DISCIPLINARY PROCEDURES IN PENITENTIARIES

THE RIGHT TO A FAIR TRIAL IN DISCIPLINARY PROCEDURES AGAINST DETAINEES

EXECUTIVE SUMMARY

The research paper titled "*Fegyelmi eljárások a büntetés-végrehajtásban. A tisztességes eljáráshoz való jog a fogvtartottak elleni fegyelmi eljárásokban"* (in Hungarian) was published by the Hungarian Helsinki Committee in 2014 and authored by Ivóna Bieber, Balázs M. Tóth, Viktor Zoltán Kazai, Krisztina Kovács, Krisztina Lukács, Zoltán Pozsár-Szentmiklósy. The research project was funded by the Open Society Foundations.

INTRODUCTION

The Hungarian Helsinki Committee (HHC) has started its project titled "*Improving the Fairness of Disciplinary Procedures in Penitentiaries"* in 2012 with the aim to map the normative framework and practice of disciplinary procedures against detainees. Our starting point was that the requirements related to the right to a fair trial – a right protected by international treaties and the practice of international judicial forums – are binding in the disciplinary procedures as well.

Within the framework of the research – in close cooperation with the National Penitentiary Headquarters – staff members of the HHC have analyzed 136 disciplinary case files based on the same standard. Accordingly, interviews with penitentiary staff members, penitentiary judges, as well as the experiences gained in the cases in which our contracted attorneys have provided legal assistance for detainees were important sources of the research. In order to discuss the research findings and the draft of the research paper, a roundtable discussion for stakeholders (Representatives of the penitentiary system, of the Curia, the Prosecutor General's Office, the Hungarian Bar Association and representatives of the academic sphere) was organized by the HHC.[1] The vast majority of the opinions which were said at the event were integrated into the final version of the research paper.

Based on the research findings and the roundtable discussion, the HHC made general recommendations related to the regulation and the practice of disciplinary procedures in order to strengthen the fairness of those.

INTERNATIONAL BACKGROUND

At the beginning of the project, the HHC conducted a mapping research into international standards on the right to a fair trial, with special regard to the *UN Standard for Minimum Rules for the Treatment of Prisoners*, the *Recommendation of the Committee of Ministers to members states on the European Prison Rules*, and the case-law of the *European Court of Human Rights* (ECtHR) on Article 6 of the European Convention of Human Rights. According to the conclusion drawn by the HHC based on the analysis, those cases in which the possible sanction is solitary confinement can be handled as criminal procedures due to the potential length and conditions of detention and the nature of the offense in question. These cases fall under the scope of Article 6 of the Convention. Similarly, strong arguments can be raised that all disciplinary cases fall under the scope of Article 6 due to the fact that

[1] The event took place in Budapest, on 13 June 2014.

the disciplinary record itself can determine the decision on probation, thereby the respondent's right to personal freedom is affected.

Based on the case-law of the ECtHR related to Article 6 of the Convention, the HHC has identified the standards and requirements related to the right to a fair trial which are relevant to disciplinary procedures conducted in penitentiaries:

- right of access to a court
- the independence of the court, namely
  - the rules and procedure of the appointment of its members and the duration of their term of office
  - the existence of safeguards against outside pressures
  - whether the judicial body presents an appearance of independence
- the impartiality of the court, namely
  - subjective approach, that is, endeavoring to ascertain the potential bias or interest of a given judge in a particular case
  - objective approach, that is, determining whether he or she offered sufficient guarantees to exclude any legitimate doubt in this respect
- equality of arms (each party be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent, opportunity for the parties to have knowledge of and comment on all evidence presented in the case or observations made during the procedure)
- detailed reasoning of judicial decisions (judgments of courts should adequately demonstrate the reasons on which they are based)
- right to remain silent and not to incriminate oneself
- public hearing and public pronouncement of judgments (with some exceptions)
- the right to be present at the trial
- the right to trial within a reasonable time
- the presumption of innocence
- rights of the defense, namely
  - to be informed promptly and in detail, in a language which the respondent understands, of the nature and cause of the accusation against him/her
  - to have adequate time and facilities for the preparation of the defense
  - to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require
  - to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The findings of the research were assessed based on the above mentioned requirements.

