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NEW NORMATIVE CLARIFICATIONS REGARDING THE FUNCTIONING OF ETHICS COMMISSIONS IN THE HIGHER EDUCATION SYSTEM

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Abstract*: The amendment of the higher education legislation in September 2023 through the adoption of Law no. 199/2023 brought a series of improvements to the current regulations regarding university ethics, although in the practice of the courts, where appeals against the acts of the University Ethics Committees (UEC) will be deduced for analysis, there will still remain aspects treated with a dual regime. By analyzing the detailed regulations regarding the operation of University Ethics Committees, which is the subject of this material, we aim to highlight the still unclear (or insufficiently regulated) aspects as a way of practical application*

Key words: *University Ethics Committees, violations of ethical norms, powers, harassment*

1. Introduction

In employment relationships and, as a category, in service relationships, compensation for damages caused by one of the parts of the relationship is made within one of the three forms of legal liability: patrimonial, civil and material, as stated by the specialized literature (Țiclea, A., 2019, p.21). Those three forms of liability ensure compensation for damage caused, but the difference in the regime, as we shall demonstrate, can be determined either by the regulations of the employment relationship or by the extent of the compensation (in respect of damage produced, actual, future or non-material damage).

Specific to employment relationships, patrimonial liability is regulated by the Labor Code both in respect of employees (art.254 para.1 of the Labor Code) and of employers (art.253 para.1 of the Labor Code). From the mutually binding relationship between the parties to the employment relationship, each party is required by their conduct or by the way in which they perform the contractual obligations not to cause any damage to the other party, and if an injury occurs due to the fault of any party, they must make good the damage caused by thus restoring the injured party in the situation prior to the occurrence

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of the damage.

A first analysis of those legal texts shows us the difference in the reparative regime of patrimonial liability in respect of employees or employers, a difference thus regulated since 2007. Although the patrimonial liability is in force since the adoption of the Labor Code on the principles of contractual civil liability, given that, starting with 2007, the individual employment contract is based on the employment relationship through the amendment brought by Law no. 237/2007, employees are liable only for the material damage caused to employers, while employers are also liable for the non-pecuniary damage caused in the employment relationship.

The second form of legal liability, civil liability appears as such mentioned in certain normative acts regarding certain categories of personnel (civil servants, forestry personnel or magistrates), although by the reference made to the Civil Code (sources of civil liability – Art.1349 and Art.1350 respectively) it is not distinguished whether it is a tort or contractual liability. After all, since these are the same principles of civil liability (whether it is tort or contractual) as the sole legal institution, the differences arise from the substantially different legal regime of tort liability, regarded as a common law regime, unlike the special regime, derogating from the ordinary law of contractual liability (Țiclea, A., 2020).

Thus, the conditions for the existence and engagement of civil liability are identical both in the case of tort and contractual liability – an unlawful act, damage caused, guilt and causal link between the act and the damage, respectively the purpose of both forms of civil liability being to compensate for an unjust damage suffered as a part of a legal relationship. The difference in the regime arises on the one hand due to its source – the law or the contract, which leads to situations in which the injured person can also be a third party to the legal relationship, on the other hand the difference is also given by the extent of the compensation for the damage and the fault of the party.

According to the texts of the special laws derogating from the Labor Code, civil liability will be incurred for the compensation of damages caused by public officials – according to art.490 para.1 reported to art.499 of the Administrative Code, by magistrates – art.94 of the Law no.303/2004 or by the forestry staff according to art.40 para.7 GEO no.59/2000

And last but not least, material liability, as a form of legal liability within an employment relationship, has its source in the Government Ordinance no. 121/1998, a normative-administrative act entitled the material responsibility of the military itself. The military, both the regulars and the reservists and those in optional service (including pupils and students in military education) will be materially liable, regardless of whether or not, after the damage has occurred, they will still have a status in the military, for the damages related to the formation, administration and management of financial and material resources, caused by the military due to their fault and in connection with the performance of their military service or duties.

Basically, this type of liability, also influenced by the military service regime, maintains the regime of the old liability in the labor law (Law no. 10/1972 _Carsr work) within which the employer issues a decision of imputation for the recovery of the damage caused by the employee, taking into account the hierarchical position of the employer towards the employee. And subsequently, if the employee does not challenge the legality of the

decision and imputation in the court, the damage is recovered by salary deductions based on the unilateral act of finding the damage issued by the employer – the imputation decision (art.25 para.2 O.G. no.121/1998).

