

DISCIPLINARY LIABILITY OF EUROPEAN OFFICIALS

Professor Barbu VLAD¹

Abstract

European public official is any person who has been appointed in legal conditions in a permanent position in one of the institutions of the Community by an act of the authority vested with the power of appointment. The activity of European public servant is dominated by the idea of fidelity, executing with professionalism and impartiality his powers and his duties. There are disciplinary proceedings to punish mistakes and everywhere exists the sanction of dismissal from office, as the most severe sanction that can be taken against a public servant, except the penalty of withdrawal of pension rights.

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1. General terms of European public official

In the institutions of the European Union are working agents, who have special rules, rules that constitute law of European public office.²

Legal status of official in European Union was adopted by Regulation no. 723/2004 of 22 March 2004.

Therefore, European public official is any person who has been appointed in legal conditions in a permanent position in one of the institutions of the Community by an act of the authority vested with the power of appointment, as required by Article 96 of the Statute.

Given the obligations of civil servants in the European system, the prevailing idea is the fidelity one, to meet with professionalism and impartiality of the powers and duties. There are disciplinary proceedings to punish mistakes and everywhere exists the sanction of dismissal from office, as the most severe sanction that can be taken against a public servant, except the penalty of withdrawal of pension rights.

The research community states retain laws that incriminating common obligations of civil servants as following:

- a) fulfill the service obligation;
- b) hierarchical obedience obligation;
- c) the obligation of impartiality, understood as the obligation to refrain from any favoritism or nepotism and ensuring equal treatment;
- d) reserve requirement, understood as the obligation to refrain from expressing personal opinions and particularly those of political, ideological, religious, including to refrain from commenting in public institutions that operate public official should act with caution and measure;
- e) an obligation of discretion and professional secrecy;
- f) the obligation of fidelity;
- g) the obligation of residence;
- h) exercise required annual medical examination;
- i) the obligation of morality.

a) Fulfill function tasks

¹ Barbu Vlad, „Alexandru Ioan Cuza” Police Academy, Bucharest, vlad_apr@yahoo.com

² Verginia Vedinas, Calinoiu Constanta, *European civil servant status*, Edition II, Legal Universe Publishing, Bucharest, 2007, p 11.

The public servant is required to devote their entire professional activity performance in a related tasks as performing their duties. The obligation requires payment of duties, employing the full power of work for the mission entrusted. Officer may exercise other functions cumulatively or trades whole entire available time and skill are engaged exclusively in civil service employment.

Also, as a consequence of the obligation to fulfill his duties, the officer is required to maintain and continuously improve their level of training and to keep abreast of all the changes occurring in this situation will be executed at the received it.

b) The obligation to respect the hierarchy in the institution where they work.

The officer is engaged in a public report, and organizing institution may involve to respect the hierarchy. Respect hierarchical order is an obligation, but it must not be understood as a solution to justify breaking the law. Officials located in a higher position have the right to cancel, suspend or modify the orders given by an official of a lower hierarchical position, both for legal reasons and for reasons of undue.

Officials located on a lower hierarchical position can neglect the official order out on a higher position for reasons of legality. Lower hierarchical official can not claim or refuse to execute an order superior because it is not appropriate order.

Public servant's responsibility for how civil service tasks is completed with superior responsibility for drawn orders. If the superior officer considers that it can execute a certain order on the grounds of illegality, he shall inform in writing the originator of the grounds of illegality and if the superior officer asks him also in writing to perform the order, then the official must enforce it, but without the possibility of holding him accountable.

However, these can be refused even if the superior persevere in that order if is a violation of criminal law or safety rules and protected by law.

c) The obligation of impartiality and neutrality

Articles 11, 12, 13, 14 of the Statute provide in detail the task which aims not only civil person, but also his family. If the spouse/husband of the officials develops an activity and makes profit, then the official is required to notify the appointing authority about that. The situation will be assessed and if it is find that the situation is incompatible with the officer, then he/she have to renounce his/hers activity within a specified time, or the public servant will resign or will be dismissed.

It is envisaged that the activities of family members may influence the objectivity and accuracy of the official concerned.

European official is prohibited from seeking or accepting instructions from any government, organization or institution other than that for which he works. Even in the case of granting honors, favors or honorary recognition of merit, it must request express permission to accept these signs of goodwill and recognition of self-worth of the authority vested with the power of appointment.

Official is prohibited from receiving any favors or gifts or remuneration of any kind which might compromise interests and independence in the exercise of its functions. Keeping intact the independence and authority of the public servant assume his abstention from any activity that could compromise his independence and obligation to consult the authority vested with the power of appointment of any possible situation that might affect this independence.

d) Reserve requirement

The civil servant is obliged to justify in writing his refusal of unfulfilling an order and to show a reservation in this aspect.

