



DECISION

No. 336 from 18.01.2021

In order to ensure a procedure that is unitary applicable, at the level of the entire penitentiary administration system, for disciplinary investigation of persons deprived of liberty;

Taking into account the provisions of Law no. 254/2013 on the execution of sentences and custodial measures ordered by the judicial bodies during the criminal proceedings, with subsequent amendments and completions;

As well as the provisions of the Regulation for the application of Law no. 254/2013 on the execution of sentences and custodial measures ordered by the judicial bodies during the criminal proceedings, approved by Government Decision no. 157/2016, with subsequent amendments and completions.

Under the provisions of art. 7 para. (4) of the Government Decision no. 756/2016 for the organization, functioning and attributions of the National Administration of Penitentiaries and for the modification of the Government Decision no. 652/2009 on the organization and functioning of the Ministry of Justice, with subsequent amendments and completions.

**The Director General of the National Administration of Penitentiaries
issues the present**

DECISION

ART. 1

The Instructions regarding the disciplinary procedure applicable to deprived of liberty persons in custody, foreseen in the Annex that is an integral part of this Decision, are hereby approved.

ART. 2

The Instructions foreseen at art. 1, are to be processed with the entire staff of the unit and are brought to the attention of persons deprived of their liberty.

ART. 3

The directoros of the units subordinated to the National Administration of Penitentiaries order measures to update the job descriptions for the personnel with attributions deriving from the provisions of the present Instruction.



ART. 4

At the date of application of this Decision, the provisions of the Decision of the Director General of the National Administration of Penitentiaries no. 497/2007 for the approval of the Methodology regarding the disciplinary procedure applicable to the persons deprived of liberty in custody, ceases its applicability.



Annex to the Decision of the Director General of the N.A.P. no.336/18.01.2021

INSTRUCTIONS REGARDING THE DISCIPLINARY PROCEDURE APPLICABLE TO PERSONS DEPRIVED OF LIBERTY

ART. 1 The principles of the disciplinary procedure

- (1) The disciplinary authority is exercised only by the disciplinary commission.
- (2) The disciplinary sanction represents an administrative measure ordered by the administration of the place of detention, in accordance with the law.
- (3) No person deprived of liberty may be disciplined except in accordance with the provisions of Law no. 254/2013 on the execution of sentences and custodial measures ordered by the judicial bodies during the criminal proceedings, hereinafter referred to as law, of the Regulation for its application, approved by Government Decision no. 157/2016 and of these instructions and never several times for the same deed.
- (4) Persons deprived of liberty may be disciplined only after verifying all the aspects and circumstances in which the acts that are the subject of the disciplinary procedure have been committed.
- (5) Under no circumstances may the right of a person deprived of his liberty to defend himself or to exercise a right of appeal against the disciplinary sanction applied be restricted.
- (6) Collective sanctions, corporal punishment, solitary confinement in improper conditions and any other inhuman or degrading treatment are strictly prohibited and may be subject to the criminal law in force.
- (7) It is strictly forbidden to use means of coercion, immobilization or physical force as a sanction against inmates.
- (8) If, in the same circumstances and at the same time, persons deprived of their liberty commit several disciplinary offenses, by several actions or inactions, the disciplinary sanction for the most serious offense shall be applied.
- (9) No other constraint may be added to any inmate in the course of disciplinary proceedings, except those provided for by the legislation in force.

ART. 2 The purpose of the disciplinary procedure

- (1) In the detention units of the Romanian penitentiary administration system, order and discipline must be established and maintained rigorously, in order to ensure collective and individual security, a well-organized common life, personal safety of penitentiary police and persons deprived of liberty.
- (2) In achieving the purpose provided in par. (1) The aim is to ensure an objective, transparent, prompt, predictable, fair, balanced disciplinary procedure, likely to contribute to maintaining the order and discipline of the prison environment.
- (3) The disciplinary procedure is carried out quickly.



