CONSIDERATIONS REGARDING THE LEGAL NATURE OF THE DECISIONS AND/OR THE ORDERS OF THE UNIVERSITY ETHICS COMMISSIONS

Iulian BĂICULESCU*

Abstract

One of the most important activities in a society is scientific research. Its essential character is conferred by its role in the perpetuation of social, economic and other human progress, all of which are underpinned by scientific progress. The functioning of the scientific research system is based, on the one hand, on a scale of academic degrees and diplomas designed to ensure and reward, gradually and thematically, an increased level of competence and complexity in the performance of scientific tasks and, on the other hand, the confidence of society as a whole in the quality and honesty of the holders of scientific degrees and diplomas. However, like any other area of economic and social life, scientific research is by its very nature perfectible. Or, to put it another way, it is subject to the permeability to various manifestations of unethical and deontological research activity. And this susceptibility is all the more present in developing societies, which have not yet achieved a sufficient degree of social and institutional resilience to the specific mechanisms of corruption in all its forms. Precisely in order to combat the possible lack of ethics in scientific research, in particular, and in the creation of intellectual creations, in general, the Romanian legislator has designed a tripartite system designed to ensure compliance with the rules of ethics in scientific research and to maintain society's confidence in research professionals, a system that we will analyse below.

Keywords: *ethics, academics, research, university, commissions, decisions, orders.*

1. Introduction

Unethical behavior and acts that are generically referred to as corruption, result in the inefficient use of an institution's/organization's resources, thus negatively affecting the way in which it performs its duties, and for public institutions, generating a negative impact on the quality and quantity of services provided to the population[1].

In the framework of educational reforms, the Romanian legislator has always sought to establish principles that ensure, at any level, the promotion of an education focused on quality, value, creativity, on stimulating cognitive and volitional capacity, while developing the academic needs. To achieve these goals, both the conduct of teachers and students must be subjected to certain codes of conduct that ensure an ethical behavior.

To this end, both the current National Education Law no. 1/2011 (in its art. 3) and the repealed Law no. 84/1995 (in its art. 5) have established a series of ethical principles within the fundamental principles governing the educational system, at all levels of organization and functioning and in all forms of teaching.

Thus, the principle of fairness or non-discrimination, the principle of equal opportunities and the principle of transparency, as ethical principles, stand alongside the principle of quality, the principle of relevance, the principle of efficiency or the principle of decentralization[2].

Although art. 3 letter (f) of the Law no. 1/2011 defines the principle of public accountability as the basis of the legal accountability of educational institutions for their performance, public accountability should not only be transposed to the institutional level, because the education system cannot be designed without the involvement of stakeholders, teaching staff and pupils/students, which is why public accountability is also reflected on their behavior from a teaching perspective in relation to their performance or to the shortcomings in the teaching and learning process.

At the same time, Law no. 206/2004[3], regulates good conduct in scientific research, communication, publication, dissemination and scientific popularization activities and, together with the Code of Doctoral Studies, outlines a research framework that regulates the organization and implementation of doctoral programs in Romania, which was published by GD no. 681/2011.

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* Lawyer; PhD Candidate, Faculty of Law, „Nicolae Titulescu" University of Bucharest, in the field of Competition Law, with a doctoral thesis entitled *Competition Law. Liability procedure in case of violation of competition rules* (e-mail: baiculescu.office@gmail.com).

[1] G. Gulyas, L. Radu, D.O. Balica, C. Hâruță, *Etica în administrația publică*, „Babes-Bolyai" University, Cluj-Napoca, 2011, p. 10.

[2] Art. 3 the National Education Law no. 1/2011, published in the Official Gazette of Romania no. 18/10.01.2011 (hereinafter referred to as the *National Education Law*).

[3] Published in the Official Gazette of Romania no. 505/04.06.2004.

Since the doctoral research is, on the one hand, both an end and a means of conducting the research activity as a whole, which stands as a veritable cornerstone of the education process (especially the superior cycle of it), given its role in forming the future teachers and, on the other hand, probably the most talked-about subject related to the superior cycle of the Romanian education system, in the following we will show how the legal framework in the matter of the ethics in the doctoral activity stands and works.

