



ORIGINAL PAPER

# Leveraging Institutions in Transition: The Role of the College of Physicians in Romania and Other Disciplinary Commissions in the Process of Applying the Law

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## Abstract

In addition to the courts and authorities of central and local government, a significant role in the application of law is played by public and professional autonomous institutions with administrative-judicial attributions: the College of Physicians in Romania, the College of Pharmacists of Romania, the Superior Council of Magistracy, disciplinary committees within the educational establishments, public authorities and institutions etc. Disciplinary boards and committees established within these institutions are competent to investigate and punish disciplinary offenses committed by employees in a particular field or area, working in specialties (functions) of their activity domain (doctors, pharmacists, magistrates, teachers etc). For staff who occupy positions of leadership, guidance and control, special laws and disciplinary statutes may establish the proposal of sanction in the competence of the heads of ministries. Settlement of complaints or appeals against disciplinary sanctions applied to those practising in certain fields of activity also enters in the competence of disciplinary committees and colleges of discipline. These structures are working in the concrete administration of justice having a role in the process of applying the law.

**Keywords:** *jurisdictional activity, disciplinary offense, appeal, sanction, College, Commission of discipline*

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### **Introductory remarks**

After the 1989 revolution, Romania's efforts have focused on reforming the state apparatus, particularly involving "the acquisition and consolidation of a modern and efficient administration capable of providing the necessary coherence and coordination in cooperation with the ministries and institutions involved" (Avram, Popescu, Radu, 2006: 18). Institutional reform aimed at all public institutions, the central and local public administration, as well as autonomous administrative authorities.

Being an instrument of social control, sanctions, as means of implementing the law, prevent disruption, ensure the cohesion of communities, define the general framework of social processes and penalise deviant behaviours. The sanctions constitute a particularly important component in any legal system and a means of intervention in regulating social relations mechanisms. They are one of the essential ways of achieving the right, ensuring strict observance of the laws by all subjects of law and, thereby, the very effectiveness of law as general system of developing social processes and sanctioning deviant behaviors. In addition to the courts and authorities of central and local public administration, an important role in the work of applying the law is played by the professional bodies with regulatory and judicial powers in their field of activity. Such bodies are: the College of Physicians in Romania, the College of Pharmacists of Romania, the Superior Council of Magistracy, the disciplinary committees of the educational establishments, public authorities and institutions etc.

### **The College of Physicians in Romania**

One of the institutions analysed is the College of Physicians in Romania (CMR), a professional, non-political body, without patrimonial purpose, of public law, with responsibilities delegated by the State authority, within the scope of authorization, control and supervision of the medical profession as a liberal profession. In the exercise of its powers as laid down by Law no. 95/2006 on the healthcare reform, the College of Physicians in Romania has institutional autonomy within its sphere of competence and shall exercise its powers without any interference. In its activity, the regulatory powers of CMR consist in drafting and adopting the Statute of the College of Physicians in Romania and the code of medical ethics, as well as in the regulation of advertising of medical activities. It also has an advisory role in the development of guidelines and protocols of medical practice by specialized commissions of the Ministry of Health and in the development of the framework contract of health insurance by the National House of Health Insurance (Radu, 2009: 46, 61-62). CMR maintains collaboration relationships with the Ministry of Public Health in the preparation of rules on the exercise of the profession of physician on the Romanian territory, in drafting the Nomenclature of medical, dental and pharmaceutical specialties in healthcare network, in drafting the topics and methodologies for competitions and examinations for doctors, as well as the medical criteria for the selection of patients for some types of treatment available in limited number.

As a professional body with judicial competence, CMR shall prosecute deviations from the norms of professional ethics, deontology and medical rules for good professional practice. The doctor is disciplinarily liable for the infringement of the laws and regulations of the medical profession, of the code of medical ethics, of the rules for good professional practice, and of the status of the College of Physicians in Romania, for failure to comply with binding decisions adopted by the governing bodies of the CMR, as well as for any

acts committed in connection with the profession, which are likely to damage the honor and prestige of the profession or of the CMR.

