

Penal, Disciplinary and Civil Responsibility of the Hellenic Coast Guard Personnel

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Abstract

The initial and basic mission of the State and its cardinal purpose was and still is the protection of the society from internal and external risks. This protection is guaranteed by institutions which have been set up by the state. The institutions which have been established by the State, guaranteed the domain of all the atomic and social rights of the citizens. Each institution as is been known, is governed by structures, that have specific functions related to its internal organization and administration as also according to the specific mission which is called to perform in accordance with the constitution and the existing legal framework. In the light of these general findings, the Hellenic Coast Guard personnel and its penal, disciplinary and civil responsibility during the enforcement of their duties will be the subject of this briefly study.

Key words: Hellenic Military Penal Code (HMPC), Hellenic Penal Code (HPC), Hellenic Coast Guard (HCG), Penal responsibility, Disciplinary responsibility, Civil responsibility

Introduction

The administrative bodies of State and concretely the military employees during the enforcement of their duties have penal, disciplinary and civil responsibility as the rest of the employees of public administration. For infringements of the Hellenic Penal Code (HPC), the military personnel are not responsible only as the rest of the state employees, but the State because of their attribute that they bear (military) has established concrete penal code, known and as Hellenic Military Penal Code (HMPC). This means taking into consideration and the sanctions that establish, that the perpetration of penal offences from the military personnel, is faced particularly strictly by the State. Besides, the same employees are not only under the authority of military penal courts, but also in the common penal courts for concretely not military offences.

At the same time according to the provisions of Civil Code as also according to special laws, the military employee is responsible against the State for each damage which was caused by him/her from deceit or from heavy negligence during the implementation of his/her duties. Also he/she is responsible for the compensation that was overwhelmed by the State in third persons for illegal action or omissions during the implementation of his/her duties, provided that they are owed by deceit or heavy negligence. It is marked that the constitution law of Hellas forecasts special court, the Court of Audit (Elegktiko Synedrio) which deals with the trial of State public right requirements right against its employees.

Finally the military employees bear also disciplinary responsibilities. These appertain in the military attribute which they bear. The institutions that are reported in the disciplinary responsibilities constitute a separate sector of law, that is known as disciplinary law and which is conditioned by concrete processes and types of sentences imposition.

All the above will be examined in the present concise study as for their enforcement in a military institution, the Hellenic Coast Guard¹. The last even if it enforces mainly police duties, according to the legislation constitutes a military corps and its personnel bear the military attribute.

1. Penal responsibility

The military employees and more specifically the executives of HCG are governed by the provisions of HMPC. The military crimes are distinguished by the public crimes because they are forecasted by the HMPC and are imposed for them concrete sentences.

The peculiarity of HCG personnel lies on that as military employees but also as executives that enforce police duties, depend individually so under the public/common as also under the military penal courts². In the HPMC are fixed the sentences, the type of military crimes, the procedural provisions and the constitution of military courts³.

Independently from the provisions of HMPC, the personnel of HCG can commit offence public for all the individuals or sui generis offence, when it presupposes the attribute of military employee in the particular case. In this case is increased the forecasted sentence, provided that the offence was committed “enforcing the service” or the employee was profited by his/her “attribute”⁴.

Concretely according to the article 193 of HMPC in the jurisdiction of military penal courts are subjected those who are military employees during the performance of action, as well as the captives of war. The military employees do not subject in the military but in the common penal courts for:

- A. Not military crimes that they commit at the duration of vacations, suspension or availability, when these exceed the three months or at the duration of desertion.
- B. Delinquencies and faults that they commit in the audience of any common penal court, if these are judged immediately according to the provisions of Code of Penal Procedure (COPP).
- C. Laws Infringements on the conduct of public elections or referendum.
- D. The crimes of barratry, piracy and duel, as well as the crimes that are taken place at the duration of duel.
- E. Infringements of the customs and forest code and the laws of hunting and fishery.
- F. Infringements of tax laws and market code with the exception of article 154 actions of this Code.
- G. Felonies and misdemeanors that with special laws are under the authority of the Courts of Appeals.
- H. Crimes that they commit against the Hellenic Police personnel, when this personnel execute its duties or for reasons that have relation with them.

The crimes related to the Service are regulated in the chapter IB', article 235 and next of the HPC⁵.

In order the personnel of HCG to be in trial is not required any previous authorization. Simultaneously with the imposition of sentence, is possible the recitation of precarious deprivation of civil rights according to the article 263 of the HPC⁶.

The public prosecutors of Militaries Court as also of the Regular Penal Courts are compelled to notify the division of HCG Personnel for the prosecution against HCG personnel⁷, while they are compelled to transmit copy of each juridical decision, innocent or condemnatory as well as each innocent order⁸.

The HCG employee is exempted by the penal responsibility in the case of command⁹ and consequently of this, in conformity for achievement of obedience duty to the command of his/her superiors, according to article 53 paragraph 2 of the HMPC.

Thus the action is not unfair for the personnel who commit the action and is punished as perpetrator the person that command the order provided that:

- A. the order was given by the legal types,
- B. from the competent authority and
- C. the law does not allow to the ordered person to examine the legality of order (article of 21 HPC). According to my personnel option the subject of disobedience in superiors orders should not be examined only in the frame of provisions of HMPC but will should be taken into consideration and the provisions of HPC.

Also it does not bear penal responsibility for attendance in action of utmost betrayal (articles 134 and 134 A of HPC, provided that aid the terms of article 134 B' of HPC).

In the general provisions of HPC must be added the general clause of article 259 on the infringement of official duty, the abuse of power according to article 239, the tortures and other offences of human dignity according to articles 137A - 137 D, the violation of domestic asylum according to article 241 and the utmost betrayal according to articles 134-135.

