LEGAL AND ETHICAL ASPECTS OF THE CONSEQUENCES OF IMPOSING THE DISCIPLINARY SANCTIONS PROVIDED IN *LAW NO. 206/2004 ON FAIR PRACTICES IN SCIENTIFIC RESEARCH, TECHNOLOGICAL DEVELOPMENT AND INNOVATION, WITH LATER COMPLETIONS AND AMENDMENTS IN THE CONTEXT OF THE PROVISIONS IN ART. 316 IN THE LAW OF NATIONAL EDUCATION NO. 1/2011*

Lecturer **Andreea Elena MATIC**[1]

Abstract

The current paper contains a brief analysis of art. 316 provided in The National Education Law no. 1/2011 in conjunction with the penalties stated in Law no. 206/2004 regarding fair practices in scientific research, technological development and innovation, with additions and amendments, as well as The National Education Law no. 1/2011. The interesting aspect of this article of the law that completes common law (art. 248 (3) in the Labour Code) is that it establishes the possibility of lifting and cancelling the disciplinary sanctions within a year since being imposed by the competent authority. In the academic world, the issue of fair practice in scientific research is one of honour and it provides each member of the scientific community with a dignified and respected career. The infringement of the provisions in Law no. 204/2004 on conduct in scientific research, technological development and innovation, with additions and amendments, leads to imposing sanctions which adversely affect the researcher's reputation. In our paper we analyse the applicable sanctions, the actual meaning of the phrase „improvement of the activity and conduct" of the sanctioned person in the context of fair practices in scientific research and, in our conclusions, we attempt at finding the requirements that have to be met in order to eliminate the negative ethical consequences, redeem the good name and regain the right to a honorary career.

Keywords: *norms on fair practices in scientific research, disciplinary offence, lifting the disciplinary sanction.*

JEL Classification: K23, K31

I. Legislative background

In the academic environment, scientific research constitutes the emblem of each teacher, showing the depth of knowledge in his/her specialised field of choice. From an institutional point of view, the total activity of the entire academic community leads to a certain place in the general hierarchy, as well as national and international professional prestige. Here are a few of the considerations why fair practices in scientific research is carefully regulated and monitored.

The specific legislation consists of the general legal framework, i.e. Law of National Education no. 1/2011, and the special statute is Law no. 206/2004 on fair practices in scientific research, technological development and innovation, with the ensuing supplements and amendments. According to art. 306 para. (1) in Law no. 1/2011 "each university has an operating commission of university ethics", whose attributions are seen in paragraph (3) of the same article, as the ethics commissions deals with documenting and sanctioning the offences consisting of misconduct in scientific research, the most serious being incriminated in art. 310 of LNE no. 1/2011[2].

Subsequently, art. 321 in Law no. 1/2011 states that "in case of misconduct in scientific research, the commission of university ethics applies, according to Law no. 206/2004, with later supplements and amendments, the Code of Professional Ethics and Deontology of Research & Development Personnel, and the Code of Professional Ethics and Deontology, one or several of the sanctions provided by statute".

Law no. 206/2004 on fair practices in scientific research, technological development and innovation, with later supplements and amendments, comprises provisions of more detailed and diverse sanctions, as the law-maker takes into account the accurate individualisation of facts and the

[1] Andreea Elena Matic - Faculty of Legal, Social and Political Sciences, "Dunărea de Jos" University of Galati, amiricass@yahoo.co.uk.
[2] According to art. 310.

infliction of punishments fitting the offence as accurately as possible. Moreover, this law includes sanctions that may be imposed at the level of the university ethics commission (art.11^1 in Law no. 206/2004) and sanctions applicable by the National Ethics Council (art. 14 in Law no. 206/2004). Also, art. 14 para. (2) in Law no. 206/2004 expressly allows for other sanctions provided for in the Code of Professional Ethics and Deontology of Research & Development Personnel, Law no. 64/1991 on patents, republished , with later amendments, Law no. 192/1992 on protecting the industrial drawings and models, republished, and Law no. 8/1996 on copyright and related rights, with later supplements and amendments.

The most serious sanction included in the regulations on the matter is the termination of the employment contract of the offender (art. 11^1 letter f), art. 14 letter. g) in Law no. 206/2004 and art. 324 letter g) in Law no. 1/2011).

The present paper deals with the detailed presentation of the sanctions applicable to this type of disciplinary misconduct. What seems worth evincing at this moment is the contents of art. 316 in Law no. 1/2001, according to which "when the subject of the disciplinary sanction has not committed any disciplinary offences within a year since the sanction, improving his behaviour and activity, the authority imposing the disciplinary sanction may decide to lift and erase the sanction in question, with the appropriate mention on the work record of the individual in question".

