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## DISCIPLINARY RESPONSABILITY OF TEACHERS IN HIGHER EDUCATION<sup>1</sup>

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### Abstract

*The regulations contained in Law no.1/2011, complete the common regulations that can be found the Labor Code. This way, the teachers in university education are going to be penalized disciplinarily, as much for the infringement of the common law directives (Labor Code), as for the behavior rules violation that prejudice the Education System interest and the institution's name, directives contained in the University Charta. Analyzing the regulations from Law 1/2011, I observed some deficiencies of regulations<sup>2</sup> concerning the disciplinary responsibility of teachers in higher education.*

**Keywords:** *teachers, high education, disciplinary responsibility.*

### Introduction

*The demand of respecting a certain order, of some rules, that can manage with the individuals' behavior, to achieve the common purpose, it is obviously necessary for the group activities<sup>3</sup>.*

*The "sine qua non" requirement of the work discipline is represented by the subordination relation existing between employer and employee, relation that is defining for the working relations.*

*Although the labor legislation<sup>4</sup> doesn't offer a definition of the disciplinary responsibility, the doctrine is very rich in this direction. It is unanimously accepted that this type of responsibility interferes when a disciplinary irregularity it's done with guilt by an employee.*

### 1. The disciplinary irregularity and the sanctions applied to the higher education teachers

Regarding the disciplinary irregularity' definition for the Higher educational system employees, the regulations from art.312, paragraph 1 from the Educational Law no.1/2011, it shows that it is about the action made with guilt of violating the duties that those persons

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<sup>1</sup> National education law 1/2011 published in O.M no. 18/2011, modified by Law 166/2011 published in O.M. no. 709/2011 and by OUG no. 21/2012 published in O.M. no. 372/2012, Title IV „Statutul personalului didactic”, Chapter II „Statutul personalului didactic și de cercetare din învățământul superior”, Section 7 „Sanctiuni disciplinare”.

<sup>2</sup> For more details regarding the regulations of Law 1/2011 see also Andreea Tabacu, Andreea Drăghici, Daniela Iancu „Legea 1/2011-implicații asupra învățământului superior”, in the volume of International Conference The European Union-Establishment and reforms, University of Pitești, 2011, p. 560-564.

<sup>3</sup> Alexandru Țiclea, *Tratat de dreptul muncii*, Vth Edition, rewied, Ed. Universul Juridic, București 2011, p. 767; Sanda Ghimpu, Alexandru Țiclea, *Dreptul muncii*, Iind Edition, Ed. All Beck, București, 2001, p.359 and next

<sup>4</sup>In accordance with Union law. For more details see Elise Nicoleta Vălcu, *Drept comunitar instituțional*, IIIth Edition, rewied and completed Sitech Publishing House, Craiova, 2012, pp. 13 and next.

have, according to the individual labor contract and the breaking of behavior rules, that can be found in the University Charta. The legal rules contained in art. 312 paragraph 1 are established without breaking the right to an opinion, freedom of speech and academic freedom.

Analyzing the regulations of art.318, from the Education Law, it results that the object of disciplinary violation is formed also from the relations concerning the university ethics and the just conduct in the scientific research. Also, art. 324 of the same regulatory document shows that breaking the just conduct in the research-development process it's seen as a violation, but as subject of this violation can be the research-development personnel, which is not necessarily a teacher too. The divergence from the just conduct in the scientific research and the university activity are provided by the art. 210 of the same law, in this manner: the plagiarism of other authors' results and publications; making results or replacing the results with fictional data; introducing false information for the financial or grants demanding.

Also in what concerns the sanctions, the law we discuss about deals with the three types of violation separately, although the citation of the first two is identical. The disciplinary violation, as they are set by art. 312 paragraph 2, are:

- a.) written warning;
- b.) the decrease of the base pay, together with, when it's the case, the board allowances of: boarding, guidance, and control;
- c.) the temporary suspension of the right to enter any competition in order to occupy a higher educational function or a leading, guidance and control position, as a doctorate, master degree or licence comission member;
- d.) the removal from the leading function in the education system;
- e.) the disciplinary removal of the labor contract.

