In the Capital 17 of the PD 210/93 titled “Disciplinary sentences”, (articles 1701 - 1722) are regulated inter alia subjects as (indicative enumeration): disciplinary infringements, service infringements, disciplinary competence, disciplinary jurisdiction, way of sentences imposition, statement and registration of sentences – defaults book, call in plea, sentences executing, end of disciplinary prosecution, submission of complaints. In the Chapter 18 of the PD titled “Submission of complaints and individual reports” (articles 1801-1804), are regulated subjects that concern the submission and examination of complaints, submission and handling of individual reports etc. As it has been reported previously, in article 47 paragraph 6 of law 2935/2001 (A’ 162) with provision that was repeated and in the article 120 of law 3079/2002 (A’ 311) was determined that: “HCG is militarily corps and the personnel of this is conditioned by the provisions which are being in effect each time for the Officers, Petty Officers and Sailors (blue jackets) of Navy to whom are assimilated, concerning the situation, penal jurisdiction, discipline, the limit of age, the retired

right, the handing-over of superior degree in retirement, the registrations, the acceptances, the walking expenses, the expenses of hospitalization and funeral, pensions, the attendance to the Participial Fund of Navy unless is determined differently in provisions of this Code. For the Harbor Guards by their classification in the Cadets Faculty are enforced proportionally the provisions which are being in effect in effect for the Petty Officers of HCG, unless is determined differently in the provisions of this Code”.

According to the article 106 of law 3079/2002 the minister is responsible for the exercise of disciplinary prosecution for HCG personnel and their reference in the Interrogative Councils. Also this competence can be transmitted in military hierarchy levels. However the rest of the competences of paragraph 3 of the above article, i.e. the disciplinary jurisdiction, the usual disciplinary sentences and the imposition of these and in general the disciplinary process should be determined by PD and not by ministerial decision. With the MD No. 5221.1/2/04 (B' 1342/2004) that was published in implementation of the above mentioned provision was regulated the Transfer of signature right “with the command of Minister” in MMM inferior levels. In the specific MD and in the preamble of this is realized between the other statutes and invocation of article 1706 of PD 210/1993 titled “Sentences” without to become comprehensible for what reason is realized this invocation, after the delegator provision is explicit and regulates the subject differently from the provisions being in effect for Navy personnel. With the mentioned before MD in the part that with this was transmitted in HCG hierarchy levels the competence of disciplinary prosecution exercise is found inside the authorization of article 106 paragraph 1a of law 3079/2002. However at the part that with this is transmitted in the above-mentioned levels the competence of disciplinary sentences imposition is found out of the above legislative authorization, which according to the above delegator law can be regulated with PD.

Remarkable is the fact that while is realized invocation of paragraph 1a of article 106 for the publication of MD, with this are regulated illegally and also arbitrary and subjects that are forecasted to be regulated with publication of PD which is forecasted in the paragraph 3 of the mentioned before article. As a consequence logically the particular forecasts of MD minus the transfer of competence for call in plea for disciplinary infringements in several of MMM inferior levels (now MCP) are not enforced the provisions on the imposition of usual disciplinary sentences by them.

According to Decisions issued by the Piraeus Administrative Court of Appeal (Note 16), from the moment where has not been published PD according to article 106 paragraph 3 of law 3079/2002, the competences of usual disciplinary sentences are regulated by the PD 514/1982 (A' 94) while the rest of disciplinary process is regulated by the provisions of PD 210/1993 (A' 89) which are also enforced for the HCG personnel according to the article 129 of law 3079/2002. Substantially keeping in mind the entire above are observed the following legal voids and contradictions

concerning the procedural frame that conditions the disciplinary law which is enforced for the HCG personnel:

HCG is a military corps and its personnel is conditioned by the provisions which are each time being in effect for the Navy personnel concerning the situation and the discipline (concretely for the present study) unless is determined differently in the provisions of HCGPC [law 3079/2002 and article 4 of law 3922/2011]. Concerning the perpetration of disciplinary infringements is in force the containing in Chapter 17 of PD 210/1993. For the process of call in plea for disciplinary infringements preparation are in effect the provisions of MD with No. 5221.1/2/04, in combination with the article 1716 of PD 210/1993 titled "Call in plea", while for the complaints submission are in effect - enforced according to the article 1722 of the same PD titled "Submission of complaints" the contained in the Capital 18 of PD 210/1993. Important subject as it reveals from the position of relative provisions is created with the imposition of disciplinary sentences and not only. The provisions of PD 514/1982 which are reported in the disciplinary jurisdiction of HCG military personnel after the publication of PD 210/1993 should be considered as suppressed and are enforced the provisions of the last PD. But is totally placed henceforth the following question: Is it possible to be enforced various provisions that are reported in the Navy personnel to the executives of HCG, when keeping in mind the article 129 of law 3079/2002 and concretely the formulation "..... unless is determined differently in the provisions of HCGPC", which refers in the paragraph 3 of article 106, the legislator and in particular via formal law has already expressed its will, subjects which are related with the disciplinary jurisdiction, the disciplinary infringements and their prescription, the types imposed in the HCG personal, disciplinary sentences (except the statutes), the reasons and the height of their imposition, the imposition process of them, statement and registration of disciplinary sentences, observed in the HCG Services defaults book, the way of sentences executing, each submission of complaints and individual reports, as well as any necessarily detail on the enforcement of this particular paragraph must be regulated with publication of PD that is published by proposal of Minister of Mercantile Marine (now MCP), independently if until now has not been published the relative PD? At my opinion this moment does not exist disciplinary law which regulates subjects related to HCG personnel, as the State will has been expressed expressly with formal law, independently if the administration has not proceeded in PD publication using the authorization of the relative provision (Note 17).

