GENERAL ASPECTS REGARDING THE PRIOR DISCIPLINARY RESEARCH

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Abstract
Disciplinary research is the first phase of the disciplinary action. According to art. 251 paragraph 1 of the Labour Code no disciplinary sanction may be ordered before performing the prior disciplinary research.These regulations provide an exception: the sanction of written warning.
The current regulations in question, kept from the old regulation, provides a protection for employees against abuses made by employers, since sanctions are affecting the salary or the position held, or even the development of individual employment contract.
Thus, prior research of the fact that is a misconduct, before a disciplinary sanction is applied, is an essential condition for the validity of the measure ordered.
Through this study we try to highlight some general issues concerning the characteristics, processes and effects of prior disciplinary research.

Keywords*: disciplinary misconduct, disciplinary sanctions, prior research, liable to disciplinary action, sanctioning decision.*

Introduction

According to Art.251 paragraph 1 of the Labor Code, no disciplinary sanction, except the written warning can be ordered before the prior disciplinary research.

In the same way, a series of normative acts regarding work reports provide the obligation of doing a disciplinary research, before taking disciplinary measures.[1]

This disposition of the Labor Code is justified by the protection of employees against the discretionary power of the employer, especially because the most severe disciplinary sanction consists in the termination of the work contract. Since a prior research is not done, the sanction cannot be individualized and its disposition discretionary, with no legal basis.

In such a way the Constitutional Court ruled, by decision no. 95/2008[2], stating that "juridical work reports have to be held in a legal surrounding, in order for the rights and duties and also the legitimate interests of both sides to be respected. In this scenery, disciplinary research prior to enforcing the sanction mostly contributes to the prevention of abusive measures, illegal or without proof, disposed by the employer, taking advantage of its dominant situation.

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[1] Law 188/1999 regarding the status of public servants, Art.78, paragraph 3: "disciplinary sanctions cannot be enforced except after a prior inquiry of the deed committed and after the public servant's hearing";
Law 303/2004 regarding the status of judges and prosecutors, Art.101: "disciplinary sanctions are submitted at the sections of the Magistrate's Superior Council, under the conditions of its laws";
Law 317/2004 regarding the Magistrate's Superior Council, Art.147: "in view of exercising disciplinary actions it is mandatory the accomplishment of prior inquiry, which is submitted by the holder of this action";
Law 567/2004 regarding the status of specialized auxiliary personnel of the courts and prosecutions connected to it, Art.87: "in the case in which there are clues of disciplinary deviations, the leaders of courts or of prosecutors connected to them, foreseen in Art.86, shall start the prior inquiry", etc.

[2] Published by Official Monitor of Romania, part I, no.153 from 28th February 2006.

The conditioning of enforcing disciplinary actions by making prior researches does not diminish at all the disciplinary responsibility of the employees and does not give them any privileges. In the situation in which the work conflict triggered by enforcing disciplinary sanctions is required to be solved in a judicial court, both parties benefit of the principle of equality of arms, each having at their disposal the same procedural means and guarantees which govern the full exercise of the right of defense and the right of a fair trial".

Article 23, paragraph 11 of the Constitution states the presumption of innocence, presumption applicable in penal matters, and by analogy the presumption also applies in the disciplinary field, its compliance being mandatory.

Stating the disciplinary deviation is as such the result of an investigation conducted by the employer named by the Labor Code: *disciplinary inquiry*. Not doing such an analysis by the employer leads to the absolute nullity of the taken measures. As such, in the case in which the courts are notified, they "will state the nullity of the decision to terminate the work contract, and as a consequence, they will admit the appeal and will issue the occupation of the former position"[3], observation which will be done without the court going further into the problem, because doing the prior inquiry is an imperative condition foreseen by the regulations of the labor right.

1.The authorities which are competent to do a disciplinary inquiry

Regarding the authorities competent to do a disciplinary inquiry, the Labor Code makes no reference. Still it provides, in Art.271, paragraph 1, that "the employer has disciplinary prerogative, having the right to enforce, according to the law, disciplinary sanctions to his employees each time he states that they have had disciplinary deviations".

