

THE AUTHOR(S) OF THE PHD THESIS AND HIS/THEIR MORAL RIGHTS. JOINT LIABILITY OF THE PHD CANDIDATE AND OF THE PHD SUPERVISOR FOR THE OBSERVANCE OF THE ETHICS AND DEONTOLOGY RULES

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Abstract

In the first part, this study proposes an analysis of the phrase “Author(s) of the PhD thesis” by reference to the principle The real author of the PhD thesis and the moral rights of the author of a scientific work provided by Law no. 8/1996 on copyrights and related rights. We thought it was necessary to pay special attention to the right of informing the public about the work, in the light of the limitations provided by law in case of PhD theses, especially by the Law of National Education no. 1/2011, Law no. 288/2004 on organizing PhD academic studies and Government Decision no. 681/2011 for the approval of the Code of PhD academic studies. The analysis mainly refers to the guidance activity carried out by the PhD supervisor throughout the PhD study years, an obligation provided by Law no. 1/2011 and Government Decision no. 681/2011. Thus, in the first part of the study, we shall answer the question whether the guidance activity of the PhD supervisor is sufficient, so that he should become the author of the PhD thesis alongside the PhD candidate and benefit of the moral rights to the same extent as the latter.

In the second part of the study, we proposed ourselves to analyze the joint liability of the PhD candidate and of the PhD supervisor for the observance of the rules of ethics and deontology, by relating such to the guidance obligation of the PhD supervisor. We shall perform this analysis by reference to the said regulations, but also to Law no. 206/2004 on the proper conduct in research activity and Law no. 319/2003 on the status of the research-development staff.

Keywords: *the author of the PhD thesis, the moral rights of the author of the work, the limitations of the right to inform the public about the author of the PhD thesis, the guidance activity of the PhD supervisor, the rules of ethics and deontology in the activity of scientific research, the joint liability of the PhD candidate and the PhD supervisor, the sanctions applicable for the infringement of the ethics and deontology rules.*

1. Introduction

In the first part, this study proposes an analysis of the collocation “The Author / Authors of the PhD Thesis” by reference to the Principle of the true author of the PhD thesis and to the moral rights of the author of a scientific work under Law no. 8/1996 on copyrights and related rights. I considered it was necessary to pay special attention to the right of informing the public about the work, in the light of the limitations provided by law in the case of PhD dissertations, especially by National Education Law no. 1/2011, Law no. 288/2004 on the organization of academic studies and Government Decision no. 681/2011 for the approval of the Code for Academic PhD Studies. The analysis mainly focuses on the guidance of the PhD supervisor during the years of performing the PhD studies, an obligation provided by National Education Law no. 1/2011 and by Government Decision no. 681/2011 for the approval of the Code for Academic PhD Studies. Thus, we shall answer the question whether the guidance activity of the PhD supervisor is sufficient for him/her to become the author of the PhD thesis besides the PhD candidate and to enjoy moral rights to the same extent as the latter.

In the second part of the study shall be analyzed the joint responsibility of the PhD candidate and PhD supervisor for the observance of the rules of ethics and deontology, referring to the PhD supervisor's guidance obligation. We shall analyze in relation to the mentioned regulations, but also to Law no. 206/2004 on proper conduct in the research activity and Law no. 319/2003 on the status of R&D staff.

2. Content

2.1. The author(s) of the PhD thesis and his/her/their moral rights

2.1.1. True Author-Principle

According to art. 3 paragraph (1) from Law no. 8/1996 on copyrights and related rights¹, “*The individual(s), who created the work is/are the author.*”

As it results from the legally quoted text, copyright is closely related to the person of the author, granting to him/her patrimonial and moral attributes. The principle governing copyright is that of the true creator of the work, which links the capacity of an author to the capacity of the subject matter of the copyright even when the author of the creation is not known. As mentioned by Professor Viorel Roş, “*Even when its author is not known, has not revealed his/her identity, it has an author and no one can assume the*

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¹ Republished, in the Official Journal of Romania, Part I, no. 489/14 June 2018;

*capacity of an author, no one can usurp the capacity of the author of the work accomplished by another, regardless if unknown, no one can claim for himself/herself the capacity of the author of a work that he/she has not created himself/herself*².

On the other hand, according to art. 4 paragraph (1) of the Law no. 8/1996, “*the person under whose name the work was made public shall be presumed to be the author until evidence to the contrary*”.

2.1.2. Is the PhD candidate the true author of the PhD thesis?

Starting from the above principle, by reference to the theme analyzed in this study, appears the question “*Who is the true author of the PhD thesis?*”? “The PhD candidate? The PhD supervisor? Or both jointly? Although, apparently, the answer can be simple, relying on the provisions of art. 65 paragraph (5) of the Code of Academic PhD Studies which expressly provide that “*The PhD candidate is the author of the PhD thesis and assumes the accuracy of the data and information presented in the thesis, as well as of the opinions and demonstrations expressed in the thesis*”, the questions has anyway its justification.

