

DISCIPLINARY RESEARCH FOR CERTAIN CATEGORIES OF CIVIL SERVANTS

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Abstract

Public servants have to fulfill their tasks with a conviction arising from his rational understanding. They are responsible both for damages caused by institutions, for wrongful acts, so-called anonymous, and for all personal offenses, and their liability is provided by different norms. The common thing for all categories of public servants is that we can talk about disciplinary liability only after a preliminary investigation.

Key words: public servant, misconduct, disciplinary liability, disciplinary sanction, Legal Statute of Public Servants.

JEL Classification: K23

1. Disciplinary research under Law no. 188/1999²

A disciplinary sanction will be legally applied only after a preliminary investigation of the offense and after hearing public servant [Article 66 paragraph (3)]³.

Disciplinary committees investigate and propose a sanction for a public servant (Article 67 of Law no. 188/1999 and Government Decision no. 1344/2007 on rules of organization and functioning of disciplinary committees⁴). Their activity is based on the following principles:

- presumption of innocence;
- guaranteeing the right to defense;
- rapidity of the procedure;
- contradictory;
- proportionality (ensuring proportionality between the seriousness of the offense and the proposed sanction to be imposed);
- the legality of the disciplinary sanction;
- uniqueness disciplinary sanction.

The commission is headed by a chairman appointed by the head of the authority or institution, in consultation with the trade union or, where appropriate, of civil servants. Part of the disciplinary committee is also a representative of the trade union or, where appropriate, a representative designated by a majority of civil servants, if the union isn't representative or servants aren't organized in trade unions [Article 67 paragraph (2) and (3) of Law no. 188/1999].

If the servants are senior, the disciplinary committee is composed of five senior civil servants, appointed by the Prime Minister at the proposal of the Minister of Interior and Administrative Reform [Article 67 paragraph (4) of Law no. 188/1999].

Committee's jurisdiction is legal determined – Article 67 paragraph (1) of Law no. 188/1999 – and consists of:

- research facts that disciplinary hearing;
- the proposed sanctions public officials found guilty.

Disciplinary sanctions are applied to the person who has legal powers to appoint to public office, to the Board proposal, except reprimand which is directly applied by the person who has

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² According to the Statute of Civil Servants, republished in the Official Gazette of Romania, Part I, no. 365 of May 29, 2007, amended, including by Law no. 284/2010 (published in Official Gazette of Romania, Part I, no. 877 of 28 December 2010).

³ High Court of Cassation and Justice, Department of Administrative and Fiscal Decision no. 3434/2003 (published in Alexandru Țiclea, Laura Georgescu, Ana Cioriciu, Vlad Barbu, Dreptul public al muncii, Wolters Kluwer, Bucharest, 2010, p. 380) - the sanction is conditional, subject to cancellation by performing preliminary investigation and hearing civil servant.

⁴ Published in the Official Gazette of Romania, Part I, no. 768 of November 13, 2007, as amended.

the legal capacity to appoint in a public office [Article 66 paragraph (1) and (2) of Law no. 188/1999].

Therefore, even written reprimand sanction shall be applied only after a preliminary investigation of the offense and after hearing the official.⁵

It was argued⁶ that the hearing as Article 66 paragraph (3) states, is actually corresponding to disciplinary research provided by the Labour Code, invoking arguments as: according to Article 66 paragraph (3) hypothesis II, the hearing of a civil servant shall be recorded in writing, under penalty of nullity, and as of the third variant of the same article, the public official's refusal to appear at the hearing or to sign a declaration on disciplinary offenses shall be recorded in written. We believe that such an interpretation doesn't meet the legislator will, who, in paragraph (1) of Article 66 of Law no. 188/1999, requires both carrying out preliminary investigation and hearing the civil servant. Hearing is, in fact, only a preliminary stage of research that is based on public servants, who has the right to defense himself. The difference from prior research is that in this stage the employee should be recorded in writing to avoid possible disputes.

If the public official is presented to the Board, but refuses to answer questions about disciplinary offenses, in legal practice⁷, his refusal doesn't prove his guilt because we talk about presumption of innocence. So, in the absence of unequivocal evidence to prove the guilt, the disciplinary sanctioning of the servant is illegal.