It does not do, at the same time, any distinction between the employer – juridical person and the employee – physical person. Or, the category of juridical persons includes: commercial societies, autonomous administrations, national societies and companies, budgetary units, etc, which could not directly, between themselves, as juridical persons, apply disciplinary sanctions. But, all these juridical persons have lead authorities, (collegial and also individuals)[4].

In the case of physical person employers, it is obvious that he is the only one who can do the disciplinary inquiry and who can enforce sanctions.

As regards to juridical persons, these have at their disposal leading bodies, the most important role in doing the disciplinary inquiry, establishing and enforcing sanctions falling to the single individuals in leadership, no matter their positions: director, general director, administrator, etc. They have general competence in the matter, being able to apply any disciplinary sanctions. The competence of single persons in leadership results, mainly, from legal, statuary or contractual dispositions, according to which they represent the link between physical and juridical persons, and, secondly, from those who provide their prerogative to organize the selection of new employees and dismissal of personnel. Considering these facts it is obvious that they also have competence in disciplinary inquiry.

The law also foresees the possibility of delegating attributions in concern to discipline, the single person in leadership being able to delegate one of his subordinates to enforce even the harshest of sanctions, firing.

The employer can assemble a discipline commission to establish prior inquiry and to propose the enforcement of a sanction, which will be established and enforced by the employer.

[3] Plenum of the Supreme Court, guidance decision no.5/1973, paragraph 2, in *Culegerea de decizii a anului 1973*, p.14 – 16.

[4] Alexandru Țiclea, *Tratat de dreptul muncii*, Edition V reviewed. (Bucharest, Universul Juridic Publishing, 2011), p.789.

From this commission can also be part, if it is required, a representative of the syndicate from which the employee is part of.

In the case of certain categories of employees, the law states the organization of special discipline committees.

As such, the Education Law no.1/2011 states for pre-university teaching personnel a disciplinary inquiry commission competent in the matter, and for university teaching personnel, analysis and ethics commissions.

In the case of judges and prosecutors, according to Law 317/2004 regarding the Magistrate's Superior Council, modified and republished, comes into effect the discipline commission of the Magistrate's Superior Council, which initiates disciplinary action.

As regards to attorneys, Art.72 of Law 51/1995 states that within each bar it is organized and functions a discipline commission. This discipline commission judges the disciplinary deviations done by attorneys of that specific bar, and is formed of three members.

At a national level, in the case of the Union of Romanian Attorneys, the Superior Discipline Commission comes into effect.

2.The procedure of researching disciplinary deviations

Actual prior inquiry starts with the notification of the employer with the commission of a disciplinary deviation by one of its employees.

The employer can be informed by any person who has knowledge of such a fact or can act ex-officio.

After he was informed of the deviation done by one of his employees, the employer empowers a commission to make the prior inquiry. The Commission can be made especially for this purpose, through internal regulations or by any act of the employer.

In order for the inquiry to be genuine, it is mandatory for the employee to be summoned. According to Art.251, paragraph 2, "in concern to the development of the prior disciplinary inquiry, the employee will be summoned in writing by the person empowered by the employer to make the inquiry, stating the object, date, time and place of the meeting."

As it results from these legal depositions, the convocation will be made mandatory in a written form. If the employee is at its place of work and is brought to notice verbally of the reasons of the inquiry, the legal obligation of convocation is not accomplished, because the law does not distinguish in such a way[5].

In a way, we understood that "under the aspect of convocation, the legislator provides only that *it be made in writing*, not being necessary to make proof of a warrant, recommended letter with confirmation on arrival, as it is foreseen, under the sanction of absolute nullity, where the law does not distinguish, neither the interpreter can, adding in extra other conditions than those who were brought to the attention of the legislator".[6]

A "convocation note", which does not have the elements provided in Art.251, paragraph1 of the Labor Code, through which the employee is invited to e meeting which has the purpose of analyzing his activity and is in no way a disciplinary inquiry of his, dose not fulfill the conditions enforced by the law.[7]

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[5] Bucharest Court of Appeal, section VII civil and for causes regarding work conflicts and social security, decision no.1892/R/2007, in Lucia Uță, Florentina Rotaru, Simona Cristescu, *Codul Muncii Adnotat*, vol II. (Bucharest, Hamangiu Publishing, 2009), p.542.

