SOME CONSIDERATIONS REGARDING CCR DEC. NO. 364/2022

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Abstract

The issue of plagiarism has raised many theoretical and practical discussions. Also, the legal basis was not clear enough and certain misunderstandings have created the premises for losing the title of doctor. Arrived in court, the trials were judged differently. In 2022, CCR pronounced dec. no. 364, one of the clearest decisions of the court, and the issue was settled in a transparent manner. The current study will analyse the implications of this decision.

Keywords: *CCR, administrative act, civil circuit, plagiarism.*

1. Introduction

The authenticity of a paperwork seeking a doctoral title has been a widely discussed topic. The title of doctor in itself represents the highest scientific qualification that a person can obtain, followed by scientific recognition in the academic world or in the field in which the person to whom this distinction is awarded works, which automatically entails the need for the work to be the fruit of an extensive personal contribution, marked by an arduous path of rigorous scientific documentation. Therefore, the writing of a doctoral thesis is subject to particular scientific rigor, designed to produce a work of real interest, written according to rules of content and form that cannot be questioned for its authenticity and personal contribution. This is why, this act of genuine scientific creativity is backed up by legal rules which should clearly stipulate the conditions under which a title of doctor can be awarded and the requirements which a work must meet in order to be considered a genuine doctoral thesis. Regulations in this area have fluctuated, from superfluous legislation with few rigorous rules, leading to scientific works of poor quality, to direct interventions of the Parliament, such as GEO no. 4/2016 on the amendment and supplementation of National Education Law no. 1/2011[1], the provisions of which were declared unconstitutional in 2016, as we shall indicate below. However, these regulations have not always been so rigorous, so that no later than 2022, CCR declared unconstitutional an extremely important text, with major implications for the practice of administrative courts dealing with plagiarism disputes in works for which the doctoral title had been awarded. Even though the legislation has been amended following the entry into force of the new education law, Law no. 199/2023[2] on Higher Education, the topic remains of the utmost interest, on the one hand due to the fact there are still disputes before the courts on this subject and, on the other hand, due to the fact the Constitutional Court is deciding certain issues applicable to future cases. Last but not least, CCR dec. no. 364/2002 regarding the unconstitutionality of the provisions of art. 170 para. (1) letter b) of National Education Law no. 1/2011 is a striking example of administrative law, which will be discussed in detail in this study.

2. Implications of CCR dec. no. 364/2022 on the doctoral title

2.1. Theoretical considerations on what CCR ruled in dec. no. 364/2022

As we have shown above, the question of the competence of the authority empowered to establish plagiarism was widely discussed and finally settled by the Constitutional Court. However, the discussion should not have been reduced to answering the question: was there plagiarism or not? And answering this question, can the competent authority (until dec. 364/2022, the Ministry of Education) revoke the doctoral title?

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[1] GEO no. 4/2016, published in the Official Gazette of Romania, Part I, no. 182/10.03.2016.

[2] Law no. 199/2023 on Higher Education, by the consolidation of 23.04.2024 is based on the publication in the Official Gazette of Romania, Part I, no. 614/05.07.2023.

„Lately, there is a tendency, when the question of violations of the rules governing good conduct in scientific research arises, to reduce this to plagiarism."[3]

The quoted author captures extremely well the administrative and judicial struggles that preceded the wave of litigations in court, litigations that had as object the revocation of the title of doctor by the Ministry of Education based on the suspicion of plagiarism.

These disputes have generated two forceful interventions of the Constitutional Court: the first one was in 2016, once with the pronouncement of dec. no. 624 regarding the admission of the objection of unconstitutionality of the provisions of the Law for the approval of GEO no. 4/2016 on the amendment and supplementation of National Education Law no. 1/2011.[4]

In this decision, the Constitutional Court has addressed certain ambiguities in GEO no. 4/2016 which aimed to amend Law no. 1/2011, questioning the issue of the individual administrative act, the principle of revocability, respectively the irrevocability of individual administrative acts that have entered the civil circuit.

Furthermore, in this decision, „the Court qualified the doctoral title as an act of administrative nature (para. 48 and 49), and the doctoral degree, as a document certifying the title, cannot be anything other than an act of an administrative nature (para. 48).

