

DISCIPLINARY LIABILITY OF CIVIL SERVANTS. ASPECTS OF THE ADMINISTRATIVE AND JUDICIAL PRACTICE

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Abstract: *This study reviews some aspects of the administrative and judicial practice regarding the disciplinary liability of civil servants, drawn by the commission of a disciplinary offence which, according to law, is the guilty violation of the civil service duties and the rules of professional and civic conduct prescribed by law.*

The application of the civil servant's disciplinary sanction must comply with the terms and conditions provided by Law no. 188/1999 on the Statute of civil servants, as republished, as well as by the Government Decision no. 1344/2007 for the approval of the Rules of organization and functioning of the disciplinary committees. It is in the jurisdiction of the courts to verify the lawfulness of the administrative deed for the application of the disciplinary sanction in terms of compliance with the relevant regulations.

The reports on the monitoring of observance of the rules of conduct by civil servants and the implementation of disciplinary procedures prepared and published by the National Agency of Civil Servants, following the collection of data transmitted by public authorities and institutions on court solutions in case the sanctioning administrative deeds are challenged, reveal an increase in the number of cases in which the court annulled the administrative deed by which the disciplinary sanction was applied.

Even though these reports mainly contain statistical data, they are considered as monitoring tools that can lead to the improvement and increase of the civil service quality.

Keywords: *civil servant's disciplinary liability, application of disciplinary sanction, limitation period, sanctioning administrative deed, obligation to describe the deed, absolute nullity sanction, solutions of the courts*

JEL Classification: *K4, K40*

1. Preliminaries - regulation of disciplinary liability of civil servants

In our approach to analysing some aspects regarding the **disciplinary liability of civil servants**, we will refer to the provisions of *Law no. 188/1999 on the Statute of civil servants*, as republished,¹ with subsequent amendments and completions, the *Government Decision no. 1344/2007 on the Rules of organization and functioning of the disciplinary committees*,² as subsequently amended and supplemented, as well as the case law of the High Court of Cassation and Justice on the application of disciplinary sanctions, taking into account certain doctrinal reference points and administrative statistics published on this matter.

Law no. 188/1999, republished, as subsequently amended and supplemented, provides in Art. 77 par. (1) **the meaning of the disciplinary offense notion** as follows:

*“The guiltily violation by the civil servants of the civil service duties they hold and the professional and civic conduct rules stipulated by the law constitutes a **disciplinary offense** and entails their disciplinary liability.”*³

1 Published in the Official Gazette of Romania, Part I, no. 600 of December 8, 1999, republished in the Official Gazette of Romania, Part I, no. 251 of March 22, 2004, republished in the Official Gazette of Romania, Part I, no. 365 of May 29, 2007.

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

3 Art. 77 par. (2) of the Law no. 188/1999, republished, as subsequently amended and supplemented, provides the following **deeds which constitute a disciplinary offence**:

- a) systematic delays in carrying out the works;*
- b) repeated negligence in solving the works;*
- c) unjustified absences from work;*
- d) repeated non-compliance with the working hours;*
- e) interventions or requests for the settlement of requests outside the legal framework;*
- f) failure to observe professional secrecy or confidentiality of such works;*
- g) acts that bring prejudice to the prestige of the public authority or institution in which they operate;*
- h) carrying out activities of a political nature during the working hours;*
- i) refusal to perform work duties;*
- j) violation of the legal provisions regarding the duties, incompatibilities, conflicts of interests and prohibitions established by law for civil servants;*
- k) other deeds foreseen as disciplinary offence in the laws in the field of civil service and civil servants.”*

Art. 77 par. (3) of the same law provides for the following **disciplinary sanctions**:

- „a) written reprimand;
- b) reduction of the salary rights by 5-20% for a period of up to 3 months;
- c) suspension of the right to advance in salary grades or, where appropriate, the right to promote to the civil service for a period of 1 to 3 years;
- d) relegation in the civil service for up to one year;⁴
- e) dismissal from the civil service.”

