

# PROPOSALS FOR LEGISLATIVE AMENDMENTS REGARDING THE ESTABLISHMENT OF THE LEGAL REGIME OF THE DECISIONS ISSUED BY THE UNIVERSITY ETHICS COMMISSION - BETWEEN NECESSITY AND URGENCY

Lecturer **Laura MANEA**<sup>1</sup>

Lecturer **Cristina Mihaela SALCĂ-ROTARU**<sup>2</sup>

## **Abstract**

*Speaking of university ethics since the first decade of the XXII century, we would be tempted to consider that the principles of academic ethics are relatively recent or that the need for regulation has become stringent in the current context of the information society, in which the detection of plagiarism, for example, is favored by internet technology. In fact, what is recent is the intervention of the legislator, including in the Romanian education system, in establishing the rules for sanctioning the violation of the principles of university ethics. The study starts from the principles of the national higher education system enunciated in art. 118 of Law no. 1/2011, analyzes the regulations of the section dedicated to university ethics in the special normative act (art. 306-310 and art. 318-326 of the National Education Law) but also of other normative acts (Law no. 206/2004) and refers to the analysis of the content and statistics of the decisions of the courts invested to rule on the appeals of decisions aimed at sanctioning deviations from university ethics. The conclusions are in the sense of the need for the legislative harmonization of the provisions incident to the activity of the university ethics commissions between the two normative acts, Law no. 206/2004 and Law no. 1/2011, at least as regards the classification of the decisions/reports of the ethics commissions between an act of labor law or an administrative act and the elimination of the ambiguity from the legal texts. Finally, are presented proposals for legislative changes deemed appropriate for legislative harmonization.*

**Keywords:** university ethics commission, report, decision, administrative act, labor law act, jurisprudence.

**JEL Classification:** H79, K31, K40, K41, K49

## **1. Introduction**

Starting with the year 2000 and more accentuated once the Bologna Process came into force, the national and international educational system emphasizes academic ethics as a guarantee of the quality of the teaching act and the scientific research, a necessity of regulating a conduct which is already implemented regarding academic writing, but also a measure of legally establishing a context for some institutional virtues and moral principles.

Given the legislative changes caused by the European systemic reform, namely the passing of the current Law no. 1/2011 regarding national education<sup>3</sup> (NEL), university ethics was legally regulated, thus the coming into force of the provisions of the Education and Research Ministry Order no. 4492/2005<sup>4</sup>, an imperative act but rather incomplete in its expression. This, along with university autonomy, led to a lack of unified practice of the ethics commissions in higher education institutions in Romania, each led by own regulations (regulations or methodologies for the functioning and organizing of the ethics commissions) passed by each university senate.

Although the structure of the legal regulation shows the lawmaker's intention to establish distinctive legal procedures in case of violations of ethics regulations as opposed to disciplinary deeds, including by creating a distinctive institutional research organism, the university ethics Commission.

From the author's point of view, institutional liability is engaged based on administrative law; however, practice notices that some university senates have passed different internal

---

<sup>1</sup> Laura Manea, Transylvania University of Brasov, Romania, manea@unitbv.ro.

<sup>2</sup> Cristina Mihaela Salcă-Rotaru - Transylvania University of Brasov, Romania, rotaruc@unitbv.ro.

<sup>3</sup> Law no 1 of 2011 for national education, published in the Official Bulletin no 18 of January 10<sup>th</sup>, 2011, accessed at <http://legislatie.just.ro/Public/DetaliuDocument/125150>.

<sup>4</sup> At the time, the National Education Ministry's Order no 4492/2005 was issued, the legal text regarding the activity in higher education institutions, Law no 84/1995, did not regulate university ethics and the research procedure, at the time the order was issued only Law no 206/2004 regarding good conduct in scientific research activity was in force.

regulations, based on two parallel directions:

(i) Ethics commissions similar, as procedure and competence, to those who research disciplinary deeds which, as a result of a preliminary analyses, proposes that the university senate applies certain sanctions,

(ii) Institutionally independent ethics commissions, which pass decisions and establish sanctions based on the analysis performed by a judicial-administrative organism.

Considering that the activity of scientific research is a part of the university regulation for the holder of the teaching position, some courts of law have established that liability for violating ethical university regulations is disciplinary, by exclusively considering the contractual labor relation between the teaching institution and the academic employee. However, in the practice of the courts of law, we have identified litigation in which liability for violating ethics regulations was analyzed by the administrative courts based on the principle of tort liability, namely an ethics - administrative liability, considering the royalties which are acknowledged to university professors and researchers for the scientific and research activity, an activity of creation and innovation.

Researching the legislative elements which need to be harmonized was approached based on the main stages which characterize the activity of the ethics commissions, by identifying them in different legal texts which apply. From a practical perspective, the activity of the ethics commissions corroborated with the solutions provided by the courts of law in litigation regarding acts of the ethics commissions, each stage shows the changes which are required in order to clarify these aspects, along with the arguments which support the suggested changes.

The analysis of the activity of the ethics commissions and the relevant decisions passed by the University Ethics and Management Council (UEMC) was achieved by quantity research, as this type of research allows for the objective identification of all regulation inconsistencies between legal texts, inconsistencies which are pointed out by different solutions, even contrary solutions, passed by authorized institutions.

The solutions suggested for the change of the legal texts and harmonization of regulations of Law no. 206/2004 regarding good conduct in scientific research, technological development and innovation<sup>5</sup> with those of Law no. 1/2011 regarding national education will undoubtedly ensure unified practice regarding jurisprudence in litigation regarding the challenge of the decisions of the university ethics commissions, namely central commissions, the UEMC and the National Council for Ethics in Science Research, Technological Development and Innovation (NCESRTDI).