ART. 3 Finding disciplinary violations

(1) The disciplinary violations shall be ascertained, ex officio or at the notification of any person, by the staff of the penitentiary administration and shall be recorded in an incident report, provided in annex no. 1, within 24 hours from the finding; the incident report is registered in the single register existing at the penitentiary level and managed by the shift manager, provided in annex no. 2.

(2) The incident report shall be submitted to the head of the section where the person deprived of liberty was accommodated at the time of committing the disciplinary offense, within 24 hours from the date of finding the offense, the register provided in annex no. 2 being completed accordingly.

(3) On Saturdays, Sundays, public holidays and outside working hours, incident reports shall be submitted to the head of shift, who shall hand them over on the first working day to the head of the section where the person deprived of liberty is in custody at the time of the disciplinary offense. , the register provided in annex no. 2 being completed accordingly.

(4) If he considers it necessary, the head of the department proposes to the director of the penitentiary the accommodation in another space of detention of the investigated person for committing a disciplinary offense, under the conditions of art. 30 of the Law Enforcement Regulation.

(5) In case the disciplinary violation is committed during the transfer between the places of detention subordinated to the National Administration of Penitentiaries, the incident report is drawn up by the head of the escort, who is sent to the head of shift in the destination unit finding a disciplinary violation.

(6) In case, after committing a disciplinary offense, it is necessary to immediately transfer the inmate to another place of detention subordinated to the National Administration of Penitentiaries or the Ministry of Internal Affairs, after the disciplinary procedure, the incident report shall be sent promptly, together with the summary investigation report of the incident and the other documents drawn up, which may lead to the clarification of the factual situation of the unit to which the inmate was transferred, in order to continue the disciplinary procedure; the provisions of art. 6 para. (1) shall apply accordingly.

ART. 4 The situation of persons deprived of liberty who carry out lucrative activities

(1) The chief of the detention section or shift chief, outside working hours, on Saturdays, Sundays and public holidays, shall inform the deputy director for detention security and penitentiary regime, regarding persons deprived of their liberty who are involved in lucrative activities or assimilated to them, for which incident reports have been drafted.

(2) By the written order of the deputy director for detention security and penitentiary regime, inmates involved in lucrative activities or assimilated to them for whom incident reports have been prepared or for whom there are data or information



justifying the reanalysis of the appropriateness of gainful employment may be temporarily stopped from working; the situation of these persons will be analyzed in the first selection and distribution commission.

(3) The retirement from work or the change of the place of work of the person deprived of liberty shall be approved by the director of the place of detention at the proposal of the commission foreseen in art. 174 para. (1) of the Law Enforcement Regulation, approved by Government Decision no. 157/2016.

ART. 5 Disciplinary commission

(1) The composition of the disciplinary commission is the one provided by art. 103 para. (2) of the law; if a member of the disciplinary commission is absent for justified reasons, he will be replaced by the prison officer who takes over his duties, as stated in the Daily Unit Decision.

(2) The disciplinary commission carries out its activity, as a rule, once a week, according to the program established by the director of the unit, and its activity is materialized in a report.

(3) In duly justified situations, the disciplinary commission has the possibility to hear the persons deprived of liberty by audio-video technical means, in compliance with the conditions of art. 37 of the Law Enforcement Regulation; the secretary of the disciplinary commission formulates a request addressed to the director of the place of detention in which are included the reasons for which the person deprived of liberty is heard by means of self-video technical means.

(4) If, during the disciplinary proceedings, the disciplinary commission becomes aware of the commission of an offense, it shall immediately inform the director of the unit in order to notify the competent criminal investigation body.

ART. 6 Disciplinary procedure

(1) The disciplinary procedure is initiated by the chief of the section where the person deprived of liberty is detained, who submits the incident report to the secretary of the disciplinary commission, within 24 hours from the receipt of the incident report.

(2) After receiving the incident report, the secretary of the disciplinary commission operates it in the PMSWeb computer application, in the Visits section, the Disciplinary measures module, specifying the unit in which the disciplinary procedure is carried out, the number and year of the file. research, and in the Remarks section write the brief description of the disciplinary violation.