[6] Constanta Appeal Court, civil section, for causes with minors and family, as well as for causes regarding work conflicts and social security, dec.no.72/CM/2007, in Alexandru Țiclea, *Tratat de Dreptul Muncii*, Edition V reviewed. (Bucharest, Universul Juridic Publishing, 2011), p.793.

[7] Bucharest Appeal Court, section VII civil and for causes regarding work conflicts and social security, dec.no.2634/R/2006, in Lucia Uță, Florentina Rotaru, Simona Cristescu, *Codul Muncii adnotat*, vol.II. (Bucharest, Hamangiu Publishing, 2009), p.544.

The reason for which the legislator, in Art.251 of the Labor Code, inserted the requirement of a written notice, by stating the object, date, time and place of the meeting, was that of giving the employee the possibility to prepare a defense and the evidences knowing the fact of which he is investigated for and which has to be communicated to him.[8]

In practice and in doctrine it is shown the existence of two ways regarding the communication of the action of being summoned:[9]

- *The first*, consists in the direct handing of the document to the summoned employee, which assumes his written signature of acceptance in the employers books (normally, on a copy of the convocation);

- *The second*, in the case of refusal to receive or the absence of the employee from the building, the convocation will be made through a recommended letter at the domicile or residence which the employee gave to the employer. Also an official report can be made in which it is stated the refusal to receive.

As regards to the term of convocation for the employee's disciplinary inquiry, the Labor Code does not establish any, prior to the date established for doing the inquiry. But, the employer has to fall within the terms provided by Art.252, paragraph 1 of the Labor Code. According to this legal disposition, the employer has to emit the sanction decision in term of 30 monthly days from the date in which he became aware of the disciplinary deviation, but no later than 6 months from that time.

The 30 monthly days term is a prescription term, even if the 6 months term is not accomplished.

The two terms are maxim terms for doing the prior disciplinary inquiry and for making a sanction. As such, from the date of notice, which does not have to be outside the limitation term of 6 months, the employer has at its disposal a maximum of 30 monthly days for the whole stage of prior inquiry, which is for establishing the commissions, convocation of the employee, for the actual research and for making the sanction.

We consider this term to be insufficient for such an action, taking into account that from the date of the convocation and to the date established for research has to be a reasonable period in which the employee can prepare a defense. The convocation cannot be handed in the exact day set for the inquiry[10] and neither with a day before.[11]

At the date of the meeting, the employee will present itself in front of the commission, being able to defend itself, presenting evidences and motivations which it considers necessary.

Also, according to Art.251, paragraph 3 the employee has the right to be assisted, at his request, by a representative of a syndicate which he is a member of.

There is also the possibility that that employee is not a member of a syndicate or for a syndicate not to exist in that company. For this reason it would be convenient to use the French juridical solution (Art.L1232-4 Code du travail) in the way that assistance is possible by another employee, at the request of the accused.[12]

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[8] Bucharest Appeal Court, section VII civil and for causes regarding work conflicts and social security, dec.no.2799/R/2005, in Alexandru Ţiclea, *Codul Muncii comentat*. (Bucharest, Hamangiu Publishing, 2008), p.773-774.

[9] Bucharest Appeal Court, section VII civil and for causes regarding work conflicts and social security, decision no.4048/R/2005, in Lucia Uţă, Florentina Rotaru, Simona Cristescu, *Codul Muncii adnotat*, vol.II. (Bucharest, Hamangiu Publishing, 2009), p.542.

[10] Bucharest Appeal Court, section VII civil and for causes regarding work conflicts and social security, decision no. 6350/R/2009, in „*Revista română de dreptul muncii*", no. 1, (2010):114.