If the public official act was referred to as a disciplinary offense but also as a crime, disciplinary liability proceedings are suspended until prosecution start, removal or termination of the prosecution or until the date the court to acquit or cessation trial [Article 65 paragraph (6) of Law no. 188/1999].

During the administrative investigation, if the civil servant who has committed a disciplinary offense may influence administrative investigation, the head of public authority or institution is required under Article 65 paragraph (7) of the Statute, to prohibited him the access to documents that may influence the investigation or, where appropriate, to order temporary removal of the civil servant in a different department or other structures of authority or public institution.

According to Article 47 of Government Decision no. 1344/2007, the Board may propose, following discussion of the case:

- exercise of the disciplinary sanctions provided for by Law no. 188/1999, where it turned committing a disciplinary offense;
- ranking notification when not committing a disciplinary confirmed.

In order to individualize a disciplinary sanction it will take into account the causes and severity of disciplinary offense, the circumstances under which it was committed, the degree of guilt and consequences of deviation, the general behavior of public servants on duty, and its existence in other disciplinary history were not removed.

If in the same complaint, are identified several misconduct committed by the same official, the Board proposes, after the administrative investigation, to apply a single disciplinary sanction, taking into account all disciplinary offenses [Article 65 paragraph (4) of Law no. 188/1999 and Article 47 paragraph (2) of Government Decision no. 1344/2007].

2. Disciplinary investigation of parliamentary servants

⁵ High Court of Cassation and Justice, Department of Administrative and Fiscal, Decision no. 7498/2004 - www.scj.ro: the sanction is conditional, under nullity sanction, by performing preliminary investigation and hearing civil servant.

⁶ Romeo Paul Postelnicu, *The statute of public servants*, University Publishing House "Carol Davila" Bucharest, 2006, p 280.

⁷ Supreme Court, Administrative Section, Decision no. 2241 of 13 June 2002. See T. Mrejeru, E. Albu, A. Vlad, *Supreme Court case law, administrative - 2002*, p 434-436.

Also here, the disciplinary sanction can't be applied until after a preliminary investigation of the fault and after hearing the official.

The hearing shall be recorded in writing, under penalty of nullity. The refusal to appear in court or to sign a statement regarding alleged violations shall be recorded in the minutes. In such cases, the penalty can be imposed without hearing it.

In the Chamber of Deputies and the Senate, both have a disciplinary committee.

General Secretary and Deputy General Secretary of the two chambers may be sanctioned by the Standing Bureau of the Chamber of Deputies or the Senate, as appropriate.

The sanction is applied by the General Secretary of the Chamber of Deputies or the Senate, as appropriate, within 30 days of the date of knowledge of the offense committed, but not more than one year from that date.

Reprimand and warning may be applied directly to the department heads or general directors or, where appropriate, by directors of the structures operating at issue.

Disciplinary sanction application and individualisation will take into account the causes and their severity of the offense, the circumstances under which it was committed, the degree of guilt and consequences of deviation, the general conduct of the parliamentary officials, and the existence of other disciplinary sanctions that weren't removed.

3. Police disciplinary investigation

In case of committing serious misconducts, that affect the image and credibility of the institution and the police profession, prior investigation and consultation of disciplinary councils are ordered and carried out immediately after becoming aware. In this situation, head of police⁸ issue an officer with prior research and calls the Disciplinary Board.

Preliminary investigation represents all components of measures of proceedings in order to establish the presence / absence misbehavior, on issues that were seized or who was directly aware, the causes and the specific circumstances in which they were produced.

According to art. 20 of the Minister of Interior and Administrative Reform no. 400/2004 on discipline, preliminary investigation is carried out by the head of the police or by other police officers specially designated from departments in charge of criminal investigation or with legal studies and usually at least equal professional degree with the investigated policeman.

Preliminary investigation starts after it's acknowledgment, personally or following a complaint about the commission of an offense which may be disciplinary. It should be noted that anonymous complaints are not taken into account [Article 19 paragraph (2) of Order no. 400/2004].

