THE LIABILITY OF THE PHD CANDIDATE AND OF THE MEMBERS OF THE DOCTORATE PUBLIC SUSTENANCE COMMISSION FOR INFRINGEMENTS OF DEONTOLOGY RULES IN THE ACTIVITY OF THESIS ELABORATION

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Abstract

The present paper proposes an analysis of the liability of PhD candidates and members of the doctorate commission for infringements of the deontology and ethics of the elaboration of a PhD thesis.

In last years, Romania toughened the control over the compliance of PhD researchers and the professors monitoring this compliance with the rules of deontology and ethics of scientific research accomplished in the process of formulating the doctorate thesis. These legal standards are regulated mainly by Law on National Education no. 1/2011 and Government Decision no. 681/2011for the approval of the Code on PhD Studies.

This kind of control passes many filters inside the university organising the doctoral studies but also an extern evaluation conceived in two rounds, one before the conferral of the PhD title and another afterwards, by the National Council on Attestation of Titles, Diplomas and University Certificates (CNATDCU).

The form of liability of PhD candidates when infringing deontology rules in the process of elaboration of doctorate thesis is mainly disciplinary, though in certain cases could be based upon non-compliance with the contractual obligations. The liability of the doctorate commission members is predominantly administrative-disciplinary and in some specific situations based on the law of torts.

The study compares the Romanian model of regulation of the matter with the legal provisions on the same topic from France, Italy and the United Kingdom. Reference are made on the role of the state organisms on research evaluation, such as CNATDCU (in Romania), Hcéres (in France), UKRIO (in the United Kingdom) and ANVUR (in Italy).

Keywords: *deontology and ethics of doctoral scientific research, integrity of research, liability of the PhD candidate for deontology and ethics infringements, liability of the doctorate commission members, administrative-disciplinary liability, contracts, law of torts, thesis evaluation.*

1. Introduction

In the process of analysing the liability for deontology of doctoral research infringements in the process of elaboration of the PhD thesis it is necessary to start from the scope of the doctorate scientific studies, as it is defined by the provisions of art. 158 par. (6) (a) of the Law on National Education no. 1/2011[1], respectively the production of original scientific knowledge, institutionally relevant, on the basis of scientific methods. Therefore, the fundamental elements of the scope of thesis are the scientific originality and the use of scientific methods with a view to produce innovatory knowledge.

The use of scientific methods of research presupposes ipso facto the attendance of deontology and ethics norms which forms the integrity in research. So, in our opinion, there couldn't constitute a valid method of scientific research the one which doesn't respect deontology and ethics (such as if plagiarism, the falsifying of scientific data and the elimination of results that contradict the hypothesis which must be proved through research are used).

In the following study we shall use the notion of ethics of research in the strictest term, even when the rules which regulate it are not legally sanctioned, in contrast with the notion of deontology, which are based upon legal norms which are raised from ethics and moral considerations. Another notion that is used extensively in this area of reflection is that of the integrity of scientific research, representing a cumulus of deontology and ethics. The Romanian laws regards ethics of research as a legally sanctioned domain, as we will see bellow in this study, but that fact does not change however the primary meaning of expression of the moral imperative, of Kantian origin, deprived however of the coercion provided by positive law.

Legal liability could be defined as the legal relation who constitutes itself as a consequence of committing an illicit fact, which represents an act forbidden by a legal norm, action or inaction constituting in the same time a trespass of a legal obligation.

For determining the content of a legal liability relation who appears as a consequence of infringing deontology rules in scientific research conducing to elaboration of the PhD thesis, as regulated for the moment by Law no. 1/2011 and Government Decision no. 681/2011, we shall identify first the legal obligations whose noncompliance is sanctioned by the two mentioned pieces of law.

Legal nature of liability is dependent on the one of the infringed obligation, on the quality of the subject

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of rights and correlative obligations implicated in the liability relation and on the form of guilt demanded by law for engendering liability, as we will see below.

2. The obligation of a PhD candidate of respect for deontology rules in elaborating the doctorate thesis

The liability of the PhD candidate in the context illustrated above in the study's title is based upon his or her obligation to respect deontology rules. By this term we understand, primarily, those norms which set off the interdiction of committing the acts which are defined as infringement of academic ethics and deontology by the Code on university's deontology and ethics, referred by art. 306 (3) of Law no. 1/2011 on national education, code on whose elaboration has contributed the commission on academic ethics, proposed to the university's senate for adoption and then incorporated in the University's Chart.

In the same context, the commission on academic ethics and deontology is habilitated, by dispositions of art. 306 (3) (d) of the same law to exercise the attribution set out by the Law no. 206 from 27th of May 2004 regarding the good practices in scientific research, technologic development and innovation activity[2].

According to provisions of art. 20 from the Academic Doctorate Studies Code, approved by Government Decision no. 681 from 29th of June 2011[3] :

"(1) The doctoral school together with the doctorate director have the obligation to inform the PhD candidate about the scientific, professional and university ethics and to verify the respect for those, including: a.) the respect of deontological provisions on the whole realization of doctoral research; b.) the respect of deontological provisions in the writing of the thesis.

(2) The doctoral school and IOUSD[4] take measures on prevention and sanctioning of infringements of norms of scientific, professional and university ethics, according to the code on professional ethics and deontology of the organization.

(3) In the case of academic frauds, of certain infringements of university's ethics or of certain infringements of rules on good conduct in scientific research, including plagiarism, the PhD candidate and/or the director of thesis are liable in the law's terms."

We notice that the infringements of deontological rules in the elaboration of doctorate thesis, comprising both activities set out by points a.) and b.) of article 20 paragraph (1), above cited, could be subject to sanctions applied by the doctoral school and IOUSD. The last paragraph of art. 20 of the Academic Doctorate Studies Code sets out expressly the liability of the PhD candidate and the doctorate director for academic frauds, infringements of university's ethics and infringements of good practices in scientific research, including plagiarism.