It is true that the PhD candidate is the one who researches, analyzes, creates and who finally drafts the PhD thesis, but what role does the “*guidance*” given by the PhD supervisor play? Is everything resumed to the fulfilment of certain legal obligations by the latter? Or does he/she have any contribution to the creative process of the PhD candidate?

We find legal provisions regarding the PhD supervisor’s obligation to “*guide*” in several regulations. The first of these is Law no. 1 / 2011³ of the national education, with subsequent modifications and completions, which at art. 162 par. (1) referring to the fact that “*the PhD candidate is working under the guidance (...) of a PhD supervisor*”. To the same “*guidance*” refers the Code of Academic PhD Studies, approved by Government Decision no. 681/2011 with subsequent amendments and supplementations. Thus, the regulations refers both of a right of the PhD candidate - to benefit from the support, guidance and coordination of the PhD supervisor (Article 71 para. (1) lit. a), as well as an obligation of the PhD supervisor - to provide scientific, professional and deontological guidance of each PhD candidate (Article 72 para. (3) lit. a))⁴.

According to the Explanatory Dictionary of the Romanian Language, 2nd supplemented and reviewed

edition (2009), “*guidance*” means correction, steering, routing. Therefore, the PhD supervisor has an obligation to guide the PhD candidate, but on his own chosen path, the one of his own creation. In other words, in our opinion, the PhD supervisor does not go ahead the PhD candidate, creating in his place and with him, creating together, but more, behind the PhD candidate, taking care not to turn on a wrong way.

In conclusion, although the contribution of the PhD supervisor is indisputable in the final form of the thesis, the creation itself belongs to the PhD candidate, who is the sole author of the thesis.

2.1.3. Moral Rights of the Author(s) of the PhD Thesis

I. Brief Considerations on Moral Rights and the Legal Nature thereof

Moral rights are those non-patrimonial personal rights, which the author of intellectual creation enjoys in this view, representing non-patrimonial prerogatives of non-patrimonial nature recognized to any author in regard to his/her work, irrespective whether it is protected in the field of copyright⁵.

The Bern Convention of 1886 for the Protection of Literary and Artistic Works has been ruled by art. 6bis “*1. Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.*

2. The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

3. The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed”⁶.

Regarding the said provisions, it was noted in the specialized foreign literature “*art.6bis represents a*

² Viorel Roș, *The Intellectual Property Law, vol.I, Copyright, Related Rights and Sui-generis Rights*, Bucharest, C.H. Beck Publishing house, 2016, page 162

³ Published in the Official Journal of Romania, Part I, no. 18/10 January 2011;

⁴ We can find similar provisions in the Regulations for the organization and development of academic PhD studies; for example, art. 19 para. (2) lit. a) of the Regulations of the PhD School of the Nicolae Titulescu University: *The PhD supervisor has the following tasks: to ensure (...) to the PhD candidate who is under his/her direction or guidance, adequate scientific, professional and deontological guidance*; the Rules of the PhD School within the Police Academy Alexandru Ioan-Cuza also stipulate at art. 24 para. (1) lit.a): *The PhD supervisor has the following tasks: to ensure the scientific, professional and deontological guidance of each PhD candidate*;

⁵ Alin Speriusi-Vlad, *The Patrimonial Effects of Moral Rights in the Field of Intellectual Property*, in “*Revista Română de Dreptul Proprietății Intellectuale*” (Romanian Magazine of Intellectual Property Law) no. 2/2017;

⁶ Published Official Journal no. 158 from 1998 and ratified by Decree no. 626 from 8 December 1997 on the subject for ratification to the Parliament of the adhesion of Romania to the Bern Convention for the Protection of Literary and Artistic Works from 9 September 1886, in the form reviewed by the Act from Paris on 24 July 1971 and amended on 28 September 1979;

*minimal right under the imperative conventional regime, and in the absence of a national regulation, the author can directly invoke the provisions of art.6bis paragraph (1) of the Convention. The law of the State where protection is claimed is liable to state whether, after the death of the author, the heirs will be able to claim the moral right.*⁷

Law no. 8/1996, art. 10, itemizes the following moral rights of the author: “a) the right to decide whether, how and when the work will be made known to the public; b) the right to claim recognition as the author of the work; c) the right to decide under what name the work will be made public; d) the right to claim the observance of the integrity of the work and to challenge any modification, as well as any prejudice upon the work, if it prejudices its honour or reputation; e) the right to withdraw the work, indemnifying, where appropriate, the holders of the usage rights, who have suffered damage as a result of the withdrawal”.