The sanctions for breaking the university ethics and that of the just conduct in the research are controlled by the art. 318 from Section 8 and, as I previously showed, they are identical with the disciplinary ones. In this matter, we can assert that the law is questionable and ambiguous. If the disciplinary penalties are settled in a separate section apart from that of the penalties that concern the violation of the university ethics and the just conduct in research, then all these latter ones, aren't of a disciplinary kind?

We consider that the legislator complicated the law text useless, settling the same sanctions twice for facts that, ultimately, represent disciplinary irregularities, either by violating the labor contract and the behavior rules, or by violating the university ethics and the just conduct in the research field.

The sanctions considering the irregularities at the just conduct in the research-development field are different from the sanctions for the other two forms of irregularity appointed by Chapter II of the current law. The subject of these sanctions is generally different from that of the previous mentioned sanctions, the discussion being about the research-development personnel from the higher education. Indeed, there is the situation in which the teaching staff it's also research-development personnel, but in this situation, two different work relations are established. The sanctions appointed for these irregularities are:

- a.) written warning;
- b.) the revocation and/or the correction of all the published writings by violating the just conduct rules;
- c.) the revocation of the quality of PhD supervisor or the ability certificate leader;
- d.) the revocation of the PhD title;
- e.) the revocation of the university educational title or of the research degree or the degradation;
- f.) the removal from the mastership of the high education institution;
- g.) the disciplinary removal of the labor contract;

h.) the prohibition, for a determined period, of the access to a financing from public funds intended for the research-development field.

In comparison with the settlements for the preuniversity education, as with the settlements from the Labor Code concerning the disciplinary sanctions, it is ascertained an ambiguity and a deficiency of the Education Law regarding the decrease of the basic cumulated salary, when it is the case with the leadership, the guiding and the control allowances, the suspension sanction for the right to participate to a competition, in order to occupy a high education function or a leading function, of guidance and of control, as a member of a doctoral, masters or license board and the sanction of prohibiting the access to a finance from public funds meant for the research-development field.

The art. 312 paragraph 2 letter b), and the art. 318 letter b) settlement, doesn't provide how much will the base pay be diminished, when it is the case with the leading, guidance and control allowance, and for how long.

The same goes with the penalty situation of suspending the right to participate to a competition, in order to occupy a high education position or a leading, guidance, control position, as a doctoral, masters or license board, and with the sanction of prohibiting the access to public funds financing intended for the research-development field, the suspension and also the interdiction, for which it is not estimated the period of time, but it is used the "determined period of time" saying. This is a pretty wide concept, by a "determined period of time", one could understand any time measurable period.

The terms and the quantities of applying these three sanctions shouldn't be let to those that apply the sanctions, even if in the high education system it is applied the university independence principle. We consider that, when applying these sanctions, it should be taken into consideration the Labor Code, as a common law in this matter.

*De lege ferenda*, we consider that the above analyzes directives should be filled in, even if the sanction periods and the decrease quantity of the salary would be derogatory from the common law, as it is the case of these sanctions for the preuniversity education system.

## **2. The institutions qualified to perform the disciplinary investigation**

As regards the disciplinary investigation, in the case of violating the duties of the high education teacher, according to the labor contract, as for breaking the behavior rules that damage the educational system interest and the institution's name, the law<sup>5</sup> provides the formation of analysis boards.

These boards are formed of 3-5 members, teachers that have at least the same position as that of the person who committed the irregularity, as also a syndicate member.

We can notice again a law deficiency considering the participation to the disciplinary research of a syndicate representative. The law omits to say if the syndicate representative belongs to the same syndicate organization with the person who is investigated or to another syndicate organization. Also, there is the question of, as in the case of the Labor Code settlements regarding this aspect, whether the investigated person doesn't belong to a syndicate organization.

The assignment of the analysis boards it is made by the rector with the university senate approval.