## **2. The duties of the University Ethics Commission. Procedures and document approval**

The duties of the University Ethics Commission covers two main components regarding university activity: general university ethics corroborated with the respect of the principles of the National System of Higher Education (article 118 first alignment of the Law no. 1/2011) and the prevention and sanctioning of any form of discrimination, as well as ethics in scientific research, technological development and innovation, according of Law no. 206 of 2004, as a part of university regulations.

In agreement with the deeds of violating the ethics regulations, inquiries regarding such violations can be initiated by different specialized bodies, according to the legal and administrative regulations in force:

- University Ethics and Management Council (UEMC), subordinated to the Education Ministry according to Governments Emergency Ordinance no. 212/2020<sup>6</sup>, rules on university ethics litigation and analyzes cases pertaining to violations of the ethics regulations and university management, thus addressing the university ethics commissions as a result of an inquiry of by self-

---

<sup>5</sup> Law no 206/2004 regarding good conduct in scientific research, technological development and innovation, published in the Official Bulletin no 505 of June 4<sup>th</sup>, 2004, accessed at: <http://legislatie.just.ro/Public/DetaliiDocumentAfis/175297> .

<sup>6</sup> Government's Emergency Ordinance no 212 of 2020 for some measures for public central administration and the change of some legal texts, published in the Official Bulletin no 1307 of December 29<sup>th</sup>, 2020, accessed at: <http://legislatie.just.ro/Public/DetaliiDocument/235735> .

inquiry, according to the law, after the subject was analyzed within the university<sup>7</sup>.

- The National Council for the Acknowledgement of Titles, Diplomas and University Certificates (NCATDUC), under the coordination of the Education Ministry, by the Institutions which conduct Doctoral Studies (IDS) directly addresses the university ethics commissions in order to confirm/infirm plagiarism charges in doctoral thesis, in order to create a plagiarism analysis file; thus, IDS will file a point of view based on the University Ethics Commission's decision which is invested with researching plagiarism<sup>8</sup>.

- The National Council for Ethics in Scientific Research, Technological Development and Innovation (NCESRTDI) coordinated by the Ministry of Researching, Innovation and digitalization in accordance with GEO no. 212/2020, analyses cases pertaining to the violations of good conduct regulations, as a result of an inquiry or self-inquiry and rules by decisions, which state if a good conduct regulation was violated<sup>9</sup>. Except for these inquiries, NCESRTDI passes the inquiry to the management of the research and development institution, in order for it to be analyzed by the institution's ethics commissions, according to the provisions of Law no. 206 of 2004 which states in article 4<sup>2</sup> that inquiries regarding conduct violations in research and development activity are analyzed in two stages; the first one is the institution analyze where the assumed violation occurred, an analysis performed by the university ethics commission.

Currently, procedure before the university ethics commission takes place as follows:

- According to NEL, the university ethics commission begins the procedures established by the University Ethics and Professional Conduct Code, namely Law no. 206/2004 (article 309 first thesis) and **elaborates decisions** which are approved by the legal adviser of the university. As a result, according to NEL, both the analysis of violations of general ethics and conduct violations in research activity are finalized with decisions from the commission, as these are legal acts whose effects are enforced by the dean according to the provisions of article 322 of NEL;

- According to Law no. 206/2004, the ethics commission appoints an analysis commission in order to examine the inquiries (article 10 of the law). The analysis commission **elaborates a report** which is approved by the ethics commission (article 11 of the Law) and is also approved by the legal adviser of the institution. As a result, any inquiry before the NCESRTDI considers the **report** of the university ethics commission. We believe this regulation is incomplete, as the university ethics commission is a research and sanction organism within the higher education institution and the dean can't enforce a report of the analysis commission without a legal document which approves the report.

- The forming of the analysis file for inquiries made to NCESRTDI pertains to the **decision** of the university ethics commission, legally approved (article 6 letter e) of the Methodology approved by Order no. 5229/2020) and the inquiry regarding a doctoral thesis file can result in plagiarism, a deed which violates university ethics and is researched and sanctioned based on the provisions of Law no. 206/2004.

As these inconsistencies regarding the duties and general procedures are differently regulated in NEL and Law no. 206/2004, as well as in internal regulations of higher education institutions based on university autonomy (the charter and regulations of the ethics commissions) they all cause effects on the activity of UEMC and NCESRTDI; thus, we believe it is not only appropriate, but also urgent to harmonize the provisions of NEL and those of Law no. 206/2004 in regard to the procedures of the ethics commissions and the acts they elaborate. *De lege ferenda*, the

---

<sup>7</sup> According to article 19 of the Regulation for the organizing and functioning of ECMU, approved by National Education Ministry's Order no 4.783 of 2017, published in the Official Bulletin no 750 of September 19<sup>th</sup>, 2017, accessed at: <http://legislatie.just.ro/Public/DetaliiDocumentAfis/193266>.

<sup>8</sup> According to article 6 letter e) of the Methodology for the solving of inquiries regarding the violation of quality standards or professional ethics, including in regard to plagiarism in a doctoral thesis, approved by the National Education Ministry's Order no. 5229/2020, published in the Official Bulletin no 783 of August 27<sup>th</sup>, 2020, accessed at: <http://legislatie.just.ro/Public/DetaliiDocument/229580>.

<sup>9</sup> According to article 4 letters d and e of the Regulation for the organizing and functioning of NCESRTDI, approved by the National Education Ministry's Order no 4.665 of 2020, published in the Official Bulletin no 601 of July 9<sup>th</sup>, 2020, accessed at: <http://legislatie.just.ro/Public/DetaliiDocument/227698>.

change of article 306 third alignment of NEL by changing letters a) and e) and introducing article a<sup>1</sup>); changing article 309 first thesis of NEL; changing article 11 of Law no. 206/2004 by completing the third alignment and introducing two new alignments (3<sup>1</sup>) and (3<sup>2</sup>).