As far as the legal nature of copyright is concerned, such are non-patrimonial rights, i.e. absolute, binding *erga omnes* rights.

Law no. 8/1996 does not contain such provisions, but the following legal characters can be deduced from its contents; thus, moral copyrights:

- are closely related to the person of the author: the author personally has and exerts the right to decide when and under what name the work will be brought to made public, how this will be done and the withdrawal of the disclosed work due to reasons that are left to the sovereign discretion of the author;

- are inalienable (Article 11 para. (2) from Law no/1996⁸) and indistinguishable, meaning such cannot be either alienated or traced;

- are of perpetual nature⁹ (art. 11 para. (2) from Law no. 8/1996) and are not time-limited: the use of the work cannot affect the memory of the author and the work cannot be dissociated from its creator even after his/her demise. After the author's death, the exercise of the right to claim recognition of the author's capacity and the right to claim the observance of the integrity of the work and to challenge any alterations and prejudices impairing to the honour or reputation of the author are transmitted by inheritance. On the other hand, the lack of barring moral rights in time means that such may be exerted as long as the work remains in the memory of people and is subject to exploitation.

II. Right of disclosure (public disclosure); Are there limitations to this moral right in the case of PhD dissertations?

From among all moral rights provided by art. 10 from Law no. 6/1998, the one stipulated in letter a) -

The right to decide whether, how and when the work will be brought to the attention of the public.

In the specialized literature, it was stated that the right to divulge the work enables “*the author of the work to decide: not to make the work public; to make the work public; when it will make the work public and how it will make the work public; to appeal to the coercive force of the state for the protection of this right*”.¹⁰ Starting from this opinion, without insisting on general issues, it has to be analyzed whether and to what extent the right to disclose the work is applicable to the subject analyzed in this study - the PhD thesis.

In a first view, we believe that the PhD dissertation cannot pose the problem of not making the work public, considering that the final goal of the PhD studies is to obtain the PhD title in a certain field, and in the absence of public support for the thesis, this goal cannot be achieved. Moreover, there is a legal provision limiting in time the maximum period until which the PhD candidate may defend the PhD thesis. In accordance with the provisions of art. 12 from Law no. 288/2004¹¹, on the organization of academic studies, with subsequent amendments and supplementations “*Academic PhD studies usually have a term of 3 years. In special situations, when the subject matter requires a longer period of study or experimentation, the term may be extended by 1-2 years, with the approval of the university senate, at the proposal of the PhD supervisor. The defence of the PhD thesis can be done within a maximum of 4 years as of the graduation of the academic PhD studies with the approval of the university senate and the PhD supervisor.*” Therefore, the moment when the PhD is made public does not entirely belong to the decision of the PhD candidate, as he/she has a time limit provided by the law in which he/she must publicly defend the thesis and neither is it at the discretion of the PhD candidate “*how*” the PhD dissertation is made public, as this may be performed only in written form and by oral public support of the thesis.

In accordance with the provisions of art. 168 para. (9) from Law no. 1/2011 “*The PhD thesis is a public document. It is also written in digital format. In the field of arts, the PhD thesis may be accompanied by the recording on digital media of the original artistic creation. The PhD thesis and its annexes are published on a site managed by the Ministry of Education, Research, Youth and Sport, by observing the legislation applicable in the copyright field*”. From the analysis of the text of the law, it results that a public nature is rendered upon the PhD dissertation by publishing it *ex officio* on the said website. On the other hand, in the

⁷ Nordemann W., Vinck K. and Hertin P.-W, *Droit d'auteur international et droits voisins...*, Bruylant, p.88, quoted by Andre R. Bertrand, *Le droit d'auteur et le droits voisins*, Dalloz, Paris, 1999, p.259, quoted by Andreea Paula Seucan, *Moral Rights and Patrimonial Copyrights*, 2nd reviewed edition, Universul Juridic Publishing House, Bucharest 2015, page 24.

⁸ Moral rights cannot be subject to renunciation or alienation;

⁹ After the demise of the author, the exertion of the rights provided in art. 10 (a), (b) and (d) are transmitted by inheritance, under civil law, for an unlimited term;

¹⁰ Teodor Bodoaşcă, Lucian Ioan Tarnu, *Intellectual Property Law, 3rd revised and supplemented edition*, Universul Juridic, Bucharest 2015, page 41;

¹¹ Published in the Official Journal of Romania, Part I, no. 614/7 July 2004;

same phrase is inserted the collocation “by observing the legislation applicable in the copyright field”. However, we cannot omit observing the contradiction between the public nature of the PhD thesis explicitly stipulated by law and the moral right that the author of the thesis has, according to art. 10 letter a) from Law no. 8/1996.

