

GENERAL CONSIDERATIONS ON THE DISCIPLINARY LIABILITY OF ARCHITECTS

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Abstract

As well as other liberal professions in Romania, also the profession as an architect is regulated by special norms, the Law No 184/2001, whose provisions are amended by the Rules governing the functioning and organization of the Romanian Order of Architects and the Code of Ethics of Architects. The specificity of the disciplinary liability of the architects towards the common law is given by specific sanctions, by the authorities competent in performing the disciplinary investigation of the disciplinary offences, as well as by the specific procedural rules. The present study aims to offer a brief analysis of these aspects which differentiate the disciplinary liability of architects towards that of the employees performing their activities under an employment contract.

Keywords: *architect, disciplinary liability, offence, procedure, sanctions*

1. Introduction

The liberal profession as an architect is regulated in Romania by the Law No 184/2001¹, whose provisions are amended by whose provisions are amended by the Rules governing the functioning and organization of the Romanian Order of Architects² and the Code of Ethics of the architects³.

According to Art 2 of the Law No 184/2001 “the activity in the area of architecture is an act of culture of public interest, with urbanistic, economic, social and ecological implications. The architectural creation is meant to functionally and esthetically organize the built space, having the obligation to harmoniously insert it within the environment, respecting the natural landscapes and real-estate patrimony”.

Within this study we shall analyze, without claiming to end this subject, the particularities of the disciplinary liability⁴ of this liberal profession⁵, as form of the legal

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² Approved by the National Extraordinary Conference of the Romanian Order of Architects, on 26-27 November 2011 and published in the Official Gazette, Part I, No 342/21 May 2012.

³ Approved by the National Extraordinary Conference of the Romanian Order of Architects, on 26-27 November 2011 and published in the Official Gazette, Part I, No 342/21 May 2012.

⁴ For an analysis of the Constitutional Court’s decisions solving the controversies regarding the regulations on disciplinary liability see: C. C. Nenu and A. Drăghici, *Contractul individual de muncă – elemente definitorii* (Pitești: Pământul Publishing-house, 2007), 137-140.

⁵ For an analysis of the disciplinary liability of architects see also Ș. Beligrădeanu, „Probleme și efecte specifice ale răspunderii disciplinare și ale jurisdicției acesteia în cazul salariaților care, în temeiul unor legi speciale, exercită anumite profesii organizate în corpuri profesionale”, in *Dreptul Review*, No 9 (2005): 78-96.

liability⁶, starting from the specific sources of the architects' obligations, disciplinary offences⁷, disciplinary authorities and throughout the particular disciplinary procedure.

The disciplinary liability⁸ of architects does not exclude the other forms of legal liability, given the possibility to cumulate it with one of them, this form of liability being specific to labor relations⁹.

As well as in the common law, also in the majority of the professional statutes, neither the specific legislation of architects offers a definition for the disciplinary offence, but just enumerates the sources of the architects' obligations.

According to Art 38 Para 1 of the Law No 184/2001 and Art 95 Para 1 of the Rules governing the functioning and organization of the Romanian Order of Architects, the members of the Order are disciplinary liable for breaching the special law no 184/2001, the Rules governing the functioning and organization of the Romanian Order of Architects and of the Code of Ethics of Architects, of the decisions adopted by the governing bodies of the Order, as well as for any other offences committed in relation to the profession or outside it that harms its prestige or the Order. Thus, we can define the disciplinary offence of the architects as the offence committed with intent that harms the provisions of the special law no 184/2001, of the Rules governing the functioning and organization of the Romanian Order of Architects and of the Code of Ethics of Architects, of the decisions adopted by the governing bodies of the Order, as well as for any other offences committed in relation to the profession or outside it that harms its prestige or the Order.

For the disciplinary offence to exist there must be cumulated its constitutive elements, namely: the object, the objective side, the subject and the subjective side. It also must be determined the causality link between the disciplinary offence and its harmful result.