The research of the irregularities considering the breach of the university ethics and of the just conduct in research it is made by the university ethics commission which works in every university.

The art. 306, paragraph 2 from the Education Law establishes that " the structure and the commission members of university ethics it is proposed by the council board, prepared by the university senate and approved by the rector. The board members are high professional

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<sup>5</sup> Art. 314 paragraph 2 from Educational Law no. 1/2011.

and moral persons. The persons that occupy positions as: rector, vice-chancellor, dean, vice-dean, director of administration, department director or director of research-development unity, projection, microproduction”.

For the research of irregularities regarding the violation of the just conduct rules in the research-development field, the institution that needs to do the enquiry it's different from the two mentioned above. Art. 323 paragraph1 establishes this capacity for the Ethics National Council of Scientific Research, Technological Development and Innovation. The analyzed legal actions don't refer to the arrangement of this institution.

The foundation of the Ethics National Council of Scientific Research, Technological Development and Innovation has been made through Law 206/2004<sup>6</sup> to coordinate and monitor the implementation of the moral and professional conduct during the research-development activities.

Law 206/2004 by art.5 paragraph 3 establishes that the Ethics National Council' members must be persons with a well-known activity in the area: academicians, university teachers, level I scientists, public workers, research-development representatives and of other main sequencers that have in their command research-development unities.

The state authority for research-development is the Ministry of Education, Research, Youth and Sport.

Considering its performance, the Ethics National Council develops its activity in plenum and by ethics boards that deal with science and technology domains. The boards can be of a permanent or temporary state. The permanent boards can be formed for socio-humanist science, science of the living and for technical and exact science.

### **3. The disciplinary research procedure**

The introduction of the corresponding institutions in order for them to start a disciplinary investigation and, if it is the case, to apply disciplinary sanctions, can be made by any person who is aware of an action that represents such a disciplinary violation. This notice can be done in written and it is registered at the respective institution' office clerk or in the respective educational institution. The analyzing boards can make a self-approach if it is the case of a directly discovered violation.

The notice for the University Ethics board can be made by any person, outside the university, as regards some irregularities made by members of the university community. Referring to this notice, the Board must respond to its owner in 30 days from its receiving and to communicate that person the result of the investigation procedures.

These directives show that the entire disciplinary research procedure, as the communication of the results must not exceed maximum 30 days.

The Ethics National Board analyses the cases that deal with irregularities following up the notice or their own initiative.

In all the noticing cases the person's identity that made the notice it will be kept confidential.

Considering the proper research of the disciplinary violation, the law does not clearly establish the procedures. It is only specified that “the disciplinary sanction it is applied only after the research of the noticed action is being done, after the hearing of the blamed person and the checking of his defensive affirmations”. By these actions, one can understand the obligation of doing the disciplinary research procedure and the warranty of the questioned person's right to defend himself.

In case of the Ethics University Board introduction, the law provides that will be started the procedures established by the Ethics and Deontology University Code and also by the Law 2006/2004.

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<sup>6</sup> Published in O.M. 505/4.06.2004.

According to art.11 from the Law 206/2004, the research stages are:

- a) the written informal of the accused person/persons regarding the beginning of the investigation, its reasons and the existent argument;
- b) making testimonials to the institution's manager.

As in the case of the Labor Code regulations, these ones do not establish a time limit for the information of the investigated person about the beginning of the enquiry. The proceeding period of the investigation must not go beyond 30 days. This period starts with the beginning of the investigation.

#### **4. The sanction proposal and establishment**

The disciplinary sanction proposal, when we talk about irregularities concerning the labor contract and the behavior rules, it is done by more subjects. In this way, the proposal can be done by the chief department or by the chief unit research, projection, microproduction, by the dean, by the rector or at least 2/3 from the total number of the department members, of the university board or the university senate, by case.

Establishing the disciplinary sanctions it is done peculiarly by the university boards for the written warning sanctions and the decrease of the base pay, when it is the case, with the leading allowance, the guidance one, and the control one, and by the university senates for the other worse three sanctions.