If the civil servant who gave the order STARUIE, he must formulate in writing.

e) Obligation of discretion and professional secrecy

Obligation of secrecy under which official is to refrain from disclosing any information about which knowledge was acquired in the exercise of his functions. It must be understood as a particular situation of violation the freedom of expression, where officials could dispel details about the work. Statute speaks not only of discretion, but the utmost discretion, which presents a pronounced shade of the obligation in question. Moreover, this obligation is not only the exercise of that function, but even after termination of the Civil Community.

Article 17 of the Staff Regulations, prohibited to publish or to help to be published any text whose purpose intended activity or community interests, unless it is expressly authorized by the competent authority.

The obligation to maintain secrecy about the official has knowledge during or in the exercise of their duties is also a criminal offense in terms of disclosure of official secrecy. This concept does not contradict the idea of transparency in government, it should be seen as a way in which the public can approach the decision of making and finding information is a necessary and required for the public to actively participate in decision-making.

f) Loyalty duty

The relationship that is created by the act of nomination from an official authority or institution they work for is one based on mutual respect and consideration.

Authority vested with power to appoint officials comply with the law and protects the rights of persons performing a service for the public benefit. Therefore it is fair that official is bound by an obligation of loyalty.

The obligation of fidelity takes the form of an obligation to refrain from any action which might reflect on their position or is likely to prejudice, moral or material, the institution where they work.

Fidelity is treated as duty of loyalty to the institution the servant works for. Fidelity and loyalty involves an appropriate professional behavior, both in relationships with strangers of the represented institution and with subordinates and superiors.

g) The obligation of residence

Officials are required to establish residence or domicile in the locality where authority is located or institution for which he works. Officials may be informed that place for skills development for its function is another town. In this case, the officer is obliged to change his residence in the town from which he can bring best job duties.

Of course, these changes of residence or domicile employ a number of expenses for officials concerned and his family. European Servants Statute sets, expressly, that these costs will be borne entirely by the institution or official authority for which are to perform their duties.

In conclusion, in order to meet the requirement of residence, officers are obliged to organize their professional and private life not to affect in any way the maximum yield.

Official is obliged to live not only in the place where they work, but he may choose to establish home in other place, but he must assure that this will not affect his duties.

h) The obligation to conduct a medical examination annually

European officials are obliged every year to renew their medical certificates submitted by the date of personal file to occupy the function.

Isn't prohibited to occupy a position by a person who may have a physical disability, unless the medical certificate of deficiency that makes him unable to perform job tasks.

i) The obligation of morality

While performing his duties as and timeless service the public servant must have a polite and moral conduct, without prejudice to the position and prestige of public servants in general. His life should not assume scandals or any other issues affecting the reputation of the person or put in an unfavorable position of morality a public institution or authority.

At European level was adopted a Code of Professional Conduct, which is part of the Council of Europe Recommendation, the Committee of Ministers on 11 May 2000.

2. Disciplinary offenses

Guilt violation of duties by civil servants, will result in disciplinary, administrative, civil or criminal liability. Disciplinary liability means that the public servant committed a misconduct, and he should be punished for it.

Misconducts are:

- a) systematic delay in performing;
- b) absence from work;
- c) interventions or entreaties to resolve calls outside the legal framework;
- d) disrespectful attitude in the performance of duties;
- e) breach of professional secrecy or confidentiality of documents that have character;
- f) unjustified refusal to perform the tasks and duties;
- g) repeated negligence in performing;
- h) events affecting the prestige of authority or institution of which the official concerned;
- i) expression or conduct as a public official or during working hours, opinions or public political activities;
- j) violation of legal provisions on incompatibilities and prohibitions on civil servants.

Article 86 paragraph 1 of the Statute provides, the offense may be committed by the officer, but also by a the former official. Therefore, it appears that liability is an institution that does not involve the need for a public office report. It may cover not only officials in office, but former officials whose service relationship ended for various reasons, but stopped and liabilities in the case they committed some offense³.

3. Preliminary investigation

Disciplinary sanction may be imposed only after a preliminary investigation of the offense charged and after hearing the civil servant. The hearing shall be recorded in writing, under penalty of nullity. Public official refusal to appear in court or to sign a statement regarding alleged violations shall be recorded in the minutes.

It isn't necessarily to be made an investigation in case of reprimand and warning, which can be applied directly by the chief of department and the civil servant in such circumstances may appeal the complaint to the head of the institution, who will issue the a proposal from the Board, the order or final disposal.

