
HISTORICAL DEVELOPMENT OF DISCIPLINARY RESPONSIBILITY

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ABSTRACT: *This article brings to attention one of the most important institutions of the relationship with work, specifically disciplinary responsibility. Through time, the several changes in work legislation, brought the evolution of the concept of this institution, adapting even to the dynamics of the society. Concretely, this article will handle the historical development of disciplinary responsibility and the meaning of the institution of disciplinary responsibility. The disciplinary right, according to the right to work of the Republic of Albania, represents the total of juridical norms that put an internal order at work, enterprise, institutions, norms that are sanctioned and compulsory for the workers, as well as measures that ensure the compliance of these norms. In democratic societies, the discipline of work moves toward a conscient and voluntary character, different from the dictatorial society, where work discipline represents a discipline dictated, even more through violence and psychological pressure. The aim of the dispositions in the field of discipline of work is regular reinforcement and organization of work, minimization of antidisciplinary demonstrations, of indifference and anarchy at work.*

KEYWORDS: historical development, disciplinary, responsibility, Albania,

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Historical view of disciplinary responsibility

The right to work was developed parallel to the Industrial Revolution, because the relationship between the employee and employer evolved from small producing units to big factories. The employees requested better work conditions and the right to gather and what we now know as syndicates, while the employers wanted more predictable employees, flexible and cheaper. The right to work of a country, is then a product of the component of attempts of different society forces.

While England was the first country to industrialize, it was also the first country to face the consequences of the often terrible industrial revolution in an economic frame less regulated. Through the end of the 18 century, and the beginning of the 19 century, slowly the fundamentals of the modern right to work were created, because some of the most aggressive of work conditions was continuously improved through legislation. This was achieved broadly through the pressure of the social reformers.¹

About the historical development of the right to work in Albania, a big step was the Civil Code of the Albanian Monarchy of 1929, which dedicated 10 articles to the work contract, *which were*

¹ <https://www.britannica.com/topic/labour-law>

*considered juridical relations through the contractor (employee) on one side and the employee on the other side, as a civil juridical relationship. While, the work relationships of the internal personnel of social organs were called administrative juridical relations. This code was created while having as a model the western legislation, but the dispositions about work safety, social security or work discipline were missing.*²

After World War II, the first Albanian law that regulated the right to work was approved, concretely, the Article no. 82, 09.07.1945 “About the time of service, safety and work retribution.” This law, about the disapprovements related to work relations, were considered as administrative disapproval, and as such were dealt with in administrative ways.³ However, even though the disciplinary responsibility has not handled some of the responsibilities, the law contains some articles which sanctioned some of the obligations of the employer, according to the non-exclusion of the employees without a reason and agreement with the syndicate.

For the first time, a regulation about the disciplinary responsibility was found in the Code of Work of 1947, approved by the Popular Assembly, specifically about the relation of work, as a result of breaking work obligations.⁴ The Code was formed by 17 chapters and 170 dispositions. It may be said that this Code included a more complete legal framework, about the work contract, its annulment and the competent organs that examine work related disagreements. Concretely, these organs were commissions of conflicts of evaluation and courts, which had to examine disapprovals that came from following work contracts. In the case that the Commissions could not find a solution to the case, the parts would go to Work Court in a sub-prefecture standing, which functioned as a first degree court and later to a prefecture standing. The second important step in the development of work relations is the approval of the law no.2550, dt. 03. 05. 1956 (Work Code of Popular Republic of Albania). It was formed by 13 chapters and 246 articles, which handles work discipline. Concretely, it specifies the general duties of administrate and employees and internal personnel, the disciplinary measures given in the case of breaking work discipline, as well as the procedure of giving a measure. In the Code, were even handled the disciplinary punishments, which were given as a policy view that existed at the time, inspired by Marxism. Between the disciplinary measures given in the Code were: Counseling, Attention with a note in biography, Note with a warning, transfer to another job, that was paid less up to three months, at the same enterprise, institution or organization, reduction of the category or position, in the same or in a different enterprise, institution of organization, dismissal.