We suggest the following texts for completing and resolving the inconsistencies described above:

- NEL Article 306 alignment (3) The university ethics Commission has the following duties:

a) it appoints analysis commissions for the examination of inquiries regarding university ethics violations, based on inquiries of self-inquiries, according to the University Ethics and Good Conduct Code;

a<sup>1</sup>) solves university ethics violations by elaborating a decision based on the analysis commission report. The analysis commission report is a part of the ethics commission decision.

(...)

e) other duties stated by law or established according to the university charter, according to the law.

- NEL article 309: As a result of an inquiry, the university ethics commissions begins the procedures established by the present law, the University Ethics and Good Conduct Code, namely Law no. 206/2004, with subsequent changes and completions.

- Law no. 206/2004 article 11 third alignment: the analysis commission elaborates a report which is approved by decision of the ethics commission, communicated to the parties and is made public on the institution's website within 45 days of the inquiry; in case of a violation of the good conduct regulations in research and development activity, the report will state the guilty parties and establish one or more of the sanctions stated in article 11<sup>1</sup>; the guilty parties can be different from those who were subject of the initial inquiry.

(3<sup>1</sup>) The Report of the analysis commission is a part of the ethics commission's decision.

(3<sup>2</sup>) Within 10 days from when the ethics commission's decision, the sanctions established in this decision are enforced by decision of the dean. The decision is communicated to the guilty party.

(4) The decision of the ethics commission is approved by the legal adviser of the institution. Legal liability for the activity and decisions of the analysis commissions belongs to the institution.

(5) The decision of the ethics commission, along with the sanctioning decision if that is the case, can be challenged in accordance with the provisions of the sixth alignment before the National Ethics Commission by the guilty party or by the author of the inquiry; the challenge will contain a simple copy of the initial inquiry and the decision of the ethics commission and is communicated to the institution which elaborated the decision.

(6) In case a challenge was not filed before the National Ethics Commission within 15 days from the time of communication stated in alignment (3<sup>2</sup>), the sanctions established by the ethics commission through decision of the dean of the institution or the board of directors, become executional.

### **3. The legal regime if the University Ethics Commission's documents**

The documents issued by the university ethics commission, by which sanctions are established, regardless of the current terminology – decision/report - can be challenged before the courts of law, according to the principle of legality. The lack of express provisions regarding the legal nature of these acts, both in NEL and in Law no. 206/2004 generates a lack of unified practice regarding the material competence of the courts of law which must solve litigation pertaining to the challenging of these acts.

Thus, there are several approaches, as follows:

a) Establishing the legal nature of the decision of the ethics commissions, as an administrative act,

b) Establishing the legal nature of the decision of the ethics commissions, as a labor relations act,

c) Establishing the legal nature of the decision of the ethics commissions, as a labor relations

act, but with special procedure as the court of law states that “the deeds were not analyzed by the Disciplinary Commission within a disciplinary procedure, but by the university ethics commission, in a distinctive procedure of analyzing the violations of certain regulations regarding university ethics. As a consequence, the court will analyze the fulfillment of legal conditions of the acts elaborated by the defendant based on the legal provisions of Title IV Chapter II Section 8 of Law no. 1/2011 - „Sanctions for the violation of university ethics and good conduct in research” - in article 318-326 of Law no. 1/2011 and the internal regulations of the defendant”, thus, we exemplify with Decision no. 6983/2018 of October 2<sup>nd</sup>, 2018, Bucharest Tribunal, Decision no. 4873/2018 of June 15<sup>th</sup>, 2018, Bucharest Tribunal.

The different view in material competence of the courts of law (labor relations sections vs. administrative acts sections) resulted in negative conflicts of competence. However, this negative conflict of competence did not lead to unified practice, as the decisions meant to regulate competence were also different; thus, we exemplify with civil Decision no. 6/2013 of November 8<sup>th</sup>, 2013, Galati Appeal Court, Decision no. 2058/2017 of December 6<sup>th</sup>, 2017, Brasov Appeal Court, civil Decision no. 1793/2018 of April 16<sup>th</sup>, 2018, Bucharest Appeal Court.

### **3.1. Jurisprudence arguments for qualifying the decisions of the ethics commissions as administrative acts**

Since the courts of law have ruled that the decisions/reports of the university ethics commissions are administrative acts, we must state that this regulation starts from the separate regulation of the transgressions from the ethics regulations, as opposed to disciplinary transgressions.

Thus, one decision<sup>10</sup> states that by examining the challenged documents, the court states that the plaintiff was sanctioned based on article 318 letters a) and b) of Law no. 1/2011 for violations from the rules of university ethics. Law no. 1/2011 for national education distinctively regulates disciplinary sanctions which apply to university personnel in section 7 (articles 312-317) and sanctions regarding the violation of university ethics and good conduct in research activity in section 8 (articles 318-326). By continuing with this reasoning and corroborating the provisions of NEL with those of law no 206 of 2004, the court shows that “while disciplinary sanctions apply only to teaching personnel, sanctions which pertain to the violation of university ethics and good conduct in research activity can also be applied to other categories of personnel and are to be enforced following an expressly regulated procedure as stated in Law no. 206/2004”. All these “particular aspects which pertain to the nature of the deed, the sanction and the specific procedure, allow for the court to rule that these are not connected to labor as regulated in article 247 second alignment of the Labor Code, but pertain to aspects which are exterior to labor relations; thus, liability in this case is not disciplinary, but administrative”. The court concludes that “the challenged acts have the nature of administrative acts, as regulated in article 2 letter c) of Law no. 554/2004: issued by a public authority (the university is considered to be a public authority according to article 2 letter b) - the private law institution which, in accordance with the law, has a public utility status or is authorized to perform a public service, as a public power), in order to organize and enforce the law which allows for the creation, change or demise of legal relations”.