2. The multiple-layered legal framework guarding the respect of the ethical norms applicable to the doctoral research activity

The first piece of legislation to be taken into account when considering the issues is Law no. 8/1996 on copyright and related rights. Of course, it could also be said that this place should be given to Law no. 206/2004 on good conduct in scientific research, but as far as we are concerned, given the central place of Law no. 8/1996 in the system of Romanian Intellectual Property Law and the fact that it is the source to which we must refer in order to understand most of the notions used, we choose to start our analysis from the provisions of this act, in which we identify definitions of essential notions such as authors, works, etc.[4].

The next applicable act, which we consider essential for the field under analysis, is the National Education Law no. 1/2011, which regulates issues such as levels of study and the specific organization of each of them[5].

Next, very important for our analysis is also Law no. 206/2004, in which we find the most relevant provisions regulating the actual conduct of the activity of developing research approaches, but it would be appropriate to mention that this act also makes certain references to Law no. 319/2003 on the status of research and development staff[6].

The next act we mention, GD no. 681/2011 on the Code of Doctoral Studies[7], is of lesser legal force but no less relevant, as it contains the most detailed regulations on doctoral studies[8].

Also important for each doctoral candidate and member of the Thesis Committee are the regulations on the organization and conduct of doctoral studies adopted at the level of the institutions organizing doctoral studies where the activity under review is carried out[9].

So, we can see the existence of a legal framework consisting of a number of at least five different acts that the doctoral researchers have to respect, namely: Law no. 8/1996, Law no. 206/2004, Law no. 1/2011, GD no. 681/2011 and the Rules of Procedures adopted by each Doctoral School. In this context, it would not be without interest to present a short history of how this complex and rather opaque and unpredictable system came to be.

3. Brief history of ethics regulation in the Education field

Given the need for a national integrity system and a long-term anti-corruption strategy, with multidimensional ethical infrastructures, to ensure ethical behavior in the public sector through reform measures, including legislative reform[10], it is evident in the public sector in Romania, since 2004, the intensification of efforts to outline and implement codes of ethics and deontology in public sector professions - civil servants, education, health, judiciary. Obviously, these steps have been integrated into Romania's internal and external policy strategy for accession to the European Union.

In the context of building a system of integrity in educational activities, disciplinary legislation should be complemented with rules on the respect of ethics in education and the deontology of the teaching profession, with the establishment of effective monitoring and control bodies and a code of ethics, measures first implemented in university education under Law no. 84/1995 [art. 141 letter s) of the law] at the initiative of the relevant ministry, which adopted Order no. 4492/06.07.2005 on the promotion of professional ethics in universities.

Although the legislation of that time regulated the disciplinary liability of teaching staff both for violation of their duties under the individual employment contract and for violation of rules of conduct that damage the educational goals and prestige of the institution (see art. 115 of Law no. 128/2005), the bodies competent to investigate the actions of teaching staff and to apply sanctions were the disciplinary investigation committees

[4] For further details, see I. Cuciureanu, D.-A. Bantaș, *The legal regime of the liability for violating deontological norms in the activity of elaborating doctoral theses - between the academic ethics and the logical challenges*, in Diplomacy & Intelligence Magazine no. 14/July 2020, p. 85 *et seq*.

[5] *Ibidem*.

[6] *Ibidem*.

[7] Published in the Official Gazette of Romania no. 551/03.08.2011.

[8] I. Cuciureanu, D.-A. Bantaș, *op. cit*., p. 85 *et seq*.

[9] *Ibidem*.

[10] A. Avram, C. Berlic, B. Murgescu, M.L. Murgescu, M. Popescu, C. Rughinișm, D. Sandu, E. Socaciu, E. Șercan, B. Ștefănescu, S.E. Tănăsescu, S. Voinea, *Deontologie academică. Curriculum cadru, Curs Universitar*, Bucharest, 2017, p. 4.

for disciplinary offences and, since 1 October 2005, the university ethics committees for the investigation of offences against university ethics (before 2005, both types of offences were investigated by the disciplinary investigation committees within the framework of disciplinary liability procedures).

