



FLASH AUDIT

THE FUNCTIONING OF THE DISCIPLINARY TRIBUNAL FOR HOSPITAL TEACHING STAFF (JDHU)

Financial years 2016 onwards

May 2022

EXECUTIVE SUMMARY

Hospital-university (HU) staff, who are professors, researchers and hospital practitioners, constitute an elite body, in both university teaching hospitals and universities alike. They are few in number (less than 10,000, of which about 6,300 are tenured) and are selected after an extremely demanding process. In addition to their threefold role of providing care, teaching and research, they are often heads of departments or sections, as well as independent staff within the university hospital or as an additional job outside, particularly as experts.

A specific disciplinary tribunal, set up at national level, was created in 1958, at the same time as the creation of the university teaching hospitals and the special status of HU staff, to deal with any professional misconduct. With 13 cases identified up to 2015 and 17 cases handled since 2016, this disciplinary jurisdiction has not been very active under its ethical regulation remit, mainly because of its distance from the institutions where these staff work (universities and university hospitals).

Government orders of 17 August 2020 and 13 December 2021 brought significant improvements to the functioning of the tribunal. However, it seems necessary to extend these reforms in order to make the disciplinary procedure more transparent and closer to those under the tribunal's jurisdiction and those heading the institutions.

Increasing the transparency of the procedure

The opacity of a procedure before the JDHU tribunal is strongly criticised by the senior executives of university hospitals and university principals. They are, in fact, poorly informed of any response by ministers responsible for higher education and health to any potential cases they report, the ministers alone having the right to refer cases to the tribunal, and also of any discussions during the procedure.

Making it possible for university hospital executives and the university principals to refer matters directly to the JDHU tribunal, concurrently with ministers, and to be a party to the procedure, would improve the transparency of the process.

The lack of awareness of the existence of the JDHU tribunal and of breaches likely to be sanctioned, on the part of the parties to the proceedings themselves, as well as the lack of understanding in the work organisations affected by certain sanctions ordered by the tribunal, reinforce the perception of a tribunal that is neither accessible nor effective.

Raising awareness of the tribunal's activity and publishing information on the nature of the offences sanctioned and the reasons for the decisions would effectively improve the transparency needed.

Strengthen support for stakeholders

Left out of the procedure, university hospital executives and university principals receive little support in dealing with the deterioration in labour relations surrounding the referral of a member of HU staff to the disciplinary tribunal and in organising the continued employment or return of the individual concerned at the end of the procedure. Supporting measures for local authorities (university principals and chief executives of university hospitals), but also for HU staff themselves, would appear to be necessary to make the mechanism run more smoothly.

In particular, the aim is to support the action of local authorities by creating a genuine support function within the ministries, to guide them at each stage of the procedure (referral, provisional suspensions, triggering of inspections, etc.).

Tools could be developed to help hospital executives and university principals identify complex situations that could be subject to disciplinary proceedings, but also to establish the materiality of professional misconduct. In this respect, the creation of a pool of peer investigators at an inter-regional or national level, in addition to the existing mechanisms (inspectorate and the mediation body), appears to be a beneficial approach.

The support of local authorities should extend to the management of staff on the periphery of the disciplinary procedure. Governmental authorities have recognised the need to develop a more “supporting” framework for HU staff, and the envisaged changes will need to be supported. Consideration should also be given to allowing functional and geographical mobility of HU staff, including when justified in the interest of the service, in particular following a disciplinary procedure.

A narrower pool of elected members of the tribunal would make it possible to provide them with more experience of complex proceedings and a better grasp of case law.

Organisation of the JDHU secretariat could be simplified on the Ministry of Health side, by completely devolving it to the National Management Centre (CNG).

Main conclusions of the audit

1. Although the specific disciplinary tribunal for hospital teaching staff was set up when university teaching hospitals were created, it is still not well known by the parties concerned (university hospital and university officials and litigants). It accordingly sees a very low level of activity (13 cases referred before 2015, 17 cases dealt with or in progress since 2016), concentrated on relatively serious incidents. However, the length of time it takes to bring cases to trial appears to be excessive, despite recent procedural improvements.

2. Against a backdrop of greater sensitivity to psycho-social risks and the amplification of tribunal referrals on social networks, making the tribunal better known and improving its operation are issues of good human resources management within university teaching hospitals and universities.

3. The disciplinary procedure, which can only be initiated by the supervisory ministers, is largely beyond the reach of local officials. University principals and university hospital executives should be more involved in initiating and conducting the procedure, but better anticipation of the difficulties that may arise at the end of the procedure is also needed, for example, when an individual involved in proceedings returns to his or her department.

RECOMMENDATIONS

Recommandation n° 1: in addition to referral by ministries, permit direct referral to the JDHU tribunal by the chief executive of university hospitals and the principals of universities, and recognise their status as parties to the procedure and build a ministerial support function. (*Mesri, MSS – JDHU*)

Recommandation n° 2: Add anonymised case studies to the JDHU annual activity report, based on the rulings made since 2016, updated, and include this body of case law into training reference materials, for the sessions given in training and practice institutions. (*JDHU*)

Recommandation n° 3: reduce the number of elected tribunal members and extend their term of office. (*JDHU – Mesri, MSS*)

Recommandation n° 4: In addition to its power to impose sanctions, the JDHU should be given the power to rule on support measures for individual members of HU staff involved, applicable at the end of the procedure. (*Mesri, MSS – JDHU*)