[11] Bucharest Appeal Court, section VII civil and for causes regarding work conflicts and social security, decision no.235/R/2008, in Lucia Uţă, Florentina Rotaru, Simona Cristescu, *Codul muncii adnotat,* vol. II, (Bucharest, Hamangiu Publishing, 2009), p.546

[12] Ovidiu Ţinca, "Observatii referitoare la concedierea disciplinară pentru abatere gravă", in *Revista română de dreptul muncii*, no.6, (2008), p. 39.

In the doctrine there are different opinions as regards to the assistance of the accused by an attorney. As such it is considered that, according to the law, the assistance of the employee by a person outside the unit cannot be possible, even an attorney.[13]

According to another opinion[14], "the employee has the right to be assisted by an attorney, on the grounds of the proclaimed norms for exercising the profession of attorney, this right being superior and distinct to the one in which the employee can be assisted, at his request by a representative of the syndicate of which he part of".

The Labor Code[15] complies with the international rules in matter of human rights and also the Romanian Constitution, as such guaranteeing the right to defense.

The employee has the right to bring all evidences and present all necessary motivations for proving his innocence.

After hearing the employee and analyzing the evidence, the commission will draft a report in which it will mention the results of the prior inquiry, the motivation for which the employee's defense had been rejected, the proposal of sanction or proposal not to sanction as well as the possible sanction. Also it will be noted the employee's absence to the convocation, if it is the case or its refusal to defend itself.

The authority competent to enforce the sanction can take notice of the commission's proposal or can decide on itself after the analysis of the result of the inquiry provided in the act drafted by the commission.

In light of the dispositions of Art.251, paragraph 3 from the Labor Code, the absence of the employee at the convocation made under the law with no objective reason gives to the employer the right to make the sanction, without making a prior disciplinary inquiry.

The above dispositions are very clear as regards to the effect of absence with no objective reason of the employee from the prior inquiry.

But, in the doctrine, the question weather the absence of the employee legally summoned, with no objective reason, is in itself a disciplinary deviation.

The absence for objective reasons of the employee summoned legally to the prior inquiry has as a first consequence the employer's prerogative to make the sanction without doing a prior inquiry. This consequence is in fact an exception from the obligation of making a disciplinary inquiry.

A second consequence is the non-exercise to the right of subjective defense which the employee has. As such, he will no longer be able to formulate a defense and bring evidence to state his innocence, the non-exercise of the right to defense being from its own fault.

3. Individualization and enforcing sanctions

In establishing disciplinary sanctions, the employer has to take into consideration the dispositions of Art.250 of the Labor Code, dispositions which provide that the employer establishes the disciplinary sanction applicable in report to the severity of the disciplinary deviation done by the employee.

Also, the following aspects have to be taken into consideration:

a) the surroundings in which the act was committed;

b) the employer's degree of guilt;

c) the consequences of the disciplinary deviation;

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[13] See:Alexandru Țiclea, *Tratat de dreptul muncii*, Edition V reviewed. (Bucharest, Universul Juridic Publishing, 2011), 795.

[14] Ștefan Naubauer, "Observatii privind dreptul salariatului de a fi asistat de avocat în cursul cercetărilor disciplinare prealabile", *Revista română de dreptul muncii*, no.2, (2010), p.92.

[15] Art 251 paragraph 1 of the Labor Code.

d) overall behavior at the work place;

e) possible disciplinary sanctions priory suffered by him.

According to the legal rules, a sanction cannot be established arbitrarily by the employer, who has disciplinary prerogative, but respecting in all the conditions shown above. The sanction will have to be individualized taking into account the criteria stated by the law in order for the preventive role of the disciplinary responsibility to be accomplished.

For example, when the employer applies a sanction "to severe in comparison to the gravity of the disciplinary deviation done by the employee, taking into consideration its overall behavior at work and the fact that he has not been disciplinary sanctioned before" will determine the court to replace the sanction enforced with an easier one (for example 10% per month with a written warning – Bucharest Appeal Court, section VII civil and for cause regarding work conflicts and social security, decree no.3670/R/2007)[16].

The sanctions provided by the Labor Code are in a gradual order, from the smallest one – written warning, to the harshest one – the termination of the work contract.