(3) The director of the penitentiary, on the first working day from the initiation of the disciplinary procedure, appoints a penitentiary policeman, other than the supervising agents, or the secretary of the disciplinary commission, or the person who prepared the incident report to carry out the disciplinary investigation; in order to make the activity more efficient, the director of the unit considers the specialization of some penitentiary police officers, as much as possible among the officers with studies in the legal field, aiming for them to have communication skills and skills for conducting disciplinary research.



(4) On the first working day from the designation of the person responsible for carrying out the disciplinary investigation, he shall inform the inmate of the reason for initiating the disciplinary procedure and the fact that he may propose the administration of evidence, the provisions of art. 61 para. (2) of the law being applied accordingly.

(5) Within 10 days from the notification of the disciplinary commission, the designated person presents to him the results of the disciplinary investigation, included in the summary report of the disciplinary incident investigation, generated by the computerized application PMSWeb, module Reports v2, section Punishments-Report disciplinary incident. The disciplinary investigation aims to clarify the incident in all aspects and involves hearing the person deprived of liberty investigated and other persons involved or indicated and verifying their defenses.

(6) Within 10 days from the receipt of the results of the disciplinary investigation, the disciplinary commission, after hearing the person deprived of liberty and any other person who is aware of the circumstances in which the act was committed, shall establish by written decision, provided in annex no. 3, one of the disciplinary sanctions or, as the case may be, classifies the disciplinary investigation file.

(7) In case the disciplinary commission has ambiguities regarding the establishment of the guilt of the analyzed person, the evidence is insufficient, as well as in other duly justified cases, the chairman of the disciplinary commission may request the penitentiary policeman designated with disciplinary investigation to complete the disciplinary investigation file without exceeding the term established in par. (6).

(8) The decision of the disciplinary commission shall be communicated to the person deprived of liberty immediately, under signature, by the secretary of the disciplinary commission, mentioning the existing appeal and the term for exercising it.

(9) The secretary of the disciplinary commission introduces in the computer application PMSWeb, in the Visits section, the module Disciplinary measures - date of granting, respectively date of analysis in the disciplinary commission, and in case the inmate complains against the decision of the commission, respectively appeal against the judge's decision. supervision of deprivation of liberty, shall complete in the section Applied measure - Sanction pending, until it remains final.

ART. 7 The activities carried out by the penitentiary policeman designated to carry out the disciplinary investigation

(1) The compulsory activities to be undertaken according to the type of disciplinary offenses subject to it shall be determined by the deputy directors for detention security and penitentiary regime, in the job descriptions or annexes of the job descriptions of the penitentiary policeman designated to carry out the disciplinary investigation and the issues found in the disciplinary investigation of persons deprived of their liberty.

(2) In addition to the steps contained in art. 6 para. (5), in order to clarify the existing situation in all aspects, the following activities may be established in conducting disciplinary research: printing of photo plates, storage of images and data provided by technical video surveillance systems or portable video cameras, requesting relevant data the penitentiary unit, proposing the application of measures for justified reasons resulting



from the disciplinary investigation, requesting written information notes to the penitentiary police officers or other persons with knowledge of the occurrence of disciplinary offenses, confiscation of goods or objects, extension of the investigation and other persons deprived of their liberty, as well as any other activities necessary to clarify the facts.

(3) The images and data provided by the technical video surveillance systems or portable video cameras shall be viewed by the prison policeman appointed with disciplinary investigation or by the members of the disciplinary commission, and a report shall be drawn up on the conclusions of the viewing. , provided in annex no. 9, and in the situation where it is necessary to print the photo plates, this approach will be done by ensuring the anonymization of third parties that may appear in the images and whose identification is not necessary for the purpose for which the images are processed. These activities are carried out while maintaining a clear record of the processing of personal data extracted from the surveillance system.

(4) The penitentiary policeman appointed with the disciplinary investigation has the possibility to hear the persons deprived of liberty in other penitentiary units, who are aware of the circumstances in which the deed was committed, by videoconference, under the conditions of art. 38 of the Law Enforcement Regulation.