⁸ They are:

- heads of units referred to in Art. 76 of Law no. 360/2002 on the Statute policeman;
- heads of units referred to in point 7.2 of Annex Government Emergency Ordinance no. 179/2002 regarding the demilitarization of the structural units of the Ministry of Interior and its subordinate structures (including police misconduct by subordinate units of the central apparatus);
- heads of DGs / departments and independent service within the General Inspectorate of Romanian Police and the General Inspectorate of Romanian Border Police;
- head of the General Directorate for Combating Organised Crime and Drugs;
- heads of county police inspectorates and border county police inspectorates;
- head of the General Directorate of Bucharest Police;
- head of Romanian Police Brigade;
- heads sectors Police General Directorate of Bucharest Police;
- heads of police stations;
- municipal police chiefs;
- heads of border police sectors;
- heads subordinated directly to the Inspector General of the Romanian Border Police with the structure of human resources departments.

Preliminary investigation starts with the act where is nominated the officer who will conduct the investigation [Article 20 paragraph (3) Order no. 400/2004].

The term for preliminary investigation is usually 15 working days. This can extend to cases justified by another 15 days, with prior approval of the chief who ordered preliminary investigation [Article 20 paragraph (1) of Order no. 400/2004].

Prior investigation is made by officers designated and will be performed by one person. For complex cases and for justified reasons, the policeman assigned to conduct preliminary investigation may be assisted in the activities of other officers, with the approval of the one who ordered it [Article 26 paragraph (2) of Order no. 400/2004].

In case the designated officer can't continue to conduct preliminary investigation for justified reasons he can be replaced.

The policeman who made a preliminary investigation under Article 22 of Order no. 400/2004, could be challenged or may abstain if:

- complaints made against the person examined or to be present as a witness;
- he's under investigation or in the analysis of a Board of Discipline;
- is prosecuted or are in the trial stage;
- he's relative or close up to the fourth degree with the investigated policeman;
- he or his relatives up to the fourth degree is/are a party in a process with the investigated policeman;
- he's the creditor or debtor of the investigated one or has an interest in the case;
- in the last 5 years was analyzed, judged on the boards of honor / judgment / discipline, convicted and punished;
- he is directly manager or subordinate to the investigated policeman.

Replacement occurs when the designated police preliminary investigation is hospitalized, has committed a disciplinary offense, died etc. [Article 22 paragraph (4) of Order no. 400/2004].

During preliminary investigation, the officers appointed to carry out the investigation should proper conduct it, should show tact and respect to the constitutional, legal and international standards of human rights [Article 25. (1) of Order no. 400/2004]. They are prohibited threats, intimidation, promises, violence against witnesses, exerted in order to obtain evidence or evidence, reports and statements or to influence the outcome of checks and / or findings [Article 25. (2) of Order no. 400/2004].

At the start of the preliminary investigation, the policeman shall be summoned by the designated officer in order to be noticed about disclosure and request for explanatory reporting in order to clarify all the issues raised [Article 26 paragraph (1) of Order no. 400/2004].

The summoning is done by written request and delivered personally, by signature of receipt or by registered letter sent to the residence served [Article 26 paragraph (2) of Order no. 400/2004].

If police summoned fails to appear, prior research can continue without further citation [Article 26 paragraph (3) Order no. 400/2004].

The investigation on misconduct, of which result data and indices that were committed offenses will be made with the participation of a representative of the National Police Corps, following that, according to the findings, to be notified legal authorities [Article 29 paragraph (3) Order no. 400/2004].

The one who deals with preliminary investigation has active role and he's forced to gather the necessary evidence of the existence or absence of disciplinary offenses, seriousness and degree of fault of the police investigation, to ascertain and assess whether or not to propose measures against it.

The investigated officer is entitled to submit a request to submit reports to suggest taking evidence or defense documents to be verified and included in the file or report completion of the preliminary investigation [Article 29 paragraph (1) of Order no. 400/2004].

If he refuses to answer charges brought or to provide data, information and documents held known in bad faith in order to frustrate truth, to influence the outcome of research or evade responsibilities under normative acts relevant facts may constitute misconduct.

All staff who is aware and can help thorough explanation of all aspects related to the case is required to provide data and information⁹ and to write reports or statements relating to that [Article 31 paragraph (1) of Order no. 400/200].

Against officers who make complaints, testify or contribute in any way to clarify some aspects of the preliminary investigation, can't be taken disciplinary action or otherwise, except if it subsequently turns out that the testimony or complaints made, in bad faith, influenced or attempted to influence negatively the outcome of research [Art. 31 paragraph (2) of Order no. 400/2004].