It is marked that for the HCG personnel that enforce police duties, if did not dissuasion of certain result (crime that is taken place with omission) is punished as its challenge with energy, because they have particular legal obligation to impede the arrival of result (article 15 of HPC).

This obligation is in effect for the police personnel, because they are also considered - and that is right- as guarantors of security of legal good that is offended by the arrival of result¹⁰.

It is pointed out that the situation of need is not in effect as for the rescue of police employee, as this according to article 25 paragraph 2 of HPC has duty to be exposed in the threatened danger, namely to that which is interwoven with the implementation of legal duty or can be a result because the implementation of this¹¹. On the contrary it is not in effect when the employee acts in order to protect the virtuous of third persons.

It should mention the general clause of police officers unfair action, provided that this according to the article 20 of HPC constitutes enforcement of right or achievement of duty that is imposed by the law.

The police power that is practiced by the personnel of HCG is conditioned according to the principle of legality, from certain basic principles and mainly from the principles of necessity, the proportionality and the lenience. These principles compose on one side the limits of police power and on the other side the scale of gradation, or differently the choice of meters that each time suits in order to anticipate or to restore the certain public order in a convenient way¹².

In consequence the police action is legal, only when it is acted with the following conditions:

- A. When are observed the explicit provisions of law with the wide significance of all the law sources of public order¹³.
- B. When are observed the principles that should condition the police action¹⁴.
- C. When uses only the meters which expressly are forecasted by the law. More specifically in the administrative policing it is not allowed to be used any means, but those that are forecasted by the law.
- D. When is observed the scale of meters choice according to the provisions of law and the content of principles.

It is pointed out, that the police authorities are facilitated but at the same time are limited, from the fact that the legislator expressly in crowd of statutes has determined the significance of basic terms as public place, place of public amusement, place or shop for the public service, vehicle¹⁵, explosive matters¹⁶, residence¹⁷, subscription¹⁸ etc. In any case the above terms but also other, should be taken into consideration as they have been interpreted by the courts and the legal science.

The control of action¹⁹ of HCG personnel, that enforce police power so in the wider as also in narrow term meaning, coincides with the control in which subjects the administrative operation, namely in political or parliamentary²⁰, in the administrative or internal self-monitoring²¹ and in the juridical control so from the administrative or/and from the penal courts. In them must be added the role of the International and Super national control that is practiced so much by the European Council of Person Rights, as also the role of Courts that are forecasted in the legal order of European Union (EU).²²

The internal control of administrative self-monitoring regarding the HCG is distinguished in two categories. When it is practiced in the frame of the hierarchy relation inside the government administration or in a public organization is called hierarchic control. The law in certain cases forecasts special controlling bodies except the hierarchic relation that they decide on the administrative appeals.

From the hierarchic relation between head and inferior results the competence of the first one to check the second one. This control is called hierarchic. This control concerns the legality of behavior (action and omissions) of the inferior (legality control). It is even practiced when the rules of competence do not allow other intervention of body head. It includes the control of legality of all sources of right in any level if they are included. It is checked the observation of discreet occasion limits as well as the plenitude of explanation.

Usually the hierarchic control is extended also in the examination of action expediency (control of expediency). Then it concerns the way of discreet occasion exercise. However right of substitution of inferior body from the head body should forecast expressly in the law.

When the control is practiced before the action publication is said preventive. In this subjects basically the competence of body head to approve the acts of lower body. When the control is practiced afterwards the action publication is called repressive. Repressive control is usually practiced, when the preventive control did not become or was insufficient.

The law or the internal regulations, often forecasts the notification of published action in the head body. Many times the law in order to coercion the repressive control forecasts various possibilities of private individual to submit appeals. The repressive control is taking place self appointed or after application of private individual^{23 24}. All the above controls in the HCG are taken place by the responsible administrative levels, based on the legal framework, the hierarchy that distinguishes the HCG and the relation between Staff and Regional Services. In the top of administrative pyramid is the Minister, the Undersecretary, the General Secretary of Safety Navigation and the Head of HCG.

The parliamentary control regarding the HCG is taking place based on the processes that is forecasted by the regulation of Parliament, namely with applications of documents deposit²⁵, questions or topical questions²⁶ and reports²⁷. In that answers the minister of Citizen Protection or the Undersecretary²⁸ that had been determined each time.

Regarding the Budgetary control, this is mainly practiced preventively and repressively by the State Audit Council that is mainly and according to the Constitution is a court²⁹. The budgetary control include the control of administration of public income, expenses and capital, as well as the accountant of the public and of the legal persons of public law and is practiced by each minister and the State Audit Council. Regarding the ministry of Citizen Protection and the HCG, the minister with Ministerial Decisions has transmitted the right of signature in Administrative and Economic subjects with "after command of the minister" in inferior levels of former Ministry of Mercantile Marine³⁰ which now is called ministry of Citizen Protection.

The control of HCG police action from Juridical Authorities (Administratively³¹, Penal Courts), presupposes mainly the determination of limits between the principles of legality and expediency.

More specifically:

A. - the meaning of public order³² in all the forms which is expressed legally is a vague meaning but legal³³. This means that its content is evaluative but is prohibited to exceed the current rules system of rights.

B. - The recognition of public order meaning as law, has as consequence its juridical control. It means that the meters of policing that are received in any case, should support in facts that indeed threaten the perturbation of certain public order because they constitute illegal persons behavior.

C. - The juridical control of police action sometimes is difficult and sometimes is also prohibited by the law. In these cases the principle of legality is bent in front of the expediency principle. Characteristic example is the provision according to which is recognized the unacceptable of the offence with application of cancellation of administrative action that are named "action of Government" because they can not be in application of cancellation the governmental action and orders that are reduced in the management of political power³⁴.