CCR also ruled by dec. no. 624/26.10.2016, para. 49 that „the provisions entail the legislative enshrinement of the principle of revocability of administrative acts, containing procedural rules establishing the means by which administrative acts that can no longer be revoked, since they have entered the civil circuit and have produced legal effects, may be subject to legality review at the request of the issuing authority. According to this text legal, the administrative acts which have entered the civil circuit and have produced legal effects can no longer be revoked by the issuing authorities, and their nullity or annulment can only be ordered by the competent court by filing a petition within one year as of the date of issuance of the act. The principle of revocability of administrative acts is, together with the principle of legality, a basic principle of the legal regime of administrative acts, having an implicit constitutional basis (art. 21 and 52 of the Constitution) and legal support [art. 7 para. (1) of Law no. 554/2004]. According to the case law, in principle, all administrative acts may be revoked, normative acts at any time, and individual acts with some exceptions; among the individual administrative acts exempted are also the administrative acts that have entered the civil circuit and have generated subjective rights guaranteed by law. However, the scientific title of doctor is an individual administrative act which, once it has entered the civil circuit, produces legal effects in the field of personal, patrimonial and non-patrimonial rights."

Subsequently, the Constitutional Court was vested with the exception of unconstitutionality of the provisions of art. 170 para. (1) letter b) of National Education Law no. 1/2011[5], currently repealed by Law no. 199/2023 on Higher Education, which read as follows:

„(1) *In case the quality or professional ethics standards are not observed, the Ministry of Education, Research, Youth, and Sports, based on external evaluation reports drafted as the case may be, by CNATDCU (National Council for the Accreditation of University Degrees, Diplomas and Certificates), CNCS (National University Research Council), the University Council of Ethics and Management or the National Council of Ethics for Research, Technological Development and Innovation, may take the following measures, alternatively or simultaneously*:

[...]

b) *to withdraw the title of doctor*."

The solution of the Constitutional Court was to admit this exception and to note that the objected legal provisions are constitutional, provided that they refer to the withdrawal of the title of doctor which has not entered the civil circuit and has not produced legal effects. *Per a contrario,* the title of doctor which has entered the civil circuit and has produced legal effects can no longer be withdrawn (an operation equivalent to the impossibility of revoking it).

Given this context, it is worth analysing the legal notions that the CCR uses since they will be repeated in dec. no. 364/2022 and, as we have already mentioned, they represent a real lesson in administrative law.

The administrative act, since it is unquestionable to remove this qualification with regard to the doctoral title and the doctoral degree, represents "the main legal form of the activity of public administration bodies

[3] E. Stefan, *Etică și integritate academică*, 2nd ed., revised and supplemented, Pro Universitaria Publishing House, Bucharest, 2023, p. 297.

[4] CCR dec. no. 624/2016, published in the Official Gazette of Romania, Part I, no. 937/22.11.2016.

[5] National Education Law no. 1/2011, published in the Official Gazette of Romania, Part I, no. 18/10.01.2011.

consisting of a unilateral and express manifestation of will to create, modify or extinguish rights and obligations, in the exercise of public power, under the main control of legality of the courts".[6]

This definition given by Professor Antonie Iorgovan to the administrative act and which has remained emblematic for the doctrine (the definition is quoted by most authors of administrative law) is complemented by the modern vision that Law no. 554/2004[7] of the contentious administrative gives to the administrative act. Law no. 554/2004 defines the administrative act in a similar way to the doctrinal definition, but expressly states that the administrative act is „a unilateral act of an individual or normative nature."

Law no. 554/2004 thus establishes that under the umbrella of the term „administrative act" stay in fact the individual acts and the regulatory acts, types of administrative acts, with a similar legal regime for certain aspects, but totally different for others.

In works dedicated to administrative law, there are authors who analyse comparatively the normative administrative act and the individual administrative act, precisely in order to capture their different legal regime and to outline the essential differences between these two types of administrative acts.[8]

The idea of „individual administrative act" is frequently repeated by the Constitutional Court, both in the substantiation of dec. no. 624/2016 (para. 48, 49, 50, 51), and in the substantiation of dec. no. 364/2022 (para. 21, 22 23, 26, 27, 28) precisely in order to highlight the difference in the legal regime, in terms of revocability/irrevocability of the individual administrative act.