This legal text, which applies also to the liability for deontology infringements in the activity of thesis elaboration, identifies also another category of acts which conduces to engaging of this type of liability, namely the infringement of norms regarding the good practices in scientific research, provided by Law no. 206/2004. On this respect, the mentioned text corroborates to the one in art. 306 par. (3) of Law no. 1/2011, to which we referred above.

Art. 2 and art. 2^1 of Law no. 206/2004 as amended to the present date sets out the acts which constitutes infringements to the good practices in scientific research activity which could be committed by the PhD candidate in the activity of realization of the thesis, among others:

- fabrication of results and data and their presentation as experimental data, data obtained by calculus and computer numeric simulation or as data or results obtained through analytic calculations or deductive reasoning;
- falsification of experimental data, of data obtained by calculus and computer numeric simulation or as data or results obtained through analytic calculations or deductive reasoning;
- plagiarism;
- auto plagiarism;
- unauthorized publication of certain results, hypothesis, theories or scientific methods unpublished yet.

The law defines the main concepts used in text.

Thus, art. 4 par. (1) (d) sets out that plagiarism means "*presentation in a written work or an oral communication, including in digital format, of texts, ideas, demonstrations, data, hypotheses, theories, results or scientific methods extracted from written works, including those in digital format, belonging to other authors, without mentioning that and without sending to the original sources" and art. (4) (d) defines auto plagiarism as "presentation in a written work or an oral communication, including in digital format, of texts, ideas, demonstrations, data, hypotheses, theories, results or scientific methods extracted from written works, including those in digital format, belonging to the same author or authors, without mentioning that and without sending to the original sources*".

Plagiarism and auto plagiarism could be found as such only in Law no. 206/2004 on good practices in scientific research, technologic development and innovation. Law no. 8/1996 regarding the author's rights and connected rights doesn't mention plagiarism or auto plagiarism as forms of infringement of rights regulated by that law because: "*Law no. 8/1996, art. 9 (a) excludes clearly from the protection ideas, theories,*

[2] Published in the Official Journal of Romania, part I, no. 505 from 4th of June 2004.
[3] Published in the Official Journal of Romania, part I, no. 551 from 3rd of august 2011, amended by Government Decision no. 134/2016.
[4] IOUSD = acronym with the meaning Institution Organizing University Studies of Doctorate;

concepts, discoveries and inventions contained in a work. As all those are representing the work's scientific originality, we could sustain only the second opinion which says that the protection's object in the case of a scientific work is the form exposing the result of the author's scientific research activity. But, in scientific research should be respected the rules established by Law no. 206/2004 on good practices in scientific research, technologic development and innovation activity, which by art. 4 confers protection to ideas too"[5].

According to art. 1 par. (4) of Law no. 206/2004, PhD candidates doesn't appear as addressee of the law, excepting perhaps the situation when they receive public funding for their research. However, we express the opinion that practicing forbidden acts constitutes an infringement of deontology rules. This conclusion is based upon the Law on education texts regarding the doctoral activity, among them, art. 306 referred before in the study and the direct dispositions aiming the same, such as those of art. 20 of the Academic Doctorate Studies Code also referred to above.

Thus, in the area of norms regulating good practices in scientific research (the activity of elaboration of the PhD thesis being such an activity), there are legal provisions included in Law on National Education, in Academic Doctorate Studies Code and in Law no. 206/2004, which refers to the other two mentioned laws, constructing a complex legal framework that stands at the basis of the liability for infringements of university and scientific research deontology. Regarding this, we notice also the provisions of art. 4 par. (2) from Law no. 206/2004, according to those "*gross infringements of good practices in research and development activity are those set out by art. 310 of Law no.1/2011*" and this last article says "*gross infringements of good practices in scientific research and academic activity are: a.) the plagiarism of results and publications of other authors; b.) fabrication of results or substitution of results with fictive data; c.) using fake information in demands for grants and funding*".

Art. 65 of the Academic Doctorate Studies Code establishes the principle of solidarity in liability between the PhD candidate and the director of the thesis for "*the respect of quality standards and professional ethics, including the assurance of content originality, as regulated by art. 170 of the Law no. 1/2011*".

More, in conformity with the provisions of art. 9 (h) of "*The evaluation methodology of PhD thesis*", constituting Annex no. 1 of Minister of National Education and Scientific Research Order no. 3482/2016 from 24th of March 2016 regarding the approval of the Regulation of establishment and functioning of the National Council on Attestation of Titles, Diplomas and Academic Certificates[6], the doctorate case should contain "*a scanned copy of the declaration signed by both by the PhD candidate and the director of thesis regarding the assuming of liability for the content originality of the doctorate thesis and for the conformity with the quality and professional ethics standards established by art. 143 par. (4) and art. 170 from the Law on National Education no. 1/2011, amended to date and art. 65 par. (5) – (7) from the Government Decision no. 681/2011, amended to date*". The necessity of such a declaration highlights once more the legal obligation of the PhD candidate, under the scientific supervision of the director of thesis, to respect the ethics and deontology standards in the doctoral scientific research activity. Moreover, this declaration opens the way to possible criminal liability for lying in an official statement committed by the PhD student in the situation where he or she perpetrated acts of infringement of scientific research ethics in the doctoral studies.

As we proved above, the obligation of the PhD candidate to follow the rules of deontology in the activity of thesis elaboration is established ex legge, but also through the internal regulations of the doctoral school or of IOUSD, mainly by the Code on academic ethics and deontology.

3. The engaging of PhD candidate's liability for violation of deontology rules in the elaboration if thesis activity

The director of the thesis, responsible together with the PhD candidate for the quality and respect of ethics and deontology in scientific research conducing to the thesis, is the first one called upon by the law to take measures in the situation of infringements of deontology rules by the candidate. He or she has the legal possibility to seize the ethics commission when the acts perpetrated by the PhD candidate take the form of a specific violation set out by law or by the University's Code of Ethics and Deontology. Moreover, the director of thesis, as any member of the guidance commission, has the choice to oppose the official deposal and the public sustenance of the thesis, according to art. 67 par. (2) (c) from the Academic Doctorate Studies Code.

