

THE PROFESSORS' JURIDICAL LIABILITY FOR THE VIOLATION OF ETHICS STANDARDS AND PROFESSIONAL DEONTOLOGY

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Abstract: *In the higher education system in Romania, from the professors' perspective, the problem of ethical responsibility distinguishes among the didactic activities of the teaching staff, which is why the educational process must take place in a civilized and ethical environment based on mutual respect between professors and students, respectively between the scientific research activities of the teaching staff, from this perspective guaranteeing the good conduct of the professional in his/her scientific research activity. Both aspects regarding the ethical responsibility of the teaching staff in the higher education have been regulated since 2004, when an institutional reform was being carried out on the entire territory of Romania on the introduction of ethical codes as ethical tools for regulating from that perspective in particular the professions in the public domain.*

Key words: *ethics, liability, research, Ethics Committee, deontology.*

1. Introduction

As a part of the professional activity, the conduct of an employee in his / her working relationships must be addressed from the perspective of the professional's moral responsibility, the problem of responsibility referring not only to correct, moral actions of the employees but also to preventing unethical conduct that may affect the development of the activity.

Unethical behaviour and, in particular, acts bearing the generic name of corruption, have the effect of inefficiently using the resources of an institution / organization, thus adversely affecting the way in which they perform their duties, and for the public institutions generating a negative impact on the quality and quantity of the services offered to the population (Gyulas et al., 2011, p.10).

As part of the educational reforms, the Romanian legislator has always sought to establish principles to ensure, at whatever level, the promotion of an education centered on quality, value, creativity, on the stimulation of cognitive and volitional ability, while developing the necessary academic capacity for their development as individuals. In order to achieve these goals, it is necessary that the teachers' conduct be subject to ethical

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regulations and professional ethics, given the legal relationship they establish with the pupils / students.

To this end, both the Law of Education No. 84/1995 (art. 5) and the current Law on National Education no.1 / 2011 (art.3) have established a series of ethical principles within the fundamental principles that govern the educational system, at all levels of organization and functioning, and in all forms of teaching. Thus, the principle of equity or the one of non-discrimination, the principle of equality of opportunity and the principle of transparency, as ethical principles, lie alongside the principle of quality, the principle of relevance, the principle of efficiency or the principle of decentralization (art.3 Law no.1 / 2011).

Although article 3 (f) of Law no.1 / 2011 defines the principle of public accountability as the basis of the legal liability of educational institutions and establishments for their performance, public accountability should not be transposed only at an institutional level, because an efficient educational system can not be conceived without the involvement of the stakeholders, teaching staff and pupils / students, which is why public accountability also reflects on their behaviour from a didactic perspective in relation to their performance or shortcomings in the process of teaching and learning.

2. Brief History on Regulating Ethics in Education

Considering the need for a nationwide system of integrity and a long-term anti-corruption strategy with multi-dimensional ethical infrastructures in order to ensure an ethical behaviour in the public sector through reform measures, including a legislative reform (Roll , 2008, p. 4), it is also evident in the public sector in Romania, starting with 2004, the intensification of the steps for shaping and implementing codes of ethics and deontology in the professions in the public sector - civil servants, education, health, judiciary system. Obviously, these steps were integrated into Romania's strategy of internal and external policy regarding the accession to the European Union.

In the context of building a system of integrity with regard to the educational activities, the disciplinary legislation should be supplemented with rules on keeping to ethics in education and the deontology of the teaching profession, with the establishment of effective monitoring and control bodies and an effective ethics code, measures first implemented in university education on the basis of Law no. 84/1995 (art.141 letter s of the law) at the initiative of the competent ministry, which adopted Order no.4492 of 06 July 2005 regarding the promotion of professional ethics in universities. Although the legislation at that time regulated the disciplinary liability of the teaching staff both for the violation of their duties under the individual labour contract and for the violation of conduct norms that damage the educational goals and the prestige of the institution (art. 115 of Law no.128 / 1997), the competent bodies to investigate the facts of the teaching staff and to apply sanctions have been, since 2005, the disciplinary research commissions for disciplinary offences, and since October 1, 2005, the university ethics committees for the research of deviations from university ethics (prior to 2005 both types of deviations were investigated within the disciplinary research commissions under the procedures for disciplinary liability).