According to the criteria showed above, the employer can set one of these sanctions, which has to be proportional to the gravity of the deviation. Still, it will be taken into account the extenuating circumstances like for example the exemplary behavior and the lack of other deviation until that time.

As such, it is noticed that although the employee did undeniably severe deviations, in order to attract an even disciplinary sanction, breaking the rules of behavior at the place of work and work discipline, still the court decided that for that person who, for 23 years since he worked there, had correctly fulfilled his tasks and had never been sanctioned before, the gravest disciplinary sanction is not justified.[17]

According to Art.249 of the Labor Code, the employer cannot decide the measure of the disciplinary sanctions, these being totally forbidden by the dispositions of paragraph 1 of the mentioned article. This legal disposition defends the employer from the dominant position which the employer has, the latter not having a discretionary power in matter of disciplinary responsibility.

Another guarantee of the balance between work reports is instituted by paragraph 2 of article 249. As such, it is forbidden the enforcement of more sanctions for the same deviation. The employee will be sanctioned in only one way, proportional to the gravity of the deviation.

In the doctrine[18] it is shown that when the Code of conduct of the profession is not respected or deviations regarding the profession are made, such an illicit fact *will attract a double disciplinary sanction*.

4. The sanctioning decision. The report between the commission's proposal of disciplinary inquiry and the juridical act of sanctioning

The result following the actual disciplinary inquiry done by the disciplinary commission will be recorded, after the employee will be heard and the evidences will be analyzed, in a report, in which will be also mentioned, the motivation for which the employee's defense had been rejected, the proposal for sanction or the proposal not to sanction him and also the possible sanction. Also, it will be noted the absence of the employee to the convocation, if it is the case, or refusal to defend itself.

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[16] Alexandru Țiclea, *Tratat de dreptul muncii*, Edition V reviewed. (Bucharest,Universul Juridic Publishing, 2011), p.800.

[17] Pitesti Appeal Court, civil section, decree no.274/2002, in *Revista romana de dreptul muncii*, no.1, (2003): 126 – 126 from Alexandru Țiclea, *Tratat de dreptul muncii*, Edition V reviewed. (Bucharest, Universul Juridic Publishing, 2011), p.800.

[18] Alexandru Țiclea, *Tratat de dreptul muncii*, Edition V reviewed. (Bucharest, Universul Juridic Publishing, 2011),p. 801.

The disciplinary inquiry procedure done by the commission will not void the employer's right to exercise its right provided by Art.40, paragraph 1 letter e of the Labor Code, which is the right to establish the committed disciplinary deviations and to enforce the appropriate sanctions, according to the law, the collective work contract applicable and the internal regulation.

As such, the employer can take into consideration the commission's proposal or can decide on its own after the analysis of the inquiry's result provided in the act drafted by the commission.

As a consequence to this analysis, the employer's decision will be seen in the sanction of the employee, if the case calls for it.

Paragraph 2 of article 252 of the Labor Code provides the conditions of validity of the sanctioning act, called by the legal rules a "decision".

Under the sanction of complete nullity, the decision of sanctioning has to include the following elements:

a) description of the fact which constitutes a disciplinary deviation;

b) stating the provisions from the statute of personnel, internal regulations, the individual work contract or the applicable collective work contract which were broken by the employee;

c) the reasons for which the formulated defenses by the employee were dismissed during the prior disciplinary inquiry or the reasons for which , under the conditions provided by Art.251, paragraph 3, an inquiry was not done;

d) the rightful ground on the basis of which the disciplinary sanction is enforced;

e) the term in which the sanction can be contested;

f) the appropriate court to which the sanction can be contested.

From the legal dispositions mentioned above it is to be understood that for the legality and validity of the sanctioning decision it is required to include all mentioned elements, condition *sine qua non* for the mentioned aspects. The lack of one of them will mean the nullity of the sanctioning decision by the employer.

As regards to the absolute nullity which appears in the case of not respecting all elements of the sanctioning decision, it is considered[19] that "this nullity has the character of an express nullity, in which case the law develops a presumption *juris tantum* of harm, as so its beneficiary does not have to prove the injury, but only the lack of observation of legal forms. The character of the legal rule is imperative, and breaking it most definitely draws the sanction of absolute nullity".

