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DEONTOLOGY AND LIABILITY IN THE ACADEMIC COMMUNITY**

Abstract: *Deontology is a science that deals with the obligations and duties that must be performed by a category of persons in the frame of professional responsibility, or a doctrine pertaining to professional ethics in a specific field. Liability is a comprehensive legal term that describes the condition of being actually or potentially subject to a legal obligation. In this paper, we analyze the juridical institutions pertaining to the academia and the status of university staff, with specific reference to the professional ethics and responsibility in the academic community.*

Keywords: *deontology, liability, university, academia, law, education, rights, obligations, labour.*

1. Introduction

Deontology is a science that deals with the duties and obligations that must be performed by a certain category of persons in the frame of professional responsibility, in our case in the academic field, or a doctrine pertaining to the professional ethics in a specific field or profession. Liability is a comprehensive legal term that describes the condition of being actually or potentially subject to a legal obligation. In the present paper, we will analyse both of the juridical

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institutions related to the academic field and the status of university staff, with specific reference to the professional ethics and responsibility in the academic community.

2. Deontology in the academic field

The word "deontology" derives from the Greek words "*deon*" (duty) and "*logos*" (science). It is a normative theory related to the study of morality. We find this idea in the work „*Ethical or Moral Science*" (1834), written by the English philosopher and jurist Jeremy Bentham. His work is structured in two parts: the first part examines the theory of virtue and the second one covers the practice of virtue. In this context, he explored the concept of ethics, and codes of ethical conduct that „ought to be respected" (Voiculescu, 2005: 17).¹

Ethical norms adopted by the society, unfortunately, bear a political imprint but they naturally tend to satisfy the public interest of all citizens who should be treated equally under the law, regardless of their legal status or religious beliefs. Otherwise, legal rules and practices would become a dogma and an obstacle in building civilized human relations; as such, they would preclude protests against the dictatorship, corruption, inequality, differential treatment of gender, etc. All democracies have to eliminate the risk of politicizing the civil service, but this may only be wishful thinking.

It seems natural that academic staff should be continually guided in their work by moral principles and legal rules. Deontology in the academic field must be understood as ethical and professional conduct that needs to be exercised both by employees and volunteers (whose efforts should be rewarded as well), and which indisputably includes the fulfillment of professional obligations, the observance of rules of professional conduct, and ethical behaviour in performing professional duties (Todorascu, 2017: 7).²

We would like to frame this paper under a very interesting question: why everybody has deontology, but nobody has ethics? The answer to this question has been given by Cristian Ducu, a specialist in Applied Ethics: "*The answer is amazingly simple: it is due to the long-term absence of ethics in the academic field of reflection over it. We do not have a school of thought in the area of moral philosophy. We have no significant books and articles to change something. The situation is almost the same in the field of bioethics, maybe just slightly better. We*

1 Voiculescu, F. (2005). *Handbook of contemporary pedagogy*. Cluj-Napoca: Risoprint Publishing House.

2 Tudorascu, M. (2017). *Ethics and Deontology in public administration*. Cluj-Napoca: Risoprint Publishing House.

*still do not have sufficient academic maturity to be fully aware of the need to take steps in this direction”.*³

In Romania, the legal provisions regulating this subject matter are contained in the National Education Law no. 1/2011 of the Republic of Romania. In addition, there are other significant internal documents: the University Charter, the Code of University Professional Ethics and Deontology, Rules of Procedure on University Ethics and Deontology, the Code of Ethics and Deontology of the University “1 Decembrie 1918” of Alba Iulia, Romania.