Who may decide to lift and erase a sanction? The legal provision says that the authority that first imposed it. According to art. 318 and 324 in Law no. 1/2011 these sanctions may be imposed by the Commission of University Ethics and The National Ethics Council, respectively. Enforcing the sanction, if it is definitive, is the duty of the management of the institution employing the person sanctioned, according to art. 326 in Law no. 1/2011[3] corroborated with art. 14 para. (1 index 1) in Law no. 206/2004. Hence, lifting or erasing the sanction falls onto the University Ethics Commission or the National Ethics Council, as it is the case, being enforced by the management of the institution whose employee is the person sanctioned.

A similar provision, but much more permissive, is to be found in the Labour Code, which is the common law on the matter, i.e. art. 248 para. (2) and (3). According to para. (3) "the disciplinary sanction is erased within 12 months since its enforcement, unless the employee is applied a new disciplinary sanction within this period". The employer ascertains the erasing of the sanction by written decision. This statute also refers, according to art. 248 para. (2) in the Labour Code to the sanctioning regimes in special statutes and regulations

By corroborating all these regulations, it may be said that the provisions in art. 316 in Law no. 1/2011 also apply to the sanctions enforced for misconduct in scientific research, technological development and innovation, as they are also disciplinary offences in the spirit of the law (as long as they are not crimes). According to professor Alexandru Țiclea, "the disciplinary sanctions constitute constraining means provided by statute, targeted at preserving disciplinary order, developing responsibility in the conscientious exertion of professional duties and abiding by the rules of good conduct […]."[4]

II. Sanctions applied for misconduct in scientific research susceptible to fall under the incidence of art. 316 in Law no. 1/2011

The first issue worth mentioning is that both the dispositions in art. 248 para. (3) in the Labour Code, and the provisions of art.316 in Law no. 1/2011 are absolutely natural. The disciplinary offence is not observing the right conduct in labour relations and is consequently sanctioned as such. *Law no. 206/2004 includes and sanctions deviations from fair practices in scientific research, technological development and innovation* which are not felonies. Felonies are by far the most serious breaches of

[3] The sanctions provided by the National Ethics Council of Scientific Research, Technological Development and Innovation are implemented within 30 days since issuing the order, as the case may be, by the Ministry of Education, Research, Youth and Sport, the president of the National Authority for Scientific Research, the National Council for the Certification of University Titles, Degrees and Certificates, the managers of contracting authorities providing funding for research and development, the boards of higher education institutions or research & development facilities.

[4] Alexandru Țiclea, *Labour Code with explanations*, 7th edition, Universul Juridic Publishing House, Bucharest, 2015, p.293.

the law and infringements of the values protected by society, but even in this extreme case the Penal Code (art. 165 and 166) and the Code of Criminal Proceedings (art. 527 and the next.) provide the possibility of rehabilitation, expunging the crimes and their effects from the criminal record, as if they had never occurred. It was only natural to treat disciplinary offences in the same manner.

The following requirements are to be met in order for the sanction to be lifted and erased by the enforcing authority:

1. A year has passed since the sanction was imposed;
2. The individual in question has not committed any disciplinary offence;
3. The sanctioned individual has improved his/her activity and conduct.

1. As stated in art. 316 in Law no. 1/2011, the initial requirement for lifting and erasing the sanction is the 1-year interval calculated since the most recent sanction applied to the individual in question. Thus, the dispositions of this article cannot be taken advantage of. Also, the effects of lifting and erasing the sanction only operate for the future, not in retrospect. So, the contingent salary cuts applied during this period are not reimbursed to the employee. It could happen only as a consequence of annulling the sanction, nullification also producing effects in retrospect.

If the Labour Code refers only to *de jure* erasing the sanction, Law no. 1/2011 mentions two possible actions: lifting and erasing the sanction. Lifting may occur in the case of the sanctions whose application goes beyond 12 months (e.g. art. 11^1 letter. d) in Law no. 206/2004 according to which a sanction may be the "suspension, for a determined period from 1 year to 10 years of the right to apply for a higher position or a management position, a supervising and control position, or a membership in contest commissions"). If the other requirements are met, and the sanction may be erased, it is also necessary to lift it if it was applied for more than 1 year. Lifting means that the sanction's dispositions are not to be applied in the future.

In case the sanction covered less than a year, lifting it is out of the question in the context of this article, so the only possibility left is to erase it.

A distinct aspect regarding misconduct is that the special regulation i.e. art. 316 in Law no. 1/2011 states that the sanction may be lifted by the authority enforcing it, not being compulsory to do so. The Labour Code states the de jure performance of erasing the sanction by the employer, even in the absence of a specific request to that effect from the interested party.