By following the same reasoning, another civil Decision<sup>11</sup> in litigation pertaining to the resolution of the university ethics commission stated that “it is requested to terminate administrative acts issued by the university ethics commission based on special provisions found in NEL no 1/2011 and Law no. 206/2004 regarding good conduct in scientific research, technological development and innovation as the acts issued by a university and its leadership bodies are administrative acts as regulated in article 2 of Law no 554/2004 and do not entail labor relations”.

In order to make such a ruling, the court stated that “there is no labor conflict in this matter,

<sup>10</sup> Civil decision 3295/2013 of September 9<sup>th</sup>, 2013, Constanta Tribunal.

<sup>11</sup> Civil decision no 6/2013 of November 8<sup>th</sup>, 2013, Galati Appeal Court, conflict of competence.

as stated in article 266 of the Labor Code regarding the execution of legal relations which pertain to labor jurisdiction, but it is an administrative litigation, thus the provisions of Law no. 554/2004 apply in this matter”.

By analyzing the legal conditions of the acts issued by the defendant, namely the report of the analysis commission and the decision of the university ethics and conduct commission, the court stated that it must be analyzed by considering “the legal provisions of Title IV Chapter II Section 8 of Law no 1/2011 - Sanctions pertaining to the violation of university ethics and good conduct in research activity - in articles 318-326 of Law no. 1/2011 and the internal regulations of the defendant (The regulations for the organizing and functioning of the University Ethics and Professional Deontology Commission and the University Charter)<sup>12</sup>. The court also shows that “given the mentions made by the plaintiff regarding the violation of the provision of the Labor Code and the NEL regarding the disciplinary procedure” the court states that sanctioning the plaintiff did not reside in disciplinary transgressions, but in the violation of university ethics; thus, the disciplinary procedure regulated by the Labor Code does not apply in this matter nor the procedure stated in Title IV Chapter II Section 7 of Law no. 1/2011, named “Disciplinary sanctions”. As a result, the plaintiff's defense pertaining to the non-fulfillment of the legal conditions stated in articles 247-252 of the Labor Code and articles 312-317 of Law no. 1/2011 will be removed, as the challenged acts were not subject to these procedures. For the same reasons, any defense regarding the disrespect to the provisions of the Regulations for the organizing and functioning of the Disciplinary Commission will also be removed as “the challenged deeds were not analyzed by the Disciplinary Commission during a disciplinary procedure, but by the University Ethics and Professional Deontology Commission within a distinctive procedure, which analyzed university ethics violations”.

Another court<sup>13</sup> rules in a similar manner, by pointing out that “the university ethics commission, according to its lawful duties does not perform preliminary disciplinary research, but it investigates the matter according to the provisions of NEL no. 1/2011 and the regulation for the organizing and functioning of the commission and not based on the Labor Code. Or the procedure stated in articles 318-326 of NEL no. 1/2011 as well as the regulation for the organizing and functioning of the commission does not pertain to the analysis and solving of the filed challenge”.

The distinction between disciplinary investigation and the specific inquiry performed by the university ethics commissions was also achieved by interpreting<sup>14</sup> the provisions which pertain to the 6 month term for the statute of limitation stated in article 252 first alignment of the Labor Code. The above quoted ruling stated that “we must corroborate the provisions of special laws which apply, namely those of Law no. 206/2004 and those of article 322 of Law no. 1/2011 - primary special provisions, which are the first to be considered”. Thus, it is shown that the 6 month term “only applies in case of disciplinary inquiry where there is a disciplinary commission established by the employer and the same employer enforces the sanction by decisions. Or, in case of sanctions which pertain to university ethics, the decisions is issued by an independent commission (the ethics commission) which decided upon a sanction based on provisions of special law no 1/2011 and Law no 206/2004 which is subsequently enforced by the leader of the institution through a sanctioning decision - thus it is not the same thing and the provisions or article 252 first alignment of the Labor Code can't be mathematically enforced”.

There are other court decisions which support the same reasoning, thus showing that (i) “the provisions of article 314 of NEL do not apply in this matter, given that that imperative procedure stated in the two sections of NEL no. 1/2011 - Section 7 - Disciplinary Sanctions and Section 8 - Sanctions which pertain to the violation of university ethics and good conduct in research, are both regulating entirely different procedures, commissions, analysis procedure, sanctions; this is why the lawmaker distinctively regulated disciplinary sanctions and university ethics sanctions”<sup>15</sup> or that (ii)

<sup>12</sup> Decision no. 6983/2018 of October 2<sup>nd</sup>, 2018, Bucharest Tribunal.

<sup>13</sup> Decision no. 1003/2015 of September 8<sup>th</sup>, 2015, Timișoara Appeal Court.

<sup>14</sup> Civil decision no. 351/2018 of March 20<sup>th</sup>, 2018, Mureș Tribunal.

<sup>15</sup> Decision no. 1003/2015 of September 8<sup>th</sup>, 2015, Timișoara Appeal Court.