ART. 8 Individualization of the disciplinary sanction

(1) In determining the disciplinary sanction, account shall be taken of the nature and manner of the offense, the person and state of health of the inmate, the disciplinary offenses previously committed, the attitude of the person deprived of liberty after the offense and during the disciplinary proceedings, with compliance with the gradual application of disciplinary sanctions and taking into account the seriousness of the offense committed, in accordance with art. 224 of the Law Enforcement Regulation.

(2) In the content of the decision of the disciplinary commission, mentions are made regarding the criteria provided in art. 224 para. (1) of the Law Enforcement Regulation, the provisions of art. 103 para. (7) of the law, and of art. 6 para. (8) applying accordingly.

(3) The establishment of the disciplinary sanction is made by the open vote of the members of the commission, the decision being taken by simple majority. If a member of the Disciplinary Board has a separate opinion, it shall be mentioned in the minutes concluded when the committee is working.

(4) If it is found that it is necessary to change the execution regime or evaluation, establish the risk for the security of the penitentiary, include persons deprived of liberty in the category of vulnerable inmates, when the decision of the disciplinary commission becomes final, the secretary of the disciplinary copy of the decision and the secretary of the commission provided by art. 32 of the law.

ART. 9 Complaint against the decision of the disciplinary commission

(1) Against the decision of the disciplinary commission, by which a disciplinary sanction was applied, the person deprived of liberty may file a complaint to the judge supervising the deprivation of liberty within 3 days from the communication of the



decision, under the conditions of art. 104 of the law. The complaint form against the disciplinary commission is provided in annex no. 4.

(2) Against the conclusion of the judge supervising the deprivation of liberty, the person deprived of liberty and the administration of the penitentiary may file an appeal to the court in whose district the penitentiary is located, within 5 days from the communication of the conclusion. The form of appeal that can be introduced by the person deprived of liberty is provided in annex no. 5.

ART. 10 Applying the disciplinary sanctions

(1) The disciplinary sanction is established by the disciplinary commission, by written decision, provided in annex no. 3.

(2) At the moment of analyzing the person deprived of liberty, the chairman of the disciplinary commission requests the doctor of the unit to make recommendations, under the conditions of art. 101 para. (4) of the law.

(3) The disciplinary sanctions remain final either by not formulating the complaint against the decision of the disciplinary commission, or by not formulating the appeal against the conclusion of the supervisory judge, or as a result of solving the appeal by the court decision.

(4) The disciplinary sanctions remaining final shall be executed on the basis of the written decision of the director of the detention unit, provided in annex no. 6, which will be brought to the notice of the inmate under signature by the secretary of the disciplinary commission.

(5) Persons deprived of their liberty may not serve two or more disciplinary sanctions of the same kind at the same time. If a new disciplinary sanction of the same kind remains final, it will be enforced after the expiry of the disciplinary sanction of the same kind in force.

(6) The warning shall be brought to the notice of the person deprived of liberty under signature, and shall be filed in the disciplinary file.

(7) The suspension of the right to participate in cultural, artistic and sports activities, for a period not exceeding one month shall take effect from the month following the month in which the sanction became final and is brought to the notice of the inmate.

(8) The suspension of the right to perform a work for a period not exceeding one month shall take effect from the month following the month in which the sanction became final and is brought to the notice of the inmate; for the distribution to lucrative activities of the person deprived of liberty sanctioned with the suspension of the right to perform work, for a period of maximum one month, it is proceeded in accordance with art. 174 of the Law Enforcement Regulation.

(9) The suspension of the right to receive and buy goods, except those necessary for individual hygiene or the exercise of the rights of defense, petition, correspondence and medical care, for a period not exceeding two months shall take effect from the month following in which the sanction remained final and is brought to the notice of the inmate; the disciplinary commission shall establish this sanction for a period of one month or two months.