ASSESSMENT OF THE HUNGARIAN NORMATIVE FRAMEWORK

The HHC has conducted desk-research on the Hungarian legal framework related to disciplinary procedures. The most important legal instruments regulating disciplinary procedures against detainees are the Penitentiary Code (Decree no. 11. of 1979), Decree no. 11/1996 (X.15.) IM of the Minister of Justice and Order no. 0289/1996 (IK. Bv. Mell. 10.) OP of the Director General of the National Penitentiary Headquarters [later replaced by the Order 1/11/2013. (IV.15.)] While the project was underway the Hungarian Parliament enacted the new Penitentiary Code (Act CCXL. of 2013), which will enter into force on 1 January 2015. The HHC has covered the provisions of the new Code related to the disciplinary procedures by the desk-research.

The HHC has conducted in-depth research into the relevant provisions of the house rules and the orders of heads of all the 31 penitentiary institutions of Hungary. The aim of the analysis was partly to

identify due process guarantees provided by law and partly to determine patterns in the "local" regulations identifying good and bad practices.

The core findings are the following:

- The Penitentiary Code in force contains only few provisions related to the disciplinary procedures: the types of sanctions and the right to appeal to the penitentiary judge against the decision about solitary confinement. The new Penitentiary Code introduces a number of provisions specifically focusing on disciplinary procedures. It is an important development that the system of sanctions will be more structured: the Code introduces new sanctions, such as the restriction of the right of the detainee to keep certain objects, the restriction of the possibility to participate in programs organized by the penitentiary institution, the restriction of services available for the detainees. The possibility of mediation in conflicts between detainees is also an important step forward. However, the new Code has left open many questions which should be regulated in detail by ministerial decrees.
- The Decree of the Minister of Justice in force contains detailed provisions related to the disciplinary procedures. The Decree defines the notion of disciplinary offence and provides detailed examples. However, the Decree entitles the penitentiary institutions to define further acts as disciplinary offences in the house rules. According to our conclusion, there are no relevant arguments in favor of the different regulation in the penitentiary institutions – this practice goes against the requirement that regulation of the disciplinary offences shall be set by law.
- The Decree also contains several provisions related to the procedural safeguards of disciplinary procedures (e.g. the requirement to hold a hearing of the respondent, the requirement of informing the respondent about her rights and duties related to the disciplinary procedure, the right to appeal, etc.).
- The Decree contains detailed provisions related to the initiation of the disciplinary procedure, the procedure itself and the execution of the disciplinary sanctions. However, the regulation is not detailed enough related to the examination of the personal conditions of the respondent, the production and presentation of possible evidences.
- The Order of the Head of the National Penitentiary Headquarters contains important additional provisions related to disciplinary procedures and clarifies the related duties of the penitentiary institutions. However, the Order provides for procedural safeguards as well, e.g. the clarification of those persons who can be present at the disciplinary hearing and the examination of the personal circumstances of those respondents whose acts can be harmful for themselves. The Annexes of the Order contain samples of the documents to be used in disciplinary procedures.
- The house rules – as primary sources of information for the detainees – do not contain detailed provisions related to disciplinary procedures.

The findings of the above analysis were heavily relied on when compiling the questionnaire to be used during the case file research and identifying the penitentiary institutions to be visited in the framework of the project.