The members of the public sustenance of the thesis have the obligation, based on the provisions of art. 68 par. (2) of the Academic Doctorate Studies Code:" *a.) to seize the ethics commission of the university in which the PhD student is matriculated and the ethics commission of the university in which the director of thesis is an employee for the investigation and finalizing of the case, including by the expulsion of the PhD student, according to art. 306-310, art. 318-322 of Law no. 1/2011 and to the provisions of Law no. 206/2004 on good practices in scientific research, technologic development and innovation, amended to*

[5] V. Ros, Dreptul proprietății intelectuale. Vol. I. Drepturile de autor, drepturile conexe și drepturile sui-generis, Editura C. H. Beck, București, 2016, p. 226, my translation.

[6] Published in the Official Journal of Romania, part I, no. 248 from 4th of April 2016.

date; b.) to notify the infringements to all members of the doctorate commission and to propose the rating « unsatisfactory»" when "*identifying in the framework of thesis evaluation prior to the public sustenance or in the sustenance time of gross infringements of good practices in scientific research and academic activity, including plagiarism of the results or publications of other authors, fabrication of results or substitution of results by fictive data*".

Each person has the legal possibility to claim the infringement of deontology rules in the activity of elaboration of a doctorate thesis, following mainly the disclosure of the thesis by depositing one exemplary of it at the IOUSD library and in the case when the author doesn't plan to publish the thesis, by posting it on an electronic platform, specially conceived by the Ministry of National Education and Scientific research with this scope.

Another situation of engaging PhD candidate liability for the infringements of deontology in the thesis is the one in which the infringement was detected by CNATDCU[7] following a complaint or ex officio, according to the provision set pot by art. 68 par. (6) and art. 69 par. (5) from the Academic Doctorate Studies Code.

4. The legal nature of the liability of PhD candidate for infringement of deontology rules in the elaboration of thesis

As we have seen before, the regulation of the acts which engender this kind of liability is realized by the law, so the infringement of deontology rules by the PhD candidate when elaborating the thesis represents an infringement of the law; however, this kind of infringement could be detrimental to the doctorate contract too. We have to keep in mind also that the PhD candidate isn't necessary employed on a contract basis by an organization which takes part of an IOUSD or constitutes an IOUSD.

Bearing in mind all these consideration, we establish that the legal liability that we referred to is of administrative nature. This isn't a contractual liability from the point of view of the PhD candidate because it has as legal basis mainly the law itself, even so there could be a repetition of this provisions in the doctoral contract. In the same time, there couldn't be a disciplinary liability because such a liability characterizes an employment relation, or the doctoral activity and the elaboration of the thesis are not realized on an employment basis. The possible employment relation binding the candidate to an IOUSD does not have as an object the thesis elaboration, but a teaching activity subsidiary to the doctoral studies.

For infringements of good practices in the scientific research, technologic development and innovation activities, Law no. 206/2004, in art. 2^1 par. (6) sets out that the nature of liability is "*ethical*". Subject of this responsibility could be also the PhD candidate. We appreciate that this form of liability represents a particular form of administrative liability.

Separately of the above qualification, when deontology infringements are a result of responsibility situations derived from the doctoral studies contract and could be sanctioned only by the ethics commission of a doctoral school or of a university part of an IOUSD or being an IOUSD because they are not established through the law, we appreciate that the liability of the PhD student could be, exceptionally, of civil contractual nature.

5. Sanctions applicable to the PhD student for infringement of deontology in the elaboration of the thesis and the consequences of liability

According to art. 319 of the Law on National Education no. 1/2011, "*The sanctions there could be applied by the university ethics commission to students and PhD candidates for university ethics infringements are: a.) written reprimand; b.) expulsion; c.) other sanctions set out by the University Code on Ethics and Deontology*."

Another sanction for deontology infringements perpetrated by a PhD candidate is the refusal of the accept for public sustenance of the thesis, according to art. 67 par. (3) of the Academic Doctorate Studies Code, which stands: "*Following identification of infringements of good practices in research and development, including plagiarism of results and publication of other authors, fabrication of results or substituting results with fictive data, in the framework of thesis evaluation by the director of the thesis or by the consulting commission, the approval of public sustenance of thesis shall be denied*".

When the doctorate public sustenance commission identifies infringements of deontology in the elaboration of the thesis, besides the notification of the ethics commission, there is the possibility to note the thesis as "*unsatisfactory*" and to show the elements of content that should be revised or completed in the thesis (including those that are the product of infringement of deontology), also the possibility to demand a new public sustenance of the thesis, followed by a new eventual "*unsatisfactory*" note, which will automatically conduce to denial of the doctorate title and expulsion of the PhD student (art. 68 par. 4 of the Academic Doctorate Studies Code).

Also, another possible sanction could be the invalidation of the thesis by CNATDCU whenever the conditions established by art. 68 par. (6) of the Academic Doctorate Studies Code: "*In the case of detection of misconduct in professional ethics, including plagiarism, by CNATDCU members of an*

[7] CNATDCU = acronym used for the National Council of Attestation of Titles, Diplomas and University Certificates, which is part of the Ministry of National Education and Scientific Research.

evaluation commission of a thesis, these members should invalidate the thesis, communicate the conclusions to the other members of the evaluation commission and should seize the General Council of CNATDCU for the analysis of director of thesis responsibility or of the doctoral school liability and for the application of art.69 par. (5)".

In case that CNATDCU is seized by an interested person with allegation of deontology infringement after the conferral of the PhD title, the General Council of CNATDCU shall ask the point of view of IOUSD in the case. In the situation where IOUSD confirms the infringements, a decision regarding the proposal of the withdrawal of the PhD title, signed by rector and legally advised by the university shall be send to CNATDCU.