The analysis of the Constitutional Court on the provisions of National Education Law no. 1/2011, as we have mentioned above, currently repealed, show that „according to art. 169 para. (2) of Law no. 1/2011, following the completion of scientific doctoral studies, the institution organising the doctoral studies confers the diploma and the title of Doctor of Science. Art. 168 para. (7) provides that the doctoral title is awarded by order of the Minister of Education, Research, Youth and Sport, after validation of the doctoral thesis by the National Council for the Accreditation of University Degrees, Diplomas and Certificates (CNATDCU). The doctoral degree is conferred after the successful completion of a doctoral degree programme, certifying the obtaining and possession of the title of doctor [art. 169 para. (1) of Law no. 1/2011]. Therefore, the law operates with two distinct terms, respectively „doctoral title" and „doctoral degree", each of which being subject to a different revocation procedure."[9]

By continuing the substantiation, CCR states, with reference to dec. no. 624/2016, that the title of doctor is an administrative act, in this case an individual administrative act, and from this moment on the great discussions on the revocation and annulment of individual administrative acts start.

In this constitutional and legal context, the Court ruled that a regulation which establishes that „the administrative act finding the scientific title is annulled from the date of the issuance of the act of revocation and produces effects only for the future" represents a violation of the irrevocability of individual administrative acts, with serious consequences on the subjective rights created as a result of the entry into the civil circuit of that act. The possibility of the revocation of the administrative act performed by the issuing authority violates the principle of stability of legal relationships, introduces insecurity into the civil circuit and leaves to the subjective discretion of the issuing authority the existence of the rights of the person who acquired the scientific title (dec. no. 624/2016, para. 50)."[10]

Based on these considerations of the Constitutional Court, we believe that certain theoretical aspects that have substantiated the decisions of the Court and that are cornerstones of administrative law should be highlighted.

With regard to revocation, this is the legal operation whereby the body issuing an administrative act or the superior hierarchical body abolishes that act. When pronounced by the issuing body, revocation is also called withdrawal.[11]

Revocation is therefore a particular case of nullity, but at the same time a rule, a fundamental principle of the legal regime of administrative acts.

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[6] A. Iorgovan, *Tratat de drept administrativ*, vol. II, 4th ed., All Beck Publishing House, Bucharest, 2005, p. 25.

[7] Law no. 554/2004, published in Official Gazette of Romania, Part I, no. 1154/07.12.2004.

[8] See, in this respect, E.E. Ștefan, *Drept administrativ. Partea a II-a, Curs universitar*, 4th ed., revised and supplemented, Universul Juridic Publishing House, Bucharest, 2022, pp. 30-32.

[9] CCR dec. no. 364/ 2022, para. 19.

[10] CCR dec. no. 364/2022, para. 23.

[11] A. Iorgovan, *op. cit.*, p. 83.

This fundamental principle applicable to administrative acts results both from art. 21 and art. 52 of the republished Constitution and from the provisions of Law no. 554/2004 of the contentious administrative. This aspect was also noted by CCR in dec. no. 364/2022, as follows: „The principle of revocability of administrative acts has an implicit constitutional enshrinement in art. 21 and 52 of the Constitution, the exceptions thereto are also implicitly contained in the same provisions in conjunction with other values, requirements and principles with constitutional enshrinement. In this regard, the Court notes art. 1 para. (5) of the Constitution, in the legal certainty component, which outlines the content and limits of the revocability of administrative acts. Therefore, once an administrative act has entered the civil circuit and produces legal effects, the principle of legal certainty prohibits its revocation by the issuer itself."[12]

But what is the legal basis for revocation, the fundamental principle of the administrative law?

The term of „revocation" is found in art. 7 para. (1) of Law no. 554/2004 as further amended and supplemented, which states the following: *„Before approaching the contentious administrative court with jurisdiction, the person considering him/herself aggrieved with respect to a right or legitimate interest, by a specific administrative decision, shall request the issuing public authority, or the higher authority along the chain of command, within thirty (30) days of notice of such decision,* ***the revocation,*** *in full or in part of such decision."*

However, according to Professor Antonie Iorgovan, the principle of revocability of administrative acts appears as a natural effect of the features of public administration, of the very *raison d'être* of administrative acts. The organisational structure of public administration is based on certain rules, including hierarchical administrative subordination, which is not, however, of a dominant nature. We will thus understand *the revocation of administrative acts as a rule, a principle of the functional structure of public administration.*[13]

As regards the legal regime of revocation, in conjunction with the provisions of Law no. 554/2004, art. 7 which provides that „*in case of a normative administrative act, the preliminary complaint can be filed at any time*", the conclusion is that normative administrative acts are always and at any time revocable, while individual administrative acts are in principle revocable.

