

BRIEF CONSIDERATIONS ON THE DISCIPLINARY ADMINISTRATIVE LIABILITY IN ROMANIA

Lecturer Cătălin-Silviu SĂRARU¹

Abstract

This article examines the concept and features of the disciplinary administrative liability in the Romanian law.

The article analyzes the subjects of the disciplinary administrative liability, the objective and subjective basis of such liability, and the types of disciplinary administrative punishments.

Finally, I stressed the need to uniform regulations in the matter of disciplinary administrative punishments through the adoption in the future of a Code of Administrative Procedure.

Keywords: *disciplinary offense; disciplinary administrative liability; administrative law; civil servant*

JEL Classification: *K23; K42*

1. Preliminary considerations

The disciplinary administrative liability is the legal situation that consists, in the complex of rights and obligations associated, contents of the punitive legal relationship established between the public authority which apply the penalty and the person who committed with culpability a disciplinary offense in violation of the rules of administrative law².

The disciplinary administrative liability must be seen separately from the disciplinary liability specific of labor law relating to breach by the employee of the labor discipline regulations, which is governed by the Labour Code³.

2. The features of the disciplinary administrative liability

Main features of disciplinary administrative liability are:

- a) *active subject* of the disciplinary administrative liability (who apply the penalty) may be:
 - usually **an administrative body**
 - by way of exception **another public body** (for example according to art. 13 (4) of Law no. 554/2004 *on administrative litigation*⁴ the administrative court has jurisdiction to oblige the public authority manager which do not sent within the time prescribed by the court the documents required, to pay the state, by way of judicial fine, 10% of the gross minimum wage per economy, for each day of unjustified delay) or **a civil servant**.
- b) *passive subject* of disciplinary administrative liability (author of disciplinary offense) can be:
 - a public administration body. For example, according to art. 55 (1) a) of Law no. 215/2001 *on local government*⁵, the local council is dissolved by right, if it is not met for two consecutive months, although it was convoked under the legal provisions.
 - a civil servant under the terms of Law no. 188/1999 *on the Statute of civil servants*⁶, and of the special regulations adopted for different categories of civil servants: the

¹ Cătălin-Silviu Săraru, Bucharest University of Economic Studies, Law Department, catalinsararu@yahoo.com.

² For similar definitions of the disciplinary administrative liability formulated in doctrine see: Antonie Iorgovan, *Tratat de drept administrativ*, vol. I, 4th edition, All Beck Publishing House, Bucharest, 2005, p. 361; Verginia Vedinaș, *Drept administrativ*, 4th edition revised and updated, Universul Juridic Publishing House, Bucharest, 2009, p. 257.

³ With regard the disciplinary liability in the labor law see Ion Traian Ștefănescu, *Tratat teoretic și practic de drept al muncii*, 3rd edition, revised and enlarged, Universul Juridic Publishing House, Bucharest, 2014, p. 767-814.

⁴ Published in the Official Gazette, Part I no. 1154 of 7 December 2004, as amended.

⁵ Republished in the Official Gazette, Part I no. 123 of 20 February 2007, as amended.

⁶ Republished in the Official Gazette, Part I no. 365 of 29 May 2007, as amended.

- Statute of parliamentary civil servants⁷, the Statute of the diplomatic and consular corps⁸, the Statute of Police Officers⁹, the Statute of customs staff¹⁰ etc.
- a person who performs a public dignity (dignitary). For example, *the suspension from office* of the President of Romania, under the terms of art. 95 of the Constitution by a vote of the both Houses of Parliament met in joint session, in case of having committed grave acts infringing upon constitutional provisions, in the doctrine was described as disciplinary administrative responsibility of the state chief¹¹. Also, local councilors and mayors who refuse to take an oath are considered *resigning of law* (art. 32 (2) and Art. 60 (2) of Law no. 215/2001).
 - a private legal person (association, foundation, political party, company etc.);
 - a natural person, regardless of its quality.
- c) *The objective basis* for disciplinary administrative responsibility is given by the disciplinary offense which violates, usually, a rule of administrative law.
- d) *The subjective basis* for the disciplinary administrative liability is represented by guilt. For to involve the administrative-disciplinary liability is necessary that the disciplinary violation to be conducted by the author with guilt. The guilt is a subjective condition of liability. It is the mental attitude of the person who, committing with the will unconstrained (loose) an act that represents a social danger, had, at the time of execution, the representation of the act and its socially dangerous consequences. There is no guilt when the perpetrator acts with the lack of discernment (due, for example, of the mental alienation) or acts with a will constrained by external actions reflected in his psyche (for example, the physical coercion, which the perpetrator could not resist or moral coercion exerted by threat with a serious danger to the perpetrator or for another person and which may not otherwise be removed).
- e) *the character of the disciplinary administrative sanctions*. The disciplinary administrative sanctions are not custodial such as, for example, the criminal penalties.