The PhD title shall be withdrawn from the one which obtained it by infringing the deontology, when this fact is detected by the General Council of CNATDCU, at the proposal by its President, by the Ministry of National Education and Scientific Research. After evaluation of the director of thesis guilt or of the doctorate school liability, the same Ministry, at CNATDCU's President proposal, could apply sanctions such as the withdrawal of the quality of director of thesis and the withdrawal of the accreditation of the doctoral school (according to art. 69 par. 5 from the Academic Doctorate Studies Code.

Also, art. 170 par. (1) from Law no. 1/2011 on National Education sets out that "*In case of infringements of quality or professional ethics standards, the Ministry of National Education, on the basis of external evaluation reports, done by CNATDC, the National Council on Scientific Research, the Ethics and University Management Council or the National Council of Scientific Research, Technologic Development and Innovation Ethics could undertake the next sanctions, alternatively or simultaneous: a.) the withdrawal of the quality of director of thesis; b.) the withdrawal of PhD title; c.) the withdrawal of the accreditation of the doctoral school, which measure is implying also the withdrawal of the doctoral school right to organize admission examination for matriculation of new PhD candidates*".

In conclusion, we appreciate that the liability of the PhD candidate for infringements of the deontology rules in the process of elaboration of the thesis, as set out by Law no. 1/2011 and Government Decision no. 681/2011 is an administrative liability, which attracts mainly the sanction of expulsion, the one of the withdrawal of PhD title, but could generate for other persons the withdrawal of the quality of director of thesis, or other sanctions (based on an administrative liability) and the withdrawal of the accreditation of the doctoral school.

6. The liability of the members of public sustenance commission for the deontology infringements perpetrated by the candidate in the elaboration of the thesis

The public sustenance commission is composed by: the president, as representative of the IOUSD, the director of thesis and at least three official referends, specialists on the thesis domain. At least two of them should be external of the IOUSD.

In the framework of paragraph II.) of this article we showed that the members of the public sustenance commission have the obligation, according to art. 68 par. (2) of the Academic Doctorate Studies Code: " *a.) to seize the ethics commission of the university in which the PhD student is matriculated and the ethics commission of the university in which the director of thesis is an employee for the investigation and finalizing of the case, including by the expulsion of the PhD student, according to art. 306-310, art. 318-322 of Law no. 1/2011 and to the provisions of Law no. 206/2004 on good practices in scientific research, technologic development and innovation, amended to date; b.) to notify the infringements to all members of the doctorate commission and to propose the rating « unsatisfactory»*" when "*identifying in the framework of thesis evaluation prior to the public sustenance or in the sustenance time of gross infringements of good practices in scientific research and academic activity, including plagiarism of the results or publications of other authors, fabrication of results or substitution of results by fictive data*".

According to art. 68 par. (4) of the Academic Doctorate Studies Code, when the doctorate public sustenance commission identifies infringements of deontology in the elaboration of the thesis, besides the notification of the ethics commission, there is the possibility to note the thesis as "*unsatisfactory*" and to show the elements of content that should be revised or completed in the thesis (including those that are the product of infringement of deontology), also the possibility to demand a new public sustenance of the thesis, followed by a new eventual "*unsatisfactory*" note, which will automatically conduce to denial of the doctorate title and expulsion of the PhD student.

Thus, we appreciate that the obligation of the public sustenance commission regarding the infringement of deontological rules by the candidate in the elaboration of the thesis are the following:

1. to abstain from participating to the works of the commission when a conflict of interest appears;
2. to discover the infringements – this constitutes an obligation of prudence for the commission's members; the failure to detect infringements of research deontology when this activity requires extraordinary and rare abilities, even compared to the very high scientific standards specific to the members of the commission could not entail their liability;
3. to seize the ethics commission of the university where the PhD candidate is matriculated and the

ethics commission of the university where the director of thesis is employed;
4. to notify the findings to all the members of the commission;
5. to propose the note "*unsatisfactory*" for the thesis;
6. to publicly present the elements of the thesis which are the product of deontology infringements and demand for their reformation or completion;
7. to note "*unsatisfactory*" the thesis at the second sustenance if the consequences of deontology infringements were not eliminated; this event shall entail automatically the expulsion of the candidate and the refusal of conferral of the title.

The infringement of any of the above obligations attracts the commission member liability.

Concerning the problem of establishing the liability's nature of the commission member who did not abstain in case of conflict of interest, we appreciate that this is an administrative liability, generated by the perpetration of the transgression set out in art. 2^1 par. (3) (a) of Law no. 206/2004, consisting in "*non-disclosure of the conflict of interest situations in elaboration or participation in evaluations*".

Regarding the liability in case of non-completion of obligation stated in point 2.), we express the opinion that the liability exists only in the situation of intent or gross negligence in evaluation because, as we state before, the obligation of ethics infringement detection could not be absolute neither operant beyond a reasonable level of expectations.

Taking in consideration all mentions made above, if the deontology infringement non-detection was caused by intent or gross negligence from the part of the commission members, this may attract a form of tort liability aiming to the repair of the damages caused to IOUSD, if such damages were caused.

Because nor the Law on national education no. 1/2011 neither the Academic Doctorate Studies Code doesn't provide sanctions for non-completion of point 3.) – 7.) obligations, we distinguish between the following situations:

a) If the infringement of the obligation constitutes itself a transgression of ethics rules or of good practices in scientific research, the liability shall be administrative as legal nature.

This is the case, beyond conflict of interest, of the obstruction of an ethics committee or analysis commission activity (art. 2^1 par. (6) (e) of Law no. 206/2004), of the infringements of legal provisions aiming to assure the respect for good practices norms in scientific research (letter f. of the same article) or of the knowledge of the perpetration by others of the infringements and refusal to seize the ethics commission (letter b. of the same article).