ANALYSIS OF DISCIPLINARY CASE FILES

Methodology of the research

Based on consultations with the National Penitentiary Headquarters, the staff members and colleagues of the HHC have visited four penitentiary institutions within the framework of the project: the Mid Trans-Danubian National Penitentiary Institution (26-27 August 2013), the Borsod-Abaúj-Zemplén County Penitentiary Institution (2-3 September 2013), the Vác High and Medium Security Prison (18-19 September 2013), and the Budapest Penitentiary Institution (15-16 October 2013). The HHC had requested data from the participating penitentiary institutions regarding the disciplinary procedures conducted in 2012 and selected the cases to be examined based on statistical methods. Selected cases were analyzed based on the case files and the database of the National Penitentiary Headquarters. The researchers of the HHC used a detailed questionnaire which had been prepared in

the framework of the project. When compiling the questionnaire the idea was to develop a comprehensive list of questions that is suitable to collect specific, accurate and comparable information. Most importantly, the HHC tried to form the right questions which would cover the key aspects of research. The questions also reflected the safeguards established by the relevant national and international human rights law.

The questionnaire covered the following issues:

- basic personal data of the respondent
- characteristics of the crime the detainee was convicted for
- information on the punishment (starting date, expected date of release, placement in a special group, security level)
- personal disciplinary record of the previous 12 months
- basic data of the present disciplinary case (short description of the facts, date and circumstances given at the time of the commission of the disciplinary offense)
- procedural safeguards (right to interpretation, legal representation, right to silence, presumption of innocence)
- admitted evidences
- details of the decision, including the reasoning
- details of the appeal procedure or request for judicial review
- disciplinary segregation as a temporary measure

The researchers of the HHC examined altogether 136 disciplinary case files. The data gained during the case file research was evaluated quantitatively by the statistician. The data she provided served as a starting point for summarizing the research findings.

Standards and context of the analysis

When assessing the data gathered from the case file research, our researchers based their findings on the standards and requirements related the right to a fair trial set by the practice of the ECtHR. Our researchers have identified the following aims of the disciplinary procedure: (a) maintaining the security of the penitentiary institution and (b) facilitating the rehabilitation of the detainees.

It is important to note that due to the overcrowding of penitentiary institutions and the lack of sufficient human and financial resources there is no rehabilitation program for the detainees.

From the methodological point of view, a distinction should be drawn between "ordinary cases" and "hard cases". Cases in which the clarification and the assessment of facts are not difficult can be considered as "ordinary cases" (e.g. smoking in a place where it is prohibited, not waking up in time, etc.). In many cases there are serious personal circumstances behind the disciplinary offences, therefore these "hard cases" should be assessed with a holistic approach. Nevertheless, the disciplinary procedure, in fact, focuses solely on the act itself and not on the motives behind, hence it cannot have a real impact on the rehabilitation of detainees. It is important to note that if the disciplinary procedure focuses only on the manifestations of those serious personal problems which exist behind the disciplinary offence, these personal circumstances will remain constant risk factors from the point of view of the security of penitentiary institution and the detainees themselves. Typical "hard cases" are the infringement of the rules of communication and (physical) abuse of other inmates.

General findings

Our general preliminary conclusion is that the disciplinary procedure in its present form is not suitable to facilitate the rehabilitation of detainees and the prevention of future offences. Furthermore, in many elements it is not in line with the European standards related to due process guarantees:

- the documentation of disciplinary procedures in many cases is not sufficient
- the different stages of the procedure (investigation, decision-making, etc.) are not separated
- the most important part of the disciplinary procedure is the investigation
- the hearing in disciplinary cases is mostly formal

- the respondent is not an active participant, he/she rather holds a passive role in the procedure
- some of the basic due process guarantees are not enforced in the practice of disciplinary procedures (the right to legal representation, the right to decision which contains sufficient reasoning, the right to appeal)

Due to the above mentioned conditions, the disciplinary procedures cannot reveal the real risks given in the penitentiary institutions and cannot have a real impact on the detainees' personal behavior. The essence of the current practice of disciplinary procedures lies in sanctioning and not in rehabilitation.

Documentation of disciplinary procedures

It shall be mentioned that the appropriate documentation of disciplinary procedures is a procedural safeguard: if the documentation is appropriate, the different stages of the procedure are traceable and the procedure itself is verifiable. Our research demonstrates that the documentation of disciplinary procedures is incomplete in most of the cases. In many analyzed cases it was not clear who were present at different procedural steps, whether there were any motions for admission of evidence filed by the respondent, whether certain circumstances were taken into consideration or not. In many cases even the minutes about certain procedural steps were not complete.