The part meanings that constitute the meaning of public order as public peace, national security, public security, danger, need, urgent etc³⁵, constitute vague but legal meanings. More specifically the terms that basically support the police interventions are the terms of danger, need and urgent. Concretely:

A. - Danger³⁶, means that is expected or befalls or is threatened befalls a loss-making fact or differently danger means the probability to befall damage or damage. Different is the case of endangerment that means the existence of situation of danger.

The term danger³⁷ has the meaning of expected villain. The dissuasion that is the prevention of villain justifies the police intervention only when the danger is direct or likely. Likely according to Constitution (article 11 paragraph 2), is the danger when it is imminent. On the contrary the police intervention cannot be justified when the danger is potential that is when it is possible to befall.

B. - Need means the imposed effort for the dissuasion or reject or prevention of befalling danger³⁸. However need can mean also the necessary meter, namely what is judged advisable, essential or simply beneficial for the Authority.

Need is distinguished in individual and common, in usual or tactic and in extraordinary or exceptionally urgent and not³⁹.

Need in order to take place a particular energy or omission or to be taken a measure as necessary, aids when does not exist at the common experience and common logic but only given each time choice of action.

Moreover the addition of surname "absolute" or the adverb "absolutely", has the meaning that the choice of action in question is unique at undeniable way.

C. - Urgent means that aids imperative need that is unanticipated (suddenly) for certain administrative energy or omission. The meaning urgent in the Constitution and in the common legislation is answered with two ways:

A. - Immediately. Thus in the Constitution is mentioned urgent social need (article 22 paragraph 3[b]') for "exceptionally urgent and unanticipated need" (article 44 paragraph 1) and for "urgent needs" (article 48 paragraph 5).

B. - Indirectly. In the Constitution is forecasted the reception of restriction meters of personal freedom that concerns the protection of public health (article 5), the arrest without warrant when it is flagrant crime (article 6 paragraph 1b), the seizure of newspapers when they contain obscene publications that offend public decency (article 14 paragraph 3d) and the implementation of law on the situation of siege (article 48 paragraph 1).

In the legislation is forecasted also the way of emergencies confrontation [articles 1 and 2 paragraph 5 Legislative Decree (LD) 17/1974], the transport of vehicle that impedes the circulation (article 34 of Highway Traffic Code) etc.

Urgent means the surpassing place of real facts in combination with the observation of legality principle, which is probably bent provisionally and only in concrete cases of administrative action. Characteristically the case law of the Hellenic Council of State (HCoS) [Symvoulío tis Epikrateias, the Supreme Administrative Court in Hellas] accepts not the enforcement of constitutional right of previous hearing (article 20 paragraph 2 of Constitution), when aid reasons of state interest "urgent need" (HCoS 2071/1975), or "urgent character" (HCoS 2250/1985, 571/1989) or "danger from the postponement" (HCoS 3853/1985, 5329/1987).

In the above cases, the rationale is difficult to be checked because of the publicity of trial would be published elements, which according to the discretion of the government would cause disturbance in the Hellenic public order. The observation of legality from the personnel that enforce police power, has as aim the safeguarding of expediency principle, that in each certain form of public order expression is considered that is worthy protection. In any case the expediency principle constitutes the exception differently the state will be changed in a police state.

The legality of police action is checked so by the administrative courts (abrogative control of illegal administrative action), as also by the penal courts (as accessory control of illegal administrative action)⁴⁰. The courts check the essential estimate of administrative personnel that enforce the police power, examine the objective substance of reasons that Administration invokes and then the equitable or not subordination in the evaluative meanings of law. For this reason the courts demand the facts to be real and concrete. Also the juridical control is feasible only when the administrative action of policing is completely justified⁴¹. The last one is imposed mainly when they are unfavorable for the citizens. Element of explanation is the existence of real base namely the real elements that founds the specialized evaluative term "public order"⁴².

2 Disciplinary Responsibility

The HCG personnel bear also disciplinary responsibilities⁴³. These appertain in their attribute as military personnel. In the particular case according to article 4 paragraph 1 of law 3922/2011 (A' 35) in combination with the article 129 of law 3079/2002 (A' 311) regarding the discipline the HCG personnel are assimilated with the Hellenic Navy personnel.

The disciplinary prosecution of HCG personnel as well as their reference in front of the Interrogative Councils according to the article 106 of the law 3079/2002 (A' 311), is enforced by the minister of Mercantile Marine (now as mentioned before minister of Citizen Protection), as it is more specifically forecasted in the paragraph 1st in the mentioned article of the above law, "Ratification of HCG personnel code". With the ministerial decision No. 5221.1/2/04 [Transfer of signature right "with command of Minister" in inferior levels of ministry of Mercantile Marine (B' 1342/31-08-2004)], has been transmitted this right to the Head of HCG, to the Head of Branch A' (Administration, Organization and Education) and to the Director of HCG Personnel Division. It is marked that as the Presidential Decree (PD) that is forecasted in paragraph 3 of the article 106 of law 3079/2002 that would determine the disciplinary jurisdiction, the disciplinary infringements and their prescription, the types of imposed sentences in the HCG personnel, except the constitutive sentences, the imposition process, the execution way, the submission of complaints and reports etc, has not been published, are applied for the HCG personnel the provisions of PD 210/1993 (A'89), "Provisions of Navy" as has been modified and been in effect with the PD 80/98 (A'74)⁴⁴.