With the adoption of law no.53/2003 – labor code, the legislator eliminated the imputation institution from the area of liability of employees replaced at the same time the material liability (art.103 and art.108 Law no.10/1972) with patrimonial liability (art.269 in the form prior to 2007, respectively art.253 in the current form of the Labor Code). Thus, in order to assume the patrimonial liability of the employees for the recovery of the damages caused to the employer, respectively the employment of the patrimonial liability of the employer for the recovery of the damages caused to the employees, legal action must be promoted on the principles of patrimonial liability of the Civil Code in conjunction with the special regime regulated in the Labor Code.

2. Patrimonial liability – civil liability in the regulation of the Labor Code

As I pointed out in the introduction, any of the forms of legal liability seeks to restore the assets of the injured person (whether it is the employee, whether it is the employer, or even a third party to the employment relationship) in the situation in which he would have found himself if the wrongful act had not occurred, so that the person liable must remove all the harmful consequences of his deed (Manea, L., 2019).

Analyzing the two legal texts – art.253 and art.254 of the Labor Code – in the form amended by law no.237/2007 we find the difference in regime: employers are liable and must repair the material or non-material damage, while the employees are liable only for material damages, although in both cases the principles of contractual liability apply.

Identifying the main restorative object of patrimonial liability in employment law relations ("*the employer is obliged ... to compensate the employee in the event that he/she suffered a material or non-material damage due to the fault of the employer during the fulfillment of the service obligations or in connection with the service*" – art.253 para.1 of the Labor Code) the reparation of the damage, regardless of the degree of culpability of the person liable, is a characteristic of the current regime of civil liability (according to the regulations of the New Civil Code), but also of patrimonial liability in labor law.

Thus, the mechanism of triggering patrimonial liability is made at the perseverance of the injured person, respectively of the holder of the injured right, so that if the victim does not request, by way of action for civil liability in tort or contract, as the case may be, the company need not notify itself (Manea, L., 2019). This lack of legal obligation to notify ex officio the state bodies in the area of protection of the rights in the labor relations (eg the Territorial Labour Inspectorate) in case of patrimonial injury through an illicit act, as in the case of self-referral to the criminal investigation bodies for certain offenses, is another argument of the pre-eminence of the reparative function of civil liability as compared to the educational-preventive one in the case of patrimonial liability in the labor law.

The preventive-restorative function of civil liability is also found to a lesser extent in the case of patrimonial liability, obviously it is desirable for the employer to adopt a different conduct in the future and not to repeat the mistakes for which his liability was committed, but each employment relationship has its individuality, and the hierarchically superior

position of the employer towards the employee most of the times devolves to an authoritarian behavior.

Acquiescing to the theory in the specialized literature (Țiclea, A., 2019, p.22-23; Ştefănescu, Tr.I., 2017, p.879) according to which patrimonial liability, as liability for damages, is a specific liability of labor law (according to its source), implies the obligation of the employee or employer to cover the damages produced to the other party with the assets from the personal patrimony.

Going further on a linguistic interpretation – patrimony derived from the heritage <*Latin. Patrimonium>* that implies all the rights and obligations of a person with economic value, we would be tempted to say that by incurring patrimonial responsibility, the patrimonial rights of the person are protected, not the non-patrimonial ones (subjective rights not valued in money such as rights concerning the existence and physical or moral integrity of the person or rights regarding the identification of the person), but we must not omit the fact that being a form of civil liability, like the proximate gender, and patrimonial liability must ensure the protection of all types of rights – patrimonial and non-patrimonial.

Thus, since 1947, the Administrative Court of the International Labour Organization recognized the possibility of awarding moral damages in labor disputes, and this conduct was also taken over by the Romanian legislator in 2007, as I said, when by Law no. 237/2007 was introduced in the regulation of patrimonial liability and compensation of non-material damage together with the material one.

And even after the express legislative amendment on non-material damage in the Labor Code, the ambiguity of the text of the law (the old art.269 current art.253 of the Labor Code) which spoke at the same time of the principles of contractual civil liability regarding the patrimonial liability for moral damages, determined a reluctance of the courts to admit petitions concerning the award of moral damages in the absence of express clauses in this regard in the individual employment contract, as a basis for contractual liability.

Following the promotion of an appeal in the interest of the law by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice even after the amendment of the Labor Code in the summer of 2007, by decision no. 40/2007, the supreme court ruled the principle according to which, according to the legal provisions, the patrimonial liability of the employer for moral damages is an exclusive contractual liability, as the text of art.253 of the Labor Code says (at the time of 2007 it was art.269 of the Labor Code in the same wording) fact for which such a request is admissible only if "*as per the law, the collective labour agreement or the individual employment contract contains express clauses in this regard*"..