For such infringements, the management or the ethics commission of the university or of the scientific research institute where the commission member is employed shall apply to him/her one or more of the sanctions set out in art. 11^1 of Law no. 206/2004, the most appropriate for such situations being: written reprimand or suspension for one to ten years of the right to participate in an examination commission. In the situation where the doctorate commission member is employed of a university or scientific research institute, some of the mentioned deeds could entail a disciplinary liability under the labor law, producing the consequence of a disciplinary sanction.

b) If the infringement of the obligation constitutes itself a transgression of ethics rules or of good practices in scientific research, the liability shall be established under the law of torts if a damage has been caused to the doctoral school or to IOUSD.

As we have already seen, in case of infringement of ethics, including plagiarism, the Ministry of National Education, on the proposal made by CNATDCU, could undertake the sanction of the withdrawal of the doctoral school's accreditation, which measure is implying also the withdrawal of the doctoral school right to organize admission examination for matriculation of new PhD candidates. Such a measure is highly damageable to the university morally and materially. In the situation where that could be established a causality nexus between the damages and the perpetration with intent or by negligence of a tort by a doctorate commission member, a civil liability based on the law of torts could be entailed. The sanction for such a deed consists in the recuperation of caused damages.

For infringements of norms on good practices in scientific research, technologic development and innovation, Law no. 206/2004, art. 21 par. (6) sets out an "*ethic liability*". The subjects of such a liability could also be the doctorate commission members. We appreciate that this liability form represents a particular typology of administrative liability, precisely of an administrative-disciplinary liability.

In synthesis, the liability of doctorate commission members for infringements of deontology rules by PhD candidates in the activity of thesis elaboration, as set out by Law no. 1/2011 and Government Decision no. 68/2001 is mainly of an administrative nature, namely administrative-disciplinary, as the doctrine of administrative law has called it[8]. Separately, it is possible to entail a liability based on the law of torts where the acts caused a material or moral damage to the doctoral school or to IOUSD. Both liabilities could be cumulated.

Another consequence of the PhD candidate's liability or of a doctorate commission member who perpetrated serious violation to the rules of scientific research and university's activity consists in the interdiction of occupying academic and scientific positions, established by art. 325 of Law no. 1/2011 on national education.

[8] Concerning the administrative-disciplinary liability, see V. Vedinaș, Drept administrativ, Ediția a X-a, revăzută și actualizată, Universul Juridic, București, 2017, capitolul XXV – Răspunderea în dreptul administrativ. Răspunderea disciplinară., § 6 – Răspunderea administrativ-disciplinară, p. 533 și urm.

7. Comparative law elements

The principal variable on which depends the liability for ethics and deontology infringements in scientific research in different legal systems is the level of real autonomy conferred to universities. This principle is universally claimed in the western world, but however it has a concrete content more or less solid.

The degree of de facto academic autonomy is influencing the regulatory mechanisms of the liability for infringement of scientific research ethics and deontology, meaning that to a real autonomy of the universities is corresponding a maximum regulation and procedure transfer in the area that we are referring to, with very few possibilities of state centralized control.

In such an ideal model, the infringements of ethics and deontology in scientific research are regulated exclusively through academic charts documents, realized upon good practices models, proposed by state agencies, but also by NGO's and academic think-tanks. Such models are not imperative, representing more of a kind of soft law.

Observing the positive law of France, Italy and the United Kingdom of Great Britain and Northern Ireland, we notice that the law is rather minimal in establishing the ethics and deontology rules, leaving a very large space to universities and public or private research institutes for regulating themselves ethics and deontology, in conformity with the universal standards.

7.1. Italian law on university professor's liability for ethics and deontology of research infringements – a relevant example of positive re-evaluation of academic autonomy

The most important piece of Italian legislation in this domain is Law no. 240 from 30 December 2010 on norms regarding the organizing of universities, the statute of academic personnel and the recruitment of the personnel and for Government empowerment for improving the quality and efficiency of the academic system, named also Gelmini Law[9], after the name of the Italian Minister of education from Berlusconi's Government who proposed the law to Parliament, Mariastella Gemini.

This law brought to major novelties from the point of view of sanctioning ethics and deontology transgressions of academic personnel, including directors of thesis and members of public sustenance commissions, but also for PhD candidates.

For understanding this legislative reform it should be said that academic personnel in Italy has the basic statute of a public servant, thus it applies to the members of this professional corpus all disciplinary regulation generally applicable to all public servants, which, initially were regulated through collective employment conventions (traditionally containing a part called "disciplinary code"), and nowadays more and more regulated through legal dispositions pertaining to administrative law, having a sectorial character[10].

The first novelty mentioned above consists in the regulation of substantial law which assures the basis for ethics and deontological liability solely by each university's ethics code, without the existence of a generic law on ethics norms applicable in all situations[11]. Thus, art. 2 par. (4) of Law no. 240/2010 contains the obligation for universities to adopt a code of ethics in a maximum of 180 days from the moment of the application of the law. The ethics code should be applicable to the whole academic community, meaning academic teaching stuff, administrative personnel, students and PhD candidates. This ethics code should establish also the interdiction of any form of discrimination or abuse, regulation of conflict of interest and infringement of intellectual property. The same article of the law establishes that the procedure for detecting, proving and application of sanction should be in the competence of the university's Senate, at the rector's proposal.

The second notable type of provisions in the domain of ethics liability is the one set out by art. 10 of Law no. 240/2010 about disciplinary competence. These dispositions are applicable in the case of infringement by university professors, including directors of thesis and members of the public sustenance commission of the thesis of the rules provided for by collective employment conventions or administrative law provisions. If certain obligations set out in the ethics academic codes contains disciplinary sanctions provided also by laws and collective employment conventions, the infringements should be submitted to art. 10 of Law no. 240/2010 and not to art. 2 par. (4) of the same law. There is an area where ethics illicit intersects disciplinary illicit, becoming under the law only disciplinary illicit.