Before the disciplinary measure was given, the employee had the right to express himself, even against the decision made, could make a complaint to the commission of reconciliation of the popular court or in higher instances. Apart from treating disciplinary measures, for the first time in this code predicted giving decorations for great achievements, an aspect that aimed to encourage the employees to do better work in different fields.

² Civil Code of Albanian Monarchy, 1929.

³ <http://www.uamd.edu.al/new/wp-content/uploads/2013/01/Perfundimi-i-marredhenies-se-punes.pdf>

⁴ Ilir Rusi, “Disciplinary responsibility of juridical relations to work” (Monografi Shkencore)

The new Code of Work of dt. 12. 03. 1966, not only didn't handle work discipline, but did not even bring novelty in the field of work relations termination, which was completed by the Decret No. 5122 dt. 04. 12. 1973, which brought new elements about the probationary employment, termination of employment and effects related to it. Meanwhile, work discipline was improved by the Minister Council No. 34 dt 08. 03. 1971 "About the internal order of work for the employees and employers", which specified the obligations for both parts. Concretely, the administration of the enterprise, institution or organization, were obligated to take necessary educative and technical-organizational measures for creating a project-plan, create the conditions for the improvement of the work rendement, generalize and expand the experience of the best, updated methods, movements for inventions and rationalization and fight procrastination, ensure respect of the discipline and regulations of technical security and hygiene- sanitary of work, etc.⁵ While the employee's obligation is to do the job with integrity; respect work discipline; strictly follow orders and directions given and finish in time and carefully the job given etc. In case of uninterrupted work the employee should not leave the workplace without being substituted. If the employee does not show up the responsible should be immediately notified, which will take measures for the substitution.

In case the employee breaks the duties predicted in points 1, 2 and 3 of this decision, when the act is not a crime, these disciplinary measures were given in an educational character: reproach, note, note with a warning, lower position or transferred to another position for up to six months in the same enterprise, institution or organization, dismissal. In order to choose the right educational disciplinary measure it was taken in consideration the scale of violation of discipline, the circumstances in which it was done, previous behaviour of the employee, attitude toward work, society, etc. The disciplinary measures with an educational character were given in administrations and enterprises, institutions or organizations where the employee worked, while for the ones that had the right to hire or dismiss, the measures were given by their highest organs. The employee had the right to make a complaint against the decision made about the educational disciplinary measure to the organization of professional union within 7 days which made the final decision.

The disciplinary measures with an educational character were redeemed if within a year from the day of the measure the employee did not get another disciplinary measure. The measure could be cleared even before that by the organ that gave it, with the request of the interested person or the proposal of the professional organization, when noticed that the employee had improved. Different by the Code of 1956, we can say that the disciplinary measures had an educational character and at the time no written warnings with a note in biography or transfer to a less paid job position was given.⁶

The fourth Code of Work, dt 01.10. 1980, had a core of ideology and it was reflected in every chapter. Work discipline was fixed on chapter nine where in article 80, the administration of the enterprise or social organization had the duty to take measures to fulfill the state plan, to better

⁵ Ilir Rusi, Disciplinary responsibility in juridical relations or work (Monografi Shkencore), fq. 16

⁶ Ilir Rusi, Pergjegjesia disiplinore ne marredheniet juridike te punes (Monografi Shkencore), fq. 16

protect and administer the socialist property to fulfill the duties in the field of defence, socialist organization of work, education of the employees and raising qualifications, reinforce work discipline, rules of technical security and hygiene at work, knowing, enforcing and following the socialist legality, as well as finding solutions to the requests and complains of employees. While in article 82, were specified the obligations of the employee, who should work with integrity to fulfill and overpass the quantity, quality, type, assortment planned to have a better rendement at work, lower the costs, saving the socialist property, use the novelties of science and technic, for inventions and rationalization is honored according to the special dispositions with different moral and material stimuli, giving priority to moral stimuli. The employee in case of unfulfillment of duties or certain acts done at work, that affect the moral-political figure first is criticized and helped by the group, but when it is not the case, these measures with an educational character are taken by the administration of the enterprise, institution or organization: counseling, reproach, note with a warning, lower position or transferred to another position for up to six months in the same enterprise, institution or organization, in rare cases even in another enterprise, institution or social organization within the same region, through the Executive committee, dismissal.⁷