The adoption of the Order of the Minister of Education and Research no. 4492/2005 was preceded by the adoption of the Law no. 206/2004 on good conduct in scientific research, technological development and innovation, a normative act that establishes rules of good conduct in research and development activities, criminalizes fraud in science, falsification and seizure of data in research activities, plagiarism and conflict of interest and a number of seven sanctions applicable by the National Ethics Council to personnel carrying out research and development activities in violation of the rules of good conduct.

Having regard to the research and development component of the teaching staff's duties in higher education under art. 79 and art. 80 para. (1) of Law no. 128/1997, as well as to the duties incumbent on it with regard to the development and implementation of reform strategies in education and training under art. 141(s) of Law no. 84/1995, the Ministry adopted Order no. 4492/2005, on the basis of which university codes of ethics were established at university level and ethics committees were subordinated to the university senate in order to analyse and resolve complaints and referrals concerning breaches of university ethics.

With the entry into force of the National Education Law no. 1/2011, the legislator's vision of ethics in the field of education has changed, on the one hand by regulating ethical issues in the teaching activity of pre-university education staff, the teaching council of the pre-university education unit has the power to establish a code of professional ethics and to monitor compliance with these rules in the educational institution), on the other hand, by speeding up the regulation of good conduct at higher education level by extending liability for breaches of ethical rules to students as well, *i.e.,* by regulating separate academic ethics, both as regards the work of teaching and research staff and as regards compliance with ethical rules by the higher education institution, with institutional academic ethics becoming an important part of the public accountability assumed by the higher education institution.

Also, if legal instruments for public accountability of educational institutions regarding their activities that violate ethical rules and principles have been adapted, we note that Law no. 1/2011 in art. 217 para. (1) has also regulated new monitoring bodies and the competences of the existing ones have been extended.

Thus, in addition to the University Ethics and Management Council (the old University Ethics Council from the Order of the Minister of Education and Research no. 4492/2005, which also received powers to monitor the management activity of higher education institutions, in the sense that it assumes public institutional responsibility), a National Ethics Council for Scientific Research, Technological Development and Innovation was also appointed, with specific powers regarding good conduct in research and development activity according to art. 218 para. (3) in conjunction with art. 323 and art. 325 – art. 326 of Law no. 1/2011.

By virtue of the new provisions of Law no. 1/2011 and in order to legitimize their activity, the competences and working procedures of the Ethics and University Management Council were detailed by the adoption of the Order of the Minister of Education and Scientific Research no. 3879/2012 on the establishment of the Ethics and University Management Council and the approval of the Regulation of its organization and functioning, successively repealed by OMESR no. 3304/2015 and currently by OMESR no. 6085/2016 (the latter act also presenting the nominal composition of the Ethics Council at national level), respectively the competences and working procedures of the National Council for Scientific Research, Technological Development and Innovation through the adoption of OMESR no. 5735/2011 on the approval of the Regulation of organization and functioning of the National Council for Ethics of Scientific Research, Technological Development and Innovation, successively repealed by OMESR no. 4393/2012, OMESR no. 5873/2015, OMESR no. 5712/2016, Order of the Minister of National Education no. 211/2017 and currently Order no. 4655/2020 (the latter administrative act presenting also the nominal composition of the Council at national level including representatives of research and development institutes and state universities).

Given the different system of subordination to the Ministry and of funding of pre-university establishments to higher education institutions, in order to coordinate and monitor the application of the rules of moral and professional conduct in pre-university education activities, OMESR no. 5550/2011 constituted a National Ethics Council of 378 members, 9 members for each county and Bucharest, with professional prestige and moral authority, representing teaching staff, parents and non-governmental organizations that have had a significant activity for at least 3 years in the field of pre-university education.