Upon finishing verification, the officer designated to deal preliminary investigation, summons the investigated policeman and notifies him about the findings – misconducts and evidence supporting or not the issues [Article 32. (2) of Order no. 400/2004].

The investigated officer will prepare a detailed report acknowledging the outcome research. This report will highlight his point of view on the material presented objections and possible new applications or evidence to the defense.

Where appropriate designated officer will perform new verification [Article 32. (2) of Order no. 400/2004], and the result will be brought again to the attention of the investigated person in the same way, then he will write preliminary research report.

If two or more officers are being investigated for acts committed in common, they will draw up separate folders with a single prior research report, unless the two are from different units (Article 34 of Order no. 400/2004).

The file is presented to the chief who ordered the investigation, not later than 2 working days to prepare the report, after prior informing in writing the head unit [art. Article 35. (2) of Order no. 400/2004].

Investigation suspension may be ordered in exceptional cases and for duly justified reasons (sickness, death in family, etc.), With the approval of the unit who ordered investigation, the procedure will be resumed within 3 working days after cessation of the situation which caused the suspension, within one year of the offense [Article 24 paragraph (1) of Order no. 400/2004].

After completing the preliminary investigation, receiving report and file research, the chief who ordered it can take one of the following measures:

- approve the ranke of materials, if not confirmed the existence of a disciplinary offense;
- impose sanctions: written reprimand or loss of pay for the function performed by 5-20% over a period of 1-3 months;
- announce the competent Disciplinary Board to rule on the legality and validity of the research, and on the adequacy of proposals and solutions set, where the proposed sanction is deferred promotion or senior professional degrees over a period of 1-3 years or dismissal of police (art. 36 of Order no. 400/2004).

In order to ensure consultation of units leaders on establishing appropriate sanction there are functioning besides following bodies:

⁹ According to art. 37 of Order no. 400/2004, disciplining police can do and the proposed control bodies, whose acts were worth prior research papers, they were drawn up in compliance with the rules of the institution.

- Higher Disciplinary Council, at the General Inspectorate / similar;
- Disciplinary Boards, the General Directorate of Bucharest Police, county police inspectorates, local units of police and educational institutions.

Disciplinary Board is a collective body who analyse violations committed by the police and how these have been researched, set up to be consulted by the leader who is able to enforce the sanction for which he ordered preliminary investigation [Article 38 paragraph (1) Minister of Interior and Administrative Reform Order no. 400/2004].

Disciplinary Board shall be constituted for each case in compliance with the rules and have advisory powers.

Disciplinary Board shall exist:

- at The General Inspectorate of Romanian Police and the General Inspectorate of Romanian Border Police, by provisions of the General Inspector;
- at the Central Office of the Ministry of Interior by the Minister or the Secretary of State coordinate structures which includes staff investigated [Article 58 paragraph (1) of Order no. 400/2004].

Members of the committee may be those who are recognized as having moral integrity, professional competence and credibility [Article 46. (1) of Order no. 400/2004].

Higher Disciplinary Council examines disciplinary offenses committed by police officers who have management / control jobs named by the Inspector General of Romanian Police and the Romanian Border Police, the quaestors, general directors of directions / similar Deputy Directors / heads sitters and services and the competence of the appointment of the Minister of Administrative and Interior and the Secretary of State [Article 58 paragraph (2) of Order no. 400/2004].

In carrying out the powers¹⁰ established by Order no. 400/2004, the Disciplinary Board, as has follows a few basic rules:

- presumption of innocence;
- guaranteeing the right to defense - police right to be heard, to present evidence in his defense and to be represented by an attorney;
- timeliness of disciplinary proceedings - also require disciplinary council to proceed without delay to the resolution of the case;
- contradictory - can cause people to express themselves on any act or fact which is related to the offense committed;
- proportionality, to ensure proportionality between the seriousness of the disciplinary offense, the circumstances of its commission and the proposed sanction;
- legality of the penalty - applying only sanctions provided by law;
- uniqueness penalty - apply a single penalty for the offense committed.

For officers who commit misconduct as long as they are delegated or seconded to other units of the Ministry of Administrative and Interior and other ministries, missions to the international police forces often follow different courses or other training in the country or abroad, the Board of Discipline is provided by the unit he belongs to, at the proposal of the leader he's delegates or detach [Article 43 paragraph (1) of Order no. 400/2004].