The adoption of the Order of the Minister of Education and Research no.4492 / 2005 was preceded by the adoption of Law no.206 / 2004 regarding the good conduct in scientific research, technological development and innovation, a normative act that establishes rules of good conduct in the research and development activity and

incriminates fraud in science, the falsification and confiscation of data in research activity, plagiarism and the conflict of interest and a number of seven sanctions applicable by the National Ethics Council to staff carrying out research and development activities in violation of good conduct rules.

Taking into consideration the research and development component of the teaching staff norm in higher education according to art. 79 and art. 80, paragraph 1 of the Law no.128 / 1997, considering its attributions regarding the elaboration and implementation of the reform strategies in education and training art.141 letter s from Law no.84 / 1995), the ministry has adopted Order no.4492 / 2005 on the basis of which university codes of ethics were established at universities level and ethics committees were subordinated to the university senate in order to analyze and resolve complaints and intimations about deviations from university ethics.

With the entry into force of the National Education Law no. 1/2011, the legislator's view on the ethics in the field of education changed, on the one hand regulating the ethical aspects also in the didactic activity of the staff in the pre-university education (according to art. Law no. 1/2011, the teaching council of the pre-university education unit has the competence to establish a code of professional ethics and to monitor the observance of these norms in the educational institution), on the other hand, with the acceleration of the regulation of good conduct at the level of higher education by extending the responsibility for the violation of the ethical norms also on students, respectively by regulating the distinct academic ethics, both regarding the activity of the teaching and research staff, as well as regarding the observance of ethical norms by the higher education institution, the institutional university ethics becoming an important part of the public liability assumed by the higher education institution.

Also, if legal instruments were adapted for public liability of the educational institutions regarding its activities that violate ethical rules and principles, we find that also Law no.1 / 2011 - 217 paragraph 1 of the law - new monitoring bodies have been regulated and the competencies of the existing ones have been extended. Thus, besides the Council of Ethics and University Management (the old Council of University Ethics of OMEC no.4492 / 2005, which also received competences to monitor the management activity of the higher education institutions, in which sense it assumes the public institutional liability), a National Ethics Council for Scientific Research, Technological Development and Innovation was also appointed, with specific competencies regarding good conduct in the research and development activity according to art. 218 paragraph 3 of Law no.1 / 2011 in conjunction with art.323 and art.325 -art.326 of Law no.1 / 2011.

By virtue of the new provisions of Law no.1 / 2011 and in order to legitimize their activity, the competences and working procedures of the Council of Ethics and University Management were detailed by the adoption of OMECTS no. 3879/2012 on the establishment of the Council of Ethics and University Management and the approval of its organization and functioning regulation, repealed successively by OMECS no.3304 / 2015 and currently by OMENCS no.6085 / 2016 (the latter administrative act also presenting the nominal composition of the Ethics Council at national level), respectively the competences and working procedures of the National Council for Scientific Research, Technological Development and Innovation through the adoption of OMECTS no.5735 / 2011 regarding the approval of the Regulation on the organization and functioning of the National Council for Ethics of Scientific Research, Technological Development and Innovation, repealed successively through OMECTS no. 4393 / 2012, OMECS no. 5873 /

2015, OMECS no.5712/2016 and presently OMEN no.211/2017 (the latter administrative act also presenting the nominal composition of the Council at national level including representatives from the research and development institutes and state universities).