The fact that the PD has not been published, it does not mean that the administration has the right or even the competence using the general formulation of the HCG military character, its personnel will be conditioned concerning the discipline by the provisions which are being in effect each time for the Navy personnel, to proceed in mixed enforcement of legal provisions that are reported straightly in the HCG personnel or indirectly via provisions that are reported in the Navy personnel in order to enforce totally provisions and processes that constitute disciplinary law. Remarkable is also the circular of HCGPD. that was reported before (No. 1117/146/06 issued on June 09, 2006), which simply mentions legal provisions without even to enter into the process to analyzes how

according to its opinion are enforced the cited conflicting legal provisions something which is expressed in paragraph 4 of this.

CONCLUSIONS

Aims of this present concise study was as mentioned in the introduction, in one department the examination of provisions that are reported in the evaluation of HCG personnel when these personnel have already been hired and exercise his/her duties in order to be ascertained if is exercised his/her sufficiency and proficiency in the specific work position that he/she is being employed and the possibility of his/her further use according to his/her qualifications, capabilities and dexterities that presents - develops during the exercise of his/her duties. More specifically was critically examined the current legal framework that determines the evaluation processes in combination with Decisions issued by the responsible Administrative Courts and circulars that have been published by the responsible HCG services in order according to the opinion of these administrative services to be enforced equitably the current provisions. Finally aim of this present study was the critical elevation of the insufficiencies concerning the current evaluation system. More specifically from the comparative apposition and study of familiar provisions reveals, that the legal text which are reported in the process of HCG personnel evaluation, is incomplete and determines a formal process, which does not promote the impartiality, justice, meritocracy and transparency in the judgment of HCG personnel, principles that constitute the virtuous administration which in any case should be enforced.

In this helps also the publication of HCGPD relative circular (No. 1117/71/2002 issued on June 04, 2002), which as the majority of the Hellenic public administration does not provide equitable directives on the application of PD 56/2002 provisions, but also proceed in arbitrary interpretations for the enforcement of its provisions, which of course is contrary to the content of PD. Basic violation of legislation constitutes the fact that it is not essential to have been supplemented time interval of sixty days concerning the administrative - official relation between the judged and the opiner, something which is determined of course clearly for the administrative - official relation between judged and evaluator. More specifically reflection creates the opiner competence to evaluate executive for time interval that was not under his/her orders. This recommends one still originality of Hellenic public administration. Also even if is forecasted by the familiar legislation that the opiners in case that does not agree with the evaluation they place near the first judgment (evaluator) their own evaluation, justifying with concrete criteria in favor or at against the judged their disagreement. This legal provision is ignored by the relative circular.

In any case the lawful frame of evaluation needs modernization. It is essential to take place evaluation by executives who have indeed more substantially qualifications from the judged in all levels. The criterion of seniority cannot constitute the unique factor for judgment expression. Consecutively in order to become essential evaluation should have been created "output indicators"

in each staff or regional Service. This automatically refers in service targets, existence of objective criteria for evaluation of produced work, of the initiative that executive assumes etc. But in which service in the Hellenic public administration are placed measurable objectives minus general formulations? And do exist even fictitiously measurement indicators? And who will evaluate these? Is possible as an example, graduate of secondary education who is having a hierarchically career by the years to judge holders of academic or even postgraduate titles?

For the promotion of meritocracy, justice and impartiality, the evaluation should be taken place by committees that will be composed by officials' and executives outside of HCG, which will evaluate the personnel capabilities based on objective qualitative and quantitative criteria, which will not be susceptible of contestations. Meritocratic - objective evaluation will lead automatically to improvement of public administration quality and operation, but also to improvement of personnel output and qualifications, because the last ones will know that their efforts and their qualifications will be evaluated objectively by executives that will allocate the pledges for this. At the same time in the rest part of the study was also critically developed the provisions that determine the disciplinary law which governing the HCG personnel in combination with decisions issued by the responsible Administrative Courts and circulars that they have also been published by the responsible HCG services, in order according to the opinion of these administrative services to be enforced equitably the current provisions. And in this case aim of this present study was the critical elevation of the insufficiencies of the current disciplinary law that governs the personnel of this particular military institution. From the comparative apposition and study of familiar provisions, revealed that does not exist separate disciplinary law for HCG personnel, as while exists provision in the law 3079/2002 (article 106 paragraph 3) that provides the authorization for PD publication which will regulate totally the subjects of disciplinary law, the administration until now has not proceeded in its publication. However accordingly to the provision of law 3079/2002 (article 129) are enforced in the HCG personnel the disciplinary law for Navy [PD 210/93 (A' 89) as was modified and is in effect]. It is marked that in the same article (article 129), is determined that "HCG is military corps and its personnel is conditioned by the provisions which are being in effect any time for the Officers, Warrant Officers and Petty Officers of Navy.. unless is determined differently by the provisions of this Code".

