

The Disciplinary Responsibility – A Form of Judicial Responsibility

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Abstract

Disciplinary responsibility represents a form of judicial responsibility specific to the labor law, containing the ensemble of the legal norms that define disciplinary deviations, establish the sanctions and regulate the background and procedural conditions for their application.

Being specific to the work relation, the disciplinary responsibility occurs whenever an employed person violates the obligation to respect labor discipline. This tipe of responsibility has a contractual nature, a strictly personal character, exercising sanctioning, preventive and educational functions.

Keywords: *disciplinary responsibility, labor discipline, disciplinary deviation, the objective side, the subjective side*

Labor Discipline – Characteristic Notions And Features

The labor discipline exclusively regards the social work relations being an objective, necessary and indispensable condition of activity developement in every institution. It can be defined as „the necessary order within the execution of the social labor relation and within a determined collective, resulted from the respecting of some rules or norms of conduct by the ones that compose the collective that ensure the efficient developement of the labor process” [1, 559].

In virtue of the subordination relation, the employee must respect both the general labor obligations provided by the normative acts in the collective labor agreement, the regulation of organisation and functioning or the regulation of internal order and the measures and/or the dispositions given by the employer, through written or verbal orders, during the exercise of his coordination, guidance and control attributions [3, 463]. In this respect, within the collective labor agreement on a national level of the years 2007 – 2010 there is provided that: „the signatory union confederations acknowledge the right of the employers to establish, within law conditions, the disciplinary or patrimonial responsibility of the employees who are guilty of violating the norms of labor discipline or who prejudice the indtitution” (art. 95).

Emphasizing the importance of the obligation to respect labor discipline, The Labor Code stated it in art. 39 align. 2. Letter b as a distinct obligation of the employees. From a judicial point of view the labor discipline can be characterised as one of the general

principles of the labor relations regulation, being a system of norms that regulate the employees' behaviour during the development of their activity.

From a subjective point of view (of the employee) it is appreciated that the labor discipline is a synthesis judicial obligation that summarizes the totality of obligations assumed by closing the individual labor agreement, since it is a general obligation that does not accept any exception thus being mandatory for every employee [4, 661]. Likewise, since it is an obligation that occurs after closing a labor agreement it can be said that it is an obligation of contractual nature.

a. Disciplinary Responsibility. Notions and Characterization

Being specific to the labor relation the disciplinary responsibility occurs whenever the employed person violates, by guilty committed actions, the obligation to respect labor discipline.

Disciplinary responsibility requires the cumulative meeting of the following conditions:

- the existence of some deviations from the labor obligations of the employee, including the violation of the conduct norms;
- the employee's action is guilty committed;
- Through his action the employee has prejudiced the order necessary for a good activity development within the institution.

According to art. 263, align. 1 of the Labor Code, „ the employer disposes of the disciplinary prerogative, having the right to apply, according to law, disciplinary sanctions to his employees whenever he observes that they have committed a disciplinary deviation”. Thus, the disciplinary deviation constitutes the necessary sufficient condition of triggering the disciplinary responsibility of the employees.

In conclusion, disciplinary responsibility is a form of judicial responsibility [2, 81] specific to the labor law containing the ensemble of the legal norms that define the disciplinary deviations, establish sanctions and regulate the background and procedural conditions for their application [4, 466].

Essentially, the disciplinary responsibility is characterized by the following features:

- it is of contractual nature since the closure of the labor agreement has as effect the hierarchical subordination [4, 663] as an objective condition of the labor organisation and efficiency representing at the same time the hierachical ground of authorising the employer to apply disciplinary sanctions; from the closure of the labor agreement alone there is issued the obligation of the employee to respect every rule that sets the labor discipline;
- it exercises a triple function : sanctioniong, preventive and educational, as it protects and reestablishes the internal order of the institution when it has been violated;
- it has a strictly personal character, responsibility for the actions of other or giving it to the heirs not being possible [1, 562];
- it is transposed in a material or moral restraint, according to the gravity of the committed deviation, in order to prevent the sanctioned person to committ other deviations in the future; by this it is distinguished from the patrimonial responsibility that mainly has a reparatory function;
- it protects the internal order of the certain institution; from here there is also issued the more reduced social danger of the disciplinary deviation as against other actions that affect larger social relations, general interests, such as contraventions and offenses;
- It is a form of responsibility independent from all the other forms of the judicial responsibility.

b. The Disciplinary Deviation

In the labor law the ground of disciplinary responsibility is constituted by the disciplinary deviation. According to the Labor Code (art. 263, align. 2) „the disciplinary deviation is a fact related to labor and consists of an action or inaction guiltly committed by the employee, through which he has violated the legal norms, the internal regulation, the applicable individual or collective labor agreement, the legal orders and dispositions of the hierachical leaders”.