Considering the different system of subordination to the respective ministry and funding of the units in the pre-university system towards the higher education institutions, in order to coordinate and monitor the application of the norms of moral and professional conduct in the pre-university education activities, OMECTS no.5550 / 2011 will set up a National Ethics Council of 378 members, 9 members for each county and Bucharest, with professional prestige and moral authority, representing teaching staff, parents and non-governmental organizations that have had a significant activity for at least 3 years in the pre-university education field, respectively at the level of each school inspectorate, ethics commissions are set up for four-year mandates based on the vote results of the school inspectorate board of directors, with annual reconfirmation by the board of directors.

What is totally lacking in pre-university education, its lack being felt acutely in the view of the pupils' and teachers' behaviour in pre-university education is the code of ethics in pre-university education, a code that has been brought forward in a number of occasions for public debate by the ministry concerned, last being in February 2017, but remaining at the project stage.

3. The Responsibility of the Teaching Staff in Higher Education / The Research Staff for Violating the Professional Ethics and Deontology Regulations

Defined by either the legislator (art.310 of the Law no.1 / 2011 and art.4 of Law no.206 / 2004), or by the university senates that have adopted the Codes of professional ethics and deontology, now considered an integral part of the university charters (art. 123 paragraph 3 referring to art. 128 paragraph 2 letter b) of Law no.1 / 2011), the facts which constitute violations of the regulations regarding the didactic professional ethics and deontology may be referred to the analysis of the academic ethics committees by any person acquainted with this fact, namely the commissions may act on their own initiative in order to investigate, by virtue of the quality of judicial body recognized by the current law of the national education to the ethics commissions at the level of the educational institutions (according to art. 306 paragraph 1 and paragraph 2 of Law no.1 / 2011, ethics committees operate at the level of universities, their composition being endorsed by the board of directors and approved by the university senate without the existence of any report of subordination, and according to article 307, sentence II of Law no. 1/2011, the legal responsibility for the decisions and the activity of the university ethics committee rests with the university).

Following a referral / *ex officio* investigation, the university ethics committee initiates the procedures established by the Code of Ethics and Deontology, respectively Law no. 206/2004 regarding the investigation of the facts, the hearing of the parties (the person denounced as the author of the ethical norms violation, respectively the denouncer), the investigation of the factual and legal situation in which the violation was committed, determining the circumstances in which the deed was committed and the individualization of the sanction applicable depending on the conduct of the person investigated in general and in particular in relation to the offence investigated.

From the point of view of the procedure described above, and even from the perspective of the sanctions that can be applied to the teaching and research staff and to the auxiliary

teaching and research staff by the university ethics committee for violating the university ethics or deviations from the good conduct in scientific research, it would seem that we are within the realm of disciplinary accountability of the teaching staff, accountability committed for disciplinary deviations. However, the disciplinary misconduct and the sanctioning regime in the case of their being committed are different in legal nature from the violations of professional ethics and deontology norms, respectively the sanctioning regime differs in the case of the bodies carrying out research activities and those who apply the sanctions, as the case may be.

Even the legislator in Chapter II of the National Education Law no.1 / 2011 - The status of the teaching and research staff in higher education, regulates distinctly, although in the continuation of the sections, University Ethics - Section 5 and Section 8 - of Disciplinary Sanctions - Section 7. Even in enumerating and defining the sanctions applicable in the two procedures, the legislator uses distinct texts (art.312 paragraph 2 of Law no. 1/2011 on disciplinary sanctions, and art.318 of the law on the sanctions regarding the violation of university ethics and good conduct in research). Following the analysis made by the members of the ethics committee, the applicable sanction or sanctions (art. 321 and / or art. 324 Law no. 1/2011) shall be established and individualized, again with a difference from the disciplinary liability where only one disciplinary sanction is enforced in relation to the offense and the consequences of the act.

Within 30 days from establishing the sanctions (from the issuing of the decision / order of the Ethics Committee), the rector or the dean, as the case may be, shall apply the sanctions established by the commission, according to art. 322 of Law no.1 / 2011. Thus, the 30-day deadline is a limitation period, and with regard to the person who will issue the implementing act, although the legislator does not distinguish, we consider that the rector rules the enforcement of the sanctions for the professors, while the dean implements the sanctions for the students.