In the article 73 of law 30979/2002 are fixed and the disciplinary sentences that are forecasted for the HCG personnel and distinguished in usual (reprehension, restriction, imprisonment) and constitutive (constitutive disciplinary sentences are those that they alter the situation of military personnel or involve deprivation of degree and attribute of this).

In the article 73 of law 3079/2002 are fixed the relatives regarding to the disciplinary prosecution that is in effect for the HCG personnel. More specifically in paragraphs 4, 5 the legislator has fixed that:

[4. “The penal prosecution does not hinder the disciplinary prosecution. The penal trial does not involve essentially the imposition of disciplinary sentence, as well as the final pause of penal prosecution or its declaration as unacceptable, does not hinder the imposition of disciplinary sentence. In case of amnesty, rehabilitation, award of grace or with any way lifting of the punishable or lifting or change of penal condemnation consequences, it is not raised the disciplinarily punishable the action.

5. The disciplinary offences are lapsed afterwards expiry of five-year period from their performance, with the exception of the offences of subparagraphs 1 (a), 1 (b) and (h) of article 99, which are not lapsed.

6. Disciplinary prosecution for second time for the same disciplinary offence is not allowed”].

The PD 210/1993 contains provisions of “essential right” as e.g. the establishment of disciplinary offences but also provisions procedural as the process that is observed regarding the submission of reports and reports of complaints⁴⁵. Regarding the Interrogative Councils of HCG personal, they are large administrative bodies in which are referred - charged HCG personnel, in order to express their opinion in the question for the imposition of not constitutive sentence [PD 187/2004 (A’164)].

It is not excluded in special cases, supported in special provisions of laws, to be enforced disciplinary action and to be caused the disciplinary prosecution from government official out of the hierarchy, as from chairman of an administrative court.

The above procedural institutions are not procedural, because it is not a process in front of the courts. The enforcement of state disciplinary power on state personnel constitutes enforcement of active administration and not enforcement of jurisdiction. The all action is reduced in the administrative operation of State as others related to the official situation of State employees (detachments, changes, availabilities etc).

Because this government action constitutes clearly administrative operation, for this reason is allowed by the Constitution the imposition of disciplinary sentences by the administrative authorities. In the disciplinary sentences is not prevented the legislator to establish also with retrospective force disciplinary sentences⁴⁶, something that in the penal law can never happen. The establishment of disciplinary sentences in the military personnel as in the state employees is taking place for the guarantee of public interest and aims in the observation of order in the public services⁴⁷.

For the cancellation of disciplinary sentences is followed the process of application submission of cancellation in the responsible Regular Administrative Courts accordingly to the provisions of article 1 paragraph 1 of law 702/1997 (A’ 268), as it was modified by the article 29 paragraph 1 of law 2721/1999 and article 1 of law 2944/2001. Against to the decision issued by the Administrative Court of Appeal is lodged an appeal in front of HCoS (article 3 of law 2944/2001).

3 Civil responsibility⁴⁸

The system of state civil responsibility as also the responsibility of state legal persons by illegal action or omissions of its bodies, as also the civil responsibility of the last ones against third persons are regulated today by the articles of 104-106 [Law of Civil Code] and the article 38 of Employees Code⁴⁹.

More specifically according to article 105 of Civil Code⁵⁰ “for illegal action or omissions of personnel”⁵¹ of the state during the enforcement of public power that has been assigned to them, the state is included in compensation, unless the action or omission became at infringement of provision, that exists for charm of general interest. With the state is accountable to entire and the guilty person, with the reserve of special provisions on the responsibility of ministers.

This basic provision regulates the responsibility of state from illegal action or omissions of State employees during the enforcement of the public power that have been assigned to them.

More specifically from employee actions which are related to relations of public law. And fix that in these cases the state has responsibility or the familiar legal person of public law, unless the action or the omission became infringement of provision thanks to the general interest. With the state however is accountable to entire and the responsible employee.

The above texts are also supplemented by the article 46 of PD 774/1980 in which is fixed that “irrelevantly to at article 25 responsibility public accountable, every state employee is accountable for all from deceit or negligence forthcoming positive damage to the public»⁵².

As already has been reported in the military employees belong also the HCG personnel⁵³.

According to article 3 of HMPC “the provisions of HPC as they are in effect each time, are also applied in the military crimes, provided that are not contained different regulations in the present Code”.

The HCG personnel apart from the penal and disciplinary responsibility that they bear have also civil responsibility⁵⁴. When from the action which happened at infringement of law or from its omission, is caused damage to the citizen⁵⁵ the state is compelled in payment of compensation afterwards the submission of lawsuit and the adjudication of this. According to the LD 2998/1954 (A’ 210), “extension of being in effect of public servants code provisions, to the military personnel in general and to and the HCG”, the provisions of law 1811/1951⁵⁶ that are reported in the civil responsibility of public political employees, are extended and are enforced by the military personnel the corps personnel and to the HCG personnel.

Relative to the subject is also the Consultation of State Legal Council with No. 460/1973 to the Ministry of Mercantile Marine. Concretely in the question which provisions are in effect for the charge of civil responsibility against HCG personnel the State Legal Council opined that the provisions of LD 2998/1954 are enforced for HCG personnel.

Also according to the PD 774/1980 (A’ 189), “Organization of State Audit Council»⁵⁷, in article 46 paragraph 4 is fixed that the HCG personnel are accountable against the State for each positive damage that caused to this from deceit or heavy negligence during the implementation of their duties, as also for the compensations in which was submitted the Public against third because of illegal action or omissions that became from deceit or heavy negligence. According to paragraph 6 of the same article the State Audit Council is able in only the case of responsibility of ex negligence and depending on the circumstances can ascribing in the employee only a part from the damage that suffered the state and part of the compensation in which this was submitted.