Thus, according to art. 10 of the law, in each university should function a disciplinary college, formed entirely by university professors and scientific researchers based in that university. The disciplinary proceedings are based on the justice among peers' principle and referred only to the gross infringements which have the potential to entail disciplinary consequences. The disciplinary college could be seized only by the university's rector. The investigated person

[9] Legge 30 dicembre 2010, n.240 Norme in materia di organizzazione delle universita`, di personale accademico e reclutamento, nonche` delega al Governo per incentivare la qualita` e l' efficienza del sistema universitario, Gazzetta Ufficiale della Republica Italiana, Serie Generale n. 10 del 14-01-2011-Suppl. Ordinario n. 11, my own translation.

[10] B.G. Mattarella, La responsabilità disciplinare dei docenti universitari dopo la legge Gelmini: profili sostanziali, legal on-line publication "ROARS", Return on Academic ReSearch, at internet address https://www.roars.it/online/la-responsabilita-disciplinare-dei-docenti-universitari-dopo-la-legge-gelmini-profili-sostanziali/ , accessed on 10 February 2018, my own translation.

[11] L. Ferluga., La responsabilità disciplinare dei docenti universitari, article published on an on-line legal portal „*diritto.it*" on 29 July 2017, accessed at internet address https://www.diritto.it/la-responsabilita-disciplinare-dei-docenti-universitari/ , on 10 Februry 2018.

could be assisted by a "*confidence defender*" or by a lawyer.

The disciplinary college takes a decision in 30 days from initiation of the procedure (which is the day when the rector officially seized the college). Next, in another interval of 30 days, the university's Administration Council applies a sanction.

As we can see, the Italian regulation of PhD candidate, director of thesis and members of the public sustenance commission liability for ethics and deontology infringements in scientific research aiming to the elaboration of thesis is a generic one, superposing itself to university's ethics and administrative rules containing disciplinary sanctions in academic activity, without special provisions dedicated to doctoral studies.

Concerning the legal nature of such a liability, we should distinguish between the following situations:

- the university's ethics code infringement by a PhD student entails an ethic liability, established by university's Senate;
- the university's ethics code infringement by the director of thesis or by a member of public sustenance commission, when the infringement acts are not regulated by administrative law as entailing disciplinary liability, attracts also ethics liability;
- the university's ethics code infringement by the director of thesis or by a member of public sustenance commission, when the infringement acts are regulated by administrative law as entailing disciplinary liability or other infringements, even so they are not regulated by the university's ethics code, but their perpetration attracts disciplinary liability applicable to a public servant based on an administrative law, entails administrative-disciplinary liability.

Thus, the administrative-disciplinary liability for infringements situated in our debate area is common to both Romanian and Italian law.

7.2. United Kingdom and the code of practice for researchers as model which could be transposed to academic regulations

The Government agency of the UK in matters in matters od ethics and deontology of scientific research is UKRIO – UK Research Integrity Office. One of the main function of UKRIO is the elaboration of models for deontological codes, which will be integrated and adapted afterwards by universities and research institutes.

Thus, two of the main documents produced by UKRIO are: "*Code of Practice for Research. Promoting good practice and preventing misconduct*"[12] and "*Procedure for Investigation of Misconduct in Research*"[13].

The Code insists on definition and classification of ethics and deontology infringements in scientific research, enumerating infringements such as: fabrication, falsification, misrepresentation of data and/or interests and/or involvement, plagiarism, failures to follow accepted procedures or to exercise due care in carrying out responsibilities for: avoiding unreasonable risk or harm to humans, animals used in research and the environment and the proper handling of privileged or private information on individuals collected during the research (point 3.16 of the Code).

As point 1.2. of the Code sets out "*recognising that many forms of guidance already exist, the intention is that research organisations may use the principles and standards outlined in this Code as benchmarks when drafting or revising their own, more detailed, codes of practice*".

With the aim to facilitate the drafting of universities Codes of research integrity, UKRIO has elaborated also the second document that we mentioned above, the Procedure for Investigation of Misconduct in Research. Thus, the universities and research institutes implement this procedure and adapts it to their structure and internal organisation. As an example, London's Global University (UCL) has elaborated at 1st of January 2017 a "*Procedure for investigating and resolving allegations of misconduct in academic research*"[14].

Paragraph 1 of the UCL Procedure stands that: "*this Procedure follows closely the model procedure prepared by the UK Research Integrity Office (UKRIO), although some necessary minor adaptations have been made to reflect UCL's local circumstances and terminology. However, these adaptations are not so significant as to mean that UCL is not adhering to the key features of the UKRIO model procedure*". The adaptations have been operated by the Committee on Research Governance of UCL.

The UKRIO model procedure uses a generic terminology, comprising abstract terms, such as "*named person*" for the individual designated to receive the complaints. The university is the entity which designates that person. In the UCL case, the "*named person*" is the Registrar.

Also, the university's rules send to the disciplinary procedure of the university, procedure which is regulated distinctly by each university. All these rules apply also to scientific doctoral research.

What is really impressive in the model procedure of UKRIO is the legal accuracy. The procedure is divided in three phases. In the first phase, one of the main activity is directed to the establishment of the fact that the complaint for integrity in research infringements has been made in good faith, that "*the*

[12] UK Research Integrity Office, *Code of Practice for Research. Promoting good practice and preventing misconduct*. September 2009, internet address http://ukrio.org/wp-content/uploads/UKRIO-Code-of-Practice-for-Research.pdf , accessed 12 February 2018.

[13] UK Research Integrity Office, *Procedure for Investigation of Misconduct in Research*, August 2008, internet address http://ukrio.org/wp-content/uploads/UKRIO-Procedure-for-the-Investigation-of-Misconduct-in-Research.pdf , accessed at 12 February 2018

[14] London's Global University (UCL), Procedure for investigating and resolving allegations of misconduct in academic research, 1 January 2017, internet address https://www.ucl.ac.uk/srs/governance-and-committees/resgov/research-misconduct-procedure-jan-2017.pd , accessed at 12 February 2018.

allegations are not mistaken, frivolous, vexatious and/or malicious". This activity should be completed in 10 working days (point C.15 of the Procedure).