At the level of each school inspectorate, ethics committees are established for four-year terms based on the results of a vote of the school inspectorate's board of directors, with annual reconfirmation by the board of directors. The Framework Code of Ethics for Teaching Staff in University Education was issued by Order 4831/2018.

At this point, it may not be without interest to see what are those specific breaches of the ethical conduct

in academic matters that such a complex framework defends against. Therefore, in the following section we will identify and analyse those breaches.

4. Specific breaches of the ethical behavior in research and education

Deviations from the rules of good conduct are provided for in art. 2 index 1 of Law no. 206/2004, insofar as they do not constitute offences under criminal law. These deviations read, in the wording of the aforementioned legal disposition, as follows:

- the compilation of results or data and their presentation as experimental data, as data obtained by numerical calculations or computer simulations or as data or results obtained by analytical calculations or deductive reasoning;
- falsifying experimental data, data obtained by calculation or numerical computer simulation or data or results obtained by analytical calculation or deductive reasoning;
- deliberately obstructing, hindering or sabotaging the research and development activities of other persons, including by unreasonably blocking access to research and development facilities, damaging, destroying or tampering with experimental apparatus, equipment, documents, computer programs, data in electronic form, organic or inorganic substances or living matter necessary for other persons to carry out, conduct or complete research and development activities;
- plagiarism and self-plagiarism;
- inclusion in the list of authors of a scientific publication of one or more co-authors who have not contributed significantly to the publication or exclusion of co-authors who have contributed significantly to the publication;
- inclusion in the list of authors of a scientific publication of a person without that person's consent;
- unauthorized publication or dissemination by authors of unpublished scientific results, hypotheses, theories, or methods;
- the inclusion of false information in applications for grants or funding, in applications for habilitation, for university teaching posts or for research and development posts;
- non-disclosure of conflicts of interest in conducting or participating in evaluations;
- failure to respect confidentiality in the evaluation;
- discrimination in evaluations based on age, ethnicity, gender, social origin, political or religious orientation, sexual orientation or other types of discrimination, except for affirmative action provided for by law;
- abuse of authority to obtain authorship or co-authorship of publications of subordinates;
- abuse of authority to obtain salary, remuneration or other material benefits from research and development projects conducted or coordinated by subordinates;
- abuse of authority to obtain authorship or co-authorship of publications of subordinates or to obtain remuneration, compensation or other material benefits for spouses, relatives or family members up to and including the third degree;
- abuse of authority in order to impose their own theories, concepts or results on subordinates without justification;
- obstructing the work of an ethics committee, a review committee or the National Ethics Council in the course of a review of misconduct in the research and development activity of subordinates;
- failure to comply with the legal provisions and procedures intended to comply with the rules of good conduct in the research and development activity provided for in Law no. 206/2004, in Law no. 1/2011, in the Code of Ethics, in the codes of ethics by fields, in the regulations of organization and functioning of the research and development institutions, respectively in the university charters, as the case may be, including the non-implementation of the sanctions established by the ethics committees according to art. 11 para. (6) of this Law or by the National Ethics Council, according to art. 326 of Law no. 1/2011;
- active participation in misconduct by others; knowledge of misconduct by others and failure to notify the Ethics Committee or the National Ethics Council;
- co-authorship of publications containing falsified or fabricated data;
- failure to comply with legal and contractual obligations, including those relating to the contract of mandate or funding contracts, in the exercise of functions of management or coordination of research and development activities.

From those breaches, by far the most frequent and talked about in the public sphere are plagiarism and self-plagiarism. Therefore, we feel the need to talk about these former ones in further detail.

As the specialized literature puts it, „the origin of the term can be found in the Latin *plagium*, which in

Romanian law meant the kidnapping of a slave or a child. The plagiarist (*plagiarius*) was considered a kidnapper, a robber, a concealer of stolen goods, a person who helped persons prosecuted by law to hide"[11].