”sanctioning the plaintiff was not based on the provisions of articles 247-252 of Law no. 53/2003 as these provisions do not regulate sanctions regarding the violating of university ethics, but disciplinary sanctions resulting from the execution of an individual employment relation. By NEL no. 1/2011, the lawmaker distinctively regulated the sanctions for violating university ethics in articles 318/322 - Sanctions which pertain to the violation of university ethics and good conduct in research activity. As a consequence, as opposed to the plaintiff’s statements, the provisions of the Labor Code do not apply in this matter.”<sup>16</sup>

By qualifying sanctioning decisions issued by the university ethics commissions as administrative acts, one decision<sup>17</sup> states the following “on one hand, we must state that aspects which pertain to the necessity to pass an administrative act can’t be subject to analysis by the court of law”. In order to issue such a ruling, the court of law stated that the decisions issued by the university ethics commission by which the plaintiff was sanctioned with a “written warning” were “administrative acts as stated in article 3 second alignment letter c) of Law no. 554/2004”. By corroborating with the provisions or article 8 of Law no. 554/2004, the court stated that “the party who suffered damage in its rights or legitimate interests, by a unilateral administrative act, if he is not satisfied with the answer received to the preliminary complaint as received from the issuing public authority or if he did not receive any answer within the term stated in article 7 fourth alignment, can file a complaint before the administrative court of law, in order to demand a complete or partial annulment of the act, the repair of the damage he suffered or moral damages. Also, the person who suffers damage in exercising its law acknowledged right by the refusal to solve the preliminary complaint or by disrespecting the term for the solution of the preliminary complaint can also address the administrative court of law”.

The above mentioned conclusion is that the sanction decision issued by the university ethics commission, based on its duties established by law, namely article 306 third alignment of Law no 1/2011 letter a) which states that the commission “analyses and solves university ethics violations, based on complaints filed or by self-inquiry, according to the Ethics and University Deontology Code” and which performs its activity with respect of the rules of University Ethics and Professional Deontology Code - a integrating part of the University Charter, are all unilateral administrative acts.

### **3.2. Jurisprudence arguments for qualifying the decisions of the ethics commissions as labor related acts**

As stated above, another part of jurisprudence, based on the same provisions, stated that the decisions of the ethics commissions have the nature of an act of labor law, namely a disciplinary sanction of labor law, with all the consequences which result from this. This approach appears after the coming into force of NEL, throughout the entire period and is interconnected with qualifying the decision of the ethics commissions as administrative acts.

Thus, some courts of law have shown, in regard to the sanctioning acts issued by the ethics commissions, that “with priority, we must point out that the sanctioning Decision no. 355/28.06.2018 is subject to verifying the lawfulness and thoroughness, according to the provisions of the Labor Code, as the means of execution of the labor contract which exists between the parties is governed by the provisions of the Labor Code. On the other hand, we must point out that NEL no. 1/2011 does not state any special provision regarding the means of drafting the sanctioning decisions, namely what it must contain and thus the common law regulations of the Labor Code apply.”<sup>18</sup>

The greater part of jurisprudence which qualifies these acts as labor law acts refer to the respect of article 252 of the Labor Code:

- ”as long as special law does not state a self-serving detailed procedure, with distinctive

<sup>16</sup> Civil decision no. 588/2018 of April 19<sup>th</sup>, 2018, Constanța Tribunal.

<sup>17</sup> Civil decision no. 3295/2013 of September 9<sup>th</sup>, 2013, Constanta Tribunal.

<sup>18</sup> Decision no. 301/2019 of January, 21<sup>st</sup>, 2019, Bucharest Tribunal.

terms and conditions and the sanction affects the labor relations of the employee, the procedure of disciplinary sanction must be performed with the respect of the provisions of the Labor Code, especially article 252 first and second alignment, within 30 days to 6 months and with the issuing of a decision which respects the formal conditions.”<sup>19</sup>

- ”as opposed to the conditions stated in article 252 second alignment of the republished Labor Code, as mandatory mentions to be contained in the sanctioning decisions, the court stated that they were not respected by the employer as shown below: a) in regard to the description of the deed which was considered as disciplinary violation, the employer did not indicate and disciplinary violation; on the contrary, he referenced the Ethics Commission Report no. 2211/24.02.2015.”<sup>20</sup>

- although it references article 318 letters a) - e) of NEL no. 1/2011 which regulates the sanctions which can be applied to teaching and research personnel, by the university ethics commission, for violating university ethics or for violating rules of good conduct in research activity, “the court states that Decision no 295/13.03.2017 does not meet the conditions stated by law. Thus, article 252 second alignment of the Labor Code states that the sanctioning decision must contain several elements, namely ....; the sanction for disrespecting these provisions is annulment”<sup>21</sup>. This decision was maintained in appeal.<sup>22</sup>

- by analyzing the provisions of article 252 second alignment of the Labor Code, the court states<sup>23</sup>, in regard to the lawfulness of the decision, that the decision which enforces the decision of the ethics commission was issued with respect of the legal provisions and contains all mandatory mentions stated in the text of law in order to be valid.

In the opinion of these courts, the existence of an employment contract is decisive. Thus, in one decision<sup>24</sup> it is shown that ”under these circumstances, in which Law no. 1/2011, invoked in the content of the contested acts, references the employment contract, we conclude that the current litigation by which the sanction is challenged only be seen as labor litigation. Thus, whenever the lawmaker intended to establish the administrative courts as competent to solve such litigation, he expressly stated such competence; an example in this manner is article 109 of the Law regarding the statute of public workers according to which “Litigation which pertains to the employment relations of the public workers are to be tried by administrative courts of law, except for the situations in which competence is expressly awarded to other courts of law”. The regulation for the organizing and functioning of the University Ethics and Professional Deontology Commission, passed by the university can’t establish, by derogation from imperative regulations, the court which is competent to try litigation pertaining to the annulment of decisions issued by the University Ethics and Professional Deontology Commission as a result of university ethics violations.”

Relevant in this dispute is the material competence of courts invested with solving complaints regarding the sanctioning acts issued by university ethics commissions; thus, we must mention a decision<sup>25</sup> which shows that ”By the 29.06.2017 decision, Bucharest Tribunal - Section VIII labor and social security conflicts ruled on the lack of functional competence of the court and awarded competence to the second section of administrative courts, by stating that the challenged acts are of acts administrative character; if special law does not state derogatory competence from common law, the complaint must be filed before the administrative court. The complaint was registered with the second section of administrative court of Bucharest Tribunal which, by the 25.01.2018 decision, ruled on the lack of functional competence and awarded competence<sup>26</sup> back to the eighth section of labor and social security conflicts of Bucharest Tribunal; as there was a

<sup>19</sup> Civil decision no. 258/2016 Bistrița Năsăud Tribunal.