The decision has to contain the description of the deed which constitutes disciplinary deviation, respectively, what the deed is, the way in which it was committed and eventually the aggravated circumstances or, on the contrary, extenuating. By this description we have to point out the essential aspects which lead to the conclusion that the employee's deed was done in connection to his work and in violation of the rules which commit him to a certain behavior.

Beside the detailed description of the deed done by the employee, the decision will include the date of the action[20], in order to verify the legal terms regarding the disciplinary action.

Resembling the acts emitted by the courts regarding the solving of conflicts with which they are invested, and also to the requests of summons, the labor legislation provides for the decision of sanction the motivation in fact and also in right.

If the in fact motivation is done through an as detailed description as possible of the deed, the in right motivation is done by showing the provisions which were broken by the employee.

In practice[21] it was shown that the "generic mention of the intern regulation, without individualizing an express disposition whose violation draws the qualification of grave disciplinary

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[19] Galati Appeal Court, section work conflicts and social security, dec.28/R/2007, footnote 7 from Alexandru Țiclea, *Tratat de dreptul muncii*, Edition V reviewed. (Bucharest, Universul Juridic Publishing, 2011), p.804.

[20] Bucharest Appeal Court, section VII civil and for causes regarding work conflicts and social security, decree no.718/R/2007, in Lucia Uta, Florentina Rotaru, Simona Cristescu*, Dreptul muncii.Raspunderea disciplinara. Practica judiciara*. (Bucharest, Hamangiu Publishing, 2009), 2p.83.

deviation of the employee, does not have to complement the request provided by Art.268, paragraph2 letter b (the actual Art.252, paragraph 2, letter b) of the Labor Code".

This request is necessary in order for the court to verify whether the employee's deed does or does not constitute disciplinary deviation.

The decision of sanction will also include the reasons for which the defenses formulated by the employee during the prior disciplinary inquiry were removed or the reasons for which the inquiry was not made.

Stating these reasons constitutes a guarantee of the fundamental right to defense which the employee has.

But if the employee refuses to formulate a defense this must be mentioned in the act drawn by the committee as well as in the sanctioning decision.

Also, in the situation in which the employee confesses the deed charged with, the employer is no longer forced to mention why the employee's defense was removed, because they never existed.[22]

The Labor Code provides also that the rightful grounds on which the sanction is enforced, the term in which it can be contested and the court in which the contestation can be made.

In order to clarify these dispositions, the Labor Code provides in paragraph 5 of the in question article, the duration in which the employee can address the competent courts in order to contest the sanctioning decision, more exactly 30 monthly days from the starting date.

As it is noticed, the legislator did not specify a certain court but used the term of "competent court", resorting to the rules of civil procedure, common rules, in order to establish this court.

As regards to the duration in which the sanctioning decision can be contested, the moment from which it starts to develop is the date on which the employee is notified.

In this regard, the Labor Code establishes in Art252, paragraph 3 that the sanctioning decision will be communicated to the employee in at most 5 monthly days, from when it was emitted.

The date from which the sanctioning decision comes into effect is not the date in which it was emitted, but, according to the same dispositions of the Labor Code, the date when it was communicated.

From these dispositions we deduce that not communicating the decision draws the lack of its effects, the communication date being also the date in which the employer can proceed towards the implementation of the sanction and also the date when the 30 days term in which the employee can contest the sanctioning decision begins.

If the decision is not communicated within 6 months from the starting date, the employer looses the right to enforce the sanction, the decision becoming void.

The communication will be handed personally to the employee, with a receiving signature, or, in case of a refusal, a recommended letter, at the domicile or residence communicated by the employee (article 252, paragraph 4 of the Labor Code).

If new elements emerge, in favor of the employee, before a competent jurisdictional authority can give a ruling, the employer can revoke the sanctioning decision, the retraction producing retroactive effects, from the date at which it was issued.