„The first prominent figure to use the term plagiarism in its current sense was the Latin poet Martial in the 1st century AD, to denote the act of his rival Fidentius of reciting his works in public as if they were his own. The negative meaning of the term indicates that Martial considered Fidentius' act particularly serious and likely to damage his dignity"[12].

„Examples of plagiarism that can be found in the academic environment are copying whole passages from other people's works in one's own assignments (essays, reports, scientific papers), using recordings, images without citing the author, presenting another person's work as the student's creation or publishing online lectures, course materials, etc."[13].

As far as classifications are concerned, these can be multiple. Thus, a first type, which involves the crude and completely unfiltered taking over of a person's work without proper citation, is the so-called copy-paste or clone plagiarism. Another type is partial citation plagiarism – the taking of content from a single source with minimal intervention. In this case, either the source is not indicated, or it is indicated without proper citation. There is also paraphrase plagiarism, where the author retains the meaning of an idea by replacing words with synonyms - basically paraphrase plagiarism is a rephrasing of an idea"[14]. This wording makes us rally to the opinion that „a qualification of this practice as plagiarism should be made after a thorough analysis of the works, extreme approaches being recommended to be avoided, as it can be concluded that any idea taken and reformulated, whose author is identified, but without quotation marks, is plagiarism, which would lead to the qualification of ¾ of published scientific works as plagiarism"[15].

Another form of plagiarism that departs slightly from the traditional physiognomy of plagiarism, but also from originality, and is somewhat of a borderline situation, is plagiarism by mixing, *i.e.,* taking texts by several authors and arranging them into a meaningful sentence. This creates an ideational jigsaw puzzle which, if the author puts his or her own stamp on it, can be classed as plagiarism (some authors have also distinguished „plagiarism by confusion")[16].

Hybrid plagiarism is a form of plagiarism where the liability of the person who „plagiarizes" in this way should be questionable. It is, in fact, that situation where one correctly quotes a source which is itself plagiarized. In this case, holding the „end-user" of the text liable is not justified, because they have (correctly) quoted a plagiarized text[17].

Of course, there is also aggregate plagiarism, where the author compiles texts by other authors, with the correct use of quotation marks, but without a creative contribution. The value of such a work can only be documentary at best, as it is a register of quotations[18].

As far as the Law no. 206/2004 is concerned, its art. 4 defines plagiarism as the *presentation in a written work or an oral communication, including in electronic format, of texts, expressions,* ***ideas****, demonstrations, data, hypotheses, theories, results or scientific methods extracted from written works, including in electronic format, of other authors, without mentioning this and without reference to the original sources*, and self-plagiarism as the *presentation in a written work or an oral communication, including in electronic form, of texts, expressions, demonstrations, data, hypotheses, theories, results or scientific methods taken from written works, including in electronic form, by the same author or authors, without mentioning this and without reference to the original sources*. Art. 310 of Law no. 1/2011 refers to serious misconduct in scientific research and academic activity such as plagiarizing results or publications of other authors; fabricating results or replacing results with fictitious data.

As regards the application of these rules, there is also a different practice in the adjudication of cases falling within the jurisdiction of the labor courts and the administrative courts (also in relation to the substantive provisions of art. 11(1) and art. 14 of Law no. 206/2004).

At this stage, we would also like to point out the fact that, as the specialized doctrine puts it, „ideas, theories, concepts and discoveries contained in a work (...) cannot benefit from legal protection" and that the „official texts of a political, legislative, administrative or judicial nature and official translations thereof are not

[11] I. Cuciureanu, D.-A. Bantaș, *op. cit.*, p. 85 *et seq*.

[12] R. Coravu, *Ce este plagiatul și cum poate fi prevenit*, in Revista Română de Biblioteconomie și Științe ale Informației, february 2013, p. 39, apud I. Cuciureanu, D.-A. Bantaș, *op. cit.*, p. 85 *et seq*.

[13] I. Cuciureanu, D.-A. Bantaș, *op. cit.*, p. 85 *et seq*.