According to Article 5-96 of Annex IX to the Staff Regulations, each institution establish a disciplinary committee. At least one member is chosen from outside the institution, and he can be the president.

The Commission consists in a president and four permanent members, who may be replaced by alternates; if there's involved an official in a grade up to AD 13, the board deliberates two additional members of the same function group and with same grade as the official subject to disciplinary proceedings.

For all cases which doesn't concern officials in grades AD 16 or AD 15, the permanent members of the commission and alternates are appointed from among officers in active AD14 at least.

³ Verginia Vedinas, Calinoiu Constanta, *European civil servant status*, Edition II, Legal Universe Publishing, Bucharest, 2007, p 176.

For cases concerning officials in grades AD 16 or AD 15, committee members and alternates are appointed from among officers in activities that AD 16.

Appointing authority and the Staff Committee shall agree on an ad hoc procedure to appoint two additional members to be part of the commission in cases which involves an official posted to a third country.

Article 6-96 provides that the appointing authority and the Staff Committee shall each appoint the same time, two permanent members and two alternates.

The president and his deputy are appointed by the appointing authority.

The president, members and alternates are appointed for a period of three years. However, institutions may provide for the appointment of members and alternates for a shorter period, but not less than one year.

The two members of the general public are appointed as follows:

(A) the appointing authority shall draw up a list containing, if possible, the names of two officials in each grade in each function group. While Staff Committee shall send the Appointing Authority a list is drawn up in the same way;

(B) within ten days of the report on which the decision initiate disciplinary proceedings, the president chooses, in the presence of the person concerned, from each list the name of one member of the committee. The president may decide to be replaced by the secretary for this procedure. He communicated to the official concerned and each member the commission.

The person concerned has the right to challenge a member of the commission within five days of the establishment. The institution is also entitled to reject a commission member.

In time limit, Board members may ask to be excused to perform their functions for legitimate reasons and shall withdraw from this position if there is a conflict of interest.

If necessary, the president shall draw new lots to replace the appointed members.

Commission under Article 7-96 of the Statute, is assisted by a secretary appointed by the appointing authority.

The president and members of the Commission shall be completely independent. Deliberations and proceedings shall be secret (Article 8-96).

According to art. 12-96 of the Statute, the appointing authority shall submit a report to the Disciplinary Board which must indicate precisely the charges and, if applicable, the circumstances under which they were committed, including any aggravating or mitigating circumstances.

This report is communicated to the official concerned and to the president, who brings him to the attention of committee members.

Upon receiving the report, the official concerned has the right to take on his complete personal file and to take copies of all relevant documents to the proceedings, including the exonerating evidence.

In order to prepare defense official has a term of at least fifteen days after receipt of the report. He may be assisted by a person chosen by him (Article 13-96).

If the officer in question recognizes in front of the President of the disciplinary Board that he behaved inappropriately and accepts unreservedly the report, the appointing authority may withdraw the case from the Board under the principle of proportionality between the nature of the offense and expected sanction. In this case, the president expresses his opinion on the considered penalty.

Under this procedure, the appointing authority may apply, a lighter sanction (referred to in Article 9 paragraph 1 letter. Ad).

Official concerned shall be informed in advance of the consequences it might have had a recognition that misconduct (Article 14-96).

Before the first meeting of the Board, the President shall instruct a member of the committee to prepare a report on all aspects of the case and shall inform the other members of the commission (Article 15-96).

Official concerned shall be heard by the Board, on this occasion, the official may submit comments in writing or orally, in person or through a representative. It may require attendance of witnesses.

The institution shall be represented before the Board by an officer authorized for this purpose and who have equivalent rights to those of the official concerned.

When the investigation was opened by the European Anti-Fraud Office, the committee may hear officials responsible for the investigation of the office (Article 16-96).

If the Commission considers that it hasn't sufficient information on the facts complained of or the circumstances in which they were committed, may opened an investigation into contradictory.

The president of the Board or one of its members of the commission lead the investigation. In the purpose of investigation, the Board may require submission of any documents relating to the case that we investigated.

The institution has an obligation to respond to any request of this nature, the term fixed by the discipline committee. If an officer does not respond to a request addressed to it, is recorded any refusal (Article 17-96).

Based on submitted documents and having considered any written or oral statements and the results of the investigation, the Board shall, by majority vote, shall give a reasoned opinion whether the facts are or aren't true and about the sanction that should be applied.. This notice is signed by all members of the Board. Each member may attach to the opinion a divergent view.

The Commission shall forward its opinion to the appointing authority and the official concerned within two months of receipt of the Authority, provided that this period shall be adapted to the complexity of the case.