In the analyzed situation, the subject of the disciplinary offence is qualified, namely an architect, member of the Romanian Order of Architects. The object of the offence is a special one too, being represented by the social relations protected by the sources of law which give birth to architects' obligations, listed by the legislation applicable for this liberal profession.

The Rules governing the functioning and organization of the Romanian Order of Architects¹⁰ state, without being limitative, action representing disciplinary offences. The legal exemplification resumes only to offences for which it shall be decided one of the disciplinary sanctions, especially the disciplinary sanction stated by Art 38, Para 2 Let c) of the Law No 184/2001, namely the suspension for a period between 6-12 months of the right to signature. These offences are:

- a) Borrowing or alienation of the seal to other persons, regardless of their quality, with the purpose of applying it on projects subjected to analysis.
- b) Non-delivery within the legal term of the professional seal if it has been ordered by a definitive sanction the suspension of the right to use it or the main architect/architect with the right to signature has requested the suspension, under the conditions of the Rules and according to other legal provisions in this area.
- c) Counterfeiting duplicates of the seal
- d) Non-declaring the loss of the seal at the local branch where the member is registered and publish the announcement in a national newspaper.

⁶ For its analysis see: E. Ciongaru, *Teoria generala a dreptului* (Craiova: Scrisul Românesc Publishing-House, 2011), 150; C. Șerban and R. Duminiță, *Elemente de drept* (Craiova: Sitech Publishing-House, 2008), 217-235.

⁷ For an analysis on the concept of disciplinary offence see C.C. Nenu, "Trăsăturile caracteristice ale contractului individual de muncă" (PhD thesis, unpublished, University of Bucharest, 2008), 119.

⁸ For a definition of this form of legal liability see Al. Țiclea, *Tratat de dreptul muncii*, 8th Edition, reviewed and amended (Bucharest: Universul Juridic Publishing-house, 2013), 803-804.

⁹ M. Volonciu in Al. Athanasiu et al, *Codul muncii. Comentariu pe articole. Volumul II, Articolele 108-298* (Bucharest: C.H. Beck Publishing-house, 2011), 362.

¹⁰ Art 97 Para 1 of the Rules governing the functioning and organization of the Romanian Order of Architects.

- e) Keeping the seal in other place than the professional headquarter, in the conditions in which the owner does not have it with him.
- f) Using the signature of complacency
- g) Failure to register the architectural projects drafted in order to issue the authorization for construction/demolition or organizing the construction site.

As it is shown by the legal provisions previously mentioned, the area of the actions representing disciplinary offences is not limited only to those enumerated, in the absence of a strict and limitative provision of the disciplinary offences committed by architects.

2. Disciplinary sanctions applicable to architects

The disciplinary sanctions applicable to architects, members of the Romanian Order of Architects, for the offences committed are expressly and limitative stated by Art 38 Para 2 of the Law No 184/2001¹¹:

- a) Warning
- b) Vote of censure on an architect
- c) Suspension for a period between 6 to 12 months of the right to sign
- d) Suspension for a period between 6 to 12 months of the membership of the Order

The application of one of these sanctions shall be made depending on the consequences caused by the offence, by the circumstances of the offence, as well as by the personal circumstances of the offender. Though the legal provisions applicable for the disciplinary sanction of the architects do not refer to the principle of the unique disciplinary sanction, we consider that this principle is rightfully applicable. Thus, for the same disciplinary sanction committed more than once can be ordered one sanction.

It must be mentioned that for architects we have one of the simplest disciplinary sanctions applicable for liberal professions. The disciplinary sanctioning regime applicable for architects does not include the prohibition of exerting the profession or exclusion from the Romanian Order of Architects, sanctions found for other liberal professions. The prohibition to exert the profession is used as a complementary penalty, so it is applicable in the penal area.