[14] *Ibidem.*

[15] *Ibidem.*

[16] *Ibidem.*

[17] *Ibidem.*

[18] *Ibidem.*

protected".[19]

Author Marian Florescu comes to similar conclusions, in the sense of the appropriateness of removing the provisions of Law no. 206/2009 on the protection of ideas. Citing case law on the subject, he also points to the fact that, in certain areas of scientific research, including law, certain expressions are standardized, uniformized, such as those contained in legal textiles, which do not enjoy the protection conferred by copyright established by Law no. 8/2006. Furthermore, the same author considers that, in order to be in the presence of plagiarism, there must be a cumulative material element, consisting of the taking of a text and the lack of citation of the taken text, an intentional element, consisting of the intention to present the taken text as the author's own creation, and the condition that the work/works taken are original[20].

In the same vein, we have to point out that, since the legislator's option was to remove certain types of text from the protection granted by the legislation regarding the intellectual property rights, it would be a proof of extensive interpretation to include these creations under the scope of the aforementioned dispositions governing plagiarism and, therefore, such a legal solution must pe repelled from the very beginning.

5. Liability of higher education teaching/research staff for breaches of ethics and professional conduct regulations

Defined either by the legislator (art. 310 of Law no. 1/2011 and art. 4 of Law no. 206/2004), or by the university senates that have adopted the Codes of Ethics and Professional Deontology, now considered integral, part of the university charters [art. 123 para. (3) with reference to art. 128 para. (2) letter b) of Law no. 1/2011], the facts constituting breaches of the regulations on teaching ethics and professional deontology may be referred to the academic ethics committees for examination by any person aware of the fact, *i.e.,* the committees may act on their own initiative to investigate, by virtue of their status as a judicial body recognized by the law in force on national education, the ethics committees at the level of educational institutions [according to article 306 para. (1) and para. (2) of the Law no. 1/2011, ethics committees operate at the level of universities, their composition being approved by the board of directors and approved by the university senate without the existence of any subordination relationship, and according to art. 307 sentence II of the Law no. 1/2011, the legal responsibility for the decisions and activity of the university ethics committee lies with the university].

Following an *ex officio* complaint/investigation, the University Ethics Committee initiates the procedures established by the Code of Ethics and Deontology, namely Law no. 206/2004 regarding the investigation of the facts, the hearing of the parties (the person denounced as the author of the violation of ethical rules, respectively the denouncer), the investigation of the factual and legal situation in which the violation was committed, determining the circumstances in which the act was committed and the individualization of the applicable sanction according to the conduct of the person under investigation in general and in particular in relation to the offence under investigation.

From the point of view of the procedure described above, and even from the perspective of the sanctions that can be applied to teaching and research staff by the university ethics committee for violation of university ethics or deviations from good conduct in scientific research, it would seem that we are in the field of disciplinary liability of teaching staff, liability committed for disciplinary misconduct[21].

However, the legal nature of disciplinary offences and the penalties for committing them are different from breaches of the rules of professional ethics and professional conduct, *i.e.,* the penalty regime differs for bodies carrying out research activities and those applying penalties, as the case may be.

Even the legislator in Chapter II of the National Education Law no. 1/2011 - Status of Higher Education Teaching and Research Staff, regulates separately, although in the continuation of the sections, Academic Ethics - Section 5 and Section 8 - of Disciplinary Sanctions - Section 7. Even in enumerating and defining the sanctions applicable in the two procedures, the legislator uses separate texts [art. 312 para. (2) of the Law no. 1/2011 on Disciplinary Sanctions, and art. 318 of the Law on Disciplinary Sanctions], sanctions for violations of academic ethics and good conduct in research).

Following the analysis carried out by the members of the ethics committee, the applicable sanction(s) (art. 321 and/or art. 324 Law no. 1/2011) is/are determined and individualized, as opposed to disciplinary liability in the case where only one disciplinary sanction is applied in relation to the offence and the consequences of the facts.