According to Art. 77 par. (5) of Law no. 188/1999, republished: „Disciplinary sanctions shall be applied no later than 1 year from the date when the disciplinary committee was notified of the disciplinary offence, but not later than 2 years from the date when the disciplinary offence was committed.”

In a simple grammatical interpretation of the cited law, given the use of the conjunction „but”, it is unambiguously understood that the two terms apply *cumulatively* and not *alternatively*.⁵

The rules of organization and functioning of the disciplinary committees, approved by the Government Decision no. 1344/2007, provide in Chap. III - *Disciplinary procedure*, and in Chap. IV - *Applying and challenging the disciplinary sanction*, Art. 50 par. (3): „Under the sanction of absolute nullity, the sanctioning administrative deed will necessarily include the description of the deed constituting a disciplinary offense (...).”

Compliance with the terms and conditions laid down by the regulations in force remains at the discretion of the competent courts to exercise control over the legality of disciplinary sanctioning administrative deeds against civil servants.

2. Legal terms and conditions regarding the application of disciplinary sanctions

2.1. Limitation period on the application of the disciplinary sanction of civil servants

By *Civil sentence no. 433 of October 5, 2011*, the Timișoara Court of Appeal – The Administrative and Fiscal Litigation Department ordered the

⁴ Letter d) par. (3) of Art. 77 was amended by section 5 of Art. 41 of the Framework Law no. 284/2010, published in the Official Gazette of Romania, Part I, no. 877 of December 28, 2010.

⁵ See: Nicolae Popa, *The general theory of law*, Actami Publishing House, Bucharest, 1997, pp. 277-278: A. *Grammatical method*; B. *Systematic method*.

annulment of the *Order of the President of the National Agency for Fiscal Administration (A.N.A.F.) no. 2111 of May 19, 2011*, the court holding the following:⁶

By Order of the President of A.N.A.F. no. 2111/2011, communicated to the applicant on 20.05.2011, he was applied a disciplinary sanction by the reduction of the salary rights by 10% over a period of two months, based on Art. 77 par. (5), previously quoted, (...)⁷.

(...) on 28.04.2010 *the notification for starting the disciplinary investigation of the applicant, accompanied by the fact-finding report describing the state of facts considered to have revealed the commission of a disciplinary offence* was registered with the disciplinary committee of the National Customs Authority of Bucharest (*competent to carry out the disciplinary investigation*).

The court of first instance found that *„on April 28, 2010, the 1-year time limit within which the disciplinary sanction for the applicant had to be applied, has begun to run, and the disciplinary sanctioning order was issued after its expiration on 19.05.2011.”*

In order to decide, the Court of Appeal concluded that *„whereas (...) there were no grounds for suspending or interrupting the limitation period, the aforementioned time limit, regulated by Art. 77 par. (5) of Law no. 188/1999 expired prior to the issuance of the sanctioning order.”*

6 See, Decision no. 1107 of March 1, 2012, the High Court of Cassation and Justice - the Administrative and Fiscal Litigation Department. *Civil servant. Disciplinary liability. Limitation period*. Available at the I.C.CJ website: <http://www.scj.ro/1093/Detalii-jurisprudenta> (...), accessed on 11.02.2018. Our trans.

7 (...) based on Art. 75, Art. 77 par. (1), par. (2) j), par. (3) b), par. (4), par. (5), Art. 78 par. (3) and Art. 79 par. (1) of Law no. 188/1999, corroborated with Art. 50 par. (1), par. (3) and (4) of GD no. 1344/2007.

Law no.188/1999, republished, provides as follows:

Art. 75 *The guiltily infringement by civil servants of work duties entails disciplinary, contravention, civil or criminal liability, as the case may be.*

Art. 77 par. (1) *The guiltily infringement by civil servants of the duties corresponding to the civil service they hold and the professional and civic rules stipulated by the law constitute a disciplinary offense and entails their disciplinary liability.*

Art. 79 par. (1) *Disciplinary committees shall be established for the analysis of the facts notified as disciplinary offenses and the proposal of the disciplinary sanction applicable to civil servants from public authorities or institutions.*

GD no. 1344/2004 states: Art. 50 par. (1) *Within 10 calendar days of receipt of the report of the disciplinary committee, the person having the legal competence to apply the disciplinary sanction shall issue the sanctioning administrative deed.* Our trans.

(...) Please note that the other relevant normative provisions are quoted selectively in this study.

The National Customs Authority through the Regional Office for Excise and Customs Operations Timișoara and the National Agency for Fiscal Administration appealed against this sentence, the following criticism being affirmed (section 2.1 of the High Court of Cassation and Justice (ICCJ) Decision no. 1107/2012): *„the court of first instance misinterpreted the provisions of Art. 77 par. (5) of Law no. 188/1999 republished, ignoring that the disciplinary sanction was applied on 19.05.2011, therefore within the 2-year time limit from the date of the disciplinary offence - 19.11.2009.”*

By **Decision no. 1107 of March 1, 2012, the High Court of Cassation and Justice** established that the *appeals were unfounded for the following reasons* (section 2.2):

(...) the court of first instance judiciously held,⁸ the competent Disciplinary Committee was notified on 28.04.2010 and the sanction was applied by Order no. 2111 of 19.05.2011, which means the violation of the 1-year time limit stipulated in Art. 77 par. (5) of Law no. 188/1999, republished.

From the interpretation of the law quoted, the court of appeal held that *„the two time limits are not alternative, and it is mandatory that the application of the disciplinary sanction be circumscribed to both time limits, otherwise non-observance of any of them constitutes a vice of illegality. The solution of the court of first instance is legal and sound, and the appeals are consequently rejected as unfounded.”*

In the specialized doctrine:⁹ *„The imposition by law of such a time limit leads to the conclusion that the disciplinary procedure must enjoy a certain degree of expedience, (...). The reason for this time limit can be as follows: in order that the disciplinary liability be able to achieve the objectives that characterize any form of legal liability, namely punitive, educational and preventive. (...) the recipients are all civil servants of the respective public authority or institution who, according to the proverb, learn not only from their own mistakes but also the mistakes of others.”*

Therefore, the period stipulated by the law for the application of the disciplinary sanction *(at most 1 year from the date when the disciplinary committee was notified, but not later than 2 years from the date when the*

⁸ Civil Sentence no. 433 of October 5, 2011 Timișoara Court of Appeal - Administrative and Fiscal Litigation Department, on the annulment of the *Order of the President of the National Agency for Fiscal Administration* no. 2111 of 19.05.2011.

⁹ Verginia Vedinaș, *Statute of Civil Servants, Comments, doctrine, legislation, case law*, Universul Juridic Publishing House, Bucharest, 2009, p. 294. Our trans.

disciplinary offence was committed) must be mandatorily observed by public authorities and institutions.

In our view, this time limit can be considered as *reasonable*, the aim of the legislator envisaging the observance of the *civil servant's right of defence* and the *expedience* with which the *disciplinary investigation procedure* under the responsibility of the public entity must be carried out so that facts that may constitute disciplinary offences of a certain severity do not remain outside investigation/sanctioning.¹⁰

2.2. Description of the deed constituting disciplinary offence in the content of the administrative deed sanctioning the civil servant, a mandatory condition

By Civil Sentence no. 535 of March 31, 2010, the Timiș Tribunal dismissed the application made by the applicant L.M. against the defendants Timișoara represented by the Mayor and Mayor of Timișoara.¹¹

The purpose of the action was to annul *the Mayor's Order no. 803 of April 1, 2009, which imposed the disciplinary sanction of relegation to a civil service inferior to the position held*, the obligation of the defendants to pay the salary rights related to the position occupied before the decision was issued (...).

¹⁰ Please note that Art. 28 par. (2) of GD no. 1344/2007 provides that: *A notification shall be lodged within a maximum of 1 year and 6 months from the date of the offense referred to as disciplinary offense (...).*

Referring to this time limit of referral to the disciplinary committee, see PhD Univ. Lecturer Alin Trăilescu, Universitatea de Vest of Timișoara, Faculty of Law, *Some considerations on disciplinary investigation of civil servants*, Annals of the Universitatea de Vest of Timișoara, Drept Series, p. 73, available at <https://drept.uvt.ro/administrare/files/1481047525-lect.-univ.-dr.-alin-tra--ilescu.pdf>, accessed on 15.02.2017:

"However, the solution to range the referral cannot be accepted simply because the referral has not been registered with the disciplinary committee within 1 year and 6 months from the date when the disciplinary offense was committed when, for example, the disciplinary offense was discovered after the expiration of this time limit, but within the 2-year term from the date of the offense in which, according to the law, the disciplinary sanctions can be applied." Our trans.

¹¹ See, Civil Decision no. 1030 of October 12, 2010, Timișoara Court of Appeal - Administrative and Fiscal Litigation Department. *Civil servant. Decision on disciplinary sanction. Failure to state reasons.* Category: *Case law and administrative litigation test cases.* Available on site: <https://legeaz.net/spete-contencios/functionar-public-decizie-de-sanctionare-554-2004>, accessed on 11.02.2018.

By the Civil Decision no. 1030 of October 12, 2010 the Timișoara Court of Appeal, the Administrative and Fiscal Litigation Department¹² upheld the applicant's appeal and amended the entire sentence under appeal, found the nullity of the *Timișoara Mayor's Order no. 303 of April 1, 2009* and ordered the defendants to pay the salary rights due to the civil service held prior to the issuance of the decision. The judicial review court held that: „by the *Timișoara Mayor's Order under no. 803 of April 1, 2009*, the applicant was applied a disciplinary sanction by relegation in the civil service, (...) for a period of 6 months, for disciplinary offences consisting in systematic delay in performing the work, repeated negligence in resolving works and breaching the legal provisions relating to duties, incompatibilities, conflicts of interest and prohibitions established by law for civil servants.”¹³

The applicant alleged before the first court that: „the sanctioning decision does not specifically include the deed held in its charge and has entailed the application of the contested sanction, lacking an essential requirement in that regard, namely the reasoning of the administrative deed.”

The first instance rejected the applicant's defence, considering that: „in the sanctioning provision, the offences made are listed with reference to the provisions of Art. 77 par. (2) letter a), b) and j) of Law no. 188/1999 republished, and this reasoning corresponds to the legal requirements since an express provision imposing another form of description of the deed cannot be identified in the Law on the Statute of civil servants”. The court of appeal found that „these arguments cannot be endorsed, since, according to the provisions of GD no. 1344/2007, Chap. 4, application and contestation of disciplinary sanctions, Art. 50 par. (3), the administrative sanctioning deed shall include under the sanction of absolute nullity the following elements: the description of the deed constituting an offense (...).¹⁴ It follows that **the**

12 See, Civil Decision no. 1030 of October 12, 2010, Timișoara Court of Appeal - Administrative and Fiscal Litigation Department, Portal> TIMIȘOARA Court of Appeal> File Information, *Solution in brief*. Available on site: [http://portal.just.ro/59/SitePages/Dosar.aspx\(...\)](http://portal.just.ro/59/SitePages/Dosar.aspx(...)), accessed on 11.02.2018.

13 Provided by Art. 77 par. (2) a), b) and j) of Law no. 188/1999 republished.

14 Art. 50 par. (3) of GD no. 1344/2007 provides: *Under the sanction of absolute nullity, the administrative sanctioning act shall mandatorily include:*

- a) a description of the deed constituting a disciplinary offense;
- b) the legal basis on the basis of which the disciplinary sanction is applied;
- c) the reason for which a sanction other than that proposed by the disciplinary committee was applied, in the situation stipulated in par. (2);
- d) the time limit in which the disciplinary sanction can be challenged;
- e) the competent court to which the administrative deed by which the disciplinary sanction has been disputed, can be challenged.

description of the deed constituting an offence is a mandatory and distinct condition of the administrative sanctioning deed, the lack of which being sanctioned by a legislator with absolute nullity.”

The Court of Appeal also pointed out that *„the sanctioning deed cannot be completed with regard to the mention on the description of the offense with the report of the disciplinary committee issued, even if, according to the provisions of the same Art. 50, it must be attached to the sanctioning deed. (...) the requirement relating to the description of the deed constituting a disciplinary offense does not imply the reproduction of the text of the Law on the Statute of civil servants (...)”*¹⁵.

From this perspective, the court of appeal concluded that: *„the person who has the power to enforce the sanction by means of the administrative sanctioning deed (...) must specify in concrete terms the actions committed by the applicant and the court vested with the exercise of legality control will verify whether the facts thus described fall within the notions of disciplinary offence regulated by Art. 77 par. (2) a), b) and j) of Law no. 188/1999 republished.”*

The Timișoara Court of Appeal upheld the appeal brought by the appellant L.M. and amended the entire sentence under appeal in that it found the nullity of the *Provision no. 803 of April 1, 2009 issued by the Mayor of Timisoara* and ordered the defendants to *pay the salary rights owed for the civil service held prior to the decision.*¹⁶

In our view, in the light of the provisions on the *grounding of administrative deeds*, as also provided by *Law no. 24/2000 on legislative technical rules for the drafting of laws*,¹⁷ republished, with subsequent amendments and completions, the provisions of Art. 50 par. (3) a) in the GD

15 *The Law on the Statute of civil servants, which at Art. 77 a) and b) declares as disciplinary offences the systematic delay in carrying out the works and the repeated negligence in solving the works; and in j) it establishes as a disciplinary offense the violation of the legal provisions regarding the duties, incompatibilities, conflicts of interests and prohibitions established by law for civil servants.*

16 Civil decision no. 1030 of October 12, 2010, the Timișoara Court of Appeal, the Administrative and Fiscal Litigation Department: *“(...) in order to ensure the full reparation of the damage suffered by the applicant and his return to the situation prior to the issuing of the administrative sanctioning deed, the defendants were obliged to payment to the applicant of the salary rights payable for the civil service held prior to the decision.”* Our trans.

17 *Law no. 24/2000 regarding the legislative technical rules for the drafting of laws*, republished in the Official Gazette of Romania, Part I, no. 777 of August 25, 2004. See Art. 31 par. (1) a) *The presentation and motivation tool includes the content of the assessment of the laws impact, comprising the following sections: the reason for issuing the legislative act; (...).*

no. 1344/2007, according to which *the administrative sanctioning deed will necessarily include, under the sanction of absolute nullity, the description of the deed constituting an offense*, establishes an element involving the *grounding of the administrative deed*, considering that the aspects of the description of the deed are already presented in the *report of the disciplinary committee* drafted, which is *attached to the administrative deed, under the sanction of absolute nullity*, according to the same Art. 50, par. (4).

3. Aspects resulting from the monitoring of compliance with the rules of conduct

The comparative analysis of the *Reports on the monitoring of compliance with the rules of conduct by civil servants and the implementation of disciplinary procedures*, for the 1st semester - 2017 and 1st semester - 2016, published by the National Agency of Civil Servants¹⁸, (A.N.F.P.), points out some issues that may be a reference point in addressing the administrative phenomenon in terms of disciplinary administrative liability of civil servants, which should be dealt with by preventive measures applied before the disciplinary procedure rather than by corrective measures.

Regarding the *reasons for the notifications*, following the reports received from public authorities and institutions, for the 1st semester - 2017, A.N.F.P. found that: *„the same reasons for notifications are maintained as in the previous periods, with the preponderant ones regarding the way of performing work duties”*¹⁹.

Regarding *the duration of the administrative investigation*, from the reports sent to A.N.F.P. the following data resulted:²⁰

18 The National Agency of Civil Servants, the *Report on the monitoring of compliance with the rules of conduct by civil servants and the implementation of disciplinary procedures*, Semester I - 2016, published in October 2016 and the *Report on monitoring the observance of rules of conduct by civil servants and the implementation of disciplinary procedures*, Semester I - 2017, published in October 2017, available at: <http://www.anfp.gov.ro/continut/Rapoarte> (...).

19 A.N.F.P., *Monitoring Report* (...) Semester I - 2017, doc. quot., Chap. 6.1.4 - *Reasons for referrals*, p. 16: “*violation of legal provisions relating to duties, conduct affecting the prestige of the public authority or institution; inadequate attitude towards the beneficiaries of the civil service; non-fulfilment of the job duties according to job description; carrying out activities of a political nature during working hours; negligence in performing the work; misconduct of job duties; inappropriate behaviour towards the public service beneficiaries; unmotivated absences from work; non-compliance with the working hours.*” Our trans.

20 A.N.F.P., *Monitoring Reports* (...), Semester I - 2016, Semester I - 2017, doc. quot., Chap. 6.1.5 - *Duration of administrative investigation*, p. 16. Our trans.

- for the first semester of 2016, the duration of administrative investigation is generally between 1 and 3 months (248%), followed by periods ranging from 4 to 6 months (60%), 7-9 months (14%) and 10-12 months (38%);
- for the first semester of 2017, the duration of administrative investigation is generally between 1 and 3 months (188%), followed by periods ranging from 4 to 6 months (70%), 7-9 months (29%) and 10-12 months (36%).

Although these data cannot be considered as absolute since they have to be reported to the number of public authorities and institutions that provided the information, there is a certain increase in the length of administrative investigation at certain intervals.

Regarding the *civil servants' unfulfilled obligations*, on the basis of the reports of the public authorities and institutions, the same legal grounds were identified as the basis of the proposals for disciplinary sanction, representing obligations regulated by law, violated by civil servants, both in the first semester of 2016, as well as in the first semester of 2017, as follows: „*the failure to perform the duties within the established deadlines; non-compliance with working hours and unjustified absences from work; violation of legal provisions on duties, incompatibilities and conflicts of interest; non-compliance with internal regulations and procedures.*”²¹

Regarding *the proposals made by the disciplinary committees* and the disciplinary sanctions applied, the published data show a decrease in the number of disciplinary sanctions applied (the percentage of disciplinary sanctions applied, in relation to the number of civil servants targeted by the referrals solved by the discipline committee, was 27.04% in 2016 and 26.98 in 2017 respectively):

- in the first semester of 2016 „*a number of 360 referrals resolved by the disciplinary committees were reported to the Agency on 514 civil servants*”; „*139 disciplinary sanctions were applied,*” (...);

- in the first semester of 2017 „*disciplinary procedures regarding 315 civil servants were reported as completed to the Agency*”; „*85 disciplinary sanctions were applied,*” (...).²²

21 Ibidem, Chap. 6.2.2 - *Obligations not fulfilled by civil servants*, p. 19-20. Our trans.

22 Ibidem, Chap. 6.2.1 - *Proposals by the disciplinary committees*, pp. 18-19. Semester I - 2016: „*Of these, the disciplinary committees put forward proposals for ranking 234 civil servants and 33 were sent to criminal investigation bodies.*” Semester I - 2017: „*Of these, 139 proposals for disciplinary sanctions were formulated, (...), 171 were ranked, and 5 were transmitted to criminal investigation bodies.*” Our trans.

In the A.N.F.P. Reports for semester I - 2016 and semester I - 2017 it is stated that:²³ „*For the reporting period, compared with the same period of previous years, a small number of disciplinary sanctions are being challenged in court.*”

On the other hand, regarding ***the solutions of the courts in the case of challenging the administrative sanctioning deeds***, following the collection of the data transmitted by the public authorities and institutions, an increase in the number of cases in which the court annulled the administrative deed by which the sanction was applied, can be noticed:²⁴

„*With regard to the judgments in which the courts have definitively ruled on disciplinary sanctions applied before the reporting period, 2 cases were maintained and in 8 cases the court annulled the administrative deed by which the sanction was applied*” during the 1st semester of 2017;

„*Only in 5 cases the court annulled the disciplinary sanction originally ordered*” during the 2nd semester of 2016.²⁵

Please note that the *sample on which the evaluation was made is considered to be representative.*²⁶

Taking into account the information communicated by the public authorities and institutions, the National Agency of Civil Servants concludes that: “*The previous observations were maintained according to which, on the basis of the submitted reports, statistical data, consisting of quantitative and less qualitative data, were obtained on the basis on which to draw relevant conclusions and concrete lines of action; (...) the analysis can be a regular monitoring tool to improve and enhance the quality of public service.*”²⁷

23 A.N.F.P., *Monitoring Report (...)*, Semester I - 2017, doc. quot., Chap. 6.4 - ***Solutions of the courts in case of challenging the administrative sanctioning deeds***, p. 21: „*Thus, following the collection of the data transmitted by the public authorities and institutions, 12 situations in which the disciplinary sanctions were challenged by the civil servants, were recorded.*” Our trans.

24 A.N.F.P., *Monitoring reports (...)*, Semester II - 2016, published in April 2017, Semester I - 2017, doc. quot., Chap. 6.4, p. 21.

25 A.N.F.P., *Reports on monitoring the compliance with the rules of conduct by civil servants (...)*, Chap. 6.4, for the 1st Semester - 2015 and 1st Semester - 2014, indicate only *one case in which the court cancelled the administrative deed by which the sanction was applied*, and for the 2nd Semester - 2016, 2nd Semester - 2015 and 2nd Semester - 2014, there are no indications on this matter.

26 A.N.F.P., *Monitoring reports (...)*, 1st Semester - 2016, 2nd Semester - 2016, 1st Semester - 2017, doc. quot., Chap. 7.2.2 - *Relevance of reporting*, p. 23: “*(...) the sample on which the evaluation was carried out is considered to be representative, taking into account the fact that the reporting system has been modified by operationalizing the on-line platform.*” Our trans.

27 A.N.F.P., *Monitoring report (...)*, 1st Semester - 2017, doc. quot., Chap. 8 - *Conclusions and recommendations*, p. 24.

Conclusions

We note that the provisions of the Government Decision no. 1344/2007 were no longer amended and/or supplemented since 2009²⁸, with the stipulation that Art. 50 par. (3) of its content is still in force in its original form.

In our opinion, Government Decision no. 1344/2007 has to be amended and completed in a correlation with the legal provisions regarding the *grounding* of legislative/administrative deeds, for the purpose of presenting in the instruments of motivation the elements *describing the deed constituting an offence* (as well as ... *the reason for replacing the disciplinary sanction proposed by the disciplinary committee*), reasoning that accompanies the administrative sanctioning deed, as the deed is already presented in the *report of the disciplinary committee*, which is attached to the administrative sanctioning deed, under sanction of absolute nullity, according to the provisions of the same legislative instrument.

From the analysis of the data published in the contents of the A.N.F.P. Reports for the years 2015-2017, there can be noticed an increase in the number of cases in which the court annulled the administrative deed by which the disciplinary sanction was applied, even if they can only be considered relative, in the report with the number of public entities communicating data, the length of cases being settled before the courts, the accuracy of the reports, and other possible factors that exceed or may be omitted from our analysis.

In these circumstances, we can assume that continuous professional development in the field could be a solution, for the members of the disciplinary committees, if not necessarily, even with a recommendation value, given the variety and complexity of administrative cases and solutions by the courts in litigation with this object.

Selective references:

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²⁸ The original text of the Government Decision no. 1344/2007 was amended and completed by: Government Decision no. 787/2008, Government Decision no. 1.268 / 2008, Government Emergency Ordinance no. 35/2009.

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