- a) Warning is the simplest disciplinary sanction which can be applied for architects. The warning has a dominant moral feature, which is ordered mainly for disciplinary offences without important consequences, for the persons who have committed their first offence. The warning is a signal for the offender that if he commits another offence he shall be sanctioned by another more serious penalty.
- b) The vote of censure on an architect is a sanction also stated for other liberal professions¹² having a preponderant moral feature. It assumes the disapproval expressed by the Romanian Order of Architects for an action representing a disciplinary offence committed by an architect, member of this Order. This sanction shall be ordered for offences not having serious consequences.
- c) The architects receive their right to signature¹³ from the Romanian Order of Architects if they have a full exercise of their civil rights, if they fulfill the honorability and internship conditions or, where appropriate, if they have practical professional experience. Receiving the right to signature by architects mandatorily assumes their registration in the National Board of Architects. Receiving this right

¹¹ The sanctions are stated also by Art 96 of the Rules governing the functioning and organization of the Romanian Order of Architects.

¹² For instance, the disciplinary liability of doctors has been analyzed by Section 1 of this paper.

¹³ According to Art 62 of the Rules governing the functioning and organization of the Romanian Order of Architects.

is essential for the profession, considering that the law states¹⁴ that, for architectural projects for which the law states the authorization to build, it must be drafted by an architect with the right to sign or by a leading architect with the right to sign.

It is also stated by the same article that “the right to sign is exerted on all technical architectural documents or documentations, representing written and drawn documents, in all the stages of projection, namely: feasibility studies, documentations for receiving the special confirmations requested by the urbanity certificate, technical documentations for authorizing the construction, technical projects, details on the performance, projecting tasks for the specialized sub-projectors, building site orders, acceptance certificates of the construction, final acceptance certificates, other documents of this nature”.

Suspending the right to sign requires that the architect cannot sign any of the documents above mentioned. This sanction affects him both materially and personally. Though, if the architect uses his right to sign in an associate office, this sanction may not affect him, since another architect may sign the documents prepared by the sanction architect.

The legal provisions state for this disciplinary sanction the period for which it may be disposed. Thus, are established both a minimum, as well as a maximum duration. The suspension of the right to sign cannot be disposed for less than 6 months, or for more than 12 months.

- d) The most serious sanction applicable for architects is the suspension for a period between 6 to 12 months of the membership of the Romanian Order of Architects. From the analysis of the law¹⁵ it does not result that for the performance of the profession as an architect is required the membership in the Romanian Order of Architects, considering that the registration in this national organism is made upon request, and the right to sign is not conditioned by the membership in the Order and mandatorily assumes only the registration in the National Board of Architects and not the membership in the Order.

Nevertheless, in practice, in order to be an architect with the right to signature is necessary the enrolment within the Romanian Order of Architects.

The suspension of the membership of the Order also assumes the suspension of all associated rights and obligations. The suspension may be ordered for a period between 6 to 12 months, without exceeding it. If the suspension of the right to signature does not involve the suspension of other rights, the suspension of the membership assumes the suspension of all associated rights and obligations, including the right to signature.

3. Competent authorities in the disciplinary procedure

The disciplinary authorities¹⁶ are the territorial disciplinary commission which is organized in each branch of the Romanian Order of Architects and the national disciplinary commission¹⁷ which is organized within the Romanian Order of Architects and is independent by the governing bodies of the Order. The law uses the name “disciplinary courts”, considering that trialing the disciplinary offences of the architects is made according to the civil procedure norms.

The territorial disciplinary commission trials only as first instance the disciplinary offences committed by architects and conductor architects enlisted in that branch. From this

¹⁴ Art 65 Para 1 of the Rules governing the functioning and organization of the Romanian Order of Architects.

¹⁵ Art 48 Para 1 and Art 62 of the Rules governing the functioning and organization of the Romanian Order of Architects.

¹⁶ As stated by Art 98 Para 1 of the Rules governing the functioning and organization of the Romanian Order of Architects.

