

Disciplinary Accountability in the Financial Area



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***Abstract.** The disciplinary accountability of the personnel from the local public administration is differently regulated, depending on the personnel category. The disciplinary accountability of the civil servants is an administrative-disciplinary accountability regulated by the Law no. 188/1999 concerning the Status of the civil servants and can take place only under the circumstances stipulated by law, while the disciplinary accountability of the persons hired on the basis of the individual work contract is regulated by the Work Law, Law no. 53/2003 and can take place only under the circumstances stipulated by this law. The only basis of the disciplinary responsibility is the disciplinary infringement, that in fact represents a deed related to work, a deed consisting in an action or inaction carried out with guilt by the employee, through which this one broke the legal norms, the internal regulations, the individual work contract or the applicable collective work contract, the orders and the legal dispositions of the hierarchical superiors (Law no. 53/2003, Art. 263, Paragr. 2).*

Key words: disciplinary accountability; disciplinary infringement; disciplinary sanction; civil servant.



The *disciplinary sanctions* are those means of compulsion stipulated by law, with highly educative character, that have as purpose defending the disciplinary order, developing the spirit of being responsible for accurately fulfilling the job duties and respecting the norms of conduct, as well as preventing that indiscipline acts are made.

1. The administrative-disciplinary accountability of the civil servants that operate in the financial field

The administrative disciplinary accountability is based on the existence of an administrative law relation, resulted from an administrative act, namely the act of appointing in a public position (Preda, 1999). There is a legal definition of the disciplinary infringement made by the civil servants that influences directly any attempt to define the institution of the administrative disciplinary responsibility. The

legislator showed that „*if the civil servants break with guilt the duties belonging to their public function and the norms of professional and civic conduct stipulated by law, this represents a disciplinary infringement and leads to disciplinary sanctions*”.

The disciplinary responsibility of the civil servants is an important component of the wider area of the administrative accountability. It fundamentally differs from the disciplinary responsibility specific to the work law. The administrative-disciplinary infringement can be committed only by persons with a special quality, that of civil servants. Analyzing the conditions for the existence of any form of administrative accountability, we realize that for the existence of the administrative disciplinary accountability, certain conditions must be fulfilled, there has to exist administrative disciplinary infringements and sanctions with certain characteristics. All these elements are shown in figure 1.

THE ADMINISTRATIVE DISCIPLINARY RESPONSIBILITY	
Conditions	Characteristics
<ul style="list-style-type: none"> - Unlawful deed (disciplinary infringement) - Damaging result - Cause-effect relationship between the disciplinary infringement and damage - The doer is not a company - The guilt takes all the forms 	<ul style="list-style-type: none"> - It is a form of the administrative accountability, it has a marked character of sanction - It is a form of personal accountability - It is based on breaking a relation of administrative law - It is based on the guilt of the subject - The sanctions do not deprive of freedom
Disciplinary infringements	Disciplinary sanctions
<ul style="list-style-type: none"> - Repeatedly not respecting the work schedule - Systematic delay in doing the works - Unmotivated absences from work - Not respecting the professional secret or the confidentiality - The unjustified refuse to fulfill the job duties - Repeated negligence in solving tasks - Deeds that harm the prestige of the authority or of the public institution where the person works - Breaking the legal provisions concerning incompatibilities, conflicts of interests - Carrying out during the work schedule of activities with political character - The civil servants establish direct relations with the petitioners in order to solve their requests. 	<ul style="list-style-type: none"> - Written reprimand - Diminishing the wage rights with 5-20% during a period of maximum 3 months - Suspending the right of advancing in salary degrees or of promotion over a period of 1-3 years - Passing to an inferior public position over a period of maximum a year, with the appropriate decrease of the salary - Dismiss from the public position
	Individualization of the sanction
	<ul style="list-style-type: none"> - The causes that determined committing the disciplinary infringement - The seriousness of the disciplinary infringement - The circumstances in which the deed was made - The general conduct of the public servant during work - The consequences of the disciplinary infringement - The existence in the antecedents of the civil servant of other disciplinary sanctions.