<sup>20</sup> Civil decision no. 1904/2016 of June 16<sup>th</sup>, 2016, Timis Tribunal.

<sup>21</sup> Civil decision no. 6727/2017 of December 12<sup>th</sup>, 2017, Cluj Tribunal.

<sup>22</sup> Decision no. 753/2018 of June 12<sup>th</sup>, 2018, Cluj Appeal Court.

<sup>23</sup> Civil decision no. 2038/MAS/07.12.2017, Brasov Tribunal.

<sup>24</sup> Decision no 1524/2017 of September 28<sup>th</sup>, 2017, Brasov Appeal Court. Similarly, see Decision no 27/2019 of March 6<sup>th</sup>, 2019, Iași Appeal Court.

<sup>25</sup> Civil decision no 1793/2018 of April 16<sup>th</sup>, 2018, Bucharest Appeal Court.

<sup>26</sup> In order to rule in this manner, the administrative court essentially stated that the context in which the plaintiff is considered to be a public worker, the aspects regarding his disciplinary liability are in the competence of the common law court in the matter of labor relations.



negative conflict of competence, the matter was filed before the Bucharest Appeal Court in order to solve the conflict of competence”.

Based on the hypothesis that the provisions of Law no. 188/1999 regarding the statute of public workers do not apply to the teaching personnel and the plaintiff is considered to be contractual personnel within the university, thus the provisions of article 109 of Law no. 188/199 do not apply to him and by considering the object of litigation, namely the annulment of the University Ethics and Professional Deontology Commission's Decision, “the court states that the litigation is considered a labor litigation as stated in article 266 of the Labor Code according to which labor jurisdiction solves employment conflicts which pertain to the conclusion, executions, modify, suspension or termination of an individual employment contract. In case of the present litigation, the plaintiff did not demand the analyze of the lawfulness or thoroughness of a typical administrative act, as regulated in article 2 first alignment letter c) of Administrative Contentious Law no 554/2004 issued by a public central authority which would fall in the competence of the Bucharest Tribunal - Administrative Section, according to article 10 of Law no. 554/2004 corroborated with article 95 point 1 of the Code”.

### 3.3. Suggestions by the authors

To the above mentioned aspects, we must add the possible discriminatory interpretation of awarding the university ethics commission's decisions the exclusive character of administrative acts by the courts of law, based on the same deeds - plagiarism, for example - in case of sanctioning a student, as he does not have an individual employment contract, but merely a schooling contract.

The prevention of such discrimination in judicial approach between teaching personnel and students sanctioned by the university ethics commissions and obtaining a unified practice by the courts of law can only be achieved by the changing of article 307 of NEL, a change we feel it is both necessary and urgent.

*De lege ferenda*, we suggest the change of article 307 NEL as follows: The Decisions of the University Ethics Commissions, administrative - jurisdictional acts, are approved by the legal adviser of the university. Legal liability for the decisions and activity of the university ethics commission lies with the university.

## 4. The role of the University Ethics Commission's sanctions in establishing the legal regime

In regard to the sanctions which are established by ethics commission, a specific practical problem is the presence of the syntagm “disciplinary resolution of the employment contract” in article 318 letter e) and article 324 letter g) of NEL no. 1/2011, a syntagm which creates confusion between liability for violating university ethics and goods conduct in research activity and disciplinary liability, even if the procedure in this latter case is performed by a separate commission - the disciplinary investigation commission. This confusion is found in some regulations for the organizing and functioning of ethics commissions<sup>27</sup>, as well as in the activities they perform<sup>28</sup>, and especially, in establishing the material competence of the court of law, which lacks unified practice,

<sup>27</sup> For example: “accepting only inquiries which respect the 6 month term (in relation to the statute of limitation term for disciplinary investigation, n.n.) from the time the violation of the Ethics Code occurred” - ARACIS Report 1605/31.03.2020; accessed at: <https://www.aracis.ro/evaluari-institutionale/>.

<sup>28</sup> For example: ECMU Decision no 78 which shows that “UTCN Ethics Commission’s members believed that engineer and professor OAC has an acknowledged scientific research activity, however in regard to his administrative and teaching activities, his contribution is “unsatisfying” within the Department”, accessed at: [www.cemu.ro](http://www.cemu.ro). ARACIS Report of Apolonia University in Iasi, concluded on 23.04.2019, identifies the following situations: 1.3 professors who were unable to justify a number of teaching hours for the month of March and the solution of the Ethics Commission was to not pay these hours; 2. for a conflict situation which affected the prestige of the university by the fact that Mrs. DP requested her daughter to be examined according to internal procedures and by using inappropriate language, the solution of the ethics commission was the following: the deeds are considered to be disciplinary violations and the senate of the university appointed a disciplinary committee. Accessed at: <https://www.aracis.ro/evaluari-institutionale/>.

as shown before.

Although Law no. 206/2004 pertains exclusively to the liability of teaching personnel which performs research and development activities, the use of the syntagm “disciplinary resolution of the employment contract” in article 11<sup>1</sup> letter (f) of Law no. 206/2004 falsely creates, by term correlation, the presumption of disciplinary liability, by ignoring the specific procedure of the ethics commission and the legal nature of the acts issued by this body.