¹⁷ The rules governing the functioning and organization of this commission are stated by Art 112-122 of the Rules governing the functioning and organization of the Romanian Order of Architects.

rule are excepted the members of the governing bodies and the members of the commissions chosen, which are trialed by the national commission of discipline, as first instance. This commission may sanction, after trialing, only by warning or vote of censure. For the other two disciplinary sanctions, the territorial commission shall forward the case file together with the proposal for sanctioning to the national disciplinary commission. The proposal shall be motivated *de jure* and *de facto* and shall be forwarded to the national commission within maximum 15 days from its wording. Also, the proposal shall be communicated to all the parties.

The documents which can be issued by the territorial disciplinary commission are:

- Decisions, which are adopted in the disciplinary cases with the votes of the majority of the panel's members;
- Resolutions, which are adopted in cases regarding the organization, debated in the administrative meetings by the territorial disciplinary commission's plenum. These are adopted by the vote of the simple majority of the commission's members.

The national disciplinary commission has competence in trialing certain cases as first court, but also in trialing the contestations against the decisions ordering disciplinary sanctions. The commission judges as first instance the disciplinary cases in which the subjects of the offences are members of the governing bodies of the Romanian Order of Architects' branches and the members of the commissions elected within the branches and the Order.

Regarding the competence of the National Council for Solving Complaints, it solves both the complaints against the decisions issued by the territorial disciplinary commissions, as well as those against the decisions issued by its panel of 3 judges.

The documents issued by the national disciplinary commission are the same as in the case of the territorial disciplinary commissions (decisions and resolutions), being adopted in the same way and for the same areas of activity.

4. Procedural rules

The disciplinary procedural rules are stated by Art 123-134 of the Rules governing the functioning and organization of the Romanian Order of Architects and are the same both for the territorial disciplinary commissions, as well as for the national disciplinary commission. According to Art 134 of the Rules governing the functioning and organization, the provisions regarding the procedure are completed by the provisions of the Civil Procedure Code. Also, from the analysis of the provisions regarding the disciplinary liability stated by the Rules governing the functioning and organization, it results that these provisions are completed by the provisions of the Code of Procedure on the jurisdictional activity of the territorial disciplinary commissions and the commission of the Order¹⁸.

According to Art 95 Para 5 of the Rules governing the functioning and organization, the procedure for trialing the disciplinary offences must be initiated in maximum 2 years from the moment when the offence was committed. Otherwise, the disciplinary offences are prescribed within this term.

As well as in the case of the common law, the disciplinary procedure begins with the notification of the competent authority regarding the commission of a disciplinary offence by the members of the Romanian Order of Architects.

The competent authority in order to receive the notification is the territorial disciplinary commission from the branch in which the architect who has committed the offence is registered as member. For the offences committed by the members of the governing

¹⁸ Approved by the National Council's Decision No 551/24.02.2006.

bodies of the Order or of the branches, shall be notified the national disciplinary commission, according to its competence.

The governing bodies of the branches and of the Order may take notice regarding the disciplinary offences committed by their members. They shall notify¹⁹ the competent disciplinary commission. The notification shall be registered in two copies. The verification of the conditions for the validity of the notification shall be made by the president of the notified commission. If the notification does not fulfil these conditions, it shall be returned for reformulation. If instead the notification is valid, the president of the notified commission shall appoint the panel which shall trial the case and the term for the summoning of the parties.

The summoning of the parties is made according to Art 125 of the Rules governing the functioning and organization, completed by Art 10 of the Code of procedure regarding the jurisdictional activity of the territorial disciplinary commissions and that of the Order. Shall be summoned both the investigated architect, who is the defendant in the trial, as well as the author of the notification, which is the plaintiff in the trial. The summoning shall be made in writing, by registered letter with confirmation of receipt, at the professional office of the parties or at their domicile address. The summoning²⁰ shall be sent with 30 days before the date of the hearing and shall have annexed a copy of the writings from the case file.