¹⁰ The main duties incumbent to board of discipline are:

1. investigation and analysis of disciplinary offenses for which it was seized;
2. proposal of an appropriate disciplinary sanctions;
3. drawing conclusion about the cause for which it was seized and present them to the head unit.

Act to start consulting disciplinary council is the head unit order for preliminary investigation and, where appropriate, of which the police investigated makes part [Article 45. (1) of Order no. 400/2004].

The policeman called to the disciplinary board has the right to demand, only once, the challenge of composition board members, including the president [Article 47 paragraph (1) of Order no. 400/2004].

Simultaneously, any member of the Council shall be entitled to refrain from taking part in analyzing the case, for good reasons.

The request for recusal or abstention shall be in written and submitted by the chairperson of the council to the head unit to determine acceptance or rejection [Article 47 paragraph (3) Order no. 400/2004].

Head of unit may decide to maintain (this should be recorded in the minutes of the meeting) or replace (reissue is available) the objected or those who restrain [Article 47 paragraph (5) of Order no. 400/2004].

Meetings of the board shall not be public, and the work of each meeting shall be recorded in the minutes signed by the chairman, members and secretary (Article 48 of Order no. 400/2004).

Article 49 Order no. 400/2004 provides that the main work of the Disciplinary Board consists in:

- a) convening the investigated officer and confirm the result of preliminary investigation and the receipt of any objections or new evidence which could not be presented during the preliminary investigation;
- b) the analysis and conclusion of objections or given fresh evidence and decide on their solidity;
- c) request necessary clarification from the police officer who conducted the preliminary investigation;
- d) hearing persons, taking of evidence and verification of documents;
- e) draw conclusions about the guilt or innocence of police investigation and proposals accordingly.

In exercising its rights of defense investigated policeman may be assisted by another officer elected or appointed by him to the National Police Corps [Article 52. (1) of Order no. 400/2004]. Choosing an assistant can't be an excuse to delay the work of the Board. The assistant will be elected usually from graduates with legal background. Assistant policeman will be elected at issue, the police in activity, usually from graduates with legal background.

At sanctions individualization will be taken into account the following elements:

- seriousness of the offense committed;
- previous work;
- circumstances in which disciplinary offense has been committed;
- causes and consequences of committing the offense;
- the degree of guilt;
- concern for the removal of the offense committed (Article 14 of Order no. 400/2004).

The investigation completed by a Board conclusion, which shall be notified of the investigated one, after deliberation, handing him the a copy of this document signed. If he refuses to sign it will be recorded in the minutes of the meeting and send a copy to the conclusion, by registered mail sent to the residence of the person concerned [Article 53 paragraph (4) - (5) of Order no. 400/2004].

Conclusion and investigation record are brought to the head unit who ordered consultation of the committee [Article 53 paragraph (6) Order no. 400/2004]. On this basis, he shall issue the sanction for the person in question.

If the unit head does not agree with the proposed sanction he may have application to other disciplinary action or make proposals, they shall submit hierarchy (Article 54 of Order no. 400/2004).

If the sanction must be applied by a superior, the unit head will report to the responsible person.

Mandatory elements that must be included in the sanction decision, according to Article 62 paragraph (2) of Order no. 400/2004 are:

- description of the act that constitutes a disciplinary offense;
- specify the provisions that have been violated by the policeman;
- why were removed defenses raised by the policeman in preliminary investigation to the Board;
- the legal grounds under which disciplinary sanction applies;
- the period within the disciplinary sanction may be appealed;
- the competent court at which can be challenged the sanction.

Disciplinary sanctions shall apply after the expiry of appeal, within 60 days after completion of the preliminary investigation, but not later than one year from the date of the offense [Article 59 paragraph (1) and Article 60 paragraph (1) of Law no. 360/2002]. These terms are prescription terms.

The sanction order or the decision are administrative and are issued under a special law. The jurisdiction proceedings against sanctioning decisions belongs to administrative courts [Article 61 paragraph (3) of Law no. 360/2002].

It's prohibited to apply several disciplinary sanctions for the same offense [Article 59 paragraph (10) of the Statute¹¹] and to punish several policemen for the offense committed by one (art. 13 of the Minister of Administrative and Interior no. 400/2004), according to the principle that disciplinary liability is personal.