The penitentiary institutions are using sample documents when informing the respondents. Even if these documents are signed by the respondents, it is questionable whether they were informed promptly and sufficiently.

The stages of the disciplinary procedure and the role of the participants

The two main stages of the disciplinary procedures are the investigation and the hearing.

The respondent, the investigator and the decision-maker are playing key roles in the disciplinary procedures. It is worth mentioning that the distinction between the two later is essential: if the investigative and the decision-making functions are linked together, the principle of the presumption of innocence is violated. Similarly, the result of the hearing can be controversial if the different procedural roles are not separated from each other.

According to our research findings, in most of the cases the decision-maker builds her decision upon the findings of the investigation. It is essential for the decision-maker to make her decision independently, and she should take into consideration both the findings of the investigation and the arguments of the respondent.

Production and presentation of evidence

Based on the research findings, the documentation of the investigation is much more detailed than the documentation of the hearing. Likewise, the collection of evidences is much more effective at the stage of the investigation than at the stage of the hearing. In most (98%) of the cases the investigator holds an oral hearing to listen to the arguments of the respondent.

It is important to note that even if in 40,4% of the cases the respondents confessed to the act in question, in "hard cases" there could be several reasons behind that decision – therefore these evidences should be handled carefully.

Even at the stage of the investigation the facts of the case can be clarified sufficiently – according to the opinion of the interviewed penitentiary judges – these are not documented satisfactory. Similarly, even if in most of the cases there are many evidences at hand, in 30% of the cases our researchers pointed out that there were unclear circumstances which could have an impact on the fairness of the procedure.

It is important to point to the fact that if the investigation is carried out routinely, the chance is growing that the facts of the case will not be clarified sufficiently.

According to our research findings, the hearing is a merely formal stage of the disciplinary procedure. In most of the cases no evidence is presented at this stage and the decision is based on the findings of the investigation. There is a tendency that the documentation of the hearing is not complete. The average oral hearing lasts from 5 to 30 minutes.

In most of the cases there are three persons present at the hearing: the respondent, the investigator and the decision-maker. Bearing in mind that the rehabilitation is one of the aims of the disciplinary procedures, the presence of the educator responsible for the respondent ("nevelő" in Hungarian) is of key importance. The Order of the Head of the National Penitentiary Headquarters also explicitly prescribes that requirement. Nevertheless, the educators are not present at the hearings in many cases.

The motives behind the disciplinary offences and the personal circumstances of the respondent are not taken into consideration in most of the cases. In addition, the reasoning of the decisions does not reflect the appreciation of evidence, the assessment of the personal circumstances of the respondent or his/her arguments.

It is of key importance that the decision-maker should build her decision upon evidences examined by her personally. In most of the cases the decision-maker gets acquainted with the evidences only from the documents of the investigation.

The equality of arms and the right to defense

The equality of arms – in close connection with the right to defense of the respondent – is a fundamental element of the right to a fair trial: the parties should have equal rights to access information about the case, to be present and to present evidence. It is important to note that the active presence of the respondent enhances the chance to clarify the facts and relevant circumstances of the case and to reach the right conclusion. However, our research indicates that in most of the cases the respondents are rather passive than active participants of the case. The only part of the procedure when the respondent plays an active role is the oral hearing at the stage of investigation (which takes place in 98% of the cases).

The respondents did not file any motion for evidence in any of the cases and in most of the cases did not request legal representation either. In 92% of the cases the respondents did not appeal against the decision of first instance. These facts demonstrate that the respondents themselves are very passive and – seemingly – not interested in the possible outcome of the procedure. Due to these circumstances the disciplinary procedure itself does not fulfill its preventive function.

According to the conclusion of our research, it is the duty of the penitentiary institution to help the respondents in a proactive way in exercising their procedural rights. Informing the respondents about their rights in a mostly formalistic way (by letting them read and sign the document containing the information) is not satisfying. The passive role played by the penitentiary staff in informing the respondents in an appropriate way is indicated by the fact that in 66,2% of the cases no extenuating or aggravating circumstances were taken into consideration. According to the assessment of our researchers, the decision-makers in these cases failed to focus on the personal circumstances of the respondents.

