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Some Aspects regarding the Disciplinary Procedure and the Application of Disciplinary Sanctions within the Romanian Gendarmerie

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Abstract: *This article aims to analyze some aspects of the disciplinary procedure within the Ministry of Internal Affairs with special reference to the Romanian Gendarmerie, a topic of great interest because there are few publications on this issue, the majority of which are internal notices published by the Ministry. The article lists the facts that are considered disciplinary violations, and also provides an analysis of the types of disciplinary sanctions applied to these category of officers, by military rank. The purpose of the research is to identify the most frequent deviations from military discipline and the sanctions applied, in order to deduce their consequences on the fulfillment rate of the missions of the Gendarmerie and to suggest preventive measures among employees*

Keywords: *disciplinary violations, disciplinary sanctions, procedure.*

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The foundation of military discipline

Disciplinary liability is the consequence of the culpable breach of duty by military personnel, which enables the disciplinary prerogative of the commander/head of the military structure to establish and apply sanctions, in accordance with the law, to subordinates who violate military discipline. The legal liability of military personnel is, according to Law no. 80/1995, an individual type of responsibility for one's own actions, as sanctioned by the law, which are committed during the exercise of their duties or outside of work duties (Romanian Parliament, 1995).

Mandatory rules regarding military discipline can be found in the Military Discipline Regulation, approved by Order no. M.64/June 10, 2013, which establishes mandatory effects of the disciplinary and professional rules, and of the sanctions that are to be applied in case those rules are not respected in the performance of work activity within the structures of the Ministry of Internal Affairs (M.A.I.)

The aforementioned regulation (Ministry of National Defence, 2013) establishes: the manner in which military discipline must be implemented for all M.I.A. structures; the authority of commanders/heads of military units to award rewards and apply sanctions to each category of military personnel; how the honor and judging boards are organized and function.

Respecting the particular legislation and the rules of order and behavior to ensure the functionality and the fulfillment of specific missions defines the mentioned military discipline (Ministry of National Defense, 2013).

Military discipline is based on the conscious acceptance of the norms of behavior established by law (Ministry of National Defence, 2013):

- compliance with the regulations in force and the military oath;
- the development of comradeship, of strict requirements for personal development and in correlation to subordinates, of providing a good personal example in work relationships;
- the objective application of incentives and sanctions;
- the exercise of preventive and educational activities among the military.

Frequency of analysis of the state of military discipline in military structures

The state of military discipline is periodically analyzed within each military structure, as shown in *Table 1*.

Table 1. Frequency of analysis of the state of military discipline in military structures

No.	Military structure	Frequency of analysis of the state of military discipline
1.	Platoon	Daily
2.	Company	Weekly
3.	Battalion/Regiment	Monthly
4.	Brigade	Each semester and when the commander/chief deems necessary
5	Division	Annually and as the Commander/Chief deems necessary
6.	Military schools	At the end of the year and when the commander deems it necessary
7.	General staff	Annually and as the Commander deems necessary
8.	Garrison	Annually, by January 15 for the previous year

Source: Author's own conception, according to OMAN no. M.64/June 10, 2013 for the approval of the Military Discipline Regulation, M. Of. 399 bis of July 3, 2013

The authority, powers and disciplinary responsibility of the military are correlated with the position in which they are placed and with the rank held by each military person, and disciplinary sanctions are imposed by hierarchical authority.

Law no. 80/1995 on the status of military personnel, with subsequent amendments and additions, establishes the obligations of military personnel in terms of work discipline (Romanian Parliament, 1995). For example, the law stipulates that the one who is responsible for informing subordinates and applying work discipline rules within the military structure is the commander/chief, recognized as a legally vested military authority

Applicable sanctions and procedure

The facts that violate military discipline are regulated according to art. 47-49 of the Military Discipline Regulation (Ministry of National Defence, 2013).