Figure 1. *The conditions and the characteristics of the disciplinary responsibility, the disciplinary infringements and sanctions*

Under the aspect of the juridical system of procedures, the administrative disciplinary infringements made by civil servants follow an administrative contentious procedure, while all contraventions follow a jurisdictional procedure regulated by the frame-law concerning contraventions. The administrative disciplinary sanctions applicable to the civil servants (Law no. 188/1999, Art. 65, Paragr. 3), Letters a), b), c), d) and e)). The disciplinary administrative sanctions are measures of compulsion with educative effect. Applying them has as purpose defending the order and the discipline in institutions (Preda, 1999). These are:

- *the written reprimand* is the written notification through which the doer of the administrative disciplinary infringement is warned that he didn't accordingly fulfilled his obligations as civil servant;
- *diminishing the salary with 5-20% over a period of maximum 3 months* is mostly a sanction with patrimonial character. The correction is carried out through diminishing the incomes of the infringer;
- *suspending the right of advancing in salary degrees or of promotion over a period of 1-3 years* is a sanction with a compelling character, addressed to the civil servants;
- *passing to an inferior public position over a period of maximum a year, with the appropriate decrease of the salary* is mostly a compelling sanction, but also a sanction with important patrimonial consequences, that applies to infringements that bring serious damage to the company where the doer carries out his activity;
- *dismiss from the public position* is an extreme measure and has as immediate effect that the work relations of the sanctioned civil servant stop.

The individualization of the sanction (Law no. 188/1999, Art. 65, Paragr. 4), that applies after mobilizing the disciplinary accountability of the civil servants, is realized by taking into consideration the causes that determined making the disciplinary infringement, the seriousness of the disciplinary infringement, the circumstances in which the deed was committed, the guilt degree of the doer, the consequences of the disciplinary infringements, the general conduct at work of the doer, the existence in the antecedents of the doer of other disciplinary sanctions that weren't deleted under the conditions of the law. Based on the intimation or on the official finding concerning administrative disciplinary infringements, the management of that company has to order an investigation, according to the Law of the Status of the Civil Servants, according to which the disciplinary sanction is applied only after making the previous investigation of that unlawful deed. Applying the disciplinary sanctions such as the written reprimand can be made directly by the manager of the authority or of the public institution where the sanctioned person works, at the proposal of the chief of the compartment where that person works. If the sanction to be applied is one of the sanctions stipulated by the Law no 188/1999, other than the written reprimand, this can be made only by the manager of the authority or of the public institution, at the proposal of the discipline committee.

The discipline committees are organisms built within each public authority; they have the competency to investigate each infringement made by the public servants from the institution or the respective public authority and to propose a way of sanctioning the persons that are guilty of any disciplinary infringement. These organisms have only the right to make proposals concerning the

opportunity of the sanction and the sanction modality, but the decision belongs to the manager of that authority or public institution. Finding the infringement and applying the sanction is made in writing, through an order issued by the manager of the authority or of the public institution, with the exceptions stipulated by the law, at the proposal of the discipline committee. If the civil servant is dissatisfied with the applied sanction, he can address the administrative contentious instance (Law no. 188/1999, Art. 68), he can ask either the cancellation or the modification of the order. The way the discipline committee is built and the way its activity is carried out is regulated by the Government Order no. 1210/2003 concerning the organization and the activity of the discipline committees and the par committees from within the public authorities and institutions. The disciplinary sanctions can be applied to the civil servants only after the previous investigation of the committed deed and after the hearing of the civil servant, which must be noted down (Law no. 188/1999, Art. 66, Paragr. 3).

2. The disciplinary accountability of the employees (typical for the work law) who work in the financial field

The disciplinary accountability of the employees (the notion of employee defines in this paper the person hired on the basis of an individual work contract) is an institution typical for the work law and consists in a set of legal norms concerning sanctioning the guilty deeds of an employee, no matter the position or job he has, deeds that represent breaking the obligations made through the individual work contract, including the norms of conduct (Ghimpu, 1997). Similar to the civil servants, the disciplinary accountability of the employees has three important functions achieved simultaneously: sanctioning, preventing and educating.

The legal basis of the disciplinary accountability of the employees is the individual work contract. The hierarchical subordination is the consequence of closing the individual work contract and at the same time the legal fundament for the fact that the management is authorized to apply disciplinary sanctions. The disciplinary accountability of the employees defends the internal order from that unit and it can be activated only in the case of the existence of the work relations and not after the ending of the work contract of the guilty person, as it happens in the case of the patrimonial accountability.

The characteristic features of the disciplinary accountability of the employees are similar to the ones of the administrative disciplinary accountability of the civil servants mentioned above. The independence of the forms of juridical accountability, due to differentiating its object of activity from the object of other forms of juridical accountability, has as consequence the possibility of cumulating the accountabilities for a deed unique in its materiality, but that harms several social values protected by law (Ghimpu, 1997). In this way, it is possible to totalize the disciplinary accountability with the material accountability, the criminal accountability, the contravention accountability and with the civil accountability.