A similar provision is also found in art. 66 par. (1) and (2) of the Code approved by Government Decision no. 681/2011, according to which “(1) *PhD theses and their annexes are public documents and are also written in digital format. In the field of arts, PhD theses can be accompanied by the recording on digital media of original artistic creation. The PhD dissertation and its annexes are published on a site managed by the Ministry of Education, Research, Youth and Sports, in compliance with applicable copyright laws.* (2) *The protection of the intellectual property rights on the PhD thesis shall be ensured in accordance with the provisions of the law.*” Concurrently, special attention should be paid to paragraph (4) from art. 66 (inserted by the Government Decision no. 134/2016 for the amendment and supplementation of the Code of Academic PhD Studies approved by Government Decision 681/2011), according to which “*The structure and access to the “PhD file” will be regulated by a procedure developed by CNATDCU and approved by order of the Minister of national education and scientific research, in compliance with the legislation in force. This procedure will comply with the following rules: a) the abstract of the thesis is published on the website of the university or, as the case may be, of the Romanian Academy and may be publicly consulted after the issuance of the order for the appointment of the support commission; b) the printed version of the thesis may be consulted at the library of the university or, as the case may be, of the Romanian Academy at least 20 days before the date set for public defences thereof. The PhD thesis remains a public document at the university library or, as the case may be, of the Romanian Academy ; c) if the PhD candidate does not choose a distinct publication of the thesis or some chapters from it, the digital form of the thesis is made public and it can be freely accessed on the national platform after issuing the order to grant the PhD title; to the thesis will be granted a copyright protection license; d) if the PhD candidate chooses the distinct publication of the PhD thesis or of some chapters thereof, he/she shall receive a grace period of maximum 24 months for this publication; after the expiry of the grace period, if no notification has been received at IOSUD regarding the separate publication of the thesis, the digital document becomes freely accessible on the national platform, granting a copyright protection license; e) after the publication of the thesis or some chapters thereof, the author has the obligation to notify IOSUD of this fact and to submit the bibliographic reference and a link to the publication, which will then be made public on the national platform; f) after granting the PhD title, within*

maximum 30 days, IOSUD is under the obligation to send a printed copy of the PhD thesis to the National Library of Romania, where it can be accessed on request.”

From the analysis of the legally quoted text, we can safely claim that although the author of the PhD thesis apparently enjoys the moral right to disclose the work (with all its consequences), he/she is however subject to certain express limitations.

III. Some considerations about the other moral rights and their applicability in the analyzed situation

Besides the right to disclose the work, Art. 10 of Law no. 6/1998 provides additional four moral rights, but we believe that without a particular interest in the subject matter analyzed in this study:

- the right to claim recognition as the author of the work - lit.b); we shall not reiterate the arguments regarding the capacity of an author of the PhD thesis, since the law itself stipulates that the PhD candidate is the author of his/her creation. However, art. Article 4 (1) of Law no. 8/1996 establishes the presumption that the person under whose name the work was first made public is also the author of the work, therefore such capacity must be recognized to it and, therefore, all the rights rendered by the status of the author of the work. However, the public support of the PhD thesis cannot be performed under the name of another person, since the final goal of the PhD candidate is to obtain the PhD title following the public support of the thesis;

- the right to decide under what name the work will be made public - lit.c); This right refers to the fact that the artist has a discretionary right to make his name public or to use a pseudonym under which to present his work. Given the specific nature of the PhD thesis, it is obvious in my opinion that this right cannot be implemented in the particular situation that we are considering, having regard to the fact that the PhD title is to be given precisely to the person who has drafted and subsequently defended the thesis;

- the right to claim the observance of the integrity of the work and to challenge any alterations, as well as any prejudice to the work, if it damages its honour or reputation - lit.d);

- the right to withdraw the work, compensating, where appropriate, the holders of usage rights, who have been harmed by the exertion of the withdrawal - lit.e); from our point of view, I believe that the analysis of this moral right can raise an interesting question. What happens to the PhD thesis after the public support, given that it becomes public, and unless the PhD candidate chooses the distinct publication of the thesis or chooses but has not observed the 24-month deadline to perform this publication, “*the document becomes freely accessible*”- art. 66 par. (4) lit. d) from the Code of Academic PhD Studies. We consider that the author of the thesis may at any time exert this right, but obviously there can be no compensation, as long as the access to his work is free and it is difficult to prove an alleged prejudice.