(10) The suspension of the right to receive visits for a period not exceeding 3 months shall take effect from the month following the month in which the sanction became final and is brought to the attention of the inmate; the disciplinary commission shall determine this sanction for a period of one month, two months or three months.

(11) Isolation for a maximum of 10 days shall be implemented only after examination of the inmate by the doctor of the place of detention; the inmates who execute the disciplinary sanction with isolation are registered in the register provided in annex no. 7.

(12) The secretary of the disciplinary commission ascertains the moment when the disciplinary sanction remained final, enters in the register provided in annex no. 8 and in the PMSWeb computer application, in the Visits section, the Disciplinary Measures module, the sanction applied, the start date, respectively the date from which the sanction was applied, and in the Remarks section enter the administrative act based on which it remained final and, if applicable, the date of lifting the disciplinary measure and the number of the decision of the awarding commission.

(13) In order to keep a clear record of the disciplinary situation, the secretary of the disciplinary commission mentions in the computerized application PMSWeb, in the section Visits, the module Disciplinary measures regarding the incident reports filed by the disciplinary commission.

ART. 11 Persons responsible for enforcing disciplinary sanctions

(1) After the decision to execute the disciplinary sanction was issued by the director of the detention unit, the secretary of the disciplinary commission shall immediately send, on the basis of a register, a photocopy of it, to the sectors as follows:

- a) suspension of the right to participate in cultural, artistic and sports activities - to the deputy director for education and psychosocial assistance;
- b) suspension of the right to perform a job - the chief of the service/office records and organization of work;
- c) suspension of the right to receive and buy goods, except for those necessary for individual hygiene or exercise of the rights to defense, petitioning, correspondence and medical assistance - the chief of the penitentiary service/office;
- d) suspension of the right to receive visits - the chief of the penitentiary service/office;
- e) isolation for a maximum of 10 days - the doctor of the place of detention and the chief of the penitentiary service/office.

(2) The chief of the sector who received a photocopy of the decision to execute the disciplinary sanction is directly responsible for the execution of the administrative act.

ART. 12 Disciplinary investigation file

(1) The evidentiary material drawn up by the penitentiary policeman designated to carry out the disciplinary investigation, the incident report, the decision of the disciplinary commission, a copy of the conclusion of the judge supervising the deprivation of liberty, , a copy of the court decision, if the person deprived of liberty or the administration of the penitentiary challenged the conclusion of the judge supervising the



deprivation of liberty and the decision implementing the disciplinary sanction forms the disciplinary investigation file and becomes part of the disciplinary file.

(2) The disciplinary investigation file shall be managed by the penitentiary policeman designated to carry out the disciplinary investigation until its completion.

(3) After the completion of the disciplinary investigation, the penitentiary policeman appointed to carry out the disciplinary investigation shall submit to the secretary of the disciplinary commission the disciplinary investigation file on the basis of a condica.

(4) After the application of the disciplinary sanction, the individual investigation file is classified in the disciplinary investigation file of the person deprived of liberty and passed in the existing description on its cover.

ART. 13 Transitional provisions

Within 30 days from the application of these Instructions, the subordinated units, through the care of the unit director and the deputy director for detention security and penitentiary regime, send to the National Administration of Penitentiaries - Detention Security and Penitentiary Regime an analysis on the implementation of the disciplinary procedure.

ART. 14 Final provisions

(1) The annexes no. 1 - 9 are an integral part of these Instructions.

(2) The secretary of the disciplinary commission draws up, quarterly, an analysis regarding the activity of the commission, which includes the number of analyzed violations and the number of very serious, serious and minor disciplinary violations, for which disciplinary sanctions were applied, number of decisions of the classification commission admitted and rejected by the judge supervising the deprivation of liberty, respectively by the court, which will be presented, in a hierarchical way, to the director of the unit. The purpose of the analysis is to streamline the disciplinary procedure, the individualization of disciplinary sanctions related to the type of violations committed, the use of concise data in the evidence, the use of audio-video recordings or any other aspects of interest. The analysis contains proposals to improve and increase the performance of the activity of the disciplinary commission.