As has already reported in the study based on the article 106 paragraph 3 of the same law, the authorization for PD publication that will regulate items of disciplinary law for HCG personnel, means that has already the legislator determined differently this subject. In consequence based on the principle NULLUM CRIMEN NULLA POENA SINE LEGE and the article 7 paragraph 1 of the Hellenic Constitution, does not exist disciplinary law now that would be enforced to the HCG personnel. Finally the fact that the administration has not published the relative PD, does not mean that the administration has the right or even the competence using the general formulation of the HCG military character, its personnel will be conditioned concerning the discipline by the provisions which are being in effect each time for the Navy personnel, to proceed in mixed

enforcement of legal provisions that are reported straightly in the HCG personnel or indirectly via provisions that are reported in the Navy personnel so in order to enforce total provisions and processes that constitute disciplinary law

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Notes

Note 1. See indicatively Harvard Business Essentials, (2004) “Human Resorces: Evaluation and Guidance”, Modern Times, Athens (in Hellenic).

Note 2. See Korontzis, Tr. (2011) “The statutory role of Hellenic Coast Guard”, PhD dissertation, library of Panteion University of Social and Political Sciences (in Hellenic).

Note 3. It will be mentioned for reasons in order to be the study better formated the extremely essential provisions that are forecasted in the legal texts, concise formulated, in order the reader to educate opinion and to become as much as possible comprehensible the legal approach of this particular item.

- Note 4. The type of evaluation reports is mentioned completely in the article 12 of the specific PD.
- Note 5. See Korontzis, Tr. (2012) "b" "The Hellenic Ministry of Mercantile Marine, as an autonomous administrative governmental institution in the period 1971-2011. A descriptive and critical approach", International Journal of Business and Social Science Vol. 3, issue 8, pp.61-75.
- Note 6. It was modified by the PD 35/2004 (A' 29) without to befall essential change in the PD, as were supplemented provisions that are reported in the evaluation process of Internal Affairs Office personnel.
- Note 7. The Council of State 1831/1999, 4496-97/1987 (in Hellenic).
- Note 8. The Council of State 1831/1999, 4496-97/1987, 2629/1986, 3506, 3572/1974, 3303/1972 (in Hellenic) .
- Note 9. See Korontzis, Tr. (2005) "Ministry of Mercantile Marine and Hellenic Coast Guard. A Critical approach of Ministry of Mercantile Marine organizations - administrative reform proposals", Dioikitiki Enimerosi (quarterly inspection of administrative science), issue 32, pp. 93-112 (in Hellenic).
- Note 10. See document with No. 1115/472/08 issued on July 21, 2008 by Hellenic Coast Guard Personnel Division (in Hellenic).
- Note 11. See Papachatzis, G. (1991) "Administrative law system being in effect in Hellas", Athens, pp. 163-165 and pp. 974-975 (in Hellenic).
- Note 12. See Korontzis, Tr. (2012) "a" "Penal, disciplinary and civil responsibility of the Hellenic Coast Guard personnel", International Journal of Humanities and Social Science, Vol. 2, issue 9, pp.174-185.
- Note 13. See draft of PD available on http://www.hcg.gr/sites/default/files/article/attach/sxedio_pd_proagogon.pdf and <http://www.hcg.gr/node/1847> (10 June, 2012).
- Note 14. See Korontzis, Tr. (2012) "b" "The Hellenic Ministry of Mercantile Marine, as an autonomous administrative governmental institution in the period 1971-2011. A descriptive and critical approach", op.cit.
- Note 15. See Korontzis, Tr. (2009) "Discipline, obligations, restrictions and rights of employees in the space of public order and security", Epitheorisi Ergasiakon Sxeseon (quarterly inspection of labour relations), issue 55, pp. 75-96 (in Hellenic) and Korontzis, Tr. (2011) "The statutory role of Hellenic Coast Guard", op.cit (in Hellenic)
- Note 16. See Piraeus Administrative Appeals of Court decisions 216 and 219/2012 (in Hellenic).
- Note 17. See Korontzis, Tr. (2012) "c" "The constitution of juridicial police as administrative reform. Evaluative approach", Dioikitiki Enimerosi, (quarterly inspection of administrative science), issue 57, pp.76-93 (in Hellenic).