Law no. 80/1995 regarding the status of military personnel, with subsequent amendments and additions (Romanian Parliament, 1995) mentions, in art. 35, the sanctions applied to military personnel for non-compliance with military discipline, non-fulfillment of duties, non-compliance with the norms of military and social conduct, respectively:

- *the warning* - by which the perpetrator is warned about the "need for correction" in order to avoid a harsher sanction in case of committing a new deviation from military discipline;

- *the written reprimand* - is a written notification, by which the commander informs the person that they are punished, more severely than in the case of a warning, for acts that represent deviations from military discipline;

- *reducing the salary given for the position held by that person by up to 10% for no more than three months* - it is applied after the prior disciplinary investigation has been carried out;

- *reduction the salary given for the position held by that person by 5-10% for a maximum of three months* - applied after a prior disciplinary investigation;

- *postponement of advancement in rank for a period of one to two years* - is applied only on the basis of the decision of the honor council for repeated violations of military order or for violations with a significant incidence within the military unit of the perpetrator, after previously having been applied less severe penalties;

- *demotion in or out of office* - consists in being appointed to a position at a lower hierarchical level than the one previously held, a sanction applied to certain categories (students from military educational units, soldiers, career officers) for repeated failure to fulfill the duties related to their position, for the lack of exigency and responsibility in maintaining military discipline or for more serious violations; this sanction is applied by the decision of the honor council;

- *military discharge* - applies, according to art. 85 and 88 of the same law, for serious deviations from military regulations or other legal provisions. For example, the military personnel who, according to the council of honor, violate the provisions of art. 28 (are part of parties, political organizations or carry out propaganda for such institutions, or run for positions in local public administration, Parliament, presidency) and art. 30 para. (2) (they are a sole partner on a corporation or directly participate in the administration of a legal person, with the exception of entities under the subordination, coordination, authority of the Ministry of National Defence and subsidiaries, or those that activate in the field of the defense industry) are discharged or withdrawn from duty (Romanian Parliament, 1995).

Apart from a written warning and reprimand, all other sanctions for violating military discipline, in the case of military personnel, are decided after the investigation and judgment of the facts by the council of honor or, as the case may be, by the juddgement councils, otherwise these sanctions are null and void. The written reprimand will be proposed and applied by the commander of the military unit only after the preliminary investigation by a commission appointed for this purpose.

Law no. 384/2006 on the status of professional soldiers and officers, with subsequent amendments and additions (Romanian Parliament, 2006), provides that soldiers and professional officers can be charged for non-compliance with military discipline, failure to fulfill duties, non-compliance with military and social conduct norms, in addition to sanctions applicable to military personnel, and termination of the employment contract.

Students of military higher education institutions may be sanctioned for disregarding military discipline, disobeying the order of social coexistence and violating university ethics with: warning, demotion, expulsion or other specific sanctions.

Procedurally, the decision of the commander/head of the military unit to apply sanctions for violations of military discipline is preceded by the procedures of investigation and judgment in the preliminary disciplinary investigation commission, in the council of honor or the judgment council, depending on the case. The procedure for the preliminary investigation of soldiers and career officers cannot exceed the term of twenty-five days from the moment the person receives the notification sent by the commission for disciplinary misconduct.

The head of the disciplinary commission has the authority to propose disciplinary sanctions, and issues a disciplinary report, after concluding the disciplinary procedure, addressed to the commander who is supervising the procedure.

Sanction proposals are directed to the commanders/direct supervisers of the military officer who committed the disciplinary violation:

- during the execution of the internal service;
- during the secondment/delegation or participation in training programs;
- during transport, by any means of communication;
- during vacations, permits or leave, during hospitalization and treatment.

Honor councils and judicial councils have the status of independent deliberative bodies, with a preventive - educational role. The former have the competence to analyze the facts considered as deviations from military discipline, which do not constitute crimes, and to establish the necessary disciplinary sanctions. Judicial councils investigate and judge serious violations of military discipline committed by active duty military personnel. In accordance with art. 21 of the Military Discipline Regulation, acts that cause substantial disruption to the activity of military units or severe damage to military dignity and integrity are considered serious violations (Ministry of National Defence, 2013).

Analysis of the structure of sanctions by military ranks and types of disciplinary sanctions applied in quarter 1, year 2023.

In order to obtain an overview of the violation of military discipline in the Romanian Gendarmerie, in the first quarter of 2023, we analyzed the dynamics and structure of disciplinary sanctions applied to officers and non-commissioned officers who are active within this structure. The data was collected from the publication "Analysis of the disciplinary situation and practice in the Romanian Gendarmerie", for the months of January-March 2023, a non-secret document, according to the specifications of the Ministry of National Defense, General Directorate of Human Resources Management no. 270495 of 6.01.2020 and Directorate of Human Resources no. 70087 of 14.01.2020. The results of the analysis are reflected in *Table 2* and *Figure 1*.