To be able to proceed in analysing these specific issues, we will provide a brief overview of the rights and obligations of academic staff, as envisaged in the National Education Law no. 1/2011 of the Republic of Romania.⁴ In Title IV (Statute of Teaching staff), Chapter II (Status of teaching and research staff in higher education), Section 4 (Rights and obligations of the teaching staff), Article 304 (para. 2-10) of Law no. 1/2011 guarantees and ensures as follows: protection of employees’ rights, and intellectual property rights on the scientific, cultural or artistic creation, in accordance with the University Charter and legislation in force; the academic liberty is guaranteed to members of the academic community, which enables them to freely express academic views in university space and have the freedom of teaching, research and creativity, in accordance with academic quality criteria; teaching and research staff have the right to publish studies, articles, volumes or works of art, to apply for national and international grants without restrictions on academic freedom; the teaching and research staff have the right to be part of associations and trade union, professional and cultural organizations, national and international organisations, as well as legally constituted political organizations, in accordance with the law; the academic staff holding a teaching position in education who are elected in Parliament, appointed for the Government or specific specialized positions in the state apparatus, the Parliament, the Legislative Council, the Constitutional Court, the Ombudsman, the Presidential Administration, the Government or the Ministry of Education, as well as those elected by Parliament to sit in central bodies of the state, have the right to reserve (withhold) the teaching post during the period of performing the public function but, throughout their term of office, the teaching staff can combine these functions with the teaching and research activity; the teaching staff are entitled to an annual paid leave, periods of rest leave, as well as to unpaid leave upon personal request for the purpose of specialization

³ See: <https://www.avocatura.com/stire/13040/de-ce-toata-lumea-are-deontologie-dar-nimeni-nu-are-etica-o-discutie-cu-cristian.html>

⁴ Legea educatiei nationale. Legea nr. 1/2011 (National Education Law), 5 ianuarie 2011, *Monitorul Oficial*, Partea I nr. 18 din 10 ianuarie 2011; http://legislatie.just.ro/Public/DetaliuDocumentAfis/125150#id_artA2413

or participation in scientific research in the country or abroad; the teaching staff are also entitled to receive salary for their work, medical insurance and assistance in relevant institutions, etc.

Article 305 of the Law no. 1/2011 provides protection to both teachers and students against a person or a group of persons who violate their human and professional dignity or hinder the exercise of their rights and obligations. The protection is provided by relevant authorities responsible for public order and persons authorised under the University Charter, without prejudice to the right to opinion, freedom of expression and academic freedom.

In particular, we would like to talk about legal education in connection with deontology. In that context, we would like to address the following issues: the adoption of general coordinates of institutional development related to changes that occurred in the period from 2011 until the present days; and the current academic, economic, political and social context. Depending on the prospective of short and medium term strategy, the Faculty of Law at the University of Alba Iulia (Romania),⁵ has the following objectives:

- continuing and developing programs aimed at increasing the quality in education, in compliance with the national standards and criteria for assessing academic university structures and curricula;
- promoting a policy that encouraged personal excellence, professional evolution, attachment and loyalty to the institution;
- priority support of scientific research through a series of measures regarding the personnel, financing and providing logistics and material to the standards required for universities that have the education and research mission;
- restructuring curriculum closely to study programs and activities at the institutional level, and specialized professional routes, as well as introduction of new curricula;
- expansion of cooperation with similar faculties and research institutes in the country and abroad, through educational and research programs and teacher and student mobility;
- Faculty training to adapt to the restructuring imposed by European integration, expanding relationships with universities in Europe, under the institutional agreements, and compatibility curriculum and standards applied

5 Faculty of Law, University „1 Decembrie 1918” of Alba Iulia, Romania; http://drept.uab.ro/index.php?pagina=date_pg_text_fisiere&id=142&l=ro

in the European Union and communitarian *acquis* within the limits allowed by national standards;

- efficient management, based on strategic planning and quality assurance, developing programs with the financial available resources, or attracting specific services, programs and contracts with beneficiaries, including participation in EU-funded programs;

Expansion and modernization endowment for education and research, continued investment effort in teaching and research laboratories.