After the first summoning, for the other summons it is not mandatory the term of 30 days. Also, if the party was present at the hearing, it shall be presumed that he is aware of the term and shall not be summoned. The failure to appear at the hearing, although the party was legally summoned it shall not prevent the hearing. If instead the party was not legally summoned, the decision issued shall be annulled.

As an exception from the principle of public hearings in the civil law, the hearings of the panel trialing disciplinary cases are not public. As well as in the civil procedural law, at the first hearing, if the procedure was fulfilled, the parties may require a term for a new hearing for the lack of defense, request which may be registered only once. Also, the parties may inspect the documents in the case file at any stage of the trial.

Art 13 Para 4 of the Code of procedure regarding the jurisdictional activity of the territorial disciplinary commissions and that of the Order states the principle of the active role of the members of the trialing panel. They are obliged to insist by any legal means to discover the truth and to prevent any mistake in the knowledge of the facts and shall actively assist the parties in the protection of their rights and interests.

The hearings are conducted as well as in the civil trials. The president of the panel leads the debates, the panels being selected according to the provisions analyzed in the previous section. He shall take the parties' statements and shall listen to the proposed

¹⁹ For its validity, the notification must state the elements pointed by Art 123 Para 3-4 of the Rules governing the functioning and organization:

Name, surname and address of the person, namely the name of the governing body who issued the notification;
Name, surname and branch where is registered the architect/conductor architect against whom the notification is issued;
De jure and de facto description of the situation;
The evidences on which the notification is based on, annexed in a copy;
Signature;

A copy of the minute of the meeting which decided to notify the disciplinary commission, if the notification is made by a governing body of the branch or of the Order.

²⁰ For its validity, the summon shall state the elements listed by Art 10 of the Code of procedure regarding the jurisdictional activity of the territorial disciplinary commissions and that of the Order:

Number and date of issuance, as well as the number of the case file
Year, month and day of the hearing

The location of the hearing

Name, domicile and quality of the person summoned

Name and domicile/head office of the defendant

The seal of the commission, according to the annexed model and the signatures of the president and secretary of the commission

witnesses. If an independent legal adviser is consulted regarding legal issues, he must answer in written, his participation in the debates of the disciplinary commission being prohibited. At the end of the debates, the president shall listen to either the parties, or their defenders, arguing or combating the complaint.

The secretary of the disciplinary commission shall draft a minute at the end of every hearing, which must be signed by all the panel's members.

During the disciplinary procedure, the right to defense is guaranteed for the defendant. The Rules²¹ establish that the parties must appear in person before the disciplinary commission. They can be assisted by an architect with right to signature and/or by a lawyer²². The members of the disciplinary commission cannot assist the parties, even if they are not part of that panel trialing the case.

After the deliberations, various solutions may be adopted, depending on the competence of each commission. Thus, the territorial disciplinary commission may only adopt two solutions: admits or rejects the complaint.

The national disciplinary commission may adopt four solutions, depending on the stage of the case:

- Admits the complaint for the cases assigned to the national disciplinary commission
- Rejects the complaint for the same causes
- Admits the contestation against the decision issued by the competent territorial disciplinary commission as first instance or against the decision issued by the national disciplinary commission.
- Rejects the contestation against the decision issued by the competent territorial disciplinary commission as first instance or against the decision issued by the national disciplinary commission.

The decisions²³ of the disciplinary commissions are adopted by the vote of the majority of the commission's members who have participated at the case trial and drafted within 15 working days by a member of the panel appointed by the president of the panel. If one of the panel's members has a different opinion he shall argue it in written and shall attach it to the decision.

The decisions of the disciplinary commissions are communicated by registered letter with confirmation of receipt. The communication shall be addressed to the parties, to the president of the territorial branch and to the president of the Order, within 15 calendar days beginning from the date when the decision is drafted.

The disciplinary commissions' decisions may be contested within 30 days since they are communicated. The competent court in solving the contestations is different depending on the competent first instance. Thus, the contestations against the territorial disciplinary

²¹ Art 127.