2.2. Joint liability of the PhD candidate and PhD supervisor for compliance with the ethics and deontology rules

2.2.1. Obligation of the PhD candidate and the PhD supervisor to observe the rules of ethics and deontology; Manners of infringing these rules (considerations regarding plagiarism and auto-plagiarism)

We can find in the legislation sufficient references to the norms of ethics and deontology and implicitly to the obligation to observe them in the scientific research activity (as is the case with the activity carried out both by the PhD candidate and the PhD supervisor throughout the research in order to draft the thesis). What are the rules of ethics and deontology? A set of norms that we have to observe or, in other words, types of deviations from which we must refrain. We can find references to these rules in Law no. 206/2004¹² on good conduct in scientific research, technological development and innovation, with subsequent amendments and supplements, which unifies the rules of ethics and deontology in Article 1, under the notion of good conduct, and provides that: "Proper conduct in scientific research, technological development and innovation (...) activities is based on a set of rules of proper conduct and procedures to comply with them". Compliance with these rules is mandatory, especially since, at Art. 2¹ are provided the types of deviations from such rules.

Referring to the specific case stated in the title of the study, the obligation to observe the rules of ethics and deontology is provided by art. 20 par. (1) from the Code of Academic PhD Studies, according to which "The PhD school together with the PhD supervisor are under the obligation to inform the PhD candidate about the scientific, professional and university ethics and to verify the observance thereof, including: a) Compliance with the ethical provisions on completion of PhD research; b) Observance of the deontological provisions in the elaboration of the PhD thesis."

As far as the PhD supervisor is concerned, we find the obligation expressly stipulated in art. 72 paragraph (3) letter k) of the same Code, according to which "The PhD supervisor has the following tasks: a) to ensure the scientific, professional and deontological guidance of each PhD candidate".

Perhaps the first impulse would be to ask why we don't find such an obligation expressly provided also for the PhD candidate. However, we find the answer in the very validity conditions of a PhD thesis as a creation of its author. The obligation of the PhD candidate to observe ethical and deontological norms when writing and elaborating the thesis.

In accordance with the provisions of art. 1 para. (4) from Law no. 206/2004 The observance of these norms by the categories of staff carrying out R&D

activities, stipulated in Law no. 319/2003, as well as by other categories of staff, from the public or private sector, benefiting from public R&D funds, determine the good conduct in the R&D activity."

Although art. 6 from Law no. 319/2003 on the status of research and development staff¹³ itemizes the following categories of staff: "a) R&D staff; b) university teachers; c) auxiliary staff from the R&D activity; d) staff from the functional apparatus", who carry out R&D activities, we also include PhD candidates here.

In support of this statement are the provisions of art. 26 lit. a) from Law no. 319/2003, according to which "The professional development of the R&D personnel is mainly accomplished through the following forms: a) PhD thesis; (...)".

At the same time, Article 17 para. (5) lit. (e) from the Code for Academic PhD Studies provides that "The PhD School Regulation establishes mandatory criteria, procedures and standards regarding at least the following aspects: (...) e) methods of preventing fraud in scientific research, including plagiarism"¹⁴.

Once established and identified in the law the obligation of both the PhD candidate and the PhD supervisor to observe the rules of ethics and deontology, should be mentioned the deviations from the norms of "proper conduct in the scientific research activity", as provided by art. 2 and 2¹ from Law no. 206/2004. Further the analysis of the two articles, we can delimit the following types of infringements that may be suspected of being committed by the PhD candidate and/or the PhD supervisor:

- the production of results or data and their presentation as experimental data, as data obtained by computer numerical calculations or simulations, or as data or results obtained by analytical calculations or deductive reasoning;
- falsification of experimental data, of data obtained by computer numerical calculations or simulations or data or results obtained by analytical calculations or deductive reasoning;
- plagiarism;
- self-plagiarism;
- the unauthorized publication or dissemination by the authors of unpublished results, hypotheses, theories or scientific methods.

Although, as can be noticed, there are several types of deviations from ethical and deontological norms, perhaps because of media pressure in recent years, the term *plagiarism* has become almost obsessively used. Nevertheless, we are convinced that many people use the word by inertia, or perhaps it is "cool" or so they have heard in the media. Unfortunately, in the last few years, most of us have become specialists in plagiarism, as it is easier to judge in areas where we do not even have a day of study. On

¹² Published in the Official Journal of Romania, Part I, no. 505/4 June 2004;

¹³ Published in the Official Journal of Romania, Part I, no. 530 from 23 July 2003

¹⁴ As an example, the Regulation for organizing and carrying out PhD studies at the Nicolae Titulescu University, the Regulations of the PhD School of the Alexandru Ioan-Cuza Police Academy

the other hand, without going too far on this subject, it is unfair that, with the media pressure, suspicions were raised about certain PhD dissertations and, implicitly, certain PhD supervisors. And once the label of a plagiarist or PhD supervisor of a plagiarist is placed, it is difficult, if not almost impossible, to overthrow a guilty presumption with such an impact.¹⁵

Closing the parenthesis and returning to the subject under consideration, in line with the times we live, we proposed ourselves to analyze the first two ways of violating good conduct rules, probably because they are the most frequent ones.