CMR is organized and operates on territorial criteria, at the national and county level, and also at the municipality of Bucharest level. Between the College of Physicians in Romania and territorial colleges there are relations of functional, financial and organizational autonomy. Pursuant to article 444 of Law no. 95/2006 on healthcare reform, a disciplinary committee is organized within each territorial college, independent of the leadership of the College, which judges disciplinary breaches committed by doctors enrolled in the College. The High Commission for Discipline is organized and operates in the College of Physicians in Romania, independently of the college leadership, which sits in panels of five members and judges appeals against decisions of territorial disciplinary commissions. Trial procedure is stipulated in the Statute of the College of Physicians in Romania.

### **The College of Pharmacists of Romania**

Another representative body with legislative and jurisdictional activity is the College of Pharmacists of Romania (CFR). According to article 576 of Law no. 95/2006 on healthcare reform, the College of Pharmacists of Romania is a professional body, apolitical, non-profit, of public law, with responsibilities delegated by the state in the domain of the authorization, control and supervision of the pharmacist profession as a liberal profession. The College of Pharmacists of Romania has institutional autonomy in its field of competence. At the county level territorial colleges are organized who are in a relation of functional, organizational and financial autonomy with CFR.

By its duties CFR fulfills an important role in the Romanian legal system, even if its powers of regulation, supervision, control and punishment are strictly limited to the professional field. It contributes to the defence of the general interests of society and of the rule of law by ensuring the enforcement of rules and regulations that organize and regulate the exercise of the profession of pharmacist, regardless of the form of exercise and of the pharmaceutical unit in which this profession is carried out. CFR also defends the dignity and promotes the rights and interests of its members in all spheres of activity; defends the honor, freedom and professional independence of the pharmacist and his right to take decisions in the exercise of his professional act; ensures compliance by pharmacists of their obligations toward the patient and the public health; attests the good repute and professional morality of its members (article 579 of Law no. 95/2006 on healthcare reform).

The main tasks of the CFR are jurisdictional and regulatory. Thus, the CFR will draw up and adopt the Statute of organization and functioning of the College of Pharmacists of Romania and the ethics code of the pharmacist; sets the system of continuing education credits, which evaluates the activity of professional training of pharmacists. It also has an advisory role in the development of the framework contract of health insurance by the National House of Health Insurance, as well as in the elaboration of the methodological norms for the application of the framework contract (Radu, 2009: 61, 62). Decisions of the National Council of the CFR are binding for territorial colleges and for all pharmacists practicing pharmacist profession in Romania.

CFR works in its field of competence together with the Ministry of Public Health in the development of regulations on pharmacist profession; in drafting the Nomenclature of medical, dental and pharmaceutical specialties in healthcare network; in the development of topics, methodologies, competitions and exams for pharmacists; in

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developing procedures for the exercise of the pharmacist profession in Romania; and also with the Ministry of Education in making the strategy and education programs for the development of pharmaceutical education. As regards its powers of control and supervision, the representatives of CFR, specially appointed, have the right to carry out control and supervision activities on how to practice the pharmacist profession in all pharmaceutical units in Romania. Jurisdictional powers of the CFR are to hold trials in cases of violation of the rules on professional conduct or on the exercise of the profession or of the professional act.