4. Disciplinary investigation of civil servants in the prison system

Article 71 paragraph (2) of Law no. 293/2004¹² provides that the disciplinary sanction may be imposed only after a preliminary investigation of the offense which constitutes misconduct committed by the public servant and after hearing him by the Disciplinary Board.

Disciplinary committees shall be established in each ministry and prison unit and they have the power to carry disciplinary investigations of misconducts and to propose, if found guilty, one disciplinary sanctions for on the person concerned. The committee has jurisdiction to investigate acts committed by officials and public servants from the prison units and disciplinary committees constituted at the level of the prison were responsible for investigating offenses committed by officers and agents appointed for execution, employed in the organizational unit's prisons.¹³

According to Article 3 of the Regulation on the establishment, organization and exercise of disciplinary commissions of the National Administration of Penitentiaries and subordinated

¹¹ This provision is consistent with that contained in Article 265 paragraph (2) of the Labour Code.

¹² Republished in the Official Gazette of Romania, Part I, no. 628 of 22 September 2009.

¹³ Article 67 as amended by O.U.G. no. 194/2008.

units approved by Order no. 2856/2004¹⁴, the members of the Disciplinary Board shall be appointed as follows:

- 2 members, named by the head of the organization, including civil servants with special status within the Ministry of Justice and Citizens' Freedoms;
- 2 members named of the representative trade union of civil servants within the unit.

If the union is not representative or officials are not organized in trade union representatives will be appointed by a majority of officials of that unit. Election of representatives shall be by secret ballot.

Commissions activity is based on the following principles:

- presumption of innocence is presumed that the public servant is innocent so long as his guilt has not been proven;
- guaranteeing the right to defense, under which recognizes the right of public servants to be heard, to present evidence in his defense and to be represented by an attorney or to be represented;
- rapidity of the procedure, which means that the disciplinary commission has to proceed without delay to the proceedings, with respect for the people involved and the rules prescribed by law and this regulation;
- contradictory, which includes ensuring the possibility of divergent positions persons to speak of any act or fact which is related disciplinary offense brought before the disciplinary committee;
- proportionality, that must follow a proportionality between the seriousness of the disciplinary offense, the circumstances of its commission and the proposed sanction to be applied;
- legality of the sanction, that the discipline committee may propose only disciplinary sanctions provided by law;
- uniqueness sanction, that of a disciplinary offense can not apply more than one disciplinary sanction.¹⁵

According to Article 22 of the Rules, the Board may be seized by:

- the head of the organization;
- the head of department in operating public servant whose action is instituted;
- any person aggrieved by an offense of a public official.

The notification shall include:

- name, address and, where appropriate, work and position held by the person who filed the complaint;
- name and, if possible, the department operates public official whose action is instituted;
- description of the act which is the subject of referral;
- appearing evidence on which the complaint;
- date and signature.

Notification shall be made in writing and be accompanied, when possible, the documents that support it.

Chairman of the Board sets the deadline for summoning civil servant and the persons specified in the notification. Summoning must be made at least 3 days before the deadline for submission by letter or written notification acknowledged by signature. It is mandatory for each period determined by the chairman of the Board.

¹⁴ Published in the Official Gazette of Romania, Part I, no. 1099 of 25 November 2004, subsequently amended, including by Order 1043/2006 (published in Official Gazette of Romania, Part I, no. 447 of 24 May 2006).

¹⁵ Article 17 of the Regulation.

In the letter or written notice is mentioned the place, date and time of the meeting of the Board.

For the first term, in the letter or written notice shall be indicated, in addition to those cited above, and subject to the notification.

Official whose action is the subject of the referral shall notify, under penalty of nullity, is handed a copy of the complaint against him. Where the discipline committee believes that it can influence or pressure on the person who made the complaint will be kept confidential name and address it until the investigation starts.¹⁶

One whose offense is studied appears personal before the Board. He can exercise the right of defense by a lawyer assisting or representative.

Disciplinary research is done expeditiously.

Investigation requires:

- hearing the person who filed the complaint;
- examination of public servants whose work is the subject of referral;
- hearing other people whose statements may lead to resolution of the case;
- gathering information deemed necessary to resolve the case by means provided by law;
- taking samples and checking documents and declarations presented.