PhD thesis, like any other creation, must be original, so that it does not come under suspicion of plagiarism. What can be anyway more beautiful, noblest than originality? We try to understand why many choose the complicated way of attempting (sometimes succeeding) to plagiarize others when it is so simple to be original. As a comparison, we see plagiarism as a lie, as it is easier to tell the truth, so you do not have to remember your own lies. What we do not understand is that originality makes us unique in a world and so dominated by too many “copy-paste” – users.

A definition of plagiarism is found in art. 4 para. (1) letter d) from Law no. 206/2004 as being “*exposure in a written work or oral communication, including in electronic form, of texts, phrases, ideas, demonstrations, data, hypotheses, theories, results or scientific methods extracted from written works, including in electronic form, without mentioning this and without referring to the original sources*”.

The committing of the deed of plagiarism is regulated, according to art. 2[^]1 para. (2) from Law no. 206/2004 as a “*deviation from the rules of good conduct in scientific research*”. On the other hand, art. 310 from Law no. 1/2011 provides that the committing of the plagiarism deed is “*serious violation of good conduct in scientific research and academic activity*”, and Article 20 (3) of the Code of Academic PhD Studies regulates plagiarism as “*academic fraud, violation of university ethics or deviation from good conduct in scientific research*”. The seriousness of the act is given, in particular, by the way in which it is committed, that it can only be with the intention of plagiarism, and negligence cannot be called into question. Thus, both the PhD candidate and the PhD supervisor may not invoke any attenuated circumstances, because you cannot copy “*by error*”, as long as the final goal is the drafting and finalization of the thesis.

As regards self-plagiarism, such is defined by the same article, letter e) and represents “*the exposure to texts, phrases, demonstrations, data, hypotheses, theories in a written work or oral communication, inclusively in electronic format, results or scientific methods extracted from written works, inclusively in*

electronic format, of the same or the same authors, without mentioning this and without reference to the original sources”.

The High Court of Cassation and Justice noted very clearly in its practice, speaking of originality through lack of self-plagiarism, the fact that an original work is “*a creation of he/she who claims he/she is the author, and not a mere copy of a previous work*”.¹⁶

The two mentioned deeds are only defined in Law no. 206/2004. In fact, we believe that this is also natural, since the normative act regulates conduct in the scientific research activity and plagiarism, which only means a lack of integrity in such activity. Plagiarism is nothing more than a theft of theories, words, phrases or even of another author's works. It is a stigma on the academic integrity that both the PhD candidate should have, but especially the PhD supervisor, who is guiding him/her during the PhD studies. More problematic is the situation of self-plagiarism when you have to copy yourself.

In doctrine, it is believed that “*Considering that the subject matter of Law no. 8/1996 is the protection of copyright and related rights, while the reason for the adoption of Law no. 319/2003, Law no. 2006/2004, Government Decision no. 681/2011 and Law no. 1/2011 is to ensure the development of the R&D activities itemized by law in order to develop scientific knowledge and to generate new knowledge, in compliance with the norms of good conduct, incompatible with the plagiarism and self-plagiarism, we are of the opinion that Law no. 206/2004 and Law no. 8/1996 are not in conflict*”¹⁷.

2.2.2. The principle of joint and several liability of the PhD candidate and PhD supervisor for infringing the ethics and deontology rules drafting the PhD thesis

The relevant legal texts in the analysis of this principle are the following:

– art. 20 para. (3) from the Code of Academic PhD Studies: “*In case of possible academic frauds, violations of university ethics or deviations from good conduct in scientific research, including plagiarism, the PhD candidate and/or the PhD supervisor is/are liable in accordance with the law*”;

– art. 65 para. (5) from the same Code: “*The thesis is an original work and it is mandatory to mention the source for any taken over material*” and para. (7): “*The PhD supervisor is jointly liable with the author of the thesis for the observance of the quality or professional ethics standards, including the assurance of the originality of the content, according to the provisions of art. 170 from Law no. 1/2011.*”

Further to the analysis of the mentioned legal texts results the existence of the principle of the joint liability of the PhD student and the PhD supervisor in

¹⁵ It is just a personal opinion and the triggering factor of enrolling the undersigned at PhD school classes; because I am convinced that many of my colleagues have experienced the same frustration of not being able to change anything;

¹⁶ Civil and Intellectual Property Section, Decision no. 6428 from 30 June 2006;

¹⁷ Sonia Florea, in Plagiarism and the Infringing of Copyrights, Juridice.ro;

the situation of infringing the norms of ethics and deontology in drafting the PhD thesis.