2. Regarding the second requirement, i.e. the individual has not committed any further disciplinary offence during that period, it is obvious that if he/she has committed a further offence and it was duly sanctioned, the first requirement is infringed. The law-maker's expression indicates that the offence has to not occur during this interval, being also possible for the sanction to be applied after the expiry of the 1-year term.

3. The individual sanctioned has improved his/her activity and conduct, as stated in the 3rd requirement. Such a situation is seen on a case to case basis, according to a set of proofs supplied to the relevant authority. Data are collected from the department where the individual in question is employed, etc. regarding fair practices in research, it is relevant if the incriminated papers have been withdrawn, if the individual sanctioned has put forward new works whose scientific quality has been acknowledged by the other specialists, etc.

The evidence submitted differs from case to case, but it should point out to the conclusion that the individual in question has performed his/her duties according to the job description, obtaining good results in research, and regrets his/her former actions, etc.

The following pages analyse all the sanctions that may be applied by the University Ethics Commission, the management of the organization or institution employing the individual in question, as well as the National Ethics Council, provided by the Law no. 206/2004 and the Law no. 1/2011, and to what extent one may apply art. 316 in LNE no. 1/2011 to each of them.

III. Sanction that may be imposed by the institution and the National Ethics Council

A. ***Written warning*** stated in art. 318 letter a) and art. 324 letter a) in Law no. 1/2011, art. 11^1 letter a) and art. 14 letter a) in Law no. 206/2004 with further additions and amendments, is the most lenient administrative sanction applicable. It is used when the offence is proven, but its seriousness is minor, the consequences minimal, the offender shows sincere remorse, etc. Regarding this sanction, one may not speak of lifting, but only erasing it, by the decision of the organization employing the individual sanctioned, as it is a written document handed to the offender, and its coming into force occurs at the moment of communication, without a consecutive implementation

B. ***Decrease of the basic salary, cumulated, when it is the case, with the management, supervision and control indemnity,*** stipulated by art. 318 letter b) in Law no. 1/2011 and art. 11^1 letter c) in Law no. 206/2004 with further additions and amendments. It may be noted that these articles do not specify the duration of this sanction, but if we refer to common law, i.e. art. 248 para. (1) letter c) and d) in the Labour Code, we find that the measure may be taken for 1-3 months. As such, lifting the sanction in 12 months' time produces no effect. The amounts withheld are not reimbursed to the individual, as it would not be fair, but the sanction may be erased, which produces effects in the future.

C. ***Suspension, for a certain period, of the right to apply for a higher teaching position or a management, supervision and control position, or membership in a PhD, master or licence degree commission*** provided in art. 318 letter c) in Law no. 1/201, art. 11^1 letter d) and art. 14 letter i) in Law no. 206/2004 with later additions and amendments, according to which the violations of fair practices may result in ***"suspension, on a definite period from 1 year to 10 years, of the right to register for the contest to fill a higher hierarchic position, a management, supervision and control position, or membership in a contest commission".***

If the provision in Law no. 1/2011 does not state the duration for the imposition of this sanction, only the fact that it should be applied on a definite period, the special statute states that the maximum duration is 10 years. Hence, it is obvious that this sanction may be affected by the provisions of art. 316 in Law no. 1/2011 if the other requirements are met. Of course, lifting the sanction shall take into account the peculiarities of each case.

D. ***Demotion from a management position in education*** (art. 318 letter d) and art. 324 letter f) in Law no. 1/2011, art. 11^1 letter e) and art. 14 letter f) in Law no. 206/2004 in a slightly different phrasing, viz. "demoting from the management position in the research-development institution") is a sanction which may be, in our opinion, only erased, not lifted. It would not be legal to give back a top, management position to someone who committed a serious violation of the fair practices in research. The act did not disappear, and the sanction was not annulled, so that to stop producing effects in the past. However, like any other member of the academic community, the individual in question may be given a second chance and thus have his/her sanction erased from his professional record.

E. ***Disciplinary termination of the employment contract*** (art. 318 letter e) and art. 324 letter g) in Law no. 1/2011 and art. 11^1 letter f) and art. 14 letter g) in Law no. 206/2004) is the most severe sanction applicable. Considering its effects, i.e. termination of the labour relations, it is obvious that neither lifting, nor erasing the sanction may occur, so art. 316 in Law no. 1/2011 is not applicable in this case.