In practice was raised the exception of unconstitutionality of the text of the analyzed article in this subsection. The Constitutional Court[23] stating that "this text is placed among those which have

[21] Bucharest Appeal court, section VII civil and for causes regarding work conflictes and social security, decree no.1857/R/6 June 2007, not published, in Lucia Uta, Florentina Rotaru, Simona Cristescu, *Dreptul muncii. Răspunderea disciplinară. Practică judiciară*, (Bucharest, Hamangiu Publishing, 2009), 281.

[22] In such a manner ruled also the Pitesti Appeal Court, section for causes regarding work conflicts and social security, minors and family through decree no.757/R-CM/2008.

[23] Through decree no.319/2007, published in Monitorul Oficial al Romaniei, Part I, no.292/29 March 2007.

as a purpose to ensure stability in work relations, their ongoing in legal conditions and respecting the rights and duties of both parties of the juridical work report. At the same time, they are meant to insure the defense of legitimate rights and interests of the employee, taking into consideration the objective dominant condition of the employer in the ongoing work reports.

Enforcing disciplinary sanctions and, especially, the termination of the work report from the single desire of the employer are permitted if there are respected certain basic conditions and strictly regulated in the work legislation, with the purpose of preventing eventual abusive conducts from the employer's part.

The mentions and statements which strictly have to include the decision to enforce disciplinary sanctions have the role, first of all to correctly and completely inform the employee regarding the rightful facts, reasons and grounds for which he is being sanctioned, including the means of attack and the terms under which he has the right to state the validity and legality of the measures disposed at the single desire of the employer.

The employer, because he has all the data, evidences and information on which the respective measure is founded, has to make proof of the validity and legality of that measure, the employee being only able to fight them through other pertinent proofs. As such, the mentions and precisions provided by the law are necessary and for the courts, in regards to the legal and grounded settlement of any upcoming litigation determined by the employer's actions."

Conclusions

Making a disciplinary research is an imperative condition as regards to the disciplinary responsibility of the employee; without this stage disciplinary actions cannot be enforced.

The dispositions from the Labor Code regarding disciplinary inquiry are justified by the employee's protection against the discretionary power of the employers, especially because the most severe disciplinary sanction is of terminating the individual work contract. Because prior inquiry is not done, the sanction cannot be individualized and its arrangement is discretionary, without legal grounds.

The procedure of disciplinary inquiry includes more mandatory stages: notifying the employer, be it from the office by the person who has knowledge of a deviation; the writing convocation of the employee; drafting the report by the commission to include the conclusions of the inquiry and proposal; emitting the decision to sanction, if it is the case, by the employer.

Within the actual research the employee can present itself in front of the commission or not. The absence for objective reasons of the employee summoned legally to the prior inquiry has as a first consequence the employer's prerogative to decide the sanction without a prior inquiry.

Before issuing the sanctioning decision, the employer has to individualize the enforced sanction. In establishing the disciplinary sanction, the employer has to take into consideration the dispositions of Art.250 from the Labor Code, dispositions which foresee that the employer establishes disciplinary sanction in report to the gravity of the disciplinary deviation done by the employee.

According to article 249 of the Labor Code, the employer cannot decide the measure of the disciplinary fines, these being strictly forbidden by the dispositions of paragraph 1 of the mentioned article. Another guarantee of the balance between the work reports is instituted by paragraph 2 of article 249. As such, it is forbidden the enforcement of more sanctions for the same deviation.

The employer will decide the enforcement of disciplinary sanctions through a decision in a written form, in term of 30 monthly days from the date on which he became aware of the deviation, but no more than 6 months from that time, according to article 252, paragraph 1 of the Labor Code.

The 30 days term and the 6 months term are prescription terms, and can be interrupted or suspended.

From the legal dispositions of article 252 we understand that for the legality and validity of the decision to sanction, this has to include all the mentioned elements, a *sine qua non* condition for

the mentioned aspects. The lack of one of these will lead to the absolute nullity of the decision to sanction emitted by the employer.

Disciplinary inquiry is a mandatory and necessary stage in order to stimulate the employee's disciplinary responsibility. The conditions for this are strictly provided in the rules of the Labor Code but also by special laws.

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