Deadlines for presentation before the Board of discipline shall be designed not to exceed, usually a period of 7 days.¹⁷

The hearing shall be recorded in writing in the minutes, under nullity. The minutes shall be signed by the President, the members of the Board, the secretary and the interviewed person.

Officials refusal to appear in court or to sign a statement of alleged disciplinary offenses shall be recorded in the minutes.¹⁸

Following the taking of evidence, members of the Board shall prepare a report that records results of research conducted by the disciplinary commission.

The paper will be made aware of public servant, and of the person who asked the disciplinary committee in order to make any objections within 5 working days from the date of knowledge.

If the objects are, they will be considered by the disciplinary commission within the period fixed by the President, but not later than 5 working days after registration. Chairman may admit or reject objections in whole or in part.¹⁹

Discipline committee meetings are public, with the following exceptions:

- a) where the civil servant against whom the complaint was lodged request in writing that they are not public;
- b) when the chairman of the disciplinary committee requested that it not be public if justified.

Unjustified lack of people quoted do not hinder the discipline committee meetings where attendance was made in compliance with legal requirements.²⁰

Article 30 of the Regulation provides that in exercising its powers, the Board draws up reports on the findings of the majority of its members.

The report of the Disciplinary Board of the cause with which he was seised must contain the following:

- the registration number and date of referral;

¹⁶ Article 24 of the Regulation.

¹⁷ Article 26 of the Regulation.

¹⁸ Article 27 of the Regulation.

¹⁹ Article 28 of the Regulation.

²⁰ Article 29 of the Regulation.

- name and position held by the official act which has been researched and compartment in which it operates;
- name, title and address of the person who asked the deed, as well as persons interviewed;
- overview of crime seized and the circumstances under which it was committed;
- the evidence;
- proposal for sanction applicable or, where appropriate, dismissal of the case;
- motivating the proposal;
- name and signature of the President, the members of the Board, and the Secretary;
- date of the report.

Separate opinions, in writing and reasoned, shall be attached to the report of the Board. It is submitted to the competent person to apply the penalty, within 3 days from the last meeting.²¹

The Disciplinary Commission propose the penalty on the essay.

It may propose:

- a) applicable sanction, if proved misbehavior committed by public officials;
- b) ranking notification when not committing a disciplinary confirmed.

To individualization disciplinary sanction for civil servants, the Board shall take into account:

- causes for disciplinary irregularity;
- the circumstances in which it was committed;
- the degree of guilt;
- the seriousness and consequences of misbehavior;
- conduct of public officials and its concern for the removal of the offense committed;
- the existence of disciplinary history of civil servants who were not radiated.

If the commission proposes the application of a sanction, it will propose its duration and, where applicable, the percentage of reduction of wages.²²

If the disciplinary commission has evidence that the act committed by the employee may be considered a criminal offense, suggests to the public servant chief to seize the prosecutor or criminal investigation bodies. The head unit will immediately notify the prosecutor or the criminal investigation.

Administrative sanctioning act is issued by the competent person on the proposal contained in the Board report.

Under penalty of nullity, the administrative act must include:

- the description of the act that constitutes a disciplinary offense;
- has to specifying the provisions of the minutes of the Disciplinary Board;
- why were removed defenses raised by the public official during prior disciplinary research;
- the legal basis under which the sanction applies;
- the period within which the disciplinary sanction may be appealed;
- the competent court where the administrative act may be appealed.

The person who is competent to impose penalty can not apply a more serious one than the board proposed.

However, he can apply a lighter penalty than proposed one, but in this case he has to motivate it.

The administrative act is issued no later than 5 working days from receipt of the board essay and is notified to the sanctioned person within 5 working days from date of issue.

²¹ Article 30 of the Regulation.

²² Article 31 of the Regulation.

The penalty is applied up to 90 calendar days after notification of the offense, but no later than one year from the date of the offense.²³

Disciplinary sanctions shall be apply by the Minister of Justice, general director of the National Administration of Penitentiaries or, where appropriate, by the unit head by written decision.²⁴

Disciplinary sanctions for civil servants in the prison system, are prescribed within 6 months from the date of the conduct.

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²³ Article 64 as amended by Government Emergency Ordinance no. 194/2008.

²⁴ Article 65 as amended by Government Emergency Ordinance no. 194/2008.