The following sanctions may be applied only by the **National Ethics Council**

a) Withdrawing and/or correcting all the papers published by breaching the norms of fair practices (art. 324 letter b) in Law no. 1/2011, art. 11^1 letter b) and art. 14 letter b) in Law no. 206/2004) constitutes a sanction which may not be lifted, as breaching the rule still persists, and the papers sanctioned may not be reintroduced in publications. However, it is possible to erase the sanction, provided all the requirements in art. 316 in Law no. 1/2011 are met.

b) Withdrawing the office of PhD supervisor or habilitation certificate (art. 324 letter c) in Law no. 1/2011 and art. 14 letter c) in Law no. 206/2004) is a sanction which, due to its seriousness and specific elements, may only be applied by the National Ethics Council. As such, lifting is not a

possibility from our point of view, as it would be equivalent to annulment, and regaining the withdrawn title would only be possible by participating in a new contest or examination, but on the other hand, it can be erased in the circumstances provided by statute.

c) Withdrawing the PhD title stipulated in art. 324 letter d) in Law no. 1/2011 and art. 14 letter d) in Law no. 206/2004 may be erased in the circumstances provided by statute, but not lifted. The title of PhD cannot be regained in this manner. The only solution (unless the sanction is annulled) is re-taking the doctoral exams and obtaining another PhD title.

d) Withdrawing the university title, research degree or demotion is a measure that may be disposed against the individual in breach of statute on the basis of art. 324 letter e) in Law no. 1/2011 and art. 14 letter e) in Law no. 206/2004, which may be eased, not lifted. When erased, the individual sanctioned is left with the lesser title, if that was an option, but with no mention of losing the higher one, i.e. being demoted. In case it is possible, the individual sanctioned, after the sanction is erased, may take a new promotion exam, if he/she meets the necessary requirements.

e) Forbidding, for a given period, access to public funding for research-development (art. 324 letter h) in Law no. 1/2011 and art. 14 letter h) in Law no. 206/2004. Concerning this sanction, none of the two statutes includes the interval of application, the only mention being that the measure is taken for a "definite time". Thus, if the sanction outlasts 12 months, it may be both lifter and erased, as shown in regard to other sanctions whose duration is longer than 1 year.

f) Removing the individuals in question from the project implementation team may only be disposed based on art. 14 letter j) in Law no. 206/2004. If the project covers several years, then the sanction may be lifted after 1 year, if the other legal requirements are met, and the project is still ongoing. In any other case, the sanction may only be erased, provided the legal requirements are met.

g) Cutting the project funding is provided in art. 14 letter k) in Law no. 206/2004 and assumes that the misconduct took place during the implementation of an ongoing project. From our point of view, the sanction can only be erased in this case, assuming the legal requirements are met.

h) Cutting the project funding, with the mandatory reimbursement of funds stipulated in art. 14 letter l) in Law no. 206/2004 is the more severe version of the previous sanction, as it involves a financial penalty to be suffered by the individual sanctioned. In this case, for the sanction to be erased, the payment of the necessary sum is obligatory. We do not consider lifting the sanction as a possibility in this particular case.

i) Art 14 paragraph (1^2) in Law no. 206/2004 states, if one may say so, a complementary penalty according to which "***it is forbidden to fill positions in research-development by individuals guilty of gross misconduct in research activity".*** The text of this sanction may lead to the inference that at the moment when the main sanction is lifted or erased, it is erased as well, according to the general principle *accesorium sequitur principale.*

IV. Conclusions

At the end of the analysis of the sanctions that may be applied for breaching the fair practices in research-development, it is worth mentioning that the competent sanctioning authority may consider that one sanction is not enough and several sanctions should be imposed[5] Later, lifting or erasing the sanctions is disposed for each sanction in turn, according to the peculiarities of the penalty.

The previous data lead to the conclusion that although the offences are quite diverse and many are quite serious, most can be lifted and/ or erased, allowing the individuals in question to resume or continue their activity and move past the more or less intended breaches of fair conduct. It is also recommendable that each member of the academic world should preserve their dignity and good reputation, as they are fundamental advantages in a research career.

One should also evince that both offences and disciplinary sanctions are revisited and provided, with various nuances, in the Codes of Professional Ethics and Deontology, as well as in the

[5] Art. 320 of Law no. 1/2011 and article. 11^1 and 14 of Law no. 206/2004.

Organisation and Operation Statutes of the University Ethics Commissions in universities and research institutes in view of a fair and equitable enforcement of the law.

Bibliography

1. Alexandru Țiclea, *Codul muncii adnotat*, seventh edition, Universul Juridic, Bucharest, 2015.
2. Law no. 206/2004 on fair practices in scientific research, technological development and innovation, with further additions and amendments by Law no. 398/2006 published in the Official Monitor of Romania, Part I no. 892 of 02. November 2006 and Ordinance no. 28/2011 published in the Official Monitor of Romania, Part I, no. 628 of 02 September 2011
3. Law of National Education no. 1/2011 published in the Official Moniotr of Romania, no. 18 of 10 January 2011
4. Law no. 53/2003 – Labour Code—updated, published in the Official Monitor of Romania, Part I, no.52 of 22 January 2015.