Conclusions

Aim of this present concise study was the description and the critical analysis of provisions that are reported in penal, disciplinary and civil responsibility of military personnel and more specifically the HCG personnel that are activated in the sector of public order and security. More specifically took place a concise analysis for the HCG personnel, that are conditioned during the enforcement of their duties so from the provisions of HMPC, the provisions HPC as also from the provisions of Hellenic penal procedures. In the same time taking into consideration the above legal frame was analyzed the legal frame that determines the disciplinary and civil responsibility of the specific personnel.

From the analysis revealed the followings:

1. – According to my opinion the HCG personnel that mainly enforce police activities should not conditioned by the provisions of HMPC. The enforcement of HMPC in the staff of Armed Forces is comprehensible. However it does not make sense the enforcement of HMPC in a corps that mainly enforces police competences.
2. – There is no existing separate disciplinary law for HCG personnel as there is existing a provision in law 3079/2002 (article 106 paragraph 3) that provides the authorization for publication of PD that will regulate totally subjects of disciplinary law, the administration until now has not proceeded in its publication. According however to the provision of law 3079/2002 (article 129) is applied at HCG personnel - as it has already been reported - the disciplinary law of Hellenic Navy (PD 210/93 as it was modified and is in effect). It is marked that in the same article is fixed that “HCG is military corps and its personnel is conditioned by the provisions which are in effect each time for the Officers,, Warrant Officers and Petty Officers of Navy unless it is fixed differently by the provisions of this Code”.

As was already reported according to article 106 paragraph 3 of the same law, the authorization for publication of PD that will regulate items of disciplinary law for HCG personnel, means that already the legislator has fixed differently this subject. In consequence according to the principle NULLUM CRIMEN NULLA POENA SINE LEGE and the article 7 paragraph 1 of Constitution does not exist disciplinary law that would be enforced for the HCG personnel at this moment.

The enforcement of provisions that are in force for the Hellenic Navy personnel, executives of institution with role and mission different from that of HCG, does not serve absolutely nothing, as from the study of familiar relative provisions, revealed of course clearly different philosophy from the one that is judged essential for corps security personnel that enforce competences of police nature.

3. – Finally I appreciate that the legal provisions on the civil responsibility of HCG personnel are right and they correspond in the role and the mission of HCG personnel as well as in the philosophy of a state of right.

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Notes

¹See law 2287/1995 (HMPC), law 3070/2002 and law 3922/2011. More specifically relevant provisions are article 5 paragraph 1.b of law 2287/1995 (A' 20), "Ratification of Military Penal Code" where is fixed that: "Military personnel are those who belong to the army and to the HCG", the article 129 of law 3079/2002 (A' 311), "Ratification of Code of HCG personnel", in which is fixed that "HCG is militarilycorps and the personnel of its is conditioned by the provisions which are in effect each time for the Officers, Warrant Officers and Petty Officers of Navy, to which is assimilated regarding the situation, penal jurisdiction, the discipline, the retired right, the acceptances.....", as well as article 4 paragraph 1 of law 3922/2011 (A' 35) "Constitution of HCG Headquarters and other provisions", in which is fixed that "The HCG is armed corps of security, military organized, its personnel of which has the attribute of military according to Military Penal Code (HMPC)". Also in the above must be taken into consideration and the provisions of PD 210/93 (A' 89) "Provisions of Navy" as was modified and is in effect by the PD 80/1998 (A' 74) [Modification of provisions of PD210/93 (89 A') "Provisions of Navy"]. Relative to the same subject is also the consultation of HCoS with No 1972/1987.

² According to article 194 paragraph 1b of HMPC (law 2287/1995) with the subject "Competence of military courts", the military personnel of Navy and HCG are subject in the competence of admiralty military court. Also in the article 193 of the same law with the subject "Jurisdiction of military penal courts" and in paragraph 2, are fixed the cases at which the military personnel do not subject in the military courts but in the common penal courts, while in article 195 with the subject "Attendance of military personnel and private individuals", is fixed that if in the crime participate military personnel and private individuals responsible are the common penal courts if the crime is of common penal law and the military courts for military personnel and the common penal courts for the private individuals if the crime is a military one.

Also in article 172 paragraph 1 is fixed, that if the defendants are only HCG personnel, as members of admiralty military court can fixed also Officers of HCG. The choice becomes with draw from table of officers that serves in the area of the court and if these do not suffice, in the region of court. This draw is taking place in the first 10 days of each month for the trials of the next month.

³ The HMPC, law 2287/1995 (A' 20), is divided in two generally Parts that contain the following capital:

FIRST BOOK

ESSENTIAL PROVISIONS

[A] General Part/Chapter First - General Definitions/Chapter Second - Sentences

[B] Special Part Chapter First - Offences against the Integrity of Country /Chapter Second Crimes against the Military Obligation /Chapter Third person - Crimes against the Military Discipline /Chapter Fourth - Crimes against the Military Order /Chapter Fifth - Crimes against the Military Duties /Chapter Sixth - Crimes against Confidential/Chapter Seventh - Crimes against the Fortune /Chapter Eighth Captives – noncombatants.

SECOND BOOK

PROCEDURAL PROVISIONS

Chapter First - Courts and Juridical Persons/Chapter Second - Jurisdiction and competence/Capital Thirdly – preliminary Proceedings/Chapter Fourth - Legal Means/Chapter Fifth – Enforcement of provisions of Penal Procedure – terms equivalence - advocate of defendant /Chapter Sixth - Military Courts in war period/Chapter seventh - Process in War Period. The HMPC is not special penal law, but self-existent penal code (Decision 194/1953, Poinika Chronika C, p131).