Table 2. The structure of disciplinary sanctions by military rank - Quarter I, 2023

No.	**Sanctions**	**January**		**February**		**March**		**Deviations ± (No.)**	
		No.	**%**	**No.**	**%**	**No.**	**%**	**Feb./Jan.**	**Mar./Feb.**
1.	Sanctions imposed on officers (O)	-	-	2	5,56	3	14,28	2	1
2.	Sanctions imposed on non-commissioned officers (SO)	23	100,00	34	94,46	18	85,72	11	-16
3.	**Total of sanctions**	**23**	**100,00**	**36**	**100,00**	**21**	**100,00**	**13**	**-15**

Source: „*Analysis of the disciplinary situation and practice in the Romanian Gendarmerie*", January-March 2023

The total number of sanctions applied to military personnel in the Romanian Gendarmerie, during the analyzed period, varies from 23 in January to 36 in February, decreasing by 15 sanctions and reaching 21 in March. Disciplinary sanctions in January were applied exclusively to non-commissioned officers. In February, 94.46% of all sanctions were applied to non-commissioned officers (34 sanctions) and only 5.56% of all disciplinary sanctions were applied to officers (2 sanctions). In March, military discipline

improved, compared to the previous month, in the case of non-commissioned officers, the percentage of those sanctioned lowered to 85.72% of the total sanctions, that is, 18 sanctions were applied, but one it additional disciplinary sanction was applied to officers, meaning 4.28% of the penalties applied in March.

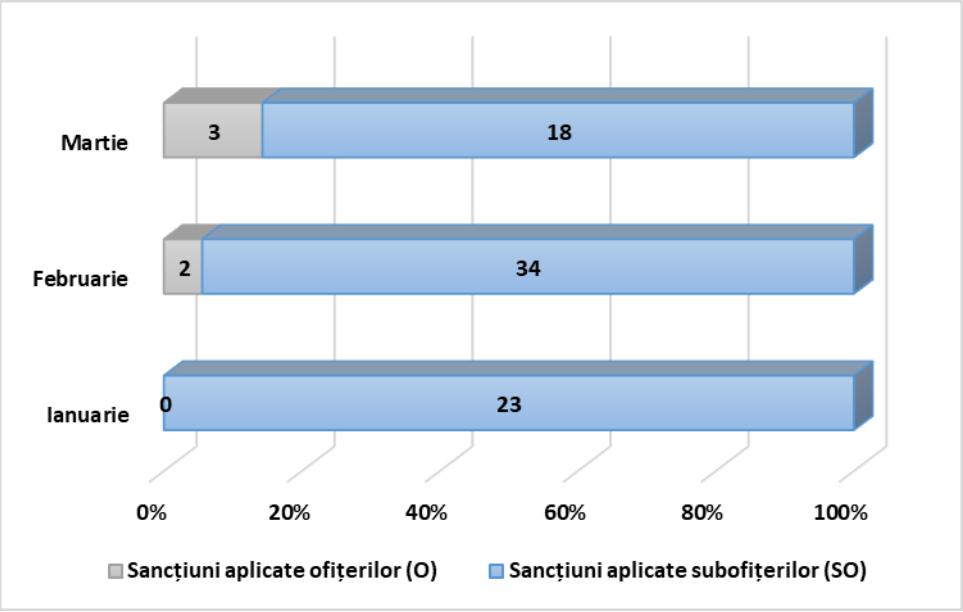


Figura 1. The dynamics and structure of disciplinary sanctions by military rank - Quarter I 2023

Source: *Author's own conception based on the „Analysis of the disciplinary situation and practice in the Romanian Gendarmerie"*

The previous figure highlights that: the month of February was the one in which the number of sanctions for deviations from military discipline was the highest, as 34 non-commissioned officers and 2 officers were sanctioned; the month of March is the one in which military discipline was most respected among non-commissioned officers, as it portrays the lowest number of disciplinary sanctions applied during the entire first quarter (18); the month of January is when there were no violations of military discipline among officers.

