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THE LEGAL REGIME OF THE DECISIONS OF UNIVERSITY ETHICS COMMISSIONS IN THE CURRENT JURISPRUDENTIAL INTERPRETATION

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Abstract: *In The legal liability for violating the norms of good conduct in the research activity specific to the university norm, respectively the responsibility in case of violation of the norms regarding the ethics and deontology of the teaching profession, are forms of legal liability of teachers 1/2011. Considering the employment relationship of the teaching staff, contractual relationship in the exercise of a public education service, and the special prerogatives of the University Ethics Commission, as regulated by the legal regime of this institutional body of research and decision in art.306 Law no. 1/2011, corroborated with the solutions of the courts of the last decade in the litigations having as object the contestation of the decisions of the university ethics commission, appears as necessary the substantive analysis of the legal regime of the decisions of the university ethics commission for the correct identification of the legislator's will. This study starts from the legal text by referring to the solutions of the courts, using a method of comparative research of the considerations of the sentences and the text of the normative act.*

Key words: *university ethics commission, decision, report, sanctions.*

1. Introduction

The rules of moral conduct among the members of the academic community (including the relation between professors and students, and those between professors) and those regarding the research activity are forms of institutional and professional academic ethics, thus being limited to certain actions specific to teaching and research activity of universities. Also functioning as a public institution, the university as a legal entity is an organization, in which sense we can also talk in the case of this institution about a

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general and collective level of morality which is beyond the morality of each member of that institution, as Kaptein and Wempe argue about deontological ethics (Kaptein M., Wempe J., 2003). This is because universities are, in turn, an environment in which a combination of organizational practices that can be subjected to moral evaluation develops (Socaciu E., Vică C., et al., 2018, p.35).

The legal relationship between teachers and universities is a labour law relationship, university professors are not civil servants, they are contractual staff even if in the case of education we are talking about a public service.

Thus, according to the rules of the Labour Code, all disputes concerning the activity of the teacher in his employment relationship with the educational institution are labour law disputes, over which there is jurisdiction of labour disputes and not that of administrative litigation as in the case civil servants regarding their employment relationship.

The legal relationship between student and university is a contractual relationship, based on a study contract concluded at the time of enrolment, a relationship that involves consensual rights and obligations regarding education services provided by the educational institution, a report in which the student submits decisions the institution regarding its didactic activity and the evaluation of the offered knowledge. If one of the parties to the study contract wishes to complain about the misconduct of the other party, we will be in the presence of a civil litigation regarding the contractual liability, and the competence for settlement belongs to the first court.

Also, in the case of teachers and students, sanctions may be applied regarding their conduct, sanctions that differ regarding the legal regime being disciplinary sanctions and sanctions for violating the norms of university ethics. To establish the need to apply these sanctions it is identified competence of two different commissions: the disciplinary research commissions and respectively the university ethics commissions.

2. The specific legal relations with the educational institution in the case of the teacher and respectively of the student

Within the contractual study report of a student, as we said before, there are certain situations when the educational institution issues decisions unilaterally regarding the situation of the student, acts that the student has to execute and which do not end by consensus. In some cases, those acts of the university are the effect of the student's activity (we have in mind the decisions of the dean of ranking students at the end of the academic year, ranking based on which the student occupies budgeted or paid positions for study).

Decisions for the enrolment of student or for cancelled studies are also administrative acts, the legality of which can be challenged in the administrative contentious court.

Regarding the activities of teachers, but also those of students, we must specify that they are carried out in compliance with certain rules / norms on scientific research, respectively rules on avoiding plagiarism and using correct citation of bibliographic sources in specialized works, circumscribed rules to the notion of academic ethics.

The issue of the development of inappropriate behaviour by students regarding plagiarism, data fabrication or data distortion in scientific papers has been aware on internationally level since last millennium (LaFollette, M.C., 1988, p.65-73) and have been taken steps to prevent the development of plagiarism, including by drafting guidelines regarding academic writing (Roig M., 2015, p.1-71; Roberts C.M., 2010). If a teacher or a student violates these rules of academic ethics, the consequences are different, although the facts are analyzed and sanctions are established by the same commission - the university ethics commission.

Thus, the plagiarized scientific paper will not be considered in the author's portfolio, but in the case of the student the establishment of a deviation from university ethics may have the effect of expulsion from university, without the possibility of recognition in case of re-enrolment of studies conducted until then.

If the plagiarized work is a bachelor's thesis, the finding of the plagiarism will determine the non-promotion of the exam, and in the case of the doctoral thesis it will have the effect of not granting the scientific title.

In the case of plagiarism identified in the scientific papers of a teacher, the paper in question will be withdrawn from conferences and the teacher promotion portfolio, and promotion in the teaching career will be negatively affected.

In addition to the consequences on scientific papers, the university ethics commissions, competent to rule on whether or not there was plagiarized through the report the commission made, may also apply sanctions that affect the work relationship, in the sense of reducing the salary for a certain period (1-3 months), the suspension of the right to promote in didactic degree or even the ending of the employment contract.

The application of both sanction: the corrective measures regarding the plagiarized work and a sanction on the legal employment relationship, does not represent a double punishment for the same deed, because through the corrective measures on the work in fact the readers are protected, because so the readers are warned about the vice of the scientific work in question – plagiarism.

Regarding the sanctions applied by the university ethics commission to teachers based on the research reports and the final decision issued by the commission on establishing the sanction/sanctions applied according to art.320 reported to art.318 Law no.1 / 2011, in case of appeal in the court of the decision of the university ethics commission, the courts approach the contested act differently: either as an act of labor law (civil sentence no. 1904/2016 Timiș Court; civil sentence no.6727/2017 Cluj Court, decision no. 1428/2017 Court of Appeal Brașov; civil sentence no. 2038/2017 Brasov Court (although the university ethics commission is not a disciplinary research commission), either as an act of administrative law (opinion that we also agreed) meaning in which we mention the civil sentence no. 4339/2013 Bucharest Court , civil sentence no.. 351/2018 Mureș Court or civil sentence no. 757/2018 Brasov Court.