⁴ See article 262 of HPC in which is fixed:

[“General Provisions”

If employee practicing his/her service or profiting from his/her attribute becomes with intention guilty of felony or delinquency that is forecasted in other capital of Penal Code, the maximum limit of sentence that is entered by the law on the action increases at half. However it cannot exceed the maximum limit that is generally certain for each type of sentence].

⁵ See Papachatzis, G. (1991) "System of current administrative law in Hellas", seventh publication, Athens, p 468. More general character between the penal offences, has the article 259 of PC "infringement of duty", that its establishment aims to anticipate and to cover potential voids, its meaning presupposes wretched intension and takes place in connection with self-interested or with intention of damage of interests of state or third.

⁶ See Anagnostopoulos, I. and Vathiotis, K. (1999) "Penal Code", P. Sakkoulas, Athens, p 113 .

⁷ For the arrest of military personnel see Raftopoulos, P. (2004) "Courses of Penal Procedure", Athens, p 269 and next.

In cases of misdemeanors or felonies of HMPC, the interrogative employees appointed immediately and they act preliminary investigation without order of military public prosecutor, who however according to article 201 paragraph 2 of HMPC inform with the more rapid means and act according to his/her commands and directives.

In the event of arrest of military personnel that is active, is informed immediately by the interrogative authority the service that serves or the responsible general personnel, or the nearest military authority (article 202 of HMPC). In any case are applied the provisions of articles 275 and 279 of HELLENIC Penal Procedure. In the event that is arrested military personnel for offences that subject in the regular penal courts, are followed the above actions of arrest and adducing of the military personnel in the regular penal courts, with parallel briefing of responsible services and the military public prosecutor.

For the faults the military personnel are subjected as a rule in the military courts, minus the cases of article 193 paragraph 2 of HMPC, that are subjected in the common penal courts (e.g. faults of Forest Code and Law of Hunting).

⁸ See article 75 of Law 3079/2002.

⁹ According to provisions of being in effect legislation but also provisions of Constitution, exist cases in which it is not allowed to be applied the provisions that raise the unfair character of action because of command according to the article 21 of PC. Relative happens the PD 265/1989 “Coding of legislation on the election of members of parliament” in combination with article 193 paragraph 2. [g]. of the HMPC.

¹⁰ See Supreme Civil and Criminal Court of Hellas (Areios Pagos) 1287/1983, 97/1985.

¹¹ See Supreme Civil and Criminal Court of Hellas (Areios Pagos) 356/1981.

¹² See Tachos, A. (1990) “Law of Public Order”, Thessaloniki, Sakkoulas, pp 89-90. The meters for the imposition and maintenance of public order are expressed with legal active actions and material and they can be distinguished:

1. - meters externally and internal proportional if they concern the public order in general persons or by any chance concern certain special public order, private individuals or bodies of State and other legal persons of public law.
2. - Meters preventive and repressive proportional if they aim at the prevention of perturbation of public order or concern in the reintroduction of already disturbed public order. The preventive as the repressive meters should be efficient.
3. - Meters topical and untimely, proportional if they are received and be enforced inside the time limit each time at the duration of which is feasible the prevention or the repression of perturbation of public order.

¹³ The law of Hellenic - internal public order springs from the Constitution, the EU law, and the International law.

¹⁴ Principles of police competence are the principles of legality, the principle of public interest, the principle of action, the principle of continuity and the principle of restrictions

¹⁵ See provisions of Highway Traffic Code.

¹⁶ See Law 3169/2003.

¹⁷ See article 9 of Constitution and articles 253-256 of Penal Procedure, see Kontaxis, A. (1992) “Code of Penal Procedure”, P. Sakkoulas, Athens, pp 221-224.

¹⁸ See LD 444/70, Tachos, A. op.cit. 12, p 213 and next, law 1756/1988 “Code of Courts Organization and Situation of Juridical Functional” and special articles 9 and 25 as well as articles 169 and 288 paragraph 2 of HPC. See Anagnostopoulos, I. and Vathiotis K., op.cit, 06, p 90 and p 132.

Relative with the subject is also the consultation with No 10/16-7-1992 issued by the A’ Public prosecutor of Supreme Civil and Criminal Court (Areios Pagos), according to which the preventive research of Police in public centers after complaint of explosive mechanisms existences and matters, does not depend from the conform opinion by anyone who is affected by the measures. The beneficiary of space has obligation to tolerate the police research, otherwise it bears penal responsibility for defiance or for resistance. The preventive detection of space for the dissuasion of crime or accident because of fire, flood, earthquake etc does not presuppose the presence of juridical functional at the research.

¹⁹ The HCG personnel is indirect bodies of state. The legal nature of bodies in question, that practices policing and the action that they publish or material actions in which they proceed, are connected with the reasons of illegality of their action.

²⁰ Furthermore of the Parliamentary Control which is taken place according to the Constitution and the Regulation of Parliament, the Director of Internal Affairs Office of Ministry of Citizen Protection /Headquarters of HCG, is fixed by the Minister of Citizen Protection afterwards opinion of Committee of Institutions and Transparency of Parliament, according to the fixed in the Regulation of Parliament (paragraph 5th, article 50 of law 2935/2001).

²¹ See article 50 of law 2935/2001 and Ministerial Decision with No. 1141.1/42/2002 [B’ 1122] “Ratification of Regulation on the realization of Statutory Administrative Examinations (EDE)” as it has been modified and been in effect.

²² See Papagiannis, D (1999) “Introduction in the European Law”, A. Sakkoulas, Athens - Komotini, pp 85 - 96 and p 141 and next, Mousis, N. (2001) “European Union, law, economy, policy”, 9th revised publication, Papazisi, Athens, pp 43-45 and Roukounas, E. (1995) “International Protection of Human Rights”, Athens, Bookshop of Hearth, p 101 and next.