Meaning of institution of disciplinary responsibility

The functioning of work relations is made possible thanks to a variety of regulations, which both parts the employee and employer should follow. Concretely, this part is regulated by *the disciplinary right which includes the total of juridical norms that put an internal order at work, enterprise, institution as well as measures that regulate the respect of these norms*. So, in these juridical norms, is specified the work duties of the employee and the administration of the enterprise, the stimuli for exemplary work and the responsibility in case the duties are not done.⁸ The disciplinary right has a conscientious and voluntary character that affects the growth of work rendement, quality of production and enforcement of financial discipline as an objective necessity.

According to the Albanian doctrine about the right to work the discipline of work is considered:

1. as one of the fundamental principles of the right to work, so one of the basic theses from which the right to work is guided.
2. as a separate institution of the right to work.
3. as an element of democratic juridical relations of work, that expresses the obligation of discipline at work while respecting the contract or other organizational juridical forms in which a work relation begins.⁹

As a consequence of these juridical norms, comes what is called the disciplinary responsibility, which in reality is the responsibility of the employee toward the violation of the concrete obligations that is being charged by the juridical relation of work of which according to a special procedure the competent organ appointed for the act gives disciplinary measures.

⁷ Work Code of 1980. <http://www.qbz.gov.al/doc.jsp?doc=docs/Ligj%20Nr%206200%20Dat%C3%AB%2028-06-1980.htm>

⁸ Prof.dr. Paskal Haxhi “The right to work” (Pt.II), Tirana 1984, fq.103

⁹ Prof. Kudret Cela “E drejta e Punes”, fq 322.

So, two are the elements that make the disciplinary responsibility: disciplinary violation and following the disciplinary sanctions. By disciplinary violation of the work relation we understand the act or non act voluntarily in opposition to the specified obligations of the discipline at work. As noticed, even not acting is a violation because it may bring disciplinary violations, which means a passive state of the employee. In order for the disciplinary act to exist, the act or non act of the employee should bring a certain effect and between the action and the effect there should be a relation that is called consequence.¹⁰ The disciplinary act may be defined as an act that exists as a consequence of the behaviour of a specific work discipline, on the side of the person that has the status of employee. Part of the disciplinary responsibility are even the disciplinary measures that make the sanction that is given to the violator of the disciplinary act, by the competent organ. Giving a disciplinary measure often becomes necessary, when the behaviour of the employee affects badly in its work or that of the other colleagues. In general, by making the workplace less effective, harmonic or productive is a reason enough for an employer to begin the disciplinary procedures.¹¹ The disciplinary measures should be predicted in the law or other acts as collective contracts or personal contracts or work.

The heavy disciplinary measures are given when after the meetings, the performance of the employee is not improved. Generally it is recommended that the employer should respect the confidentiality of the employees that have been given disciplinary measures. While in the case of “civil internal personnel” it will be handled more as follows. What should be specified, is that an internal personnel is responsible toward the state and society in the process of activities done in civil service. So, by not following the duties predicted by the law or unfair acts might be a cause of disciplinary measures against him.

As mentioned above, one of the disciplinary measures is dismissal. So, the disciplinary responsibility is one of the factors that cause the termination of a juridical work relation. This comes as a consequence or violation of duties prescribed in the contract or law, according to which the employee has accepted the responsibility to fulfill the given duties, unfulfillment of which causes this heavy consequence. However, in order for the juridical relation to end, the juridical facts and effects should be verified. The employer makes a written order in which he notifies the dismissal.¹²

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¹⁰ Ilir Rusi, Pergjegjesia disiplinore ne marredheniet juridike te punes (Monografi Shkencore), fq. 31.

¹¹ <https://www.thebalance.com/progressive-discipline-warning-form-introduction-1917906>

¹² Ilir Rusi, Pergjegjesia disiplinore ne marredheniet juridike te punes (Monografi Shkencore), pg.96