

# **Administrative and disciplinary investigations in the Federal Administration**

**Summary of the report by the Parliamentary Control of the  
Administration for the National Council Control Committee**

17 June 2019

---

---

## Summary

***Administrative and disciplinary investigations in the Federal Administration are usually requested, conducted and concluded in an appropriate manner. However, the evaluation uncovered some weaknesses in the choice of type of procedure, the inclusion of the departments, procedural regulations, the application of the statute of limitations and the use of available expertise.***

*As part of its supervisory duties, the Federal Administration may order various kinds of investigation to be carried out. Besides an informal investigation conducted by a superior, two formal procedures exist: an administrative investigation to examine an event or situation, and a disciplinary investigation to examine whether an individual has breached their professional duty.*

*Having identified problems with procedure in some instances, in January 2018 the parliamentary control committees (CCs) requested the Parliamentary Control of the Administration (PCA) to conduct an evaluation of administrative and disciplinary investigations in the Federal Administration. At its meeting on 25 June 2018, the competent sub-committee of the National Council Control Committee, the FDFA/DDPS sub-committee, decided that the PCA should investigate how administrative and disciplinary investigations are ordered, conducted and concluded both from a legal and a practical viewpoint. The sub-committee also decided to assess the extent to which informal investigations differ from formal administrative and disciplinary investigations in legal terms.*

*The PCA subsequently requested the University of Zurich to provide a legal opinion. The PCA also carried out a written survey among the departments in order to form its own impression of investigations in the Federal Administration. On the basis of this survey, it selected six administrative investigations and twelve disciplinary investigations to examine in more detail. Documents were analysed and around 45 interviews conducted, in each case with the instance ordering the investigation, with the body conducting the investigation and with the investigated person, where possible. The PCA also conducted interviews on general practices in such procedures with a number of employee associations, the mediation board for federal employees, the Federal Office of Personnel, the Federal Chancellery and with the general secretariats of some departments.*

### ***Difficulties in procedure selection***

*The law regulates only to an extent the circumstances under which an authority can or must conduct an administrative or disciplinary investigation. To some degree, therefore, it is at the discretion of the departments and offices to decide when to conduct an investigation. The PCA enquiry showed that in some cases an administrative investigation was conducted where a disciplinary one would have been more appropriate. This was particularly true of the cases in which it was already known which individuals the investigation would focus on at the time the investigation was launched. In a few cases, it was inappropriate to order a disciplinary investigation. It might be asked why administrative and disciplinary investigations are actually necessary, since an informal investigation can also lead to staff measures being applied and, if necessary, to dismissal. Some cantons,*

---

indeed, no longer conduct disciplinary investigations; however, the PCA did not look at the pros and cons of this in any detail. Finally, ordering an administrative or disciplinary investigation underlines an issue's importance and possibly sends out a signal about the person or administrative unit to be investigated. The evaluation also identified problems of differentiation between the two procedures, raising questions about the need to have two separate formal procedures.

***Ordering of administrative investigations sometimes inappropriately delegated***

The law states that administrative investigations should be ordered at departmental level. In two of the administrative investigations evaluated by the PCA, the department delegated this task to a lower administrative unit on the basis of an internal regulation. In other words, the department delegated the ordering of the investigation in line with the statutory requirements; however, the matter under investigation was such that it would have been more appropriate for the department to have ordered the investigation. In two further cases, the administrative unit launched an administrative investigation in the absence of a departmental regulation on delegation. The PCA noted that in several instances the administrative units provide very little information to their department about administrative and disciplinary investigations; admittedly, there is no actual legal requirement to do so. Owing to an oversight, in the PCA's written survey one department submitted incomplete information on the investigations it had conducted.

***Legal protection afforded, but subjects often informed of their rights at a very late stage***

In matters relating to procedure, there is legal uncertainty in particular with regard to the administrative investigation, because in this procedure there are no parties and therefore no party rights. Legal protection does not, therefore, feature greatly in the legal provisions relating to administrative investigations. However, the case studies showed that legal protection is appropriately granted in an administrative investigation, especially the right to be heard; indeed, the PCA only spoke to persons who had been given a hearing in such an investigation. There was no indication that persons significantly affected had not been interviewed during the procedure under review. As also confirmed by the employee associations, those involved are usually very inadequately informed of their rights when an administrative or disciplinary investigation is announced, and only have these explained when interviewed. Some had their rights explained at a very late stage, so were not, for example, able to organise legal representation in time. This is a particularly problematic situation in the case of a disciplinary investigation, as it can have direct consequences for the persons involved, such as an official warning or reduction in pay. But informing people of their rights at a late stage can also cause problems in an administrative investigation, as sometimes the information from these investigations may be used in subsequent disciplinary investigations.

***Duration of investigations appropriate, but in some cases disciplinary measures imposed despite statute of limitations***

The PCA considers the time taken to conduct administrative and disciplinary investigations to be generally appropriate. Its analysis of the investigations conducted suggests that those involved are, for the most part, interested in clarifying

---

*a situation as quickly as possible. However, in disciplinary investigations a federal employee's liability to disciplinary measures lapses one year after the matter comes to light, and this can pose a challenge to differing degrees. The majority of disciplinary investigations were concluded in one to five months, but some lasted more than a year and yet still resulted in disciplinary measures being imposed. The PCA considers this to be unlawful and that the person under investigation is exposed to uncertainty for too long.*

***Lack of information on administrative and disciplinary investigations***

*There are, in general, very few materials, expert opinions or court decisions on administrative, disciplinary and informal investigations which can provide a basis for support when conducting such an investigation. Although the departments and offices that order the investigations regard the statutory requirements as clear and fit for purpose, many of the problems identified in the evaluation (e.g. choice of procedure, degree of information provided to person under investigation) were the result of mistakes made by those ordering or conducting the investigation. According to the employee associations, there is too little awareness regarding the issue; many departments and offices are seldom called on to conduct an administrative or disciplinary investigation, and so very few have the appropriate processes or checklists in place. Moreover, they rarely consult their department's general secretariat or the Federal Office of Personnel (FOPER), and so these entities also know very little about the issue of administrative and disciplinary investigations and as a result cannot contribute in any great measure to ensuring that the cases are properly dealt with. When asked why they do not seek support, the departments and offices responded that they prefer to conduct their investigations as discreetly as possible, informing as few people as possible about what are, in most cases, very delicate situations.*

*Although the procedures in administrative and disciplinary investigations are addressed in training courses for managers in the Federal Administration, the PCA concludes that too little attention is paid to the challenges faced by those responsible for ordering and carrying out such investigations.*

The full report is available in German, French and Italian ([www.parliament.ch](http://www.parliament.ch)).