The right to appeal

As mentioned above, in 92,2% of the examined cases the respondents did not file a motion for appeal: all of the appeals were filed in cases in which the sanction was solitary confinement and the penitentiary judges changed the decision of first instance only in one case.

It is important to note that the equality of arms and the appropriate reasoning of the decisions are preconditions for the use of the right to appeal.

The practice of sanctioning

The purpose of the sanctions in disciplinary cases is twofold: sustaining the security of the institution and of the detainees and the rehabilitation of the detainees. According to our experiences, when the appropriate working conditions are missing (e.g. the problem of overcrowding), security takes precedence over rehabilitation.

The practice of sanctioning in the examined penitentiary institutions is in many aspects very similar and qualified by our researchers as fair. In aspects in which there are big differences between the practice of the examined penitentiary institutions the assessments of the researchers are varying as well. For example in the practice of the Budapest Penitentiary Institution in cases of abuse of other detainees the typical sanction imposed is the reprimand – contrary to the practice of the other institutions which use more severe sanctions. Our researchers qualified this practice as too moderate taking into consideration the point of view of the victim. One possible explanation for that is that in the Budapest Penitentiary Institution many respondents were in pre-trial detention, therefore the solitary confinement – due to the frequent hearings in the ongoing criminal cases – was not the appropriate sanction in many cases. Moreover, in the Budapest Penitentiary Institution the overcrowding rate is even higher than in other institutions (the number of the detainees is three times higher than the number of the penitentiary staff).

In 25,2% of the examined cases, the disciplinary offences in question were examined by the educators – mostly in simple cases. The participation of educators in the disciplinary procedures is advisable due to the fact that they are in better position to assess the personal circumstances and possible motives of the respondent. At the same time, the main function of the educators is to facilitate the rehabilitation of detainees. Therefore, the HHC recommends that the educators should not participate in disciplinary procedures as investigators but rather as the participants of a compulsory dialogue which aims for discovering the personal motives of the respondent and the possible methods of rehabilitation.

It is an important conclusion of the research that the sanctions imposed in the disciplinary cases does not have any preventive effect. In 59,6% of the examined cases the respondents had more than three previous disciplinary cases.

INTERVIEWS WITH PENITENTIARY STAFF MEMBERS

In order to gain an overall impression of the view of professionals working in the field the HHC's researchers interviewed altogether 21 staff members of penitentiaries. The interviews took place at the time of the visit to the respective institutions. The interviews helped us to understand the perspective of and the challenges faced by prison staff members with regard to disciplinary offenses and proceedings. They also facilitated the formation of adequate recommendations in this field.

While selecting staff members for the interviews, HHC aimed for involving all kinds of staff members who may play an important role in handling disciplinary cases. Thus, wardens and prison officials of different ranks, educators and heads of penitentiaries were also interviewed.

General questions related to the disciplinary procedures

Almost every interviewees assessed the practice of the penitentiary institutions with regard to conformity with the regulations prescribed by law. A number of interviewees mentioned the difficulties in presenting evidence as one of the deficiencies. Some of them argued that the normative framework related to the procedure itself is not satisfying: it is not clear who can be a legal representative, what measures should be taken in the case of suspending the procedure, etc. One additional opinion was that the fact that a detainee was a victim of a disciplinary offense should also be registered in the penitentiary record in order to be taken into consideration at the decision about the placement of the affected detainee. In the opinion of more interviewees, the education of penitentiary staff members regarding the disciplinary procedures should be more effective.

Many interviewed staff members consider that the educational function of the disciplinary procedure itself should play an important role. However, many of them argued that the present practice of the disciplinary procedures is not suitable to reach this goal.

