

THE DISCIPLINARY LIABILITY OF TEACHING STAFF FROM ROMANIAN UNIVERSITIES IN THE NEW REGULATION OF THE LEGISLATION ON HIGHER EDUCATION FROM 2023

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Abstract: *The taking over the principles and procedure from the previous legislation (Law of National Education no. 1/2011), the legislator brings in 2023, through the new Law no. 199, changes to the regime of disciplinary liability of teaching staff. The clear distinction between the legal regime and the administrative act of the decision of the University Ethics Commission regulated in Law no. 199/2023 removes the sanction for the violation of ethical norms from the scope of disciplinary liability, as was considered by the majority of national jurisprudence under the old regulation. Our comparative analysis aims to highlight the new regulations, although some inadvertent still persist.*

Key words: *disciplinary sanctions, disciplinary liability, ethical norms, decision of the University Ethics Commission*

1. Introduction

Disciplinary liability - It is triggered as a result of committing a disciplinary misconduct, and in order to engage this type of hearing, there needs to be a complaint, the employer not being able to notify ex officio.

Disciplinary misconduct is a work-related act and consists of an action or inaction committed due to the fault of the employee, by which he violates the legal norms, the internal regulations, the individual employment contract or the applicable collective labor agreement, as well as the orders and dispositions of the leaders higher up in the hierarchy.

Thus, we find that disciplinary liability, although similar in regime and conditions to tort liability, has a contractual character, resulting from the fact that the conclusion of an employment contract involves hierarchical subordination to the employer, as an objective condition of the organizing the efficiency of work. Since hierarchical

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subordination derives from the conclusion of the individual employment contract, it is also the legal basis for the authority of the employer's management bodies to apply disciplinary sanctions to employees in connection with their employment relationship.

In the case of higher education staff, according to the special legislation represented by the Higher Education Law no. 199/2023, entered into force in September 2023, all staff in universities are contract staff, there being no public function, which is why disciplinary liability is subject to the special rules of Law no. 199/2023, being supplemented by the general rules of the Labor Code.

Taking into account the fact that according to art.198 Law no.199/2023, the staff of universities are teaching staff (teaching , research and auxiliary teaching staff) and administrative staff, as per the regulation of disciplinary liability in art.175-art. 179 Law no. 199/2023, it follows that the rules of the special legislation on disciplinary liability apply only to teaching staff, while in the case of administrative staff (represented by security personnel and cleaning, unskilled workers, etc.) the general provisions of liability in the Labor Code will be applicable (Salca Rotaru, Manea, 2021, p.130).

Another characteristic specific to disciplinary liability in the case of teaching staff regulated by the current legislation is the clear distinction that the legislator brings between disciplinary liability and liability for violation of the rules of ethics and professional deontology, the latter being regulated separately (it was also in the previous legislation as a separate chapter for disciplinary liability and deviations from ethical norms, however, the legal regime of the two types of liability was not as clearly outlined as in the current regulation) in art.161 – art.174, Law no.199/2023.

2. Distinction between Disciplinary Liability and Liability for Breaches of Ethical Rules in the Case of Teaching Staff

As we also showed in a previous study conducted in 2021 (Salca Rotaru, Manea, 2021, p.117-151), liability for deviations from ethical norms is distinct from disciplinary liability, even if in both cases we are based on an employment relationship – the one between the university and the teacher.

The fact that there are distinct regulations in the case of the two types of liabilities, with distinct procedures (different investigation commissions, with different attributions), with distinct sanctions – although in the old regulation of Law no.1/2011 the sanctions were identical, only that there were different legal texts in which they were mentioned related to each type of liability – e.g. art.280 para.2 and art.312 para.2 Law no.1/2011 disciplinary sanctions, respectively Article 318 of Law no. 1/2011 on sanctions for violation of ethical norms - is completed by the fact that the subject of liability for violation of ethics norms can also be the student / student (situation in which sanctions are different - Article 174 paragraph 3 of Law no. 199/2023), unlike disciplinary liability where the active subject of liability is only the university employee / teaching staff.

Although some courts (Sentence 2013) until 2023 (when Law no. 199/2023 entered into force) resolved appeals against sanctioning decisions for violation of ethics rules through the bench under the administrative litigation procedure, most courts

considered sanctioning decisions for ethical deviations to be within the competence of labor courts, thus assimilating liability for breaches of ethical norms as a disciplinary liability.

The argument of the courts was the existence of the employment contract between the teaching staff and the educational institution, deliberately omitting the particular typical of liability for misconduct in relation to ethical norms.

As mentioned above, the basis of disciplinary liability is the contractual and employment relationship, a relationship by which the employee is placed in a position of subordination to the employer. The basis of responsibility for violation of ethical norms is represented by social values prejudiced by deviations, social values that do not relate only to the parts of the employment relationship that the teaching staff has with the university, but are also related to this employment relationship.

3. The Specifics of Disciplinary Liability in the Case of Teaching Staff

As we have shown from the introduction, in the case of disciplinary liability there must be a complaint, either made by the person injured by the disciplinary misconduct, for example the author of the complaint may be another teacher or even a student, or the notification can be made by a person hierarchically superior to the author of the disciplinary deviation, who is thus responsible for the proper functioning of the structure and by disciplinary notification shows that he has taken measures to correct the situation thus created.

These are common regulations both in the Labor Code and in Law no. 199/2023 on the notification of committing a disciplinary offense (Article 176 paragraph 1 sentence II Law no. 199/2023).

Specifically, in the case of teaching staff, the legislator also provided for the possibility for the hierarchically superior person to file a disciplinary notification ex-officio, if they find a direct violation.

Unlike the notification that initiates the preliminary disciplinary investigation procedure according to the rules of common law (Labor Code), in case of initiating disciplinary investigation for acts committed by teaching staff, the notification must also be accompanied by a proposal for sanction, the proposal can be made *either by to the department director or by the head of the research, design or microproduction unit, by the dean, by the general administrative director or by the rector or by at least 1/3 of the total number of members of the department, faculty council or university senate, as the case may be* (art. 176 paragraph 1 Law no. 199/2023).

Unlike disciplinary sanctions in the labor code, in the legislation on higher education, the sanctions that can be applied to teaching staff are expressly and exhaustively regulated (art.175 para.4 Law no.199/2023):

- a) *written warning;*
- b) *reduction by up to 20% of the basic salary for a maximum period of 2 years;*
- c) *suspension, for a determined period of time, but not more than 5 years, of the right to enroll in a competition for a higher teaching position or a management position or to exercise membership in doctorate, master or bachelor committees;*

d) dismissal from the management position in education;

e) disciplinary termination of the employment contract.

Thus, unlike the Labor Code, the sanction of demotion in office for a maximum period of 60 days (disciplinary sanction provided by art.248 paragraph 1 letter b Law no. 53/2003), is replaced by the suspension of the right to promotion to higher teaching position or management position for a maximum period of 5 years.

Basically, this sanction, having a longer period of application than the one of demotion from the common law, involves blocking the teacher on the position he occupied at the time of committing the disciplinary deviation, with pecuniary effects (remaining at the same salary level afferent to the position held).

And in the case of disciplinary sanction with direct effects on salary, if the common law establishes a period of 1-3 months for the application of the salary reduction between 5 and 10% (disciplinary sanctions provided by art.248 paragraph 1 letters c and d of Law no. 53/2003), in the case of teaching staff the salary reduction is made to a maximum percentage till 20% (increased limit compared to the common law) for a period of up to 2 years.

Thus, we find that sanctions with higher limits are applied to the teaching staff, respectively the sanction of demotion being replaced by blocking in the same position, thus bringing more serious consequences to the staff who commit disciplinary misconduct in universities.

An explanation of the rigor of sanctions for teaching staff can also result from the fact that most disciplinary deviations can occur within the existing tuition relationship between the educational institution and students.

Taking into account the fact that management positions in the case of teaching staff in higher education are mainly filled by elections during a mandate (art.131 Law no.199/2023), the application of the sanction with dismissal from the management position may appear to be unrelated to the employment relationship (in which promotion to a management position is generally made by competition).

We consider that the legislature inserted this express sanction for the teaching staff who accede to such a management position, given that the misconduct thus committed is circumstantiated by the prerogatives of the management position, and the assumption of liability will have as a consequence the loss of the prerogatives of the management position used in committing the misconduct.

The maximum sanction that can be applied is that of disciplinary termination of the employment contract, sanction that involves the termination of the employment relationship, without the right of notice, from the date of application of the disciplinary sanction by issuing both the sanctioning decision and the decision to terminate the employment relationship (as in the case of common law).

4. Conclusions

For a clear understanding of the difference between disciplinary liability and that for violation of ethical norms in teaching and research, we propose to present by comparison the specific elements of each (Table 1).

Table 1

Comparative elements of between disciplinary liability and that for violation of ethical norms

DISCIPLINARY LIABILITY	LIABILITY FOR BREACHES OF ETHICAL RULES
<p>1.The object of disciplinary deviation – prejudice to social labor relations in relation to violation of disciplinary rules specific to teaching activity in universities (regulated and protected both at general level by the special law art.175 paragraph 2 Law no.199/2023, and at specific level by collective labor agreement, individual employment contract, internal regulation and other regulations of the university, orders and legal provisions of hierarchical leaders)</p>	<p>1.The object of deviation from ethical norms – prejudice to social relations regarding conduct in labor relating to interpersonal relationships, respectively the relationship between teacher and student, as well as damage to social relations regarding the research and publishing activity of teachers (by non-compliance with the rules of summoning and self-citation, which leads to actions of intellectual theft, as plagiarism is called)</p>
<p>2.The objective side – represents an act related to work, an act that falls within the scope of contractual and disciplinary wrongdoing.</p>	<p>2. The objective side – represents an act related to work, an act that falls within the scope of illicit behavioral and notoriety of publishing activity (the latter activity necessary for professional promotion by teaching degrees, is part of the work norm of teachers and researchers, being at the same time a personal and individual).</p>
<p>3.The subject of disciplinary deviation – can only be a teacher who acquires this quality by concluding an individual employment contract.</p>	<p>3. The subject of deviation from ethical norms – can only be a teaching and / or research staff, in terms of interaction between them and students, respectively interpersonal interactions, as well as auxiliary teaching staff (category of employees in the education system who help the teaching process, coming into direct / indirect contact with students). At the same time, also based on a contractual relationship (tuition contract), it becomes subject to responsibility for deviation from ethical norms and the student, in interpersonal relations between them and in relations with teachers</p>
<p>4.The subjective side – refers to the degree of guilt, because this is an important aspect in applying the disciplinary sanction.</p>	<p>4.The subjective side – refers to the degree of guilt, as this is an important aspect in individualizing the sanction applied.</p>

From the perspective of the legal acts issued by the employer / university in finding deviations and applying specific sanctions (consequence of incurring liability), finally, the legislator distinguishes between a specific act of labor law in the case of disciplinary liability (report of the preliminary disciplinary investigation commission, approval of the report by the decision-making body of the employer and the decision of the implementing rector) and administrative act in case of liability for deviations from ethics rules (report and decision of the University Ethics Commission, for which institutional responsibility is incurred, rector's decision to implement the sanction established by the University Ethics Commission, as an act subsequent to the decision of the Ethics Commission).

Thus, clarifying the regime of the two types of liability will lead to a unitary practice of the courts, thus clarifying the competence of the labor litigation courts and respectively of the administrative courts (Salca Rotaru, Manea, 2021, p.122) regarding the acts issued during the two investigation procedures.

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