Besides, this kind of liability results precisely from the obligations of both the PhD student and his/her PhD supervisor. Thus, the PhD supervisor is under the obligation to observe the rules of deontology in his/her guidance activity and, on the other hand, the PhD student is under the obligation to observe these rules in drafting the PhD thesis.

From the above it is clear that the first who is interested in observing the rules of ethics and deontology is precisely the PhD supervisor, as according to how he/she directs the PhD candidate depends whether he/she will suffer the rigors of the law for the non-observance thereof.

If, however, in the unlikely situation in which the PhD candidate violated the rules of ethics and deontology without the contribution of the PhD supervisor, he/she (together with the guidance committee) has the possibility in accordance with the provisions of art. 67 para. (2) letter c) of the Code of Academic PhD Studies, to refuse the submission of the thesis for public support.

If the PhD supervisor (and implicitly the PhD candidate) fails to observe the rules of conduct in the process of guidance for the drafting of the thesis, the provisions of art. 68 para. (2) of the Code of Academic PhD Studies provides for the PhD Commission assessing the thesis, the obligation that “*If a member of the PhD Commission identifies in the assessment of the thesis both before and during public support serious violations of good conduct in scientific research and academic activity, including plagiarizing the results or publications of other authors, forging results or replacing the results with fictitious data, the member of the PhD Commission is under the obligation to take the following measures: a) to notify the ethics committee of the higher education institution where the PhD candidate is enrolled and the ethics committee of the institution where the manager is PhD supervisor is employed for the analysis and resolution of the case, including by expelling the PhD candidate, according to art. 306-310 and 318-322 from Law no. 1/2011 and the provisions of Law no. 206/2004 on good conduct in scientific research, technological development and innovation, with subsequent amendments and supplements; b) to notify the deviations of all members of the PhD committee and to propose the award “unsatisfactory”.*”

The finding of violation of deontological norms can be done by CNATDCU even under Art. 68 para. (6) of the Code of Academic PhD Studies according to which “*If the members of CNATDCU in an evaluation committee of a PhD thesis find that the professional ethics standards, have not been complied with in the thesis and/or the activities that led to its creation, inclusively the existence of plagiarism, they shall invalidate the PhD dissertation, inform about these findings the other members of the evaluation committee and notify the General Council of the CNATDCU for the analysis of the responsibility of the PhD supervisor*

or the PhD school and for the application of the provisions of art. 69 para. (5).”

Last but not least, it is worth mentioning that any individual or legal entity may notify about potential violations of deontological norms in a PhD thesis, under the terms of art. 50 para. (2) of the Code of Academic PhD Studies.

2.2.3. Sanctions applicable to the PhD candidate and/or the PhD supervisor for violating ethical and deontological rules; The legal nature of the liability for violating ethical and deontological rules; Consequences

A first sanction for non-observance of the rules of ethics and deontology in the PhD thesis drafting is found in the provisions of art. 67 para. (3) of the Code of Academic PhD studies and consists in the refusal of the PhD Commission to issue the public support agreement of the thesis. As a result of this situation, the PhD Commission, in accordance with the provisions of art. 68 para. (4) of the Code “*In case of the “unsatisfactory” rating, (...) it specifies the content items to be remade or completed in the PhD thesis and calls for a new public support for the thesis. The second public defence of the thesis takes place in front of the same PhD Committee as in the first case. If the second public support session is awarded the “unsatisfactory” rating, the PhD title is not granted and the PhD candidate is expelled.*”

Another sanction is provided by para. (6) of the same article, according to which “*If the members of the CNATDCU in an evaluation committee PhD thesis find that the professional ethics standards have not been complied with in the thesis and/or the activities that led to its completion, including plagiarism, they invalidate the PhD dissertation, inform about these findings the other members of the evaluation committee and notify the General Council of the CNATDCU for the analysis of the responsibility of the PhD supervisor or of the PhD school and for the application of the provisions of art. 69 para. (5).”* Thus, the content of art. 69 para. (5) of the Code provides that “*If the General Council of the CNATDCU decides that the quality standards or the professional ethics have not been observed, inclusively in regard to plagiarism, the president of CNATDCU proposes to the Ministry of National Education and Scientific Research one or more of the following measures: a) the withdrawal of the capacity of a PhD supervisor; b) the withdrawal of the PhD title; c) the withdrawal of the accreditation of the PhD school”*, whereas (6) of the same article refers to the obligation of the Minister of Education “*to take the measures provided for in art. 170 from Law no. 1/2011, with subsequent amendments and supplements. The Ministry of National Education and Scientific Research informs all parties about the issued orders”*.