²² As it completes Art 11 Para 2 o the Code of procedure regarding the jurisdictional activity of the territorial disciplinary commissions and that of the Order.

²³ For validity, the decisions must state the elements listed by Art 130 of the Rules governing the functioning and organization, completed by Art 15 of the Code of procedure regarding the jurisdictional activity of the territorial disciplinary commissions and of the Order:

The name of the president of the hearing, of the members of the panel and of the secretary;

The name and surname of the parties;

The argumentations of the parties;

The presentation of the situation which grounded the decision of the commission, as well as those for which the demands of the parties were denied;

The de jure and de facto motivation of the decision

The content of the decision (the solution issued for the case);

The mean of attack and the term in which it must be submitted;

The date of the draft;

The signatures of the panel's members and of the secretary.

commissions' decisions are submitted to the national disciplinary commission. The contestations against the decisions issued by the national disciplinary commission as first instance are solved also by the national disciplinary commission in panel of 5 members.

The contestations against the decisions issued by the national disciplinary commission as court of appeal are solved by the competent administrative contentious court. If the decisions issued by the disciplinary commissions are not contested within the legal term, they become definitive. Definitive decisions have the *res judicata* authority for the parties and the governing bodies of the branches and of the Order and are executory from the notification of the decision to implement it. The decision to implement the suspension either of the right to signature or of the membership of the Order shall also state the date until the sanction is valid. The definitive decisions shall be applied either by the territorial ruling councils or by the national council of the Order, depending on the established disciplinary sanction. The decisions stating the warning or the vote of censure shall be applied by the territorial ruling councils. The decisions stating the other two disciplinary sanctions shall be applied by the national council of the Order.

Unlike the common law and the other professional statutes, the legislation states that the performance of the profession as an architect does not mention the possibility of erasing the disciplinary sanctions. We consider that, in order to align the provisions of the common law, as well as for rational reasons, the Law No 184/2001 should be amended on this area.

5. Conclusions

Though the norms regarding the disciplinary liability stated by the Labor Code represents the common law in the disciplinary area for all the persons performing their professional activity based on a specific labor relation, which is not born from an individual labor contract, their disciplinary liability acquired additional valences, by a detailed regulation, adequate for each category. Knowing and correctly applying these legal norms ensures the legitimacy of the document stating the disciplinary liability of these categories of persons.

Organized in associations or professional societies, the architects may unfold their profession both based on an individual labor contract, as well as based on other types of conventions. Even if they are not subjected to a subordination relation in this latter case²⁴, they are disciplinary liable in front of certain special bodies, created based on a special statute.

References:

- Athanasiu, Al. et al, *Codul muncii. Comentariu pe articole. Vol. II. Articolele 108-298*. Bucharest: C.H. Beck Publishing-house, 2011.
- Beligrădeanu, Ș., "Probleme și efecte specifice ale răspunderii disciplinare și ale jurisdicției acesteia în cazul salariaților care, în temeiul unor legi speciale, exercită anumite profesii organizate în corpuri profesionale". *Dreptul Review* No 9 (2005): 78-96.
- Ciongaru, E., *Teoria generala a dreptului*. Craiova: Scrisul Românesc Publishing-house, 2011.
- Nenu, C.C., "Trăsăturile caracteristice ale contractului individual de muncă". PhD thesis, unpublished, University of Bucharest, 2008.
- Nenu, C.C. and Drăghici, A., *Contractul individual de muncă – elemente definitorii*. Pitești: Pământul Publishing-house, 2007.
- Șerban, C. and Duminiță, R., *Elemente de drept*. Craiova: Sitech Publishing-House, 2008.
- Țiclea, Al., *Tratat de dreptul muncii*, 8th Edition, reviewed and amended. Bucharest: Universul Juridic Publishing-house, 2013.

²⁴ For an analysis of the employer's right to establish and sanction misbehavior of the employee who works under his authority see C.C. Nenu, *Dreptul muncii*, University of Pitești Publishing House, Pitești, 2010, p. 34.