### **The Superior Council of Magistracy**

One of the main objectives pursued by Romania for the purpose of admission as a member of the European Union was the reform of the justice system by “strengthening the justice prestige, improving the functioning of the judiciary system, guaranteeing the independence of the judiciary power, eliminating corruption” (Avram, Pîrvu, Radu, Gruescu, 2007: 163). This reform was achieved through a series of laws such as the Law no. 303/2004 regarding the status of judges and prosecutors, Law no. 304/2004 on judicial organization, Law no. 317/2004 on the Superior Council of Magistracy. Law no. 24/2012 on amending and supplementing Law no. 303/2004 regarding the status of judges and prosecutors and Law no. 317/2004 on the Superior Council of Magistracy made a number of substantial changes regarding disciplinary responsibility of magistrates through strengthening the Judicial Inspection and establishing the role of the President of the High Court of Cassation and Justice, of the Attorney General of the Prosecutor’s Office attached to the High Court of Cassation and Justice and of the Minister of Justice as holders of disciplinary action (Radu, Voicu, 2014a: 124-125). The Superior Council of Magistracy (CSM) acts as a disciplinary council for judges and prosecutors, being able to suspend them from office and apply disciplinary sanctions provided by article 100 of Law no. 303/2004 on the status of judges and prosecutors. Dismissal of judges and prosecutors is decided by decree of Romania’s President, at the proposal of the Superior Council of Magistracy, while trainees judges and prosecutors are dismissed by the CSM.

The main objective of the creation of this body is to ensure the independence, effectiveness and responsibility with which the act of justice is being carried out (Avram et al., 2007: 165). In this capacity, CSM shall have the right and the obligation to notify *ex officio* in order to defend judges and prosecutors against any act that might impair their independence or impartiality or might create suspicions about these. In addition, the Superior Council of Magistracy defends the professional reputation of judges and prosecutors. The judge or the prosecutor who considers that his independence, impartiality and professional reputation has been damaged in any way can address a complaint to CSM, which may dispose, where necessary, the verification of reported issues, the publishing of its results, may refer the matter to the competent organ to decide on any appropriate measures or may order any other appropriate measure, according to the law. CSM shall ensure the observance of the law and of the criteria of competence and professional ethics in the conduct of the professional career of judges and prosecutors.

The complexity of the functions performed by the CSM within the legal system is reflected in the wide variety of tasks fulfilled: of regulating, advising, monitoring, control and sanctioning. CSM has a regulatory power which consist in the adoption by the plenary session of the code of conduct of judges and prosecutors, the rules of organization and functioning of the Superior Council of Magistracy, the rules on the procedure of

electing the members of the CSM, the internal regulation of the courts, as well as other regulations and rulings set out in Law no. 303/2004 and in Law no. 304/2004.

In cases where the law provides for the assent, approval or consent of the Superior Council of Magistracy, the point of view issued by this is binding. When the law requires consultation or opinion of the Superior Council of Magistracy, its point of view is not compulsory. In terms of sanctioning activity, jurisdiction over disciplinary sanctions belongs to the Superior Council of Magistracy sections (article 101 of Law no. 303/2004). The sections of CSM have numerous responsibilities relating to the career of judges and prosecutors, including: dealing with complaints against the rating granted by the committees for the annual assessment of the professional activity of judges and prosecutors, constituted according to the law; taking action for the resolution of complaints received from litigants or from other people regarding the inappropriate conduct of judges and prosecutors; submission of proposals to the President of Romania regarding the appointment and removal from office of the President, the Vice-President and the Chairmen of the departments of the High Court of Cassation and Justice; the suspension from office of judges and prosecutors (article 40 of Law no. 317/2004). Through its judicial powers, CSM plays an important role within the judicial system (Albici, 2010: 200).