Sanctions are also provided by the provisions of art. 170 from Law no. 1/2011 according to which“(1) In case of non-observance of the quality or professional ethics standards, the Ministry of National Education, on basis of external evaluation reports prepared, as the case may be,

by CNATDCU, CNCS, by the Ethics and University Management Council or by the National Council of Ethics for Scientific Research, Technological Development and Innovation, may take the following measures, alternatively or simultaneously: a) the withdrawal of the capacity of a PhD supervisor, b) the withdrawal of the PhD title, c) the withdrawal of the accreditation of the PhD school, which implies the withdrawal of the right of the PhD school to organize an admittance contest to select new PhD candidates. (2) The re-accreditation of the PhD school can be obtained after at least 5 years as of the loss of this capacity, only after resuming the accreditation process, according to art. 158. (3) The regaining of the title of a PhD supervisor may be obtained after at least 5 years as of the loss of this capacity, based on an IOSUD proposal, on basis of an internal evaluation report, the assessments of which are validated by an external evaluation carried out by CNATDCU. The positive results of these procedures are necessary for approval by the Ministry of National Education. (4) PhD leaders are evaluated once every 5 years. The evaluation procedures are established by the Ministry of National Education, at the proposal of CNATDCU.”

From the corroboration of the said legal texts, it results that, in essence, we can speak of administrative responsibility, both in regard to the PhD candidate and the PhD supervisor. The administrative nature of liability also derives indirectly from the provisions of Article 69 para. (1) of the Code, according to which “*the PhD title is assigned by the order of the Minister of Education (...)*”, the withdrawal of the title being made by the same type of administrative act, according to the principle of symmetry of the legal act. Further, like any administrative act, it can be challenged by administrative litigation, an additional argument in support of the theory of administrative responsibility of the PhD candidate for the violation of the deontology rules in drafting the PhD thesis.

The law does not provide the possibility of attracting the civil liability of the PhD candidate, but it is possible that in certain situations expressly stipulated in the PhD studies contract, such a situation should occur and then we are in the presence of contractual civil liability.

In regard to the responsibility of the PhD supervisor, it is clear from the quoted legal provisions that this is an administrative-disciplinary liability.

4. Conclusions

Starting from the idea that the PhD candidate is the only author of the PhD thesis, we reach the natural question, why the responsibility is a joint one, his/her liability and such of his/her PhD supervisor. It can be noticed that in his capacity of mentor of the thesis, the PhD supervisor is jointly liable with the PhD candidate, risking a sanction up to the withdrawal of this capacity, which he/she can recover only after 5 years. Unfortunately, in Romanian society, the label of a PhD supervisor who has warranted or may even contributed to the violation of ethical and deontological norms is very difficult to remove.

We believe that such a “*joint*” liability of the PhD supervisor with the PhD candidate for violating the ethics and deontology rules should be regulated in more detail or even reconfigured. We appreciate this in view of the fact that it is relatively easy to prove the intent of the PhD candidate to violate ethical and deontological norms (mainly by plagiarism/self-plagiarism). It is more difficult to prove the intention of the PhD supervisor for such purpose, of collaborating with the PhD candidate in infringing the ethical rules. We appreciate that we can claim at most negligence, correlated with a less severe administrative penalty (instead of the withdrawal of the capacity with the possibility of regaining it after at least 5 years). We also consider necessary, by *lex ferenda*, a delimitation of the accountability of the PhD candidate from that of the PhD supervisor, so that each one responds *pro rata* to his/her own default, and not jointly¹⁸.

This type of approach would be maybe also imposed by the fact that the author of the PhD thesis is the PhD candidate, not the PhD supervisor, who – as we showed throughout the study – plays a guidance, coordination role, not one of creation. Therefore, if the rights are not the same, why is liability a joint one?

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¹⁸ An example of this is the decision of the Ministry of National Education and Science (MENS) from 25 May 2016 establishing the national training framework and the methods leading to the award of the national PhD diploma in France, analyzed by Gheorghe Bocșan in “*The responsibility of the PhD candidate, of the PhD supervisor and of the members of the public support committee for PhD dissertations for violating the rules of deontology in drafting the thesis*”, in “Revista Română de Dreptul Proprietății Intelectuale” (Romanian Magazine of Intellectual Property Law. The author notes that “*a difference between the French and the Romanian law in the field of the scientific leader (directeur de la them) is that he/she is not liable in any way for the content of the thesis; this is considered the product of the exclusive work of the PhD candidate, who has the full responsibility for the content*”, page 28.

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