The results of an in-depth analysis, which comparatively highlights the situation of sanctions for military discipline by types of sanctions and by military ranks, in the first quarter of the year 2023, are presented in *Table 3*.

Table 3. The structure of disciplinary sanctions by types and military ranks - Quarter I 2023

No.	**Type of sanctions**	**January**		**February**		**March**		**Total per trimester (no.)**	
		Officers	**Non-commissioned officers**	**Officers**	**Non-commissioned officers**	**Officers**	**Non-commissioned officers**	**O**	**SO**
1.	Warning (W)	-	18	-	24	2	11	**2**	**53**
2.	Written repriman d (WR)	-	3	1	9	-	5	**1**	**17**
3.	Reductio n of salary by up to 5% for one month (RS 5%)	-	-	1	-	1	-	**2**	**-**
4.	Reductio n of salary by up to 10% for no more than three months (RS 10%)	-	2	-	1	-	1	**-**	**4**
5.	Postpon ement of advance ment in rank for 1-2 years (PAR)	-	-	-	-	-	1	**-**	**1**
	Total of sanction s	**-**	**23**	**2**	**34**	**3**	**18**	**5**	**75**

Source: *Author's own conception based on the „Analysis of the disciplinary situation and practice in the Romanian Gendarmerie"*

For the entire quarter, 80 sanctions were applied within the Romanian Gendarmerie for violating military discipline, of which 5 were applied to officers, and 75 to non-commissioned officers. Of the total of disciplinary sanctions that were applied, the least severe sanction prevailed, namely the warning, applied, during the analyzed period, to a number of 2 officers and 53 non-commissioned officers. The written reprimand is the second-highest issued sanction during the analyzed period. An officer and 17 non-commissioned officers were sanctioned with a written reprimand for acts that represent deviations from military discipline. The third position, in terms of application frequency, is the 10% decrease in salary for three months, a disciplinary sanction that was administered exclusively to non-commissioned officers, namely to 4 persons. Two officers were sanctioned with a 5% decrease in salary for one month, and for one non-commissioned officer the applied sanction was prolongation of advancement in rank for one to two years.

Analysis of sanctions in correlation with the committed act

Regarding the results of the correlation of the types of disciplinary sanctions applied to officers and non-commissioned officers in the Romanian Gendarmerie, in the first quarter of 2023, with the acts that were considered deviations from military discipline, following the qualitative analysis of the synthesis reports developed by the General Inspectorate of the Romanian Gendarmerie and taking as a reference art. 47 - 49 of the Military Discipline Regulation, we proceeded to grouping the facts that were considered disciplinary violations and correlate them to the categories of sanctions applied for these deviations, as *Table 4* reveals.

Table 4. The types of disciplinary sanctions correlated with the committed disciplinary offenses - Quarter I 2023

No.	Type of sanction	Description of the most common deviations
1.	Warning (W)	- The non-commissioned officer logged into user accounts belonging to other colleagues; - The non-commissioned officer's use of a personal mobile phone during the execution of service; - The head of the patrol was caught sitting with another officer in the ballistic cabin during the execution of duty; - The non-commissioned officer was not found in the service area, during a surprise check; - The non-commissioned officer did not respect the schedule established in the mission organization documents; - The non-commissioned officer involuntarily fired his gun inside the subunit, without causing damage or injury;

		- The non-commissioned officer did not perform the mission in the ordered conditions, during the performance of the service he carried out activities that distracted him from the performance of duties; - Against the backdrop of congested road traffic, the non-commissioned officer did not attend the briefing before entering the mission and did not report the situation to the commander; - During the control carried out by the head of the Public Order and Safety Service, the non-commissioned officer did not have his mission card; - The non-commissioned officer was unreasonably late for the work schedule; - The non-commissioned officer did not respect the norms of social coexistence, order and public peace, damaging the institution's prestige and image; - The officer was unjustifiably absent from work hours;
2.	Written reprimand (WR)	- The non-commissioned officer did not show respect towards colleagues and superiors by reporting some aspects that were misleading in the personal report; - The non-commissioned officer did not request, through a written report, the commander's approval to carry out other remunerated activities outside the working hours; - The officer did not transmit to the collaborative structures the general framework on the basis of which public order in the county had to be ensured; - The non-commissioned officer presented himself for an alerting exercise unequipped in military uniform and without picking up the related materials necessary for carrying out the activity; - The non-commissioned officer damaged the honor and dignity of the unit commander through a series of statements to the leadership; - Due to some personal problems, the non-commissioned officer handed over his shift faster, without reporting this to the detachment commander; - During an intervention for an event, the non-commissioned officers omitted to carry out mandatory measures (preventive body control and handcuffing of the offender); - The detachment commander finds, following the control, the non-commissioned officer's inadequate equipment and the non-fulfillment of the duties of service;
3.	Reduction of salary by up to 5% for one month (RS 5%)	- The officer did not organize the background check and did not list it in the personnel file, within 30 days of the removal of a military personnel, who was transfered in the interest of service;

4.	Reduction of salary by up to 10% for no more than three months (RS 10%)	- Requesting the intervention of a police crew, on the grounds of harassment in the family of a non-commissioned officer and inappropriate behavior with police workers; - The non-commissioned officer did not present himself for entering the service; - The non-commissioned officer did not intercept a suspected aggressor and also no person entered the Palace of Justice for the purpose of carrying out the technical anti-terrorist control or for the preventive body control;
5.	Postponement of advancement in rank for 1-2 years (PAR)	- The non-commissioned officer shows lack of honesty in his relationship with his superiors, by incompletely and imprecisely reporting the facts that happened in a mission that involved a search of the non-commissioned officer's home.

Source: *Author's own conception based on the „Analysis of the disciplinary situation and practice in the Romanian Gendarmerie", January-March 2023*

From the previous table, we can see that the acts that compromise military honor and dignity, the actions that affect the tasks to be performed, as well as the acts that affected the performance of the functional attributions of the Gendarmerie, constituted grounds for sanctioning.

Analysis of the disciplinary situation by county

In this section, we will investigate the state of military discipline in the structures of the Romanian Gendarmerie by county and in the Municipality of Bucharest, analyzing the distribution of disciplinary sanctions by types and military ranks, aspects highlighted in *Figure 2* and *Table 5*.

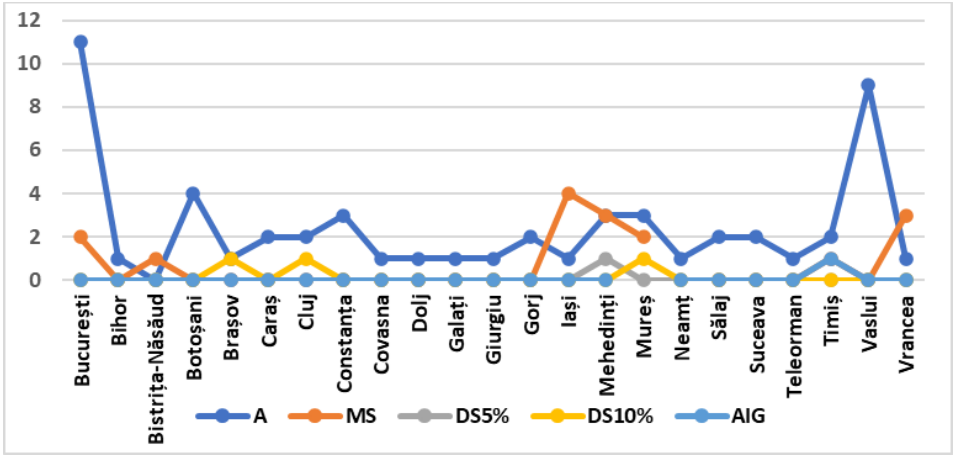


Figure 2. The situation of disciplinary sanctions by types and counties - Quarter I 2023
Source: *Author's own conception based on the „Analysis of the disciplinary situation and practice in the Romanian Gendarmerie"*

The results of our research indicate that the Municipality of Bucharest, Botoşani and Vaslui counties stand out, as they report the highest number of warnings applied only to non-commissioned officers, in the first quarter of 2023. Thus, in the Municipality of Bucharest, 11 warnings were administered to non-commissioned officers, out of the total number of 13 sanctions for deviations from military discipline; in Vaslui County, 9 warning were applied; in Botoşani county, 4 sanctions for violations of military discipline were applied.