At the Law Faculty level, the management is achieved through the combined action and coherence of the two main branches of management: academic leadership and administrative leadership. When it comes to deontological rules, the issue is addressed by the University quality management as a matter of global strategy that engages all the components and processes of teaching, research and administrative work. We would like to conclude this part of the paper by referring to the words of Immanuel Kant: *“In law, a man is guilty when he violates the rights of others. In ethics, he is guilty if he only thinks of doing so.”*⁶

3. Liability in the academic field

Legal responsibility of the teaching staff in higher education entails liability established in disciplinary proceedings, which are governed by the rules and principles of labour law.⁷ Ensuring discipline at work involves the application of disciplinary sanctions, in accordance with the law, against those employees who commit a breach of the obligations imposed on them as a part of a labour contract (either intentionally or negligently). On the other hand, disciplinary sanctions are traditionally divided into two groups: *general disciplinary sanctions* and *special disciplinary sanctions*. The special disciplinary sanctions apply to specific categories of employees, on the basis of laws that regulate their professional status.

Disciplinary rules applicable to academic staff are derived from the general provisions of the Romanian Labour Code, especially those pertaining to misconduct, but also those concerning the observance and implementation of disciplinary sanctions, as well as those pertaining to institutions involved in this stage of disciplinary action. In Romania, legal liability of higher education staff, including the teaching and research staff, the teaching and research auxiliary personnel, as well as the management, guidance and control of higher education personnel

6 See: https://www.brainyquote.com/quotes/immanuel_kant_134876

7 For more details on the matter, see A. Hurbean, *Disciplinary action of the teaching and research staff in the academic field*, 2014, ISI, Monduzzi editore, ISBN 978-88-7587-694-4.

is regulated by the National Educational Law no.1/2011 and Law no.206/2004 on the Proper Conduct in Scientific Research, Technological Development and Innovation. The first one (Law no.1/2011) is a general law on this matter, while the second one (Law no.206/2004) is a special law which supplements the provisions of the general law. This approach is rational and particularly significant in terms of establishing disciplinary offences and forms of liability.

The National Education Law no. 1/2011 stipulates two types of misconduct: a) serious misconduct, which implies substantial departure from the proper conduct in scientific research and academic activity; and b) misconduct strictly concerning the specific categories of university teaching and research staff and other employees. According to Article 310 of Law no. 1/2011, serious misconduct includes: plagiarism of the results or publications of other authors; fabricating results or replacing the results with fictitious data; and entering false information in applications for grants or funding.

On the other hand, Law 206/2004 governing Proper Conduct in Scientific Research Activities, Technological Development and Innovation⁸ defines both the rules of conduct in these activities and the deeds that constitute violations of these rules, in detail; but, these legal provisions are strictly applied in the specified fields of scientific activity.

According to Article 2 of Law no. 206/2004, the rules of proper conduct in the research and development activity are: a) rules of proper conduct in scientific activity; b) rules of proper conduct in the activity of scientific communication, publication, dissemination and popularization, including the funding requests submitted in project competitions organized from public funds; c) rules of proper conduct in the institutional assessment and monitoring of research and development, evaluation and monitoring of research and development projects obtained through actions of the National Plan for Research, Development and Innovation, and evaluation of individuals in order to grant degrees, titles, positions, awards, distinctions, bonuses, attested or certified in research and development activity; d) rules of proper conduct in leading positions in research and development; e) rules of proper conduct regarding the respect for human beings and human dignity, preclusion of animal suffering, protection and restoration of the natural environment and ecological balance.

⁸ Portal legislativ: Lege 206/2004 of 27 mai 2004 privind buna conduită în cercetarea științifică, dezvoltarea tehnologică și inovare (actualizată până la data de 28 ianuarie 2016); <http://legislatie.just.ro/Public/DetaliiDocument/52457>

In 2011⁹, Article 2 was amended by introducing specific forms of misconduct that constitute a departure from the rules of proper conduct in the scientific work, to the extent that they do not constitute offences under criminal law. Thus, Article 2 (1) of Law 206/2004 includes: a) manufacturing results or data and presenting them as experimental data, such as data obtained by calculations or numerical simulations on computer, or data or results obtained by analytical calculations or deductive reasoning; b) falsifying the experimental data, or data obtained by numerical calculations or simulations on computer, or data or results obtained by analytical calculations or deductive reasoning; c) deliberately hindering, preventing or sabotaging research and development activity of other persons, including: unjustified blocking of access to research/development facilities; damage, destruction or manipulation of experimental devices, equipment, documents, software, electronic data, organic or inorganic substances or other living matter used by other persons to conduct, perform, or complete research/development activities.