#### **Disciplinary committees within the education establishments, public authorities and institutions**

Alleged offences committed by the teaching personnel, the management staff of pre-university education units, staff of the guidance and control of school inspectorates and the guidance and control personnel of the Ministry of Education, Research, Youth and Sports, are investigated by disciplinary committees. Disciplinary committees are appointed by the management board of pre-university education unit – for its personnel and senior management; by the Minister of Education, Research, Youth and Sports – for guidance and control functions of the Ministry of Education, Youth and Sports, as well as for management staff of the county school inspectorates (article 280 paragraph 5 of Law no. 188/1999). In the case of civil servants, for reviewing the facts alleged as disciplinary offences and proposal of applicable sanction, discipline committees are established within each authorities and public institutions (article 79 of Law no. 188/1999 and article 3 of Government Decision no. 1210/2003 on the organization and functioning of disciplinary and parity committees within public authorities and institutions). Exceptionally, the Committee of discipline may be set up for more public authorities or institutions where, within the framework of the respective public institutions or authorities, there are less than 12 civil servants. The Discipline Committee for high civil servants is composed of 5 high civil servants, appointed by decision of the Prime Minister, upon the proposal of the Minister of Internal Affairs and Administrative Reform.

#### **Procedural rules**

As regards the categories of persons considered (doctors, pharmacists, civil servants, magistrates, teachers) some specific disciplinary regimes operate governed by statutes of personal and/or disciplinary statutes (Ștefănescu, 2007: 474; Gidro, 2013: 274; Popescu, 2013: 260). Disciplinary boards and committees established by law are competent to investigate and punish disciplinary offenses committed by employees in a particular field or area, working in specialties (functions) of their activity domain. Individualization of disciplinary offenses, penalties, their application procedure, the

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establishment, organization and functioning of the discipline committee are established, usually through professional or disciplinary statutes. For civil servants, for example, the establishment, organization and functioning of disciplinary committees and their structure, attributions, mode of referral and working procedure are established by Government decision on a proposal from the National Agency of Civil Servants (G.D. no. 1210/2003 on the organization and functioning of disciplinary and parity committees within public authorities and institutions). Statutes, in whatever form – professional or independent disciplinary statutes – have a strict application limited only to those categories of persons referred to expressly (Radu, 2008: 292).

### **Specific sanctions**

Disciplinary sanctions specific to these categories of employees are other than those in the Labour Code. The disciplinary sanctions that may apply to judges and prosecutors in proportion to the seriousness of offences are: a) warning; b) decrease of gross monthly salary by 20% over a period of up to 6 months; c) disciplinary move to another court or another prosecutor's office, located in the jurisdiction of another court of appeal or of another prosecutor's office attached to a court of appeal, for a period of up to one year; d) suspension from office for a period of up to 6 months; e) exclusion from the magistracy (article 100 of Law no. 303/2004).

Disciplinary sanctions applicable to physicians are: a) reprimand; b) warning; c) vote of censure; d) fine from 1,000,000 Ron to 15,000,000 Ron (failure to pay the fine within 30 days from the date of the final disciplinary decision entails suspension of the exercise of the profession, until payment amount); e) prohibition to practise the profession or certain medical activities over a period of one month to one year; f) withdrawal of membership of the College of Physicians in Romania for the duration established by a final decision of the courts with respect to the prohibition of profession exercise (article 447 of Law no. 95/2006). The same sanctions, except the one referred to in letter d), shall apply accordingly to pharmacists (article 618 of Law no. 95/2006 on healthcare reform).

Civil servants committing disciplinary offences can be sanctioned with the following penalties: written reprimand; reduction of the salary rights with 5-20% for a period of up to 3 months; suspension of the right to advancement in the wage ranks or, where appropriate, to promote in the public's function for a period of 1 to 3 years; the demotion in wage ranks or the relegation in public office for a period of up to one year; dismissal from public office (article 77 paragraph 3 of Law no. 188/1999).

Disciplinary penalties that can be applied to teachers are: a) written remark; b) warning; c) reduction of the basic salary, combined, where appropriate, with the allowance of leadership, guidance and control, with up to 15%, over a period of 1-6 months; d) suspension for a period of up to three years, of the right to entry in a competition for a superior teaching functions or for obtaining teacher's degrees or a function of leadership, guidance and control; e) dismissal from management, guidance and control position; f) disciplinary termination of the individual labour contract (article 280 paragraph 2 of Law no. 1/2011).

The existence of specific disciplinary sanctions shall not exclude the application of general sanctions to employees in those fields. For example, a doctor or a pharmacist may be sanctioned with the general penalty of disciplinary termination of individual employment contract (provided by article 248 letter e) of the Labour Code); even if the special law does not expressly provide this sanction, this is possible by the expressly sending to the common law. Even though article 249 of the Labour Code imposes the

principle that a single penalty may be applied for the same misconduct, there are cases in which committing of a wrongful act may result in a double penalty: one provided by the professional Statute, applied by the college/committee of discipline, followed by another sanctioning decision issued by the employer, in accordance with the provisions of labour legislation (Ștefănescu, 2007: 477; Țiclea, 2012: 810; Gidro, 2013: 276; Beligrădeanu, 2005: 78-96). In principle, the application of general disciplinary sanctions in all areas is possible in so far as they do not contradict the specificity of the activity field and do not replace special disciplinary sanctions (Belu, 2001: 183).

### **Specific disciplinary procedures**

The procedure for investigating disciplinary offences, as well as for the application of specific disciplinary sanctions by colleges and committees of discipline is distinct from the one stated in common law, as laid down in the professional and/or disciplinary statutes. In the case of committing certain disciplinary offences, some disciplinary regimes explicitly stipulate rules of disciplinary procedure different from those stipulated by the Labour Code. For example, during the administrative investigation, to avoid the danger of influencing the investigation, the head of the authority or institution is obligated to ban the access of the civil servant who has committed a disciplinary offense to relevant documents which can influence the investigation or, where appropriate, to temporarily move the civil servant in another department or internal structure within the authority or public institution (article 77 paragraph 7 of Law no. 188/1999). Besides the possibility of suspension as a self-reliant sanction, article 49<sup>1</sup> of Law no. 317/2004 on the Superior Council of Magistracy, introduced by Law no. 24/2012 provides that during the disciplinary proceedings, the section of the CSM, *ex officio* or at the suggestion of the judicial inspector, may order the suspension from office of the magistrate, pending final solving of disciplinary action if the exercise of the function could affect the impartial conduct of disciplinary investigation or if the disciplinary proceeding is likely to prejudice seriously the prestige of justice (Radu, Voicu, 2014a: 127-128).

### **Disciplinary investigation**

Disciplinary investigation is entrusted, in professional statutes, to a designated person or to a body specially set up, usually called the Committee of discipline. Thus, investigation of disciplinary offences committed by teaching staff is carried out by the committee of discipline consisting of 3-5 members (one of whom is the representative of the trade union in which the person in question is member or a representative of employees, and the others are teachers that have a function at least equal to the person investigated). In case of civil servants, that power belongs to a disciplinary committee which includes a representative of the trade union or, where appropriate, a representative appointed by a majority vote of civil servants for which the disciplinary commission is constituted, where the union is not representative or civil servants are not organized in trade unions, committee which also proposes the applicable sanction (article 79 paragraph 2 of Law no. 188/1999). In the case of pharmacists disciplinary investigation shall be carried out by the Department of professional jurisdiction, and in the case of physicians by persons appointed for that purpose by the office of the territorial council or, where appropriate, by the Executive Board of the College of Physicians in Romania. In case of irregularities committed by judges and prosecutors, including by members of the Superior Council of Magistracy and by the assistants-magistrates of the High Court of Cassation

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and Justice, prior investigation is carried out by judicial inspectors (Radu, Voicu, 2014a: 127-128).