In both cases, the courts take into account the labour law relationship existing between the teacher and the university based on the individual employment contract, the difference being given by the way in which the activity and the legal regime of the university ethics commission are perceived by the judge.

3. Specific regulation on academic ethics in Romania

Starting with 2002, various aspects of behavioural ethics and academic integrity regarding scientific research of students or of the professors have been regulated in Romania through a series of normative acts. Only through the National Education Law no. 1/2011 had been created the concrete legal framework of activity of the ethics commission – the university ethics commissions (article 306-308 Law no.1/2011) - and had been regulated the necessity of Code of University Ethics.

The importance of ethics in academic activities it is marked through the connection between the University Charter and the Code of University Ethics, by including this Code as a component part of the University Charter (article 128 Law no.1/2011).

We present below a selection of the normative and administrative representative acts on academic ethics, presented in chronological order, together with the main provisions considered to be relevant for ethics and academic integrity:

- Government Ordinance no. 57/2002 on scientific research and technological development - provides the framework for organizing research and development activities, including scientific research, experimental development and innovation based on scientific research and experimental development.
- Law no. 206/2004 on good conduct in scientific research, technological development and innovation - defines for the first time deviations in the scientific activity such as: plagiarism and self-plagiarism, data fabrication or data distortion in scientific papers.

The Law provides as an advisory body of central public administration, without legal personality, the National Council for Ethics of Scientific Research, Technological Development and Innovation (CNECSDTI), which carries out specific activities such as: monitors the application and compliance with the legal provisions regarding research ethics and deontology by the units and institutions of the national research-development and innovation system, as well as by the research-development staff; elaborates reports with analyses, opinions and recommendations in connection with the ethical issues raised by the evolution of science and knowledge and with the professional ethics and deontology in the research-development activity; develops and makes proposals on codes of ethics in scientific fields, regarding the international best practices.

- Order of the Ministry of Education and Research no. 4492/2005 on the promotion of professional ethics in universities (an administrative act) introduces the obligation to adopt their own Code of University Ethics for the higher education institutions or authorized ones to operate provisionally. At that time, the Ministry of Education and Research concluded that the Code of Ethics in higher education institutions should include the explicit formulation of ideals, principles and moral norms that the members of the academic community agree to respect and to follow in their professional activity.

The Code of University Ethics is a mandatory document, which sets out the standards of professional ethics that a university community aims to follow, as well as the penalties that may apply in the event of a breach (Rosioru F., 2018).

In addition, the order provides for the establishment of the University Ethics Council at the level of the Ministry of Education and Research, with responsibilities such as: providing advice and monitoring of the application of university ethics codes in higher education institutions accredited and authorized to operate provisionally; dissemination of good practices for the elaboration and application of university codes of ethics.

- Law of National Education no. 1/2011 – provides for the establishment, as an advisory body without legal personality of the Ministry of National Education, the University Ethics and Management Council (CEMU), whose general mission is to develop a culture of ethics and integrity in the Romanian universities.

The role of CEMU is to determine and support universities to develop and implement ethics and university integrity policies. CEMU audits the ethics and academic integrity commissions of universities. Chapter III decides that on university ethics disputes based on a Reference Code of university ethics and deontology (which it will elaborate) the university ethics commission has the hole competence to analyzed the facts and to set sanctions.

The university ethic commission is an independent commission he university ethics commission is an independent commission and its activity is not subordinated neither to the university senate nor to the university administration board, in the light of article 307, thesis II of Law no.1 / 2011

4. Conclusions

Considering that the same and one commission - university ethics commission (composed of teaching staff and students) - analyzes the deviations from the ethics norms, both according to Law no. 206/2004 and according to Law no. 1/2011 and the Code of university ethics from the University Charter, and sanctions both students and teachers, by the same type of act - the decision of the ethics commission (art. 307 reported to art. 320-322 Law no. 1/2011), the conclusion can be only in the sense that the same court has jurisdiction in case of contesting the legality of the decision of the university ethics commission.

And the competent court is the administrative contentious Court, regardless of whether a teacher or a student has been analyzed, because the decision of the university ethics commission is an individual administrative act issued in the name and on behalf of the educational institution, whose responsibility is assumed by the higher education institution (article 307, thesis II of Law no.1 / 2011).

Thus, we cannot agree that in case of contesting a decision of the university ethics commission by which a student was sanctioned, the administrative contentious court should be competent, considering the legal regime of the university ethics commission and the student's subordination to the university's decisions, and in case of contesting a decision of the university ethics commission by a teacher for deviations from the ethics norms regarding his/her scientific research activity to be competent court of labour, just because that teacher has an employment contract with the educational institution.

What most courts have considered, when analyzing the material competence in disputes aimed at challenging the decisions of the university ethics commission and

applying the sanctions in these decisions, was exclusively the legal relationship between teacher and employer, the educational institution, being completely omitted the legal regime of the activity and acts of the university ethics commissions. Most of the courts considered that the disciplinary liability of the professor is engaged for violating the norms of ethics, the deviation from ethics norms being related to the scientific research activity included in the norm of the teacher.

We do not deny the contractual relationship between teachers and universities, but we consider that the establishment of the material competence of the courts in case of contesting the decisions of the university ethics commission must start from the regime of administrative act of the ethics commission decision, considering the independence of this commission in the university, the activity of the commission and the responsibility of the university engaged by these decisions, meaning that we believe that the court of administrative contentious is competent.

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