Applying these disciplinary sanctions, in this case, it is done by the dean or the rector, as they were established by the university board or by the university senate. The communication of the sanctions is done by writing, by the human resources service.

According to the Labor Code changes, Education Law also establishes the possibility to remove and to cancel the disciplinary sanction. If the person who is sanctioned has not committed disciplinary violations during a year from the received sanction, the authority that applied the respective sanction can proceed as such. For the situations when it is about irregularities of just conduct in the scientific research and of the Ethics code and professional deontology, the sanctions' application it is done by the Ethics university board. The board can establish one or more sanction, by waiver from the Labor code<sup>7</sup> rules that assign the principle according to which for the same disciplinary irregularity there can be only one sanction.

As regards this plurality of sanctions, we consider that the worst sanction, the disciplinary cancellation of the labor contract, cannot be added to any other sanction established by the analyzed rules.

The Ethics university board advances a decision that is approved by the law adviser of the university.

The application of the established sanctions by the Ethics university board it is done by the dean or the rector. In this case, the law also establishes a period of application. In this way, the sanctions are applied within 30 days from the date established for them.

The Ethics National Council of Scientific Research, Technological Development and Innovation establish the sanctions when it is the case of the teacher's guilt probation for which he has been approached. The document through which the sanctions are established is the decision. These decisions are going to be approved by the law direction of the Ministry of Education, Research, Youth and Sport.

The application of these established sanctions is done, if necessary, by the Ministry of Education, Research, Youth and Sport, by the National Authority for Scientific Research, by the National Council for the Titles Certification, Diplomas and University Certificate, by the authority leaders that ensure the public funds for the research-development are, by the high education institutions' leaders or by the leaders of the research-development units. The time limit to apply these sanctions is within 30 day and starts with the decision date.

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<sup>7</sup> Art. 249 paragraph 2 from Labor Code.

An important effect of the disciplinary sanction is the forbiddance of occupying a teacher position and the research ones by people who have been proved to have committed serious irregularities of just conduct in the scientific research and in the university activity, established by the law. Also, the competition from which it were obtained a teacher position or a research one, is cancelled, and the labor contract with the university ends automatically, not taking into consideration the moment when it has been proved that a person has done serious violations to the just conduct in the scientific research and in the university activity.

#### **5. The contestation of the sanction act**

The contestation of the disciplinary sanctions approved by the analyzing boards is done differently, considering who emitted the decision.

So, the regulations from art. 314 paragraph 3 are referring to the assignment of some boards of analyze by the Ministry of Education, Research, Youth and Sport, in order to solve the appeals regarding the university senates' decisions.

It is appears that, in this way, the sanctioned people with penalties from art. 312 paragraph 2, letters c)-e), can contest the sanction' decisions to these boards.

Concerning the decisions given by the university councils, the law does not provide someone from the inside to whom to go to and make a contestation, but provides the general right of the sanctioned person to go to court.

The authority where the Ethics board decisions can be contested is established by the Law 206/2004. This authority is the The Ethics National Council of Scientific Research, Technological Development and Innovation. It has within 30 days to check the contestation, to have a result and to send suggestions and recommendations to the institution or the organization leader.

Although neither the Education Law, nor the Law 206/2004 do not provide which is the authority in question to solve the contestations against the sanction' decisions given by the The Ethics National Council of Scientific Research, Technological Development and Innovation, we consider that the sanctioned people have every right to complain to court of justice.

#### **Conclusions**

In the case of the higher education teacher, the object of the disciplinary violation has many categories of social relations regulated by the individual labor contract, by the behavior rules established by the university Charta, by the university ethics and just conduct, as by the just conduct in the research-development area. The disciplinary sanctions are different for each category of damaged relations, and the investigation boards are established for each one of them.

After the analysis of the settlements that deal with the disciplinary responsibility contained in the Education Law, we consider that these have deficiencies in some ways, opinion expressed and demonstrated within the present study.

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