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[19] V. Roş, *Plagiatul, plagiomania si deontologia*, *www.juridice.ro*, 03.07.2007, accessed on 25.05.2020, apud I. Cuciureanu, D.-A. Bantaş, *op. cit*., p. 85 *et seq*.

[20] M. Florescu, *Plagiatul. Scurte consideraţii*, in Pandectele săptămânale no. 21/2012, apud I. Cuciureanu, D.-A. Bantaş, *op. cit*., p. 85 *et seq*.

[21] I. Macovei, *Dreptul proprietății intelectuale*, „Alexandru Ioan Cuza" University Publishing House of Iași, Iași, 2002, p. 137.

Within 30 days of imposing the sanctions (from the issuance of the Ethics Committee's decision/order), the rector or dean, as the case may be, shall apply the sanctions established by the committee, according to art. 322 of Law no. 1/2011. Thus, the 30 days constitutes a limitation period, and in relation to this period, the person who enforces (although the legislator does not distinguish, it has to be the rector) orders the enforcement of sanctions for teachers, while the dean enforces sanctions for students.

With regard to the application of sanctions for deviations from good conduct in research and development for staff of higher education institutions, found and proven, the National Council for Ethics in Scientific Research, Technological Development and Innovation determines the application of one or more sanctions either as a court (art. 5 of Law no. 206/2004), or as an appeal court in the case of sanctions applied by university ethics committees [art. 321 of Law no. 1/2011 on art. 11 para. (2) of Law no. 206/2004].

If the National Council for Ethics in Scientific Research, Technological Development and Innovation, a national-level organization, determines the sanction to be applied, the legal responsibility for the work of the Council lies with the relevant Minister. It is the Minister who implements by ministerial order the sanction applied by the National Ethics Council for Scientific Research, Technological Development and Innovation as the court of substance. If the Council resolves appeals against decisions/orders of the university ethics commissions, the decisions of these appeal courts will be communicated to the management of the educational institution for implementation.

6. Personal considerations on the legal nature of the decisions/orders of the University Ethics Committees in the elaboration of PhD Theses

With regard to teaching staff in the university education system, we consider that, although the teacher is in a contractual employment relationship with the educational institution, the sanction for violation of ethical rules is distinct from the disciplinary sanction from the perspective of the procedure carried out by the University Ethics Committee, because we take into account that according to art. 307 of Law no. 1/2011, the legal responsibility for the decisions and activity of the University Ethics Commission lies with the university, so the University Ethics Commission is an administrative-judicial body at the level of the institution, the legal status being different from that of a disciplinary investigation as well as from the perspective of the consequences on the activity of the teaching staff (withdrawal of certain scientific titles - for example, the scientific title of doctor, a university degree of professor or a scientific researcher degree - or the loss of certain qualities associated with the teaching function - loss of the quality of doctoral supervisor - respectively the withdrawal of certain published works from the scientific field or portfolio.

From the point of view of the quality and competence of the University Ethics Commission, it investigates the facts and applies sanctions in case of violations of the provisions of the Code of Ethics and Professional Deontology, according to art. 320 and art. 321 of Law no. 1/2011, so that the decision/order of the University Ethics Commission is the act of the administrative judicial body that produces legal effects – by establishing the applicable sanction.

We consider that the theory of the complex administrative act is fully applicable, provided that for the implementation of the sanctions applied by the University Ethics Commission, the dean or rector issues an act subsequent to the commission's decision. For these reasons, the legality and appropriateness of the decision/order of the University Ethics Commission regarding the facts and sanctions applicable to university staff must be subject to review by the administrative court, in accordance with the procedures established by Law no. 554/2004, the activity of the University Ethics Commission and its acts cannot be assimilated to the activity and acts of a prior disciplinary investigation commission (whose activity is subject to the control of the legality of the labor law courts according to art. 208-211 of Law no. 62/2011) which does not have the prerogative of an administrative-judicial body, but only to ascertain the facts and circumstances in which the disciplinary offences were committed, the decision of sanctioning is the responsibility of the decision-making body of the universities - the faculty council or the university senate according to art. 313 para. (2) of the National Education Law no. 1/2011.

We believe that this solution is feasible in assessing the quality and competence of the University Ethics Commission, whose statute - a body coordinated by the university senate, and not subordinated to it - by an administrative judicial body, confers a character of administrative law on its acts, namely the decision/order establishing the sanctions resulting from the petitions examined regarding violations of professional conduct and ethics.

The decision of the Rector/Dean provided for in art. 322 of the National Education Law no. 1/2011 is an act subsequent to the act establishing the sanction of the Ethics Committee, it is an implementing act, as provided for by the legislator.

From the above considerations, we disagree with the practice of the court, although unqualified, which considers that the sanction established by the University Ethics Commission is a sanction applied within the framework of a contractual employment contract (teaching staff have employment contracts with universities, not being civil servants according to the letter of Law no. 188/1999), thus arguing that the labor dispute resolution courts, within the framework of judicial dispute procedures, are competent to ensure the legality of both the decision of the rector/dean implementing the decision of the University Ethics Commission and the decision of the University Ethics Commission itself, following the principle of disciplinary liability and the specific procedures of the preliminary disciplinary investigation.

The solution of splitting the appeal against the decision of the Ethics Committee from the appeal against the decision of the Rector/Dean in the case of a dispute challenging the procedure before the University Ethics Committee and the sanctions established by it and implemented cannot be accepted because of the break in the unity of the complex administrative act which is the decision of the University Ethics Committee, the same procedural report based on the appeal against the acts of the Ethics Committee is subject to different jurisdictional procedures - the specific labor dispute procedures relating to the decision of the rector/dean and the administrative dispute procedures relating to the acts and activity of the University Ethics Committee.

7. Conclusions

At the level of pre-university education, the application of sanctions for unethical behavior among students and teachers is currently blocked by the lack of a Code of Ethics in Education defining deviations from the rules of professional ethics, although there are regulations establishing the composition and competence of monitoring bodies. Ethics committees have been operating since 2005 at university education level, both at institutional and national level, with serious breaches of ethical conduct being described in university charters within the framework of the codes of ethics and professional deontology, texts which affect the conduct of both teachers and research staff and students.

In the current regulation of the rules of ethics in higher education, from the student's perspective, we note that the effects of sanctions applied in case of violation of the rules of academic ethics by the student are exacerbated, in the sense that the studies carried out within the study program, interrupted due to expulsion, on the grounds of violation of the provisions of the Code of Ethics and University Deontology, cannot be recognized in case of a new enrollment [art. 147 para. (2) of Law no. 1/2011], regardless of the educational institution to which the student would re-enroll.

Basically, this mandatory rule requires the cancellation of all transferable credits earned by a student in a degree program if the student's conduct is unethical at any given time, whether resulting from a conflict with another student or professor or resulting from teaching fraud. However, this is not an absolute nullity because a student expelled as a result of a breach of ethical rules is not fully reinstated prior to enrolment, which is why if the study program interrupted by expulsion established by the Ethics Commission was a funded one, enrolment in a new study program can only be made against payment.

As regards the legal nature of the acts and activities of the University Ethics Commission, we note that the approach of the courts differs depending on the relationship that the person investigated for violation of the rules of ethics and conduct specific to the education system has with the institution where the University Ethics Commission operates, namely whether the person investigated and sanctioned is part of the teaching staff of the university (having an employment contract concluded and signed by the rector as the representative of the employer), then the dispute concerning the appeal against the decision/order of the Ethics Committee is considered by most courts as an employment dispute arising from the employment contract, involving in the form of a disciplinary liability of the employee - the teacher - and litigation in matters of administrative dispute being referred to the administrative dispute courts with the decision of the rector/minister's order to enforce the sanction, when we have an appeal against a decision/order of the Ethics Committee to withdraw a scientific title/research degree (where the person under investigation does not necessarily have to have an employment relationship with the university), the scientific title/research degree being awarded on the basis of a civil education/professional training report.

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