Thus, in one civil decision<sup>29</sup>, ”the court states that in the content of article 318 letter e) of Law no. 1/2011, for violations of good conduct in scientific research activity, the most serious sanction which can be applied is the disciplinary resolution of the employment contract. Identically, Law no. 206/2004 regarding good conduct in scientific research, technological development and innovation, states, for the same type of violations, in article 11 first alignment letter a, that the most serious sanction is the disciplinary resolution of the employment contract. Thus, arises the normal question of whether in the same sanction of a legal text and within the same article the lawmaker can regulate two different forms of liability? Is the conclusion that some sanctions stated in article 318 of Law no. 1/2001 and article 11 first alignment of Law no. 26/2004 are administrative and other sanctions are disciplinary, correct in the end? The court believes that only a forced interpretation of the legal texts can justify the solution of the Mureş Tribunal - civil section, according to which the sanction which applies to the plaintiff is an administrative sanction. The intention of the lawmaker is very clear in establishing disciplinary liability for university ethics violations and is confirmed by the use of terms specific to disciplinary liability.”

The opinion of the authors is that the ethics commission performs an administrative - judicial procedure in regard to the employees within the system and the students/Ph.D. candidates in the education system. For the same facts which fall under the incidence of the university ethics commission, even if from the perspective of the relations between the above mentioned people and the higher education institutions, for the teaching personnel and auxiliary personnel there is an individual labor contract and for the students/Ph.D. candidates a schooling contract, disciplinary sanctions can't be applied to employees by decision of the ethics commission (article 318 and/or article 324 of Law no. 1/2011) and administrative sanctions in case of students<sup>30</sup> and Ph.D. candidates (article 319 of Law no. 1/2011).

In order to avoid creating confusion between the procedure and sanctions applied by the ethics commission and those of disciplinary liability, we believe it is necessary that the term used in the legal text is **dismissal from position**. This term is in accordance with the provisions of NEL, Title IV the Statute of the teaching personnel, Chapter II the Statute of the teaching and research personnel in higher education institutions, article 285, which regulates, in the first alignment, the teaching positions, the research positions in the second alignment and the equivalence of research positions with teaching positions in the third alignment. Article 291 fifth alignment of NEL states that “teaching personnel is that personnel who occupies a teaching position within a university”; alignment 7 states that “the research - development positions and the personnel who holds such positions is subject to the provisions of Law no. 319/2003 for the statute of research and development personnel”.

In light of the previously mentioned statements and by comparing the texts of law and the practical solutions identified by the quantity research we have performed, we believe that is necessary to legally harmonize these laws, by modifying article 318 letter e) of NEL and article 324

<sup>29</sup> Civil decision no 351/2018Of March 20<sup>th</sup>, 2018, Mureş Tribunal.

<sup>30</sup> Decision no 2295/2014 of March 24<sup>th</sup>, 2014, Bucharest Appeal Court, annulment of an administrative act (administrative section):”Although the court correctly ruled that the decision to sanction the plaintiff is a complex administrative act, it left out the fact that the motivation of the measure to expel the plaintiff is performed by the sanctioning decision and must be achieved by the legal department of the university (article 20 of the Regulation for the functioning of the Ethics Commission), a decision issued by the dean or the rector (according to article 21 of the same regulation). As the motivation of an administrative act is essential and absolutely necessary in order to appreciate the lawfulness of that certain administrative act, we must conclude that the complex administrative act can't ignore the sanctioning decision which, in the opinion of the defendants stated in the court decision of 20.09.2013, is an administrative act. Thus, this decision is an act issued by a public authority in enforcing the law, the act leads to the demise of legal relations as it is the act which terminates the relation between the student and the university; thus, it is an administrative act, according to law no 554/2004 (article 2 letter c).”

letter g) of NEL, in agreement with the change of article 11<sup>1</sup> letter (f) of Law no. 206/2004, by replacing the syntagm “disciplinary resolution of the employment contract” and the syntagm “dismissal from position” .

### 5. Instead of conclusions

As throughout the present study we phrased a series of suggestions of changes to the legal texts, we believe it is necessary to present these suggestions in a table, at the end of the paper. For clarity of the author’s endeavor, we will present the current form in parallel with the form which we suggested should be changed.

Initial text	Suggested text
<p><b>Article 306 alignment (3), NEL no. 1/2011</b>                      (3) The university ethics commission has the following duties:  <b>a)</b> analyses and solves university ethics violations, based on inquiries or self-inquiries, according to the University Ethics and Deontology Code;  <b>e)</b> other duties stated by law or by the University Charter, according to the law.</p>	<p><b>Article 306 alignment (3), NEL no. 1/2011</b>                      (3) The university ethics commission has the following duties:  <b>a)</b> it names the commission which analyses inquiries regarding university ethics violations, based on inquiries or self-inquiries, according to University Ethics and Deontology Code;  <b>a<sup>1</sup>)</b> solves university ethics violations by issuing a decision based on the report of the analysis commission. The analysis commission’s report is an integrating part of the ethics commission's decision.  <b>e)</b> other duties stated by law or by the University Charter, according to the law.</p>
<p><b>Article 307 NEL no. 1/2011</b>                      The decisions of the university ethics commission are approved by the university’s legal adviser. Legal liability for the decisions and the activity of the university ethics commission lies with the university.</p>	<p><b>Article 307 NEL no. 1/2011</b>                      The decisions of the university ethics commission, administrative - jurisdictional acts, are approved by the university’s legal adviser. Legal liability for the decisions and the activity of the university ethics commission lies with the university.</p>
<p><b>Article 309 thesis 1, NEL no. 1/2011</b>                      As a result of an inquiry, the university ethics commission begins the procedures stated in the University Ethics and Deontology Code, namely Law no 206/2004 with subsequent changes.</p>	<p><b>Article 309 thesis 1, NEL no. 1/2011</b>                      As a result of an inquiry, the university ethics commission begins the procedures stated in the present law, the University Ethics and Deontology Code, namely Law no 206/2004 with subsequent changes.</p>
<p><b>Article 318 letter (e) NEL no. 1/2011</b>                      e) disciplinary termination of the employment contract</p>	<p><b>Article 318 letter (e) NEL no. 1/2011</b>                      e) dismissal from position</p>
<p><b>Article 324 letter (g) NEL no. 1/2011</b>                      g) disciplinary termination of the employment contract</p>	<p><b>Article 324 letter (g) NEL no. 1/2011</b>                      g) dismissal from position</p>
<p><b>Article 11 Law no. 206/2004</b>                      (3) The analysis commission issues a report which is approved by the ethics commission and is communicated to the author of the inquiry within 45 days of the inquiry and is also made public on the website of the institution within the same term; in case there is a violation of the good conduct regulations in the research and development activity, the report establishes the guilty parties and one or</p>	<p><b>Article 11 Law no. 206/2004</b>                      (3) The analysis commission issues a report which is approved by the ethics commission and is communicated to the author of the inquiry within 45 days of the inquiry and is also made public on the website of the institution within the same term; in case there is a violation of the good conduct regulations in the research and development activity, the report established the guilty parties and one or more of the sanctions stated in article 11<sup>1</sup>; the guilty parties can be</p>