The modified Article 2 (2) of Law 206/2004 includes forms of misconduct which constitute a departure from the rules of proper conduct in the activity of scientific communication, publication, dissemination and popularization, including the funding requests submitted in projects competitions organized from public funds, such as: a) plagiarism; b) self-plagiarism; c) inclusion in the list of authors of a scientific publication of one or more co-authors who did not significantly contribute to the publication, or exclusion of some co-authors who significantly contributed to the publication; d) inclusion in the list of authors of a scientific publication of a person without his/her consent; e) unauthorized publication or dissemination of unpublished results, hypotheses, theories or scientific methods; f) entering false information in applications for grants or funding, in application files for empowerment, for university teaching positions or for research and development positions.

Article 2 (3) of Law 206/2004 enlists the forms of misconduct that constitute a departure from the rules of proper conduct in the institutional assessment and monitoring of research and development, evaluation and monitoring of research and development projects obtained by actions of the National Plan for Research, Development and Innovation, and evaluation of individuals in order to grant degrees, titles, positions, awards, distinctions, bonuses, attested or certified in research and development activities; they include: a) non-disclosure of conflict of interest situations in conducting or participating in assessments; b) inobservance of confidentiality or violation of privacy in evaluation; c) discrimination

⁹ Law no. 206/2004 was amended and supplemented by the government Ordinance no. 28 of August 31, 2011, published in *Official Monitor* no. 628 on 2 September 2011; <http://legislatie.just.ro/Public/DetaliuDocumentAfis/131196>

in evaluation, on the basis of age, ethnicity, gender, social origin, political or religious orientation, sexual orientation or other types of discrimination (except for the affirmative measures provided by law).

Article 2 (4) of Law 206/2004 includes the forms of misconduct that constitute a departure from the rules of proper conduct in leading positions in research and development, such as: a) abuse of authority in order to become the author or co-author of publications of subordinate persons; b) abuse of authority to obtain salary, remuneration or other material benefits from research and development projects conducted or coordinated by subordinate people; c) abuse of authority to become the author or co-author of publications of subordinate persons, or to obtain salary, remuneration or other material benefits for spouses, in-laws or relatives to the third degree inclusively; d) abuse of authority to unjustifiably impose one's own theories, concepts or results to the subordinates; e) obstructing the work of ethics committees, a review committee or the National Ethics Council, during the analysis of some violations of proper conduct in research and development activity under subordination; f) inobservance or violation of legal provisions and procedures for compliance with the rules of proper conduct in research and development activity provided by the law, in Law no. 1/2011, in the Code of Ethics, in field-specific codes of ethics, in regulations governing the organization and operation of research/development institutions or in university documents (e.g. charters), as well as failure to implement the sanctions imposed by the ethics committees or by the National Ethics Council for Scientific Research, Technological Development and Innovation.

Article 2 (5) of Law 206/2004 refers to the forms of misconduct that constitute a departure from the rules of proper conduct regarding the respect for human beings and human dignity, avoidance of animal suffering, protection and restoration of the natural environment and ecological balance, which are stipulated in detail in the Code of Ethics developed by each university, or in the field-specific codes of ethics developed by every academic field.

Article 2 (6) of Law 206/2004 specifies other forms of misconduct that may lead to ethical responsibility (accountability) by association: a) active participation in the misconduct or offences committed by others; b) awareness or knowledge of the offences committed by others and failure to notify the competent ethics committee or the National Ethics Council; c) co-authoring publications containing falsified or fabricated data; d) failure to fulfil legal and contractual obligations, including those related to the mandate contract or funding contracts, in the exercise of management or executive functions or coordinating the R&D activities.