Regarding the application of the sanctions for deviations from good conduct in research and development for the staff in higher education institutions, ascertained and proven, the National Council for the Ethics of Scientific Research, Technological Development and Innovation determines the application of one or more sanctions either as a court (art. 5 of the Law no. 206/2004), or as a court of appeal in case of the sanctions enforced by the university ethics committees (art. 321 of Law no. 1/2011 regarding article 11, paragraph 2 of Law no. 206/2004).

If the National Council for Ethics of Scientific Research, Technological Development and Innovation, a national level organization, establishes the sanction to apply, the legal liability for the activity of the Council falls on the line ministry, the minister also being the one that enforces by minister's order the sanction applied by the National Council of Ethics for Scientific Research, Technological Development and Innovation as a background court. In case the Council settles the appeals against the decisions / orders of the university ethics committees, the solutions of this appeal court shall be communicated to the management of the educational institution in order to carry them out.

4. Personal Considerations on the Legal Nature of the Decisions / Orders of the University Ethics Committees

Regarding the teaching staff in the university education system, we consider that, although applied in a contractual work relationship that the professor has with the

educational institution, the sanction for violating the ethical norms is distinct from a disciplinary sanction both from the perspective of the procedure carried on by the Commission of University Ethics (we take into account the fact that according to art. 307 of Law no. 1/2011, the *legal liability for the decisions and the activity of the university ethics commission rests with the university*, so the University Ethics Commission is an administrative-judicial body at the level of the institution, the legal status being different from that of a disciplinary research commission) as well as from the perspective of the consequences on the teaching staff activity (withdrawal of certain scientific titles - for example, the scientific title of doctor, a university degree of professor or a scientific researcher degree - or losing certain qualities associated with the teaching function - loss of the quality of PhD supervisor - respectively withdrawal of certain published papers from the scientific portfolio).

From the point of view of the quality and competence of the Commission of University Ethics, which being referred to, investigates the facts and applies the sanctions in the case of deviations from the provisions of the Code of Ethics and Professional Deontology, according to art.320 and art.321 of Law no. 1/2011 so that the decision / order of the Commission of University Ethics is the act of the judicial administrative body producing the legal effects - by establishing the applicable sanction - we consider that the theory of the complex administrative act is fully applicable, given that for the implementation of the sanctions applied by the Commission of University Ethics, the dean or the rector issue a subsequent act to the commission's decision.

For these reasons, we consider that the lawfulness and the appropriateness of the decision / order of the Commission of University Ethics regarding the facts and penalties applicable to the academic staff must be subject to the control of the administrative contentious court, according to the procedures established by Law no.554 / 2004, the activity of the University Ethics Commission and its acts cannot be assimilated to the activity and the acts of a disciplinary preliminary investigation commission (whose activity is subject to the control regarding the lawfulness of the labour law courts according to art.208-art.211 of Law no.62 / 2011) that does not have the prerogative of administrative-judicial body, but only making a finding of the facts and circumstances in which the disciplinary deviations have been committed, the decision to sanction falling on the decision-making body of the universities - the faculty council or the university senate according to art.313 paragraph 2 of the National Education Law no. 1/2011 .

I consider that this solution is feasible in assessing the quality and competence of the Commission of University Ethics, whose status - a body coordinated by the university senate, and not subordinated to it - by an administrative judicial body, confers a system of administrative law to its acts, namely the decision / order which establishes the sanctions resulting from the petitions analyzed with respect to breaches of conduct and professional ethics. The decision of the rector / dean referred to in article 322 of the National Education Law no. 1/2011 is an act subsequent to the act of establishing the sanction of the Ethics Commission, it is an act of implementation, as the legislator provides.