### **Application of disciplinary sanctions**

In general, as we previously stated, the application of disciplinary sanctions for the professional staff analysed is a task of the boards or colleges of discipline. In the case of magistrates, jurisdiction over the application of disciplinary sanctions rests with the sections of CSM (article 101 of Law no. 303/2004). In the matter of civil servants, the disciplinary Committee shall submit the report of proposing disciplinary sanctions applicable or, where appropriate, the report of termination of disciplinary action to the person legally competent for the implementation of disciplinary sanction at the time of submission of this report. According to article 78 paragraph 1 and 2 of Law no. 188/1999, written reprimand can be applied directly by the person who has legal jurisdiction of appointment in public office, while other disciplinary sanctions referred to in article 77 paragraph 3 let. b)-e) shall be applied by the competent person, upon the proposal of the disciplinary committee. If the person who has the legal jurisdiction to apply disciplinary sanction applies another sanction than that proposed by the disciplinary committee has the obligation to motivate such a decision (Radu, Voicu, 2014b).

For teaching staff of pre-university education units, the proposal of sanction is made by the director or at least 2/3 of the total number of management board members. The sanctions approved by the management board are implemented and communicated through the decision of the director of primary education unit. For management staff of the pre-university education units, sanctions proposal is made by the management board of school education unit and communicated by decision of the General School Inspector. For the management personnel of the school inspectorates and of teachers' houses, the proposal of sanction is made by the Minister of Education, Research, Youth and Sport and shall be communicated by order. For the guidance and control personnel of the Ministry of Education, Research, Youth and Sport, the proposal of sanction is carried out, where appropriate, by the Minister of Education, Research, Youth and Sport, respectively by the secretary of state or the hierarchical head of the person concerned and shall be communicated by order.

The sanction shall be determined on the basis of the discipline committee's report, by the authority which appointed this committee and communicated to the person concerned, through a written decision, where appropriate, by the director of the education unit, the General School Inspector or the Minister of Education, Research, Youth and Sport (article 282 of Law no. 1/2011).

### **The appeal against sanctioning decisions**

The competence of solving the complaints or appeals against disciplinary sanctions belongs to, in certain areas of activity, the disciplinary councils and committees of discipline (Belu, Stoicovici, Almășan, 2001: 103-110). Against the sanctioning decision of the Superior Commission of Discipline, the doctor or pharmacist sanctioned can make a complaint at the division of administrative and tax disputes of the Court of Appeal within 15 days after notice. In the case of magistrates, the appeal against judgements solving disciplinary action may be exercised, within 15 days of the notification, by the judge or the prosecutor punished or, where appropriate, by the Judicial Inspection or by the other holders of disciplinary action. The sanctioned persons employed in educational establishments have the right to make an appeal to the disciplinary college attached to the



School Inspectorate, within 15 days of the notification. Personnel of management, guidance and control within the school inspectorates and the Ministry of Education, Research, Youth and Sport, which has been sanctioned, has the right to appeal the decision within 15 days of the notification, to the Central College of discipline of the Ministry of Education, Research, Youth and Sport.

In certain statutes, the competence of solving the appeal is expressly provided for. For example, article 51 of Law no. 317/2004 on the Superior Council of Magistracy provides that the jurisdiction of the appeal brought by the judge or the prosecutor belongs to a section of 5 judges of the High Court of Cassation and Justice. According to the article 80 of Law no. 188/1999 and article 51 of Government Decision no. 1344/2007 on rules of organization and functioning of discipline committees, a civil servant discontent with the disciplinary sanction imposed may appeal the sanctioning decision, in accordance with the law, to the competent court of administrative disputes, requesting the cancellation or amendment, as applicable, of the order or the sanctioning decision (Barbu, Vasile, 2013: 252).

### **Conclusion**

When we refer to the realization of the law, we do not have in mind only the courts, even if the substance of justice consists of the judgments handed down by courts of varying degrees, but to the whole structure working together to the realization of justice. Beside the courts and the Public Ministry there are other jurisdictional bodies having meant to defend the general interests of the society and its legal order. As it can be seen, colleges and committees of discipline analyzed have a well defined role in carrying out the act of justice, and in the application of law, respectively. Given the specific character of jurisdictional activity, all organs with judicial powers need to be provided with a series of guarantees, the most important being institutional autonomy and independence in decision-making.

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