The position of respondents in the disciplinary procedures

According to the majority of the interviewed penitentiary staff members, the most important factors which have an effect on the fairness of the disciplinary procedures are the objectivity and professionalism of the investigator and the decision-maker. An interesting finding of these interviews is that most of the penitentiary staff members consider that the participation of legal representatives does not have any relevant effect on the fairness of disciplinary procedures.

Problematic areas

It is important to note that the opinions of the penitentiary staff members do not vary based on their rank but rather their professional experience. Although regular education and consultation could enhance the professional quality of disciplinary procedures, our findings indicate that there is no cooperation between the different penitentiary institutions with regard to disciplinary cases. Based on the interviews, the most problematic areas are the following: legal representation does not exist in the practice of disciplinary procedures, the lack of participation of the educators (who are aware of the personal circumstances of the respondent) in the procedure, the lack of a separate status for the decision-maker in disciplinary cases in every penitentiary institution that could ensure sufficient time and attention for conducting the procedures, and the lack of differentiation of sanctions.

INTERVIEWS WITH PENITENTIARY JUDGES

Since the project also aimed to assess the disciplinary decisions' possible influence on parole decisions, three penitentiary judges (i.e. judges deciding on parole) were interviewed in the framework of the project in order to gain information about professionals' view regarding the relevance of disciplinary decisions. The interviews with the penitentiary judges were conducted in a later stage of the project so that the preliminary findings of the case file research could be discussed with the interviewees. Due to the nature of these discussions the interviews were based on a partly structured questionnaire. The interviews took place on 14 October 2013, 24 April 2014 and 29 April 2014.

The penitentiary judges were on the opinion that the main elements of the regulation regarding the penitentiary procedures are satisfying. However, two judges were on the opinion that the regulation should clarify the relation between the disciplinary cases and the parole decisions. According to their view, the fact that the head of the penitentiary institution has the right to delete the disciplinary cases from the penitentiary record of the respondent as a reward, is not a satisfying safeguard. They proposed that after a certain time these data should be deleted from the penitentiary record based on regulation stated by law.

The interviewed judges were on the opinion that the penitentiary institutions are not clarifying the facts of the cases in a satisfying manner.

The interviewed judges pointed out that attorneys are present at any stage of the disciplinary procedure very rarely, even though their participation would have a positive effect on the legality of the whole procedure and on the clarification of the facts of the case. One of the judges proposed that the law should prescribe the compulsory presence of attorneys at some stage of the procedure.

The penitentiary judges were on the opinion that the role of the respondents in the disciplinary procedures is predominantly passive. All of the judges were on the opinion that many circumstances (i.e. the overcrowding of cells, the relations and conflicts between detainees, etc.) have an effect on the frequency of disciplinary offences. Similarly, all of the judges were on the opinion that the extenuating and aggravating circumstances should be taken into consideration in the procedure.

LEGAL REPRESENTATION

As noted earlier, in order to ensure well-founded, correct and impartial conclusions the guiding principle of the research was to use as many different sources of data and information as possible – that is why the HHC paid special attention to providing legal assistance in individual disciplinary cases as well. Besides, the legal assistance provided aimed the protection of the rights of the detainees involved. In order to get informed about new disciplinary cases in due course and to be able to provide legal assistance in different penitentiary institutions, the HHC has contacted the National Bar Association and the Budapest Bar Association requesting them to circulate a letter among defense lawyers with clients detained in penitentiary institutions and asked these colleagues to help the HHC in identifying prospective clients to be represented in disciplinary proceedings.

However, our experience has shown that it is challenging to find those disciplinary cases within the penitentiary system which are suitable for legal representation. Our contributing defense counsels have drawn our attention to the facts that (a) it is difficult to predict the commencement of new procedures, because disciplinary offenses occur unexpectedly – even if relatively frequently – in the penitentiaries; (b) it is difficult to get information about the commencement of disciplinary procedures, because in many instances by the time the counsel is informed, the procedure has been accomplished; and (c) the respondents in many cases refuse the legal representation – even if they are informed about the possibility – due to the fact that they are often more interested in the quick termination of the procedures than in getting high quality legal representation.

Our experience has also shown that even if in many cases the respondents themselves were not motivated in seeking legal remedy, providing legal representation in disciplinary procedures is still essential for acquiring insight into the practice of the procedures themselves and for assessing what difference professional legal assistance may make in those procedures.

Based on the experiences of the cases, our contributing attorneys have drawn our attention to procedural errors. One of the cases was sent back to the penitentiary institution by the judge two times because the facts of the case were not established. In another case – due to the failures – the reasoning of the judicial decision contained detailed information (addressed to the penitentiary institution) about the formal and substantive requirements regarding the penitentiary case files established by law.

According to our experience it is often difficult for the attorney to communicate with the respondents represented by them in disciplinary cases. In a number of cases the penitentiary institution did not inform the attorneys about the time of the hearing.

The attorneys were on the opinion that in many cases the clarification of the facts of the case and the presentation of evidence is not satisfying and convincing. One of the colleagues pointed to the fact that the procedure was closed because of his remarks regarding the contradicting evidence. In other cases the colleagues reported that their motions for presenting evidence were denied without any reasoning. All the attorney were on the opinion that the decision-makers in disciplinary cases build their decisions directly upon the result of the investigation and do not take into consideration extenuating and aggravating circumstances at all.

GENERAL RECOMMENDATIONS

According to the above detailed research results, the Hungarian Helsinki Committee puts forward the following recommendations related to the regulation and practice of disciplinary cases in order to strengthen the fairness of disciplinary procedures:

Recommendations regarding the regulation of disciplinary procedures

- The list of possible disciplinary offences (set out by the house rules and orders of heads of penitentiary institutions) varies from institution to institution. Therefore – in accordance with the international requirements – the unification of the regulation would be necessary, at least at the level of a ministerial decree.
- The new Penitentiary Code includes more types of sanctions in disciplinary procedures than the regulation in force – however, a more precise differentiation of the possible sanctions would still be necessary.
- As a positive development, the new Penitentiary Code introduces the possibility of mediation in disciplinary procedures in the case of conflicts between detainees. However, it would be necessary to clarify the rules regarding mediation and to include procedural safeguards.
- It is essential to prescribe in the law that after a certain period of time data on disciplinary cases shall be removed from the personal disciplinary record of the detainee – taking into account the fact that the detainee's disciplinary record can be taken into consideration when deciding on parole.
- It should be prescribed by law that the consultation with the educator ("nevelő") must be always part of the disciplinary procedure in order to identify the personal motives and special circumstances behind the disciplinary offences.
- It should be prescribed by law that the penitentiary institutions shall offer the detainees involved in disciplinary cases the regular possibility of consultation with attorneys, whose activities shall be financed from the state budget.
- The safeguards related to the hearings in disciplinary cases must be strengthened in order to clarify the different roles (investigator, decision-maker) in the procedure and to ensure the equality of arms.
- House rules shall be available for the detainees and should contain all the relevant information regarding the disciplinary offences and procedure.

Recommendations regarding the practice of disciplinary cases

- When handling disciplinary cases, penitentiary institutions should pay special attention to the aim of rehabilitation of inmates.
- It is necessary to initiate a professional dialogue regarding the methodology of mediation in disciplinary cases and its detailed regulation by an order of the National Penitentiary Headquarters.
- Similarly – after consultations with stakeholders and NGOs –, it is essential to provide penitentiary staff members with detailed methodology regarding disciplinary procedures (in the form of an order issued by the National Penitentiary Headquarters).
- It is essential to provide penitentiary staff members involved in disciplinary procedures sufficient time and suitable conditions to handle these procedures.
- It is a basic requirement to provide regular trainings and consultations to penitentiary staff members involved in disciplinary procedures.
- It is essential to establish a separate position in every penitentiary institution for a staff member who is entitled to decide in disciplinary cases and does not have any other duties.
- The presence of the respective educator responsible for the detainee is essential at the hearings in disciplinary procedures.
- It is essential to pay sufficient attention to the precise documentation of disciplinary procedures.