C. 16. of the Procedure says: "*If the named Person decides that the allegations are mistaken, frivolous, vexatious and/or malicious, the allegation will then be dismissed. The decision should be reported in writing to the Respondent and the Complainant (…)*". In such a case "*the Named Person should consider recommending to the appropriate authorities that action to be taken under the Organisation's disciplinary process against anyone who is found to have made frivolous, vexatious and/or malicious allegations of misconduct in research (…)*" (C.17.).

Another scope of this preliminary phase is to take all necessary measures for preventing or removing any danger for persons, animals and/or the environment (C.6.a.). In the same phase, there is the possibility to seize government agencies responsible of different aspects of human activity which could be endangered by infringement of ethics and deontology in research (such as, for example, the Department for Environment, Food and Rural Affaires, Department of Health and Social Care etc.). In the same phase, the Named Person takes all necessary measures for conservation of evidence about the facts.

In the next phases, the Screening Panel shall consider if the allegations are sufficiently credible, serious and made in good faith as to justify a thorough investigation. Then, at recommendation of the Screening Panel, the Named Person forms an Investigation Panel, which will conduct proper investigation of the facts, based upon administered evidence, respecting also the right of defence for the Respondent, the presumption of innocence, the right to an equitable process etc. The standard of proof is that of "*the predominance of probability*", an intermediary standard, which is higher than the one characterising civil procedure: "*the predominance of proofs*" but lower that the criminal procedure uses: "*beyond a reasonable doubt*".

In the situation of proving the infringements of research integrity, the Investigation Panel draws up a report, comprising mediation solutions and, if the case, send the report to the disciplinary organism of the university or research organisation. The disciplinary procedure is differently structured for students, including PhD students and academic personnel because of the inexistence/ existence of an employment contract under labour law. All the way to the finalising of the disciplinary process, the university has to fill up periodic reports to UKRIO.

The link between the procedure of investigation allegation of misconduct in academic research and the disciplinary procedure, which are distinct, is very well delineated in point C.6.b. of the Procedure: "*Where allegations include behaviour subject to defined sanctions in the Organisation's disciplinary process, then the Named Person should take steps to implement the disciplinary process. As above, the Procedure may continue in parallel with the disciplinary process but may have to be suspended, to be concluded later, or to be declared void by the Named Person*".

Certain UK universities of great tradition and name have a single academic document regulating both the substantial and the procedural law in the case of integrity in research infringements, which could be extremely brief and concentrated, but accompanied by numerous academic custom[15].

Thus, we appreciate that in UK law, the liability for infringement of integrity in scientific research is mainly disciplinary, regulated and conducted by the universities and for some infringements that are not encompassed in disciplinary procedures, there is only a liability for integrity, a kind of "*ethics liability*", set out by universities on the model Code and procedure elaborated by UKRIO.

7.3. France – the accreditation of universities for doctoral studies as guarantee of respect for the ethics and deontology rules in doctoral scientific research

The regulation of doctoral studies in France in very similar to that of Romania, but certainly presents certain notable particularities.

The most important piece of legislation in this domain is the Ministry's of National Education and Science Decision from 25thof May 2016 for the establishment of national framework for the formation and modalities conducing to the awarding of national doctorate diploma[16].

Very alike the Romanian Law on national education no. 1/2011, the French ministerial decision shows in art. 1 that: "*doctoral formation is a formation by and for research*" and "*conduces to production of new knowledge*".

Art. 5 of the above-mentioned Decision sets out that the accreditation decision of a university signifies empowerment to deliver the PhD diploma in specialities that were authorised for this aim and the accreditation of doctoral schools is realised by the High Council of Research and Superior Education Evaluation[17] (Hcéres).

The accreditation of doctoral schools and universities makes that the definitive decision over the

[15] It is the case of Oxford University, which has adopted "Academic integrity in research: Code of practice and procedure", that could be found at internet address http://www.admin.ox.ac.uk/personnel/cops/researchintegrity/ , accessed at 14 February 2018.

[16] Arrêté du 25 mai 2016 fixant le cadre national de la formation et des modalités conduisant à la délivrance du diplôme national de doctorat, JORF no. 0122 du 27 mai 2016, NOR: MENS 1611139A, my own translation.

[17] Haut conseil de l'évaluation de la recherche et de l'enseignement supérieur (Hcéres), established by the Research Code, whose art. L. 114-3-1, point. 3 sets out evaluation functions in the area of scientific formation and of the diplomas emitted bu superior education and, where the case, the validation of evaluation procedures realised by other, Code de la recherche, internet address https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071190 , accessed on 16 February 2018, my own translation.

conferral of the PhD title pertains only to the university and not, by any means, to Hcéres. This is a difference to the situation in Romania where CNATDCU, the equivalent agency of Hcéres, decides itself on a preliminary basis if the thesis complies to the ethic and deontology standards before the conferral of the title. In France, the university's accreditation is regarded as a sufficient guarantee for the assurance of respect for ethics and deontology rules, meaning that the doctoral schools and the universities have made in place the organisational mechanisms for detection and sanctioning of infringements, regulated mainly by the Chart over the Thesis (Charte des thèses) of a Doctoral Chart.

Another important difference of the French regulation compared to the Romanian one could be notice regarding the liability of the director of thesis (directeur de la thèse), because unlike the case of Romanian law, the French one establishes that this university professor is not liable for the content of the thesis, that is considered as the sole product of research activity of the candidate, to whom entire liability for the content belongs.

Somehow similarly, the public sustenance commission, called in France "*the thesis jury* "(le jury de la thèse) does evaluate solely the following aspects of the thesis: the quality of doctoral thesis, it's novelty, the aptitude of the PhD candidate to situate the thesis in a scientific context and the quality of thesis sustenance (art. 19 of the Ministerial Decision).