For the above reasons, we disagree with the practice of the court, though unqualified, which considers that the sanction established by the University Ethics Commission is a sanction applied within a contractual labour contract (the teaching staff has concluded employment contracts with universities, not being civil servants under the letter of Law no.188 / 1999), thus arguing that the courts settling labour disputes, under the jurisdictional litigation procedures, are competent to ensure the legality of both the

decision of the rector / dean of implementing the decision of the University Ethics Commission, as well as the decision of the University Ethics Commission itself, following the principle of disciplinary liability and the procedures specific to the disciplinary preliminary investigation.

The solution of splitting the appeal against the decision of the Ethics Committee from the appeal against the enforcement decision of the rector / dean in the case of a litigation contesting the proceedings before the Commission of University Ethics and the sanctions established by it and enforced can neither be received due to the break of the unity of the complex administrative act which is the decision of the Commission of University Ethics, the same procedural report based on the appeal against the acts of the Ethics Commission being subjected to different jurisdictional procedures - the procedures specific to the work litigation regarding the decision of the rector / dean and the administrative litigation procedures regarding the acts and the activity of the University Ethics Commission.

5. Conclusions

If at the level of pre-university education, the application of sanctions for unethical behaviour among pupils and among teachers is blocked at this time by the lack of the Code of Ethics in education defining the deviations from the norms of professional ethics, although there are regulations establishing the composition and competence of the monitoring bodies, the Ethics Committees have been in operation since 2005 at the level of university education, both at institutional and national level, the serious deviations from the ethical conduct being described in the University Charters within the codes of professional ethics and deontology, texts affecting the behaviour of both the professors and the research staff, as well as the students.

In the current regulation of the norms of ethics in higher education, from the perspective of the student, we find that the effects of the sanctions applied in the case of his/her violation of the norms of university ethics are exacerbated, meaning that the *studies carried out within the study program interrupted due to the expulsion by reason of violating the provisions of the Code Of Ethics and University Deontology cannot be recognized in the case of a new registration* (art.147 paragraph 2 of Law no.1 / 2011) irrespective of the educational institution where the student would re-enroll.

Practically, this imperative rule requires the cancellation of all transferable credits acquired by a student in a study program if his/her conduct is unethical at any given time, regardless of whether it results from a conflict with another student or a professor, or it results from frauds in teaching. However, we are not in the presence of absolute nullity because the student expelled as a result of the violation of ethical norms is not fully reinstated prior to his/her enrolment, which is why if the study program interrupted by expulsion established by the Ethics Commission was a funded one, enrolment in a new study program can only be done fee-based.

Regarding the legal nature of the acts and activities of the Commission of University Ethics, we find that the approach of the courts differs depending on the relationship that the person investigated for violating the norms of ethics and the conduct specific to the education system has with the institution in which the Commission for University Ethics functions, namely whether the person investigated and sanctioned by the University Ethics Commission is part of the teaching staff of the university (having a contract of employment concluded and signed by the rector as the employer's representative), then

the litigation on the matter of appealing the decision / order of the Ethics Committee is considered by most of the courts as a labour dispute derived from the contract of employment, engaging in the form of a disciplinary liability of the employee - the professor - and the litigation in the matter of appealing a decision / order of the Ethics Commission with the purpose of withdrawing a scientific title / research degree (where the investigated person should not necessarily have a working relationship with the university, the scientific title / research degree being awarded on the basis of a civil education / vocational training relationship) is considered an administrative litigation being referred to the administrative contentious courts together with the decision of the rector / ministerial order enforcing the sanction.

In practice, the nature of the litigation is determined by reference to the person's relationship with the institution in which the judicial body operates - the Ethics Committee - and not according to the activity and acts of the judicial body, as it would be correct, to the effect that the same judicial body issues both complex administrative acts and preliminary acts in the procedure of disciplinary liability in the form of the liability for the violation of ethical norms and good conduct in the didactic activity.

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