In the field of scientific research and academic activity, no other offences can be established other than those stipulated by the law. The actions and omissions

which may be regarded as forms of ethical misconduct are not established by the employee, but by the law. Thus, the actions and omissions that constitute a breach of ethical norms and may be the grounds for disciplinary liability must be enlisted in the University Ethics and Deontology Code, which is elaborated by each university, according to the university's field of activity.

According to Article 312 (para. 1) of Law no. 1/2011, the second category of misconduct which is subject to disciplinary proceedings entails every breach of duty of the teaching and research staff, auxiliary teaching and research staff, management staff, vocational guidance and control staff, based on the individual employment contract, as well as the violation of the rules of conduct set out in the University Charter. In this context, any breach of behavioural norms that may be detrimental to the interest of education and prestige of the unit/institution may constitute a disciplinary offence, as long as these rules have been established and communicated to the employees. So, the employees must observe not only the general obligations stipulated by the law, individual employment contract and collective labour agreements, and the rules of conduct envisaged in the University Charter but also the obligations arising from the employer's decisions, verbal or written orders (Țiclea, 2012: 782).¹⁰ Within the meaning of the law, any breach of these orders may be regarded as misconduct which is subject to disciplinary action.

3.1. Disciplinary sanctions

The disciplinary sanctions which may be applied to teaching and research staff, and auxiliary teaching and research staff, in case of any violation of university ethics or envisaged rules of proper conduct are provided in Article 312 (para. 2) of Law no. 1/2011, as follows:

- a) a written warning;
- b) reduction of the basic salary (cumulated, if necessary), in line with the management, guidance and counselling indemnity;
- c) suspension, for a limited period of time, of the right to compete for a higher teaching position, a management office, or a vocational guidance and institutional control position, a member of the examination board for PhD degree, master degree or graduation exams;
- d) dismissal from the teaching position or management position in higher education;

¹⁰ Țiclea, A., *Tratat de dreptul muncii*, Bucharest, Universul Juridic Publishing House, 2012, pp.782

- e) cancellation of the employment contract.

Besides these sanctions, Article 11 (1) of Law no. 206/2004 (amended in 2011) also stipulates the sanction of withdrawing and/or correcting of all published papers which violate the proper conduct rules in research and development activity.

According to Article 324 of the National Education Law no.1/2011 and Article 14 (1) of Law 206/2004 amended in 2011, the National Ethics Council for Scientific Research, Technological Development and Innovation may impose one or more disciplinary sanctions for proven misconduct in research and development activity:

- f) a written warning;
- g) withdrawal and/or correction of all works published in violation of proper conduct rules;
- h) withdrawal of the title of a PhD mentor/supervisor and/or the habilitation certificate;
- i) withdrawal of the PhD title, university teaching title or research degree, and/or demotion;
- j) dismissal from the management position in the higher education institution;
- k) termination of the employment contract on disciplinary grounds;
- l) prohibition, for a specific period of time, to access to public research and development funds (Article 324 Law no.1/2011);
- m) suspension, for a specific period of time ranging from 1 to 10 years, of the right to enter into a competition for a senior university position, a management position, guidance and institutional control function, or a member of competition committees;
- n) removing the concerned person/persons from the project team;
- o) stop funding the project;
- p) stop funding the project with mandatory return of funds (Article 14(1) of Law 206/2004).

If the National Ethics Council establishes a serious violation of the law, it may impose the following sanctions (Article 325 of Law no.1/2011):

- q) prohibition of employment in teaching and research positions of individuals proved to have committed serious violations of proper conduct in scientific research and academic activities, as established by law;
- r) cancellation of the contest for an occupied teaching or research position, termination of the employment contract with the university, regardless of the time when somebody's serious violation of proper conduct in scientific research and university activity has been proven.