In the area of the public finance, the disciplinary sanctions of the persons hired on the basis of an individual work contract do not have special characteristics. These sanctions are (figure 2):

- *the written reprimand;*
- *suspending the individual work contract over a period that cannot exceed 10 working days;*
- *passing to an inferior position, with a proper salary, on a period that cannot exceed 60 days;*
- *diminishing the basis salary on a period of 1-3 months with 5-10%;*
- *reducing the basis salary with 5-10% and/or of the management allowance over a period of 1-3 months*

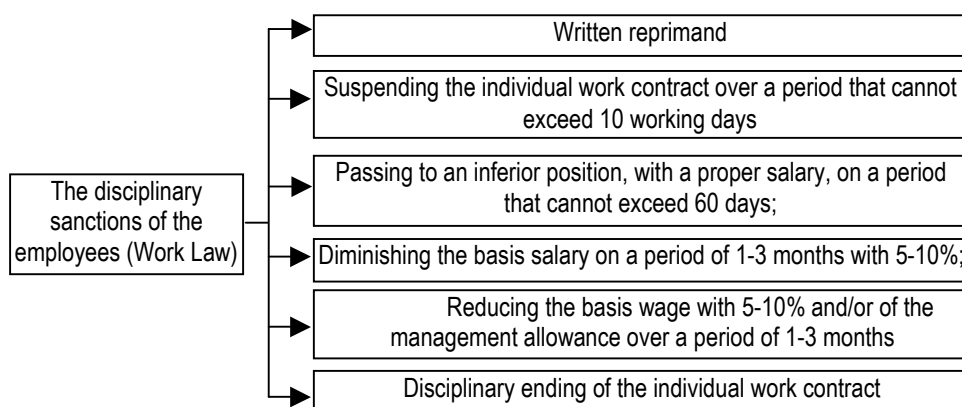


Figure 2. The disciplinary sanctions that can be applied for financial infringements to the persons hired on the basis of the individual work contract

The *disciplinary ending of the individual work contract* is the most serious disciplinary sanction regulated by the Work Law and has as effect the ending of the work relation at the initiative of the unit due to very serious acts of indiscipline. Through professional statuses approved through special laws, another system of sanctions can be established for certain categories of employees.

Applying disciplinary sanctions. The disciplinary sanction is applied according to some rules of procedure with the role of guaranteeing the exact establishment of the facts, to guarantee the right of self defense for those persons and to ensure the efficiency of the struggle against the disciplinary infringements that disturb the community of that unit. „The disciplinary action”, as called in the literature (Ghimpu, 1997), is not an action from a jurisdictional perspective, but a privilege of the ones that manage the work process having as ground the individual work contract. For the same disciplinary infringement, one can apply only one disciplinary sanction. The employer establishes the applicable disciplinary sanction, depending on the seriousness of the disciplinary sanction and takes into consideration the following elements: the circumstance in which the deed was made; the guilt degree of the employee; the consequences of the disciplinary infringement; the general conduct of the employee at work; the possible previous disciplinary sanctions. The disciplinary sanctions, except for the written reprimand, can be applied only after carrying out a previous disciplinary investigation. The disciplinary investigation is made by a person appointed by the employer. If the sanction is ordered without a previous disciplinary

investigation, the act that ordered the sanction (sanction decision) is null (Law no. 53/2003, Art. 267). For a correct previous disciplinary investigation, the employee will be convened in writing. The paper will include the object, the date, the hour and the place of the meeting.

The disciplinary sanction decision. The disciplinary sanction is found and applied through a sanction decision that is not a jurisdictional paper and therefore can be revoked. The decision of disciplinary sanction is issued under a written form, within 30 calendar days from the information date, but no later than 6 months after the deed. The decision that orders the disciplinary sanction must obligatorily comprise the following elements, otherwise it is null: the description of the deed that represents a disciplinary infringement; mention of the provisions from the personnel status, the internal regulations or the applicable collective work contract that were broken by the employee, the reasons why the defensive arguments brought by the employee during the previous disciplinary investigation were not taken into account or the reasons why the investigation was not carried out; the norm that was broken; the term within which the sanction can be contested. The sanction decision is communicated to the sanctioned persons within maximum 5 calendar days from the issue date and causes effects starting with the communication date. The communication is given in person to the employee, under signature, or, if he refuses to receive the decision, through letter, at the domicile or the residence communicated by the employee. The sanction decision can be contested by the employer in court, within 30 calendar days from the communication date.

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