²³ Bodies of administrative self-monitoring minus the office of Internal Affairs are the Body of Inspectors, Controllers of Public Administration (law 2477/1997), the General Inspector of Public Administration (law 3074/2002) and the Advocate of Citizen (law 2477/1997).

²⁴ See Panagopoulou, M – E (2000) “The appeals against action of administration in front of the Administrative Authorities”, A. Sakkoulas, Athens - Komotini, Remelis, K. (1987) “The informal administrative appeals (Constitutional foundation, conditions of exercise, extent of control), Ant. Sakkoulas, Athens - Komotini, p 89 and next, Delikostopoulos, St. (2008) “Interpretation of code of administrative procedure: articles 1-230 as it was modified by law 3659/2008”, “Law and Economy”, P. Sakkoulas, Athens.

²⁵ Article 133 of Parliament Regulation.

²⁶ Article 126 and next and 129 and next of Parliament Regulation.

²⁷ Article 125 of Parliament Regulation.

²⁸ See Dagtoglou, P. (2004) “General Administrative Law”, Ant. Sakkoula, Athens - Komotini, pp 563-599.

²⁹ See article 98 of Constitution.

³⁰ See MD 4222.1/7/97 (B’ 724), 5221.4/4/04 (B’ 1642) και 5221.1/01/05 (B’ 323).

³¹ Are meant administrative courts of first instance, administrative courts of appeal, Council of State and the State Audit Council

³² The meaning of public order is legal meaning, because is identified with the keeping legal order but also because it recommends verification of legality principle, as with this is seeking to be observed the aims of Constitution and laws and not simply to be imposed any order.

³³See Tachos, A., op.cit., 12, p 111, Papaioannou, Z. (2006) "Police law, the functional competence of police personnel of Hellenic Police, meaning, content, limits", B' publication, Sakkoulas, Athens - Thessaloniki, p 20 and next, p 261 and next, p 311 and next and Alibizatos, N.(1983) "The legal regime of Bodies of Security", [NoB], pp 622-624.

It is pointed out that according to the professor Alibizatos N., "the meanings of the national and public security, the public order and the police, with which the legislator continues delimiting the mission of security corps in Hellas are meanings eminently fluid.

They belong in the category of vague legal meanings that presupposes each time concrete specialization in order to be determined the extent and their content. Simultaneously they leave important margins of subjective evaluations from the responsible state bodies, creating thus the conditions of uncertainty of right. They are meanings as generally speaking acceptable in their abstract operation, namely as expressions of concern of each state for its self-protection, and respectively as extreme barriers in the exercise of individual freedoms, these meanings cannot be determined as selfly-existent protected legal goods with alone the tools of legal science. For their interpretation, as it was characteristically said, is required to resort in meanings that "acknowledge but do not create first the law".

Nevertheless, for systematic reasons and only, we will try to locate the core of every from this meanings, having complete conscience that are not definitions, but searches of certain constant points, under the conditions that prevail today in our place. Thus, while the core of national security resembles to be identified with our government substance in our exterior relations, the public security appears to imply the protection of regime, coordinates of powers and more generally the government bodies, at the enforcement of their duties. As long as for the public order and the police they are reported more in tripartite "peaceful", "healthy" and "security" - persons and things - that it recommends the legal good "common peace".

With formulations that the vagueness has reproached from old times our legal science, "the management" of national and public security, "the compliance" of the public order and "the exercise" of police under conditions of normality, the legislator has assigned in the corps of security».

³⁴ See article 45 paragraph. 5 PD 18/1989 and Korsos, D. (2005) "Administrative Law", general part, third publication, Athens - Komotini, Ant. Sakkoulas, p 366.

³⁵ See articles 4 paragraph 3, 11 paragraph 2, 19, 36 paragraph 1, 48 paragraph 1, 105 paragraph. 4 and articles 6 paragraph 1, 8 paragraph 2, 9 paragraph. 2, 11 paragraph 2 of the European Convention for Human Rights.

³⁶The danger that concerns the public order is distinguished in interior which is limited (articles 11 paragraph 2, b', 18 paragraph 3, 22 paragraph 3, b of Constitution and article 15 paragraph 1 of the European Convention for Human Rights and in abroad (article 48 paragraph 1 of Constitution and article 15 paragraph 1 of European Convention for Human Rights) who is generalized. The existence of danger that threatens the Nation is reduced in ball of political power and is not checked juridical (HCoS 35/1961).

³⁷It is still distinguished in individual and common, direct and not direct, health of - life, danger of fortune (articles 264, 268, 270, 272, 273, 275, 277, 288, 290, 307 of HPC).

³⁸ See article 2 paragraph 5 of LD 17/1974 "Civil Emergency Planning".

³⁹ See articles 5 paragraph 4b', 18 paragraph 3, 22 paragraph 3b', 44 paragraph 1, 48 paragraph 5 of the Constitution, articles 25,32, 296 of HPC, Civil Code articles 124, 128, LD 17/1974.

⁴⁰ See Supreme Civil and Criminal Court of Hellas 782/1979.

⁴¹ Bad use of discreet power, recommends illegal action of administrative body according to is created civil responsibility of state (article 105 of Civil Code). Bad use became when existed overshooting of extreme limits of discreet power of body (Appeals Court of Athens 5372/1977, Supreme Civil and Criminal Court of Hellas 39/1988).

⁴² See HCoS 651/1932, 1122/1964, 3416/1970, 1941/1972, Supreme Civil and Criminal Court of Hellas 782/1979.