There is a whole series of exceptions from the principle of revocability of administrative acts, including the administrative act that has entered the civil circuit.

Regarding this exception, there have been divergent opinions in the doctrine, as regards the interpretation of art. 1 para. (6) of Law no. 554/2004, which provides as follows: „*The public authority that has issued an unlawful unilateral administrative act may request the court to declare it null and void, whenever such decision may no longer be revoked because it has already entered the civil circuit and has produced legal effects."*

According to a legal opinion, "art. 1 para. (6) of Law no. 554/2004 is understood by one author on the basis of the meaning of the notion of *civil circuit*, seen as the totality of legal acts through which goods (patrimonial assets) circulate from one person to another. Hence, the identification of five conditions „in order for an administrative act to be considered irrevocable by *ad litteram* application of art. 1 para. (6)", namely: to be individual; to create a patrimonial effect; the right must have been acquired in good faith by the beneficiary; the right acquired by the act must have already been transacted and there must be such a close link between the initial administrative act and the subsequent civil act that the revocation of the former entails the dissolution of the latter."[14]

Another opinion points out that there are reservations on the proposed definition of the civil circuit. The quoted author shows that „its meaning should not be forcibly restricted to the circulation of goods, as the scope of the concept is much wider". Furthermore, she considers that it concerns individual administrative acts the legal effects of which have left the applicable administrative law regime and entered another legal regime, which is that of civil law in the broad sense. It is not mandatory to conclude a subsequent civil act, but only to the extent that other such acts have been concluded.[15]

In our opinion, the solution of the CCR dec. no. 364/2022 is in line with the second opinion, which is correct because the situation under analysis takes into account other concepts, much more abstract than the limitation only to the concept of „good".

[12] CCR dec. no. 364/2022, para. 28.

[13] A. Iorgovan, *op. cit.*, p.84.

[14] O. Podaru, *Drept administrativ, vol. I. Actul Administrativ (I) Repere pentru o teorie altfel*, Hamangiu Publishing House, Bucharest, 2010.

[15] D. Apostol Tofan, *Drept administrativ*, vol. II, 5th ed., C.H. Beck Publishing House, Bucharest 2020.

The Constitutional Court sees the entry into the civil circuit as the deadline by which the issuing authority could revoke its act. After this moment, which in practice will have to be proved, as we shall show below, the only one in a position to rule on the legality of the individual administrative act granting the title of doctor remains the court, but by means of an action for annulment, the issuing authority losing any right of withdrawal. The theoretical argument of the Constitutional Court is fully sustainable since any other discretionary power left to the issuing authority beyond this moment (of entry into the civil circuit and implicitly of the production of legal effects) would be capable of deregulating legal security.

2.2. Practical considerations on the CCR rulings in dec. no. 364/2022

What the Constitutional Court underlines in the decision under review is that „The challenged text regulates the withdrawal of the doctoral title, regardless of whether or not the act in question has entered the legal circuit and produced legal effects. Since the issuing body withdraws it for reasons prior to its issue (failure to comply with quality or professional ethics standards), such withdrawal has the legal nature of a revocation. Notwithstanding the principle of the revocability of administrative acts is not an absolute one, but there are exceptions, including individual administrative acts which have entered the civil circuit and have generated subjective rights guaranteed by law, which cannot be revoked, but only annulled by an authority other than the issuing authority. Therefore, since the doctoral title and the doctoral degree which have entered the civil circuit and have generated subjective rights guaranteed by the law fall within the scope of this category, they cannot be revoked."[16]

In conclusion: „If they have entered the civil circuit and produced legal effects, both the doctoral title and the certificate accompanying it can be abolished only under a court decision, because, otherwise, if the institution issuing the document were left to abolish the title, insecurity on the legal relationship already established would be created."[17]

Starting from these two hypotