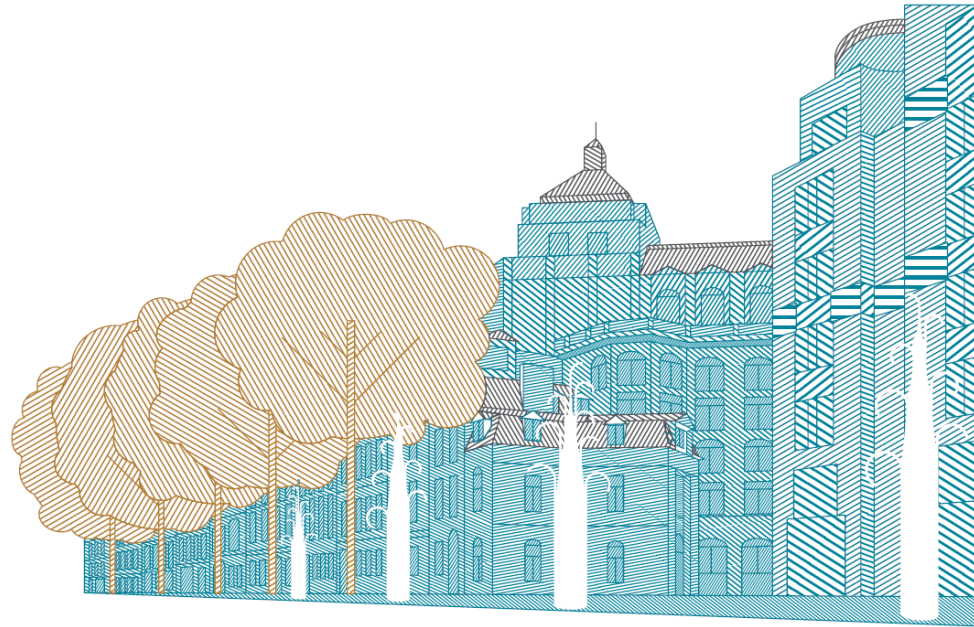


Pre-disciplinary and disciplinary proceedings: key insights and practical recommendations



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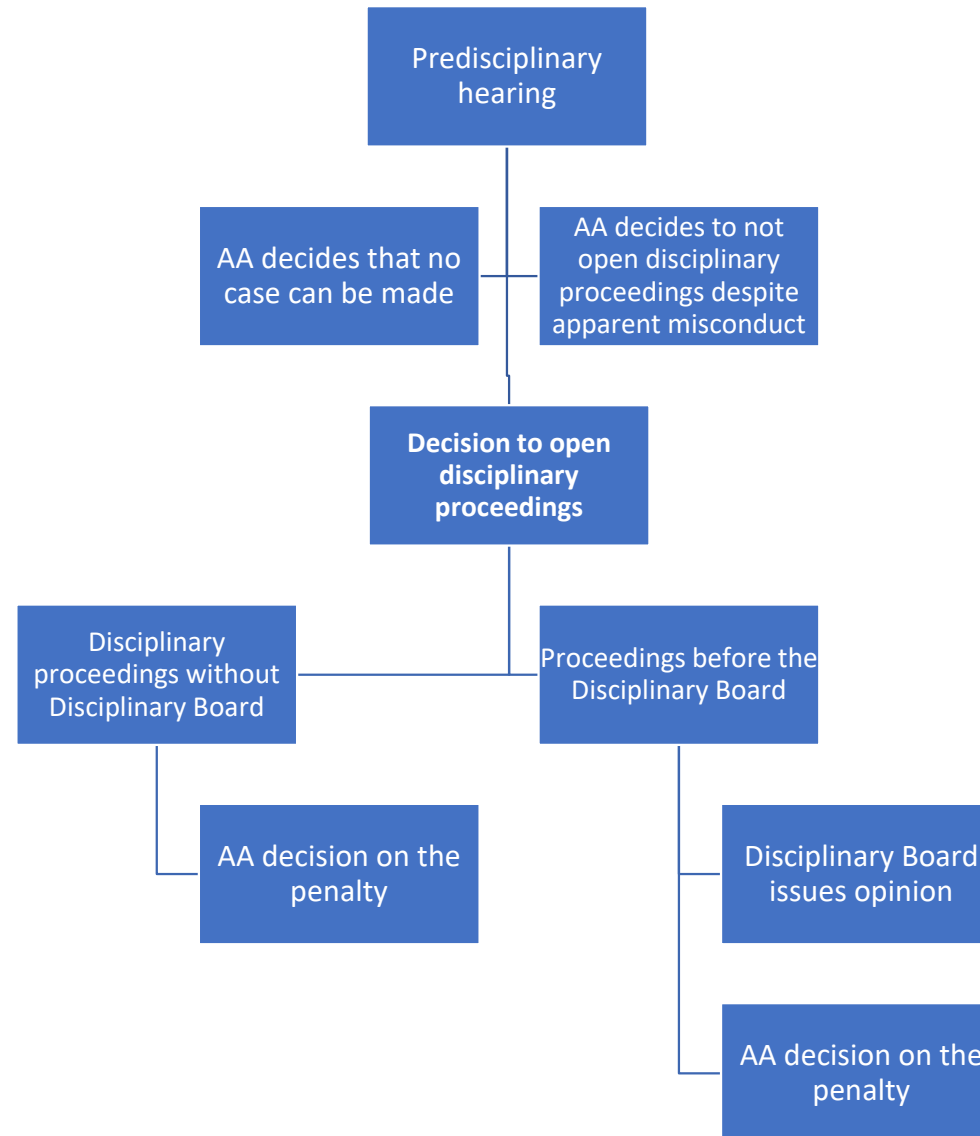
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Introduction

Overview of the disciplinary proceedings

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Topic 1: Right to be heard of the person concerned

Topic 1: Right to be heard of the person concerned in disciplinary proceedings

- Right to an interview? Or written observations are sufficient?

"(...) it is only when the appointing authority cannot, for objective reasons, hear the person about to be sanctioned that it can be satisfied with written observations thereof".

➤ Case T-49/23, *Angelidis v Parliament*, §55

- Objective reasons preventing the hearing?

"it does not appear from Article 4 of Annex IX to the Staff Regulations that only the member of staff concerned can decide whether to use written observations"

➤ Case T-3/23, *UA v EUAA*, §64

Topic 1: Right to be heard of the person concerned à practicalities

- Hearing via videoconference?
 - Case T-3/23, UA v EUAA, §69-70
- Delegation of the right to be heard by the Appointing authority:
 - Which hearing can be delegated?
 - To whom?

Topic 2: Disciplinary proceedings combined with financial liability

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- Article 22 SR: The procedure for financial liability follows the same steps as disciplinary proceedings:

1. Preliminary Hearing;

2. Hearing and opinion of the Disciplinary Board;

3. Final Decision of the AA.

➤ *See Case T-3/23, UA v EUAA*

- Disciplinary penalty + financial liability: Infringement of principle ne bis in idem?

Topic 2: Disciplinary proceedings combined with financial liability

- Article 22 addresses personal liability for **serious misconduct** on his part in the course of or in connection with the performance of his duties.
- Article 85 deals exclusively with the **repayment of undue payments**, focusing on financial accountability without addressing misconduct.
 - No disciplinary proceedings should be initiated for the repayment of undue payments.

Topic 3: the Disciplinary Board, an essential body

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Increasing use of alternatives to the Disciplinary Board:

- **Article 3 (c) of Annex IX of the SR**
 - Simplified Procedure: Penalties (e.g., warning/reprimand) without involving the Disciplinary Board (DB). Easier for Institutions: Faster and less burdensome.
 - **Annual Activity Report of IDOC - 2023 Overview:** In 2023, 27 disciplinary proceedings were initiated: **13 without referral** to the Disciplinary Board and **14 with referral** to the Board
- **For agent:** The AA may terminate a temporary agent's contract under Article 47(c) CEOS, without initiating disciplinary proceedings, even if the misconduct could justify disciplinary dismissal (**CT / EACEA, F-36/13, § 54**).

Topic 3: Is the disciplinary Board obsolete?

Importance of the consultation of the Disciplinary Board (case T-669/22, IP/Commission):

➤ **Disciplinary Board's Role:**

The board is essential for collegial "in depth and adversarial debate" and recommending appropriate penalties "on the basis of an assessment of the exact facts", especially for serious penalties such as the termination of the contract.

➤ **AHCC's Obligation:**

The AHCC must consult the disciplinary board and consider its opinion when making decisions on penalties, as required by Staff Regulations.

➤ **Procedural flaw:**

The AHCC's failure to consult again the disciplinary board's opinion after annulment of the initial penalty decision constitutes infringement of an essential procedural requirement.

Topic 4: Parallel criminal proceedings

Topic 3: Parallel criminal proceedings

- **Dual Proceedings:** Officials may face disciplinary proceedings within institutional bodies while simultaneously being subject to criminal proceedings in national courts for the same facts.
- **Suspension of Disciplinary Proceedings (Article 25):** The final decision is deferred until a final judgment is delivered by the criminal court.
 - Exception: Goetz / Committee of the Regions, F-89/11 § 151 ; AL/ Conseil, T-22/22 § 27
- **Independent Sanctions:** Disciplinary penalties may differ from those imposed by national criminal courts.

Topic 3: Parallel criminal proceedings

- Impact of Criminal and Administrative Proceedings on Disciplinary Decisions:
 - **Excessive Length of Procedure** (T-217/18, DK / SEAE § 95).
 - **Non-Promotion:** Exclusion from annual promotion exercise due to ongoing administrative investigation.
 - Infringement of the principles of presumption of innocence and ne bis in idem?

Topic 5: disciplinary penalty and principle of proportionality

Topic 4: disciplinary penalty and principle of proportionality

- **Comprehensive List of Disciplinary Penalties** - Article 9 of Annex IX
- **Proportionality principle:** The disciplinary penalty must be proportionate to the seriousness of the misconduct (Article 10, Annex IX SR):
 - nature of the offense, impact on the institution,
 - level of negligence or intent involved,
 - seniority,
 - career conduct,
 - recurrence of the offense...
- **AA's wide margin of Discretion:** (IP/Commission, T-669/22 §126).

Topic 4: disciplinary penalty and principle of proportionality

1. Mitigating Circumstances:

- Health conditions (Coedo Suárez / Conseil, T-297/15 P §29 - 30)

2. Aggravating Circumstances:

- Recidivism (BG / Médiateur, F-54/11 § 127 & IP/Commission, T-121/20 § 57-59, 67-70)
- Intentionality of the offense (AL / Conseil, T-22/22 § 98-101)
- Damage to institutional image (HI / Commission, F-133/15 § 104)
- Lack of remorse (AL / Conseil, T-22/22 § 122)
- Loss of trust (DI / BCE, T-514/19 §207-220)

➤ Note: The AA must justify the choice of penalty by referencing both mitigating and aggravating factors (OT / Parlement, T-757/20 § 189).

Topic 4: disciplinary penalty and principle of proportionality

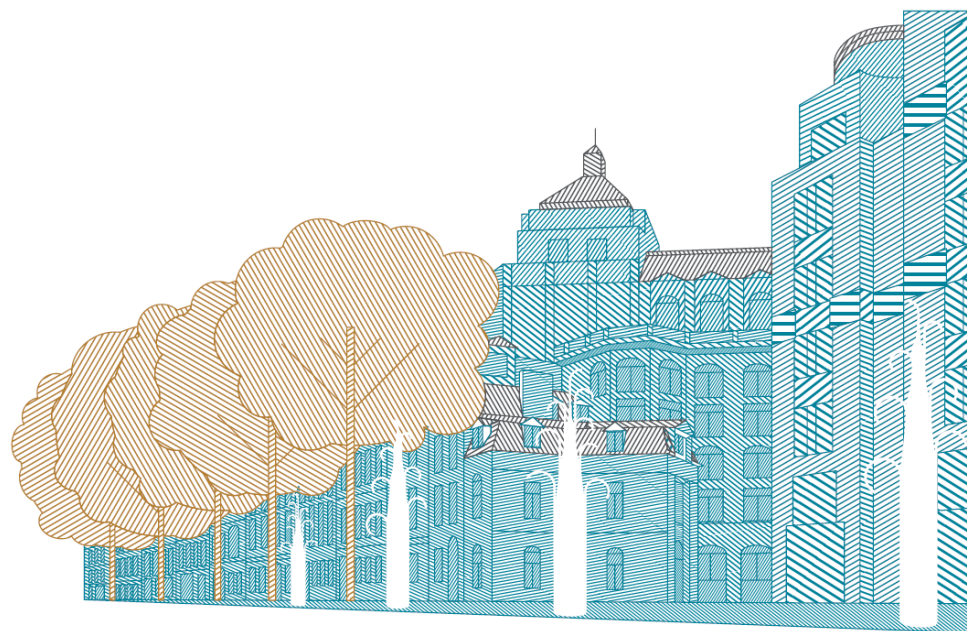
➤ Judicial Review:

- The judge has the power **to assess fully the proportionality** between the misconduct and the penalty (OQ / Commission, T-162/22 §71).
- Compliance with Article 47 of the EU Charter of fundamental rights
 - For example, in cases of **manifest error** or **abuse of power** (AL/Conseil, T-22/22 §52):
 - The judge annulled the penalty (reprimand) as it was disproportionate, due to the lack of justification for choosing the most severe penalty between a written warning and a reprimand. (OT / Parlement, T-757/20 § 165-173)
 - The General Court assesses whether the disciplinary authority's consideration of aggravating and mitigating circumstances is proportionate. (DI/BCE, T-514/19 § 196-197)

Conclusion

THANK YOU

QUESTIONS?



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