The counties of Iaşi, Mehedinţi and Vrancea stand out for the highest number of written reprimand disciplinary sanction assigned to non-commissioned officers, respectively 4 in Iaşi and 3 each in Mehedinţi and Vrancea. Also, in Mehedinţi county, the only sanction in the country related to decrease of salary by 5% for one month was identified, which was applied to an officer. A disciplinary sanction of 10% reduction in salary for three months was applied to non-commissioned officers from Braşov, Cluj and Mureş counties. The only sanction in the country, in the first quarter of 2023, prolonging the advancement in rank for one to two years, was administered in Timiş county.

In order to get a general overview on the degree of respect for military discipline within the Romanian Gendarmerie, we calculated, for the analyzed period, the ratio between the number of sanctions applied, in total and by military rank, and the total number of employees in the Romanian Gendarmerie (*Table 5*).

Table 5. The ratio between the number of applied disciplinary sanctions and the total number of employees in the Romanian Gendarmerie - Quarter I 2023

No.	Employees in the Romanian Gendarmerie	No. of employees	No. of applied sanctions	No. of applied sanctions/No. of employees
1.	Officers	2484	5	0,0020
2.	Non-commissioned officers	19350	75	0,0038
3.	**Total**	**21834**	**80**	**0,0036**

Source: *„Analysis of the disciplinary situation and practice in the Romanian Gendarmerie", January-March 2023*

According to the reports of the Romanian Gendarmerie, the total number of employees in the first quarter of 2023 was 21,834 persons, of which 2,484 officers and 19,350 non-commissioned officers. If we take into account that, during the same period, a total number of 80 sanctions were applied for deviations from military discipline, to 5 officers and 75 non-commissioned

officers, we find that on average of 0.0036 sanctions/employee were applied, which for officers is an average of 0.0020 sanctions/officer, and for non-commissioned officers is an average of 0.0038 sanctions/NCO. Therefore, in the structures of the Romanian Gendarmerie there is a very low degree of violation of military discipline during the observed period, respectively isolated cases or exceptions.

Conclusions

Following the analysis on the disciplinary sanctions of military gendarmes, we find that during the observed period, in the structures of the Romanian Gendarmerie, a very low degree of violation of military discipline, respectively isolated cases, were found. However, we consider that among the measures taken for strengthening the disciplinary responsibility of employees within the Ministry of Internal Affairs, we could enlist:

- taking more preventive actions, training and improvement of the training of military personnel;
- informing the military personnel about the newly issued normative acts, about the changes made in the field of military discipline and about how to apply them;
- increasing the degree of firmness by the leaders of the military units in applying the rules for evaluating the performance of subordinates and disapproving a compliant attitude towards the lack of professionalism in any activity carried out.

References

Ministry of National Defense, Directorate of Human Resources. (2020). Dispoziţia nr. 70087 din 14 Ianuarie 2020 [Disposition no. 70087, January 14th, 2020].

Ministry of National Defense, General Directorate of Human Resources Management. (2020). Dispoziţia nr. 270495 din 06 Ianuarie 2020 [Disposition no. 270495, January 06th, 2020].

Ministry of National Defense. (2013). Ordinul de ministru nr 64/10 iunie 2013 pentru aprobarea Regulamentului disciplinei militare [Ministerial Order No. 64/June 10, 2013 for the approval of the Military Discipline Regulation]. *Monitorul Oficial al României, 399 bis*, July 3rd, 2013.

Romanian Gendarmerie. (2023). Analiza privind starea şi practica disciplinară din Jandarmeria Română [Analysis of the disciplinary situation and practice in the Romanian Gendarmerie]. https://www.jandarmeriaromana.ro

Romanian Parliament. (1995). Legea nr. 80/1995 privind statutul cadrelor militare, cu modificările şi completările ulterioare [Law no. 80/1995 on the status of

military personnel, with subsequent amendments and additions]. *Monitorul Oficial al României, 399 bis*, July 3rd, 2013.

Romanian Parliament. (2006). Legea nr. 384 privind statutul soldaţilor şi gradaţilor profesionişti, cu modificările şi completările ulterioare [Law no. 384 on the status of soldiers and professional grads, with subsequent amendments and additions]. *Monitorul Oficial al României, 868*, October 24th, 2006.