The disciplinary sanctions which can be imposed by the National Council of Ethic also include the sanctions applicable by the Ethics Committee. Disciplinary sanctions which can be applied in case of common disciplinary misconducts are the same as the sanctions imposed for breach of university ethics: a) a written warning; b) reduction of the basic salary (cumulated, if necessary), in line with the management, guidance and counselling indemnity; c) suspension, for a limited period of time, of the right to compete for a higher teaching position, a management office, or a vocational guidance and institutional control position, a member of the examination board for PhD degree, master degree or graduation exams; d) dismissal from the teaching position or management position; e) cancellation of the employment contract on disciplinary grounds (Article 318 of Law no.1/2011).

3.2. Application of sanctions

The divergence from the university ethics is the basis for establishing legal liability of the person who has committed such infringement. In universities, the Ethics Committee is the principal institutional body whose principal duty is to ensure compliance with the codes of ethics and analyse and resolve cases involving misconduct and violation of the university ethics on the basis of complaints or notifications, in accordance with the University Code of Ethics and Deontology (Article 306 (par.3a) of Law no.1/2011).. Any person, either from the university or outside the university, may notify the Ethics Committee about a violation of the university ethics committed by a member of the academic community (Article 308(1) of Law no.1/2011), or the Committee may take action *ex officio*, considering that academic and scientific research activity of the teaching and research staff is a public one.

The Ethic Committee is established at each university and its structure and composition is proposed by the University Board, authorized by the Senate and approved by the Rector. The committee members are people of professional and moral authority (Article 306 (par.2) of Law no.1/2011). After investigating and analysing the case, the committee decides on the sanction which will be applied, and issues a public report on the outcome of proceedings. The Ethics Committee

may be appealed to the National Ethic Council for Scientific Research, Technological Development and Innovation, either by the person who was found liable or by the person(s) who referred the case to the university ethics committee (Article 11 (2) of Law 206/2004).

The National Ethic Council analyses cases which have been referred to this body, or may take action *ex officio*. After the examination, the Council decides on the liability of the concerned person(s) and issues a report on the findings, including a reasoned decision; in case of establishing the person's liability for breach of university ethics or divergence from proper conduct in research and development activity, the Council proposes relevant sanctions to be applied, in compliance with the law (Article 323 (par.1) of Law no.1/2011). The report is made available to the general public by being published on the National Ethics Council's website.

The National Ethics Council decisions are endorsed by Ministry of Education, Research, Youth and Sport, which has legal responsibility to put the Council decisions into effect (Article 323 (par.3) of Law no.1/2011). Depending on the person(s) the sanctions refer to, the sanctions set by the National Ethics Council are implemented by: the Ministry of Education; the President of the National Authority for Scientific Research; the National Council for Certification of University Degrees, Diplomas and Certificates; the heads of contracting authorities that provide public funding for research and development; the heads of higher education institutions or research and development units (Article 326 of Law no.1/2011).

4. Conclusion

In the idea of the above, it is natural that in their activity, the academic staff, to be voiced by dignity of moral and legal rules. Only acting on these coordinates, the academic staff contribute to ensuring the effective completion of the specific activity and also to the fulfilment of the conditions of their duties.

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Quote: Immanuel Kant; https://www.brainyquote.com/quotes/immanuel_kant_134876

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ДЕОНТОЛОГИЈА И ОДГОВОРНОСТ У ОБЛАСТИ АКАДЕМИЈЕ

Резиме

Деонтологија је наука која се бави обавезама и дужностима које одређена категорија особа мора испунити у оквиру професионалне одговорности, или доктрина која се односи на професионалну етику у одређеној области. Одговорност је свеобухватни правни појам који дефинише услове под којима одређена категорија људи реално или потенцијално подлеже законској обавези. У раду се даје приказ и анализа правних институција које се односе на високошколско образовање и статус универзитетског наставног особља, са освртом на професионалну етику и одговорност у академској заједници.

Кључне речи: *деонтологија, одговорност, универзитет, академија, право, образовање, права и обавезе, рад.*