If the investigation was conducted at the Board's initiative, the term is four months, provided that this period shall be adapted to the complexity of the case (Article 18-96).

The Board president shall not vote on cases submitted for resolution by the committee, unless they are discussed procedural issues or in case of a tie.

It ensures the implementation of decisions and inform each member all information and documents relating to the case (Article 19-96). The Secretary shall draw up minutes of meetings of the Board. Witnesses shall sign the minutes which contain their depositions (Article 20-96).

4. Disciplinary sanctions⁴

Disciplinary sanctions are provided by Article 9-96 of Annex IX to the Staff Regulations, and they are:

- a) written warning;
- b) blame;
- c) deferment of advancement in rank;
- d) demotion in rank;
- e) temporary downgrading for a period of between 15 days and one year;
- f) downgrading in the same function group;
- g) classification in a lower function group, with or without downgrading;

⁴ Vlad Barbu, *Răspunderea funcționarilor comunitari*, Valahia University Law Study, Volume XIX, issue 1, Bibliotheca Publishing House, Târgoviște, 2012, p.67.

h) dismissal, accompanied, if necessary, by reducing *pro tempore* of the pension or withholding, for a specific period of incapacity benefit without the effects of the sanctions to be extended to the successors in title of the official.

However, in case of such retention, former officer can not be less than the legal minimum subsistence plus, where appropriate, family allowances.

If an official or a retired officer who receives invalidity benefit, the appointing authority may decide to conduct a retain for a period of retirement or disability benefit, without the effects of the sanctions to be extended over his successors. However, his income can not be less than the statutory minimum subsistence plus, where appropriate, family allowances.

a) The warning is the easiest form of official sanction that can be ordered by hierarchically chief without prior research. The main character is that it is a moral sanction, and it's role is that the public servant to acknowledge his mistakes, and to determine him not to repeat such undisciplined behavior. It prevails preventive role against the sanctioning one.

It necessarily applies in writing and the sanctioning document is kept in the personal file of the official concerned.

b) Blame can be applied both in writing and orally, case in which we consider that the effects are strictly moral and preventive for future work of the official. They are applied to infringements that have no great severity, but can be serious if it occurs with serious consequences for both the institution and the official.⁵

c) Temporary suspension of the right to promotion is a sanction affecting the natural course of civil career. Thus, the official can usually move every 2 years since the last promotion. Sanction of suspension of the right to promote the advancement interrupt automatic for reasons related to the official misconduct. Indirectly affected other interests, such as monetary side, since advancement leads to an increase in remuneration.

d) Reduction of degrees is a serious warning consequences of his actions by reducing the remuneration received. Therefore it affects, both career and income.

e) Temporary downgrading is means loss degree due to misconduct and indiscipline for a certain period of time. This sanction strongly affects the career in question. It applies to officials who are not first offenders, because it is a serious sanction for civil activity concerned.

f) Downgrading in the same function group is similar to the previous sanction which mandatory keep the group and no degree.

g) Ranking in a lower function group, with or without relegation is a penalty which leaves an official administrative function group (AD) and bends assistant function group (AST), saving, yet professional degree or, if the offense is serious, losing even professional degree, obtaining a lower one.⁶

h) The suspension is the penalty imposed by the appointing authority for the commission of a serious offense, whether the professional failure, or violation of law. It can be applied to fixed-term or indefinite. Authority make this decision, except in exceptional circumstances, after hearing the official concerned (Article 23).

The decision to suspend the officer must indicate whether in the period of suspension, he continues to receive full remuneration or the remuneration will be a deduction of an amount to be determined by that decision. Paid officials can not take, in any case, less than the legal minimum subsistence representing plus, where appropriate, family allowances.

⁵ Virginia Vedinas, Calinoiu Constanta, *European civil servant status*, Edition II, Legal Universe Publishing, Bucharest, 2007, p 187.

⁶ Virginia Vedinas, Calinoiu Constanta, *European civil servant status*, Edition II, Legal Universe Publishing, Bucharest, 2007, p 189.

The situation of a suspended official must be definitively settled within six months from the date of entry into force of the decision to suspend. When isn't taken any decision within six months, the official concerned regains right to full compensation.

Withholding of wages can be maintained over the six months when the official concerned is prosecuted for the same acts and he's arrested. In this case the officer does not receive full remuneration until the competent court ordered his release.

When the final decision isn't requiring any disciplinary action or doesn't impose a sanction in the form of written warning, reprimand or deferment of advancement in rank temporarily, the official concerned shall be entitled to reimbursement of amounts withheld from his remuneration, increased if which does not apply a penalty with legal interest (Article 25).

i) Revocation of function is the longest penalty applicable for serious misconduct or unfitness for work. It results in termination of service. Revocation may be accompanied by partial or total removal of the right to pension.