The definition of the disciplinary deviation provided in the Status of the public servants (Law 188/1999, art.77, align.1) is similar: ” the guiltly violation by the public

servants of the duties of their public function and of the norms of professional and civic conduct provided by law, is a disciplinary deviation and triggers their disciplinary responsibility”.

It is a prerogative of the employer to implicitly determine the committing of a disciplinary deviation by establishing the job duties of the employees. Also, the employer will establish if the constitutive elements of the disciplinary deviation are met, namely:

- the object of the deviation
- the objective side
- the subject of the deviation
- the subjective side

The object of the disciplinary deviation, in fact the social values violated by committing a deviation, is constituted by the labor relations, the order and discipline necessary at the workplace. Essentially, they imply the execution of the job duties as well as respecting the conduct norms. By job duties it is understood the totality of duties of every employee, based on the labor agreement, on the law provisions and on all the decisions taken at the level of the institution [5, 153].

The objective side represents the action that is not in accordance with the job duties assumed by the employee, committed by him, through which he affects the labor relation. Besides, the employer has the obligation to draw up the Internal Regulation that will contain several categories of dispositions amongst which there are „concrete rules regarding the labor discipline within the institution”, „disciplinary deviations and applicable sanctions”, rules regarding the respecting of the principle of not discriminating and of eliminating any form of dignity violation”, „the rights and obligations of the employer and the employees” [6, Art. 258, lit. b,c,d,e,f].

The subject of the disciplinary deviation is always an individual, as a qualified subject, respectively an employee of an employer. The discipline being unique the obligation to respect it is both of the detached or delegated personnel and of the pupils and students that practice at that work place [4, 666].

The subjective side is represented by the guilt as a conscious and deliberate attitude of the guilty person towards his action and its consequences. According to the forms and the degrees of guilt stated in the Penal Code the deviations can be

intentionally committed (directly or indirectly) or committed due to fault (out of carelessness or recklessness) [7, 92-97]. Within the disciplinary responsibility the guilt degree is one of the criteria used to establish, to individualize the sanction.

The disciplinary responsibility does not operate in some situations that exclude the illicit character of the action, such as : self – defense, necessity status, physical restraint, moral restraint, accidental case, major force, error of fact, execution of a job order legally issued. These are causes of relief of the disciplinary responsibility (non – responsibility) [1, 567].

c. Disciplinary Sanctions

The Labor Code provides expressly and limitatively the sanctions that the employer can apply to the employee whocommitts a diusciplinary deviation. These sanctions can be applied only in the quantum andf period established by law. According to art. 264, align.1 of the Labor Code they are the following:

- the written warning;
- suspending the individual labor agreement on a period that cannot exceed 10 work days;
- demoting in function, while giving the proper salary of the function to which the employee has been demoted for a period that cannot exceed 60 days;
- reduction of the basic salary on a period of 1-3 months by 5-10%;
- reduction of the basic salary and/or, as appropriate, of the leadership indemnity on a period of 1-3 months by 5-10%;
- Disciplinary termination of the individual labor agreement.

The disciplinary sanctions are ways of restraint provided by law having the purpose to protect the disciplinary order, the developement of the responsibility spirit for conscientiously executing the job duties and respecting the conduct norms as well as preventing the production of indisciplinary acts.

The sanctions provided by the Labor Code in art. 264 are general disciplinary sanctions, there also are special sanctions provided in the Disciplinary Statutes applicable to certain labor sectors or professions, such as: The Status of the public servants (Law 188/1999), The Status of the educational personnel (Law 128/1997), The Status of magistrates (Law 92/1992), The Status of doctors (Law 74/1995), The Status

of pharmacutists (Law 81/1997), The Status of lawyers (Law 51/1995) and others, with the ulterior modifications and completions.

Likewise, the Labor Code provides on art. 265 that disciplinary fines are forbidden (align. 1) as well as the fact that for the same disciplinary deviation there can be applied only one sanction (align 2).