⁴³ See Korontzis, Tr. (2009) "Discipline, obligations, restrictions and rights of workers in the space of public order and security", Journal of Epitheorisi Ergasiakon Sxeseon, 55, pp 75-96.

⁴⁴ See Korontzis, Tr. (2012) "The establishment of Judicial police as an administrative reform. An evaluation approach", Journal of Dioikitiki Enimerosi, No. 54, pp 76-93.

⁴⁵ See op.cit. 43.

⁴⁶ HCoS 523/1931, 645/1935, 387/1938.

⁴⁷ HCoS 2522/1966.

⁴⁸ See Korsos, D., op.cit.,34, p 514 and next.

⁴⁹See article 2 of law 3528/2007 (A' 26).

⁵⁰ See Spyridakis, I. (1998) "Civil Code and Introductory Law", critical publication, Athens – Komotini, A. Sakkoulas, p 586.

⁵¹ See Mathioudakis, I. (2006) “The civil responsibility of the state from material energies of its employees according to articles 105-6 of Civil Code”, Thessalonica, Anion, p 160 and next.

⁵² Relative is also the document with No 1117/220/08 from 05-11-2008 circular of former Ministry of Mercantile Marine with subject “Sworn Administrative inquiry regarding loss or deterioration of materials and medium of HCG”.

More specifically in paragraphs 2 and 3 equivalents is fixed that the State Audit Council, after relative command of the ministry of Mercantile Marine (now ministry of Citizen Protection), in order to pronounces the charge in the guilty of caused damage, in the cases where results deceit or heavy negligence of guilty, is essential this to result expressly from the mechanism part of conclusion of the Sworn Administrative Inquiry.

Besides according to the document with No 253/05-08-2002 issued by the General Delegate of Territory in the State Audit Council, should in the accompanied document to be included also proportional command on charge. For the State Audit Council see Spiliotopoulos, E. (2006) “Handbook of administrative law”, 12th publication, Athens - Komotini, A. Sakkoulas, pp 211-220.

⁵³ See op.cit. 1.

⁵⁴ It is marked that the HCG personnel bear the attribute of general interrogative employee [articles 158-163 of LD 187/1974 (A’ 261)]. It carries out the examination of witnesses or defendants, it realizes investigations at houses or body searches, seizures, arrests or provisional reservations. It is moved in areas where are jeopardized fundamental individual rights of person as the bodily integrity, the personal freedom, the asylum of residence, the property etc.

Each infringement of penal procedures and of the special legislation that determines the legal realization of interrogative action, attracts the civil responsibility of state, provided that is also taken into consideration the particularity of police service beyond the illegality, aids also the remaining conditions of government responsibility, mainly at the exercise of power of body realization of action. See Mathioudakis, I., op.cit, pp 376-377.

⁵⁵ The public policing consists in the consolidation and maintenance of the public and state security and the safeguard of the civil and the national defense of country in collaboration with armed forces.

The exercise of police competences for the security of the state and the freedom of citizens collide. The police power becomes many times over dangerous. The material character and the virtuousness of the state policing justify the prominent place that is held in this point in the state responsibility by the loss-making police action. By the moment in deed that the HCG personnel constitutes bodies of state are enforced clearly the provisions of article 105 of civil code, see Mathioudakis, I., Organization of Producers, op.cit, p 362.

⁵⁶ Now law 3528/2007 (A’ 26), “Ratification of Code of Situation of Public Political Employees and Employees of legal persons of public law” and concretely article 38 with the subject “Civil responsibility”.

[<1. The employee is accountable against the State for each damage which she/he caused in this from deceit or heavy negligence at the implementation of his/her duties. The employee is accountable also for the compensation which it overwhelmed the State in third for illegal action or omissions at the implementation of his/her duties, provided that they are owed in deceit or heavy negligence. The employee is not accountable against third for the above action or his/her omissions.

2. In the event deceit of employee, he/she is referred obligatorily in the State Audit Council. In the event of heavy negligence, if the employee is referred, the State Audit Council, appreciating the special circumstances, can ascribe in this part of only damage that befell in the State or the compensation that the last one was compelled to overwhelm.

3. If more employees caused joint damage in the State, they are accountable to entire at the provisions of Civil Law.

4. The claim of State against of its employees for compensation in the cases of par.1 is barred in five (5) years. In the case of first section of paragraph 1, the five-year period begins since the responsible body for the submission of application of charge was informed of the damage and the reason of this, and in the case of second section, since the State overwhelmed the compensation.

5. The civil responsibility of public accountable and of authorizing officer is conditioned by the special for them provisions.

6. Special provisions on the personal civil responsibility of public employees against third person are maintained in force »].

Public accountable is anyone that manages money, values, materially that belong in the state, the organisms of local self-government or other legal persons of public law. See article 54 paragraph 1 NDL and article 54 paragraph 1 NLnpdd. The duties of accountable are incompatible with them of the authorizing officer and the liquidator (articles 55 NDL, 33 NLnpdd).

See also Supreme Civil and Criminal Court of Hellas 395/1955, 447/1962, 449/1969, 1073/1976, 52/1960, 163/1974, Appeals of Court of Athens 4866/1975 and Paulopoulou, Pr. (1989) “The civil responsibility of State”, Athens - Komotini, A. Sakkoulas.

⁵⁷ See article 98 paragraph 1 of Constitution, article 46 paragraph 5 of PD 774/1980 (Organization of Court of Audit). The department of Court of auditor judges for the responsibility that brings the body of state after the application of General Delegate of Court of Audit, which acts or after a command of the familiar Minister, or selfly appointed provided that results responsibility from the submitted elements in the State Court of Auditor. Against the decision is allowed application of revision as also an application of recantation in front of the session of the State Court of Audit.