5. Sanctions

To individualize disciplinary sanction it shall be take into account the following factors:

- the nature and circumstances of the offense was committed;
- the injury integrity, reputation or interests of the institutions as a result of the offense;
- the extent to which the offense was committed intentionally or negligently;
- reasons which led the officer to commit the offense;
- the level and seniority of the official;
- degree of personal responsibility of officials;
- the duties and responsibilities of officials;
- if the official is the first offense or offenses he committed in the past;
- the servant's behavior throughout his career (Article 11-96).

If disciplinary proceedings result in the application of a sanction the public servant will pay for expenditure for disciplinary proceedings on his initiative and fees for the person he chose to attend or to defense him.

However, the appointing authority may decide otherwise in exceptional cases where such expenses would be unfair for officials concerned (Article 21-96).

After hearing the official, the appointing authority shall take a decision within two months of receipt of the commission. This decision must be substantiated.

If the authority decides to close the case without ruling a disciplinary sanction, it shall immediately inform in writing to the official concerned of the decision. He may request that this decision be inserted in his personal file (Article 22-96).

In case of professional inadequacy, the authorized authority officer shall verify actual skills, then issue a decision thru which dismiss the servant or he goes into a inferior post. The decision to dismiss on lower post must explain the reasons considered for this position and will be communicated to the official concerned before its implementation.

According to the principle of *non bis in idem* it can't be imposed more sanctions for the same offense. This principle is established by statute and Article paragraph 9-96. 3 of Annex IX, which shows that the same act may give rise only to a single disciplinary sanction.

6. Remedies

Any person who is subject of a disciplinary sanction, may address to the authority with a request of adopting a decision. Within four months of the filing date, the authority communicates the reasoned decision to the person concerned. If, on the expiry isn't given any answer, his

absence shall be construed as an implied decision of rejecting the request, which may be contested.

The officials may contest the penalty at the authority, whether or not the authority adopted a decision. The complaint must be lodged within three months.

Period shall be calculated:

- from the date of publication thereof in the case of general measures;
- from the date the recipient's decision no later than the date on which the person is aware of the decision in the case of measures of individual; however, if an act of individual violates another person than the recipient, the period shall be calculated in respect of that other person on the date on which he receives notification thereof but not later than the date of publication;
- the deadline set for reply, when the complaint concerns an implied decision rejecting the application.

Within four months of the appeal being filed, the reasoned decision is communicated to the person concerned. If, on expiry of that period, it doesn't give any answer, his absence shall be construed as an implied decision rejecting the complaint, which can be challenged in court (Article 90).

The Court of Justice shall have jurisdiction in any dispute between the European Communities and any person subject of the statute and regarding the legality of an act adversely affecting the person.

An appeal to the Court of Justice may be allowed only if:

- was submitted in advance a claim against the authority and within the time prescribed by law, and
- the complaint has been rejected by an express or implied decision.

Appeal must be lodged within three months. Period shall be calculated:

- the notification of the decision taken in response to the complaint;
- from the expiry for the reply, if the action is against a decision rejecting the applicant; however, when a complaint is rejected by express decision after being rejected in advance by implied decision, but in the time limit for action, express decision makes running a new term for the appeal.

Notwithstanding, having filed a claim against the authority, the person concerned may lodge an immediate appeal at the Court of Justice, provided that the action is accompanied by a request for suspension of the contested act or to adopt of temporal measures.

In this case, the procedure relating to the main proceedings before the Court of Justice shall be suspended until a decision is taken explicitly or implicitly rejecting the complaint (Article 91). If accepted, the European Court of Justice annuls official sanction applied.

Cancellation penalty is retroactive (*ex tunc*), the official before being restarted.

7. Disciplinary sanctions removal

Disciplinary sanction shall meet:

- preventive function (determines officials to refrain from misconduct);
- the educational (teaching staff to follow a disciplinary regime);
- the function of punishing the guilty for committing offenses.

In virtue of educational function, the law provides that disciplinary sanctions radiates as follows:

- a) reprimand and warning within three years of application, if the public official sanctioned with one of these sanctions and if he has not committed another disciplinary offense in this period;

- b) other penalties, within six years after the deadline for which they were applied, if the public official sanctioned with one of these sanctions has not committed another disciplinary offense during this period (Article 27-96).

So it is provided that official has the right to request erasing sanctions from his personal file (except for revocation or dismissal sanction). Therefore, there isn't a law radiation as it is, for example, in our law, but a check of canceling condition done only at the request of the official concerned.

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