From the foregoing, it is apparent that there are numerous administrative and disciplinary sanctions provided by a multitude of regulations. Such are the disciplinary administrative sanctions:

- *the warning* in the case of disciplinary offenses that have a low concrete social threat for social values protected by rules of administrative law.
- *the fine*. For example the Law no. 26/1990 *on the trade register*¹² states that the traders who do not comply the law and the terms of inclusion of entries in the Commercial Register may be forced to pay a fine.
- *the reduction of wages, under the terms of law*. For example art. 77 (3) letter b) of Law no. 188/1999 *regarding the Statute of civil servants* provides that disciplinary administrative punishment applicable of civil servants, the reduction of wages by 5-20% over a period of up to 3 months;
- *late payment penalties for delayed payments of budgetary obligations regarding taxes*. According to art. 120¹ (1) of the Tax Procedure Code¹³, penalties for delay represent *the punishment* for failure to fulfill obligations of payment at maturity and is calculated for each day of delay from the day following the payment deadline and until the date of settlement of the amount owed, inclusive.

⁷ Law no. 7/2006 regarding the Statute of parliamentary civil servants republished in the Official Gazette, Part I no. 345 of 25 May 2009, as amended.

⁸ Law no. 269/2003 on the Statute of Diplomatic and Consular Corps of Romania, published in the Official Gazette, Part I no. 441 of 23 June 2003, as amended.

⁹ Law no. 360/2002 on the Statute of Police Officers, published in the Official Gazette, Part I no. 440 of June 24, 2002, as amended.

¹⁰ Emergency Ordinance no. 10/2004 on the Statute of customs staff, published in the Official Gazette, Part I no. 256 of March 23, 2004, as amended.

¹¹ See Verginia Vedinaș, cited work, p. 256; Antonie Iorgovan, cited work, 2005, vol. I, p. 330-335.

¹² Republished in the Official Gazette, Part I no. 49 of February 4, 1998, as amended.

¹³ Government Ordinance no. 92/2003 regarding the Fiscal Procedure Code, republished in the Official Gazette, Part I no. 513 of 31 July 2007, as amended.

- *the suspension of the exercise of certain rights* (eg. suspension of advancement in the superior salary ranges of the civil servants)
- *the demotion* (for example retrograding in civil service for a period of up to one year).
- *the removal from post or the dissolution of the collegial body* etc.

In a democratic state, the procedure for applying the disciplinary administrative penalties will have predictable character, being laid down through legal norms that will govern, unequivocal:

- what are the facts that constitute disciplinary offenses;
- the way of fact-finding and research of the causal link between act and the result damaging;
- establishing of the public administration body competent to declare the disciplinary offenses and content of the observation act¹⁴.
- establishment of the disciplinary administrative penalties ranked from lightest to the most severe allowing their application by the competent administrative body according to the concrete social threat of the facts.
- operational procedures to ensure the celerity in punishing;
- procedures to ensure the right to defense and the legal remedies against punishments disposed;
- consecration of the principle of proportionality between the penalty established and degree of social danger of the act committed.
- limitation periods and revocation etc.

3. Conclusion

Currently in Romania there is no uniform system of disciplinary administrative penalties. There are numerous disciplinary administrative penalties provided for by a multitude of regulations. We appreciate that a simplification and uniform regulation could be achieved by adopting, in the future of a Code of Administrative Procedure.

Bibliography

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3. Ion Traian Ştefănescu, *Tratat teoretic și practic de drept al muncii*, 3rd edition, revised and enlarged, Universul Juridic Publishing House, Bucharest, 2014,
4. Ioan Alexandru, Mihaela Cărăușan, Ion Popescu, Dragoș Dincă, *Drept administrativ*, Economica Publishing House, Bucharest, 2002
5. Law no. 188/1999 *on the Statute of civil servants*, republished in the Official Gazette, Part I no. 365 of 29 May 2007, as amended.
6. Law no. 215/2001 *on local government*, republished in the Official Gazette, Part I no. 123 of 20 February 2007, as amended.

¹⁴ See Ioan Alexandru, Mihaela Cărăușan, Ion Popescu, Dragoș Dincă, *Drept administrativ*, Economica Publishing House, Bucharest, 2002, p. 306, 307.