Although subsequent in terms of the consequences of the unlawful and harmful decision or measure of the employer, there is not a compensation of non-pecuniary damages.

3. Civil liability from the perspective of employment relationships

Using the phrase of civil liability, several normative acts (Administrative Code where it was taken over from the old Law no.188/199 for the public administration area, Law

no.303/2004 and Law 567/2004 for the staff in the area of the judiciary or GEO no.59/2000 for forestry personnel) in fact, it also establishes a patrimonial liability in the charge of certain categories of personnel / employees, for the compensation of any damages caused in the employment relationship. The need for the legislature to designate that type of liability as being of a civil nature finds its explanation, first, because of the particular category of staff concerned who do not necessarily have an employment relationship based on an individual employment contract, as is the case with civil servants, that is to say, because of the particular status of staff in relation to the provision of a certain public service, in which case it is necessary to ensure full civil compensation, both of an existing and a future material damage, as well as of the non-material damage within the framework of tort liability, as is the case of magistrates or court staff).

Art.499 of the Administrative Code contained in Chapter VIII on Disciplinary sanctions and liability of public officials, taking over the old text of art.84 of law no.188/1999, has a deficient wording, but somewhat justified by the administrative doctrine regarding the service relationship which is based on a unilateral administrative act – the decision of appointment to office. Thus, art.499 of the Administrative Code exhaustively establishes the situations in which the civil liability of the public official is committed (guilty of damages caused to the patrimony of the institution, for the non-reimbursement of the amounts unduly granted or for the damages paid by the authority as a principal to third parties on the basis of court decisions), although in fact it is also about the principles of contractual civil liability, even if the civil servant has not signed an individual employment contract with the institution for which he works, and yet the service relations of the civil servants have a contractual source, although the doctrine of administrative law does not support this.

However, this contract was qualified in the case-law, by Decision no. 14/200, the High Court of Cassation and Justice held and held, at the same time, that the civil servants "do not carry out their activity on the basis of an employment contract", but "the act of appointment to office by the public authority together with the application and/or the acceptance of the post by the future civil servant form the agreement of will, the administrative contract".

Although similar to the patrimonial liability of employees, the liability of civil servants is a civil one from the perspective of the authority of the public authority with which civil servants are invested in the exercise of their duties, unlike contractual employees who do not have this prerogative, although somewhat similar powers and duties.

4. Conclusion

At present, both the national doctrine and the jurisprudence support and demonstrate the necessity of reparation for the non-pecuniary damages by granting monetary damages, which is why the legislator has also expressly regulated (even if a bit conflictual as in the case of art.253 para.1 of the Labor Code) the possibility of reparation of the moral or non-patrimonial damage in certain special matters, both contractual and especially non-contractual, starting with the very regulation of the New Civil Code. Thus, the courts

allow, as the case may be, this type of remedy, all the more so since at present it exists both in civil law and in labour law explicitly as the legal basis.

The general principle in civil procedure is that the evidence is to be made by the injured party – as the applicant (the employee in the employment relationship) in reference to the importance of the social value affected by the wrongful act for the normal development of his life, both family and professional life, is fully applied also in labor disputes, thus being an exception to the procedural principles in the jurisdiction of work where the burden of proof lies with the employer (Art.272 Labour Code).

Also, the extent of the non-material damage suffered and the causal link between the harmful measure/conduct of the employer and the negative impact on the person or difficulties in the family or in relation to other persons that have arisen and/or accentuated as a result of the application of the measure by the employer or as a result of that unlawful conduct must be proved by any means of proof by the injured party. The admission of the subsidiary petition for the award of non-material damages is not necessarily subsequent to the admission of the main petition of the labour dispute concerning the finding of illegality/unlawfulness of the employer's measure, in the absence of minimal proof for the facts of the content of the alleged non-material damage and of the causal link between the existence of the damage and the act/measure sanctioned by the admission of the petition main action on the employment relationship (Suceava Court of Appeal, 2018).

Given the non-patrimonial character of the subjective injured right, object of patrimonial liability, we consider, with the value of principle, that the judge's assessment of the assessment of moral damages is a subjective one, on a case-by-case basis, but the criteria that can be the basis of the amount of compensation are objective (Luchin, A., 2017) and can form the object of judicial control and decision.

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