The thesis jury is designated in accordance to the provisions of art. 18 of the Ministerial Decision by the chief of superior education institution, approved by the director of the doctoral school and the director of thesis. The number of jury's members is between four and eight with the condition that at least half of them should be external to the university and the doctoral school. At least half of the jury members should be university professors or persons assimilated by the law to those (such as scientific researchers of a certain degree). The jury members elect from their part a president of the jury and a rapporteur over the thesis. The director of thesis takes part in the jury but does not participate to deliberations and decisions of the jury.

The majority of doctoral charts of French universities contain separate chapters on scientific research deontology, ethics and integrity and separately of the Chart over the Thesis there is a Deontology Chart.

Thus, as an example, strengthening the idea of academic autonomy, the Doctoral Chart of Paris-Saclay University sets out, within the section dedicated to the thesis jury, that: "*the doctorate national diploma is realised by the chief of the accredited institution at the conform proposal of the jury of thesis sustenance*"[18]. As a matter of fact, no administrative authority of the state interposes itself in the procedure of conferral of the PhD title, such as it is the case in Romania at the moment.

Finally, the PhD candidate, the director of thesis and the members of public sustenance commission liability for the infringement of ethics, deontology and integrity rules in scientific research in the French law is disciplinary.

According to art. L. 712-6-2 of the Code of Education[19], the disciplinary power over the academic personnel-researchers, scientific researchers, professors and students (including PhD students) is exercised by the Academic Council of the university, sitting in Disciplinary Section.

8. Conclusions

In the Romanian regulatory model, but also in the French, Italian and British one, analysed in this article, the liability of the PhD candidate and of the members of the public sustenance commission for infringement of scientific research deontology oscillates between an administrative and a disciplinary dimension, being rather administrative-disciplinary (for the academic personnel and scientific researchers that take part in such commissions). Function of the nuances and the complexity of the facts in cause, there is also a possibility of contract liability (in the PhD candidates case) or of tort liability (in the commission's members case).

The administrative-disciplinary liability hypothesis is well reasoned in Italian and Romanian law, systems which establish for academic personnel a position similar to the public officials with special status (at least when speaking of public superior education).

Thus, generally, the findings on the Romanian law on the domain are valid also in other systems, we notice some administrative differences being linked directly to the degree of academic autonomy conferred by different states, reflected mainly in the powers vested in national organisms established for the accreditation and evaluation/control over the doctoral schools and universities, powers that could be very important (the case of Romanian CNATDCU) or limited (such as the case of UKRIO).

Nowadays, Romania, by the most extended powers conferred to CNATDCU, marks a veritable summit of restriction on academic autonomy in the area of the control and evaluation of doctorate thesis. This may however correspond to a real necessity raised by the concrete situation on the matter. CNATDCU verifies the thesis both before the conferral of the PhD title and afterwards, at the complained of any person or ex officio. The university and doctoral school arrived at

[18] La Charte de doctorat de l'Université Paris-Saclay, internet address https://www.universite-paris-saclay.fr/fr/la-charte-du-doctora , accessed at 16 February 2018, my own translation.

[19] Code de l'éducation, (Dernière modification : 17 février 2018), internet address https://www.legifrance.gouv.fr /affichCode.do?cidTexte=LEGITEXT000006071191&dateTexte=20180217 , accessed on 17 February 2018, my own translation.

the stage of having a purely formalistic role in the releasing of the PhD diploma. The final decision on that matter is pertaining to the Ministry of National Education and Scientific Research. By comparison, in France, the equivalent of the Romanian CNATDCU, Hcéres, performs ulterior verification only on complaint. We appreciate that a single procedure of thesis verification by a state organism should be sufficient to guarantee the observance of ethics and deontology in doctoral scientific research. There is here also a problem of stability and predictability of the legal relations generated by the conferral of the PhD title – this fact should not be doubted perpetually. There should be a final and definitive decision on the matter because otherwise the PhD researcher will always be treated as a dubious candidate. The presumption of innocence must prevail here ones again.

The accreditation of a university and of a doctoral school by Hcéres, submitted undoubtedly to pretentious criteria, values in France absolute confidence accorded to the university hosting doctoral studies in its power to organise a proper functioning system for the prevention, detection, sanctioning and generally fighting the infringements of research integrity.

In the UK, the power to establish and operate such a system pertains also to universities and other research institutes. UKRIO, the British equivalent of the Romanian CNATDCU, produces models of integrity in research codes and procedures for the investigation of ethics and deontology infringements in scientific research. These models do not have an imperative character. What is really interesting in the UK regulation on the domain is the refusal to investigate allegations of integrity in research infringements if they have been made in ill faith (vexatious, malicious etc.). The British thinking in research integrity considers a contestation of the scientific activity of a researcher (including a PhD candidate) only when this is made in good faith, meaning in an ethical way. Adhering ourselves to this line of ethical thinking and regulations, we appreciate that such a practice is empowering the good faith legal principle in all areas of law enforcement.

Finally, the Italian legal instrument on the matter, Legge Gelmini from 2010, promotes a direct transfer from the state to universities of competencies in evaluation and liability for deontological infringements in doctoral studies. The Italian regulatory framework provides only for an ethic liability in the case of PhD students and for both an ethic liability and an administrative-disciplinary liability for the members of the public sustenance commission.

The government organism similar to the Romanian CNATDCU in Italy is the National Agency for Evaluation of University System and of Research (ANVUR)[20], having concrete attributions in the matter of universities accreditation for doctoral studies.

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[20] ANVUR = Agenzia Nazionale di Valutazione del Sistema Universitario e della Ricerca, internet portal at address http://www.anvur.org/index.php?option=com_content&view=article&id=55&Itemid=103&lang=it , accessed on 17 February 2018.

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