Taking into account their effects, the disciplinary sanctions can have a preponderantly moral and/or patrimonial effect, the most severe sanction being the termination of the individual labor agreement, this meaning the removal of the guilty employee from the labor colective by the unilateral will of the employer.

d. The Procedure of Applying the Disciplinary Sanctions

The disciplinary action does not have a jurisdictional sense (of contradictory judging the employee's deviation) [3, 471]. The establishment of the disciplinary deviation is the result of an analysis made by the employer, frequently named in practice disciplinary investigation. The employer establishes the applicable disciplinary sanction in relation to the gravity of the disciplinary deviation committed by the employee, taking into account the following elements [6, Art. 266]:

- the circumstances in which the act was committed;
- the degree of guilt of the employee;
- the consequences of the disciplinary deviation;
- the general conduct at work of the employee;
- the possible disciplinary sanctions previously suffered by the employee.

There are distinguished the following stages of the disciplinary actions [4, 156]:

- informing the competent organ about committing a deviation;
- the investigation of the action and the establishment of the committing of the deviation;
- the application of the disciplinary sanction;
- the communication of the sanctioning decision.

The New Labor Code has included in art. 267 explicit provisions referring to the procedure of the preliminary disciplinary investigation. Thus, the employee will be summoned in a written form by the person authorized by the employer to make the investigation, stating the object, date, time and place of the meeting. „During the

investigation the employee has the right to formulate and sustain all the defense in his favour and to give to the person authorized to make the investigation all the evidence and reasons he thinks necessary as well as the right to be assisted, at his request, by a representative of the union he is a part of” (art. 267 align 4 of the Labor Code).

If the provisions of the Labor Code regarding the preliminary disciplinary investigation are not respected the sanctioning decision is stricken by absolute nullity. Only if the employee does not come to the meeting, without any objective reason, the employer will have the right to sanction him without the preliminary investigation (art. 267, align 3 of the Labor Code). Certainly, if the concerned does not come for an objective reason - such as temporary incapacity to work – he will not be sanctioned. In this situation, the individual labor agreement is suspended and the terms of sanction application are also suspended. [4, 680]

The disciplinary sanctions must be objectified in writing (decision), a unilateral act of the employer. According to art. 268 align 2 of the Labor Code under the sanction of absolute nullity, the decision must contain:

- the description of the action that constitutes a disciplinary deviation;
- the statement of the provisions of the personal status, internal regulation or the applicable collective labor agreement that were violated by the employee;
- the reasons why the defenses formulated by the employee have been eliminated or, as appropriate, the reasons why the investigation has not been made;
- the lawful ground based on which the disciplinary sanction is applied;
- the term when the sanction can be contested;
- the authorised instance where the sanction can be contested.

The employer disposes of the application of the disciplinary sanction on a term of 30 days from the moment when he acknowledged the committing of the disciplinary deviation but not later than 6 months from the moment when the action has been committed. The 30 day term is a prescription term that can be interrupted or suspended and the 6 month term is a cancellation term after which the employee can no longer be

disciplinary sanctioned. All the procedural stages regarding the application of the sanction must be integrally consumed within the 6 month term. [5, 157]

For producing effects, the sanctioning decision must be communicated to the employee in maximum 5 days from the date of its emission (art. 268, align 3 of the Labor Code), personally, with reception signature or, in case of refusal of the reception, by registered letter to the residence communicated by the employer.

Due to the fact that it is not a jurisdictional act, the sanctioning decision is revocable [1, 584].

According to the Labor Code the sanctioning decision can be contested by the employee at the competent courts within 30 days from the date of communication (art. 268, align 5).

Against the application of any disciplinary sanction the law provides the possibility to exercise an appeal by complaint with a guarantee of the defence right of the employee. But the exercise of the appeal by the sanctioned person does not suspend the execution of the disciplinary sanction [3, 475].

A controversial problem regards the possibility of the labor jurisdiction organ to replace the applied sanction with a lighter one when he observes that the one concerned has committed a disciplinary deviation but with a lighter gravity that did not justify the maximum sanction. This controversy is generated by a gap in the labor legislation that does not state the possible solutions in judging appeals. Thus, the practice is not unitary: while some instances consider that replacing a severe situation with a lighter one is possible, others appreciate that there is no such possibility, motivated by the fact that the application of the disciplinary sanctions is the exclusive attribute of the employer. [4, 685, 688]

Therefore, the labor legislation obligates the employees to respect the order and discipline at the place where they develop their activity. By closing the labor agreement the employee is to subject himself to the discipline imposed at the workplace thus being established a specific subordination between employee and his employer. Ensuring the labor discipline represents an indispensable condition for accomplishing any activities developed by an economic agent or any other judicial person of other nature.

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