Initial text	Suggested text
<p>more of the sanctions stated in article 11<sup>^1</sup>; the guilty parties can be different from the parties mentioned in the inquiry.</p> <p>(4) The analysis commission's report is approved by the legal adviser of the institution. Legal liability for the decisions and the activity of the analysis commission lies with the institution.</p> <p>(5) The analysis commission's report can be challenged before the National Ethics Commission by the guilty parties or by the author of the inquiry; the complaint will contain a simple copy of the initial inquiry and the report of the analysis commission.</p> <p>(6) In case a complaint was not filed before the National Ethics Commission within 15 working days from the date of the communication mentioned in alignment 3, the sanctions established by the analysis commission are enforced by the leader of the institution or the board of directors within 45 days from the time the report was communicated in accordance with the provisions of the third alignment.</p>	<p>different from the parties mentioned in the inquiry.</p> <p>(3<sup>1</sup>) The analysis commission's report is an integrating part of the ethics commission's decision.</p> <p>(3<sup>2</sup>) Within 10 days from the time the ethics commission report is issued, the sanctions established in it are enforced by decision of the leader of the institution. The decision is communicated to the person who is found guilty.</p> <p>(4) The analysis commission's report is approved by the legal adviser of the institution. Legal liability for the decisions and the activity of the analysis commission lies with the institution.</p> <p>(5) The analysis commission's report can be challenged before the National Ethics Commission by the guilty parties or by the author if the inquiry; the complaint will contain a simple copy of the initial inquiry and the report of the analysis commission.</p> <p>(6) In case a complaint was not filed before the National Ethics Commission within 15 working days from the date of the communication stated in alignment (3<sup>2</sup>), the sanctions established by the ethics commission, by the decision of the leader of the institution or by the board of directors, become executinal.</p>
<p><b>Article 11<sup>^1</sup> letter (f) of Law no. 206/2004</b> f) disciplinary termination of the employment contract</p>	<p><b>Article 11<sup>^1</sup> letter (f) of Law no. 206/2004</b> f) dismissal from position</p>

## Bibliography

1. Law no. 206/2004 regarding good conduct in scientific research, technological development and innovation, published in the Official Bulletin no. 505 of June 4<sup>th</sup>, 2004.
2. Law no. 1 of 2011 of national education, published in the Official Bulletin no. 18 of January 10<sup>th</sup>, 2011.
3. Government's Emergency Ordinance no. 212 of 2020 for some measures for public central administration and the change of some legal texts.
4. National Education Ministry's Order no. 4.783 of 2017 The Regulation for the organizing and functioning or ECMU published in the Official Bulletin no. 750 of September 19<sup>th</sup>, 2017.
5. National Education Ministry's Order no. 4.655 of 2020 for the approval or the Regulation for the organizing and functioning of NCSRTDI published in the Official Bulletin no 601 of July 9<sup>th</sup>, 2020.
6. National Education Ministry's Order no. 5229 of 2020 for the approval of the Methodology for solving inquiries regarding the violation of quality standards or professional ethics, including in regard to plagiarism in doctoral thesis, published in the Official Bulletin no 783 of August 27<sup>th</sup>, 2020.
7. Civil decision no. 3295/2013 of September 9<sup>th</sup>, 2013, Constanta Tribunal.
8. Civil decision no. 6/2013 of November 8<sup>th</sup>, 2013, Galati Appeal Court.
9. Decision no. 2295/2014 of March 24<sup>th</sup>, 2014, Bucharest Appeal Court.
10. Civil decision no. 1904/2016 of June 16<sup>th</sup>, 2016, Timis Tribunal.
11. Decision no. 1524/2017 of September 28<sup>th</sup>, 2017, Brasov Appeal Court.
12. Civil decision no. 2038/MAS/07.12.2017, Brasov Tribunal.
13. Decision no. 6983/2018 of October 2<sup>nd</sup>, 2018, Bucharest Tribunal.
14. Civil decision no. 351/2018 of March 20<sup>th</sup>, 2018, Mures Tribunal.
15. Civil decision no. 588/2018 of April 19<sup>th</sup>, 2018, Constanta Tribunal.
16. Civil decision no. 351/2018 of March 20<sup>th</sup>, 2018, Mures Tribunal.
17. Civil decision no. 1793/2018 of April 16<sup>th</sup>, 2018, Bucharest Appeal Court.
18. Decision no. 301/2019 of January 21<sup>st</sup>, 2019, Bucharest Tribunal.
19. Decision no. 27/2019 of March 6<sup>th</sup>, 2019, Iasi Appeal Court.
20. Decision 78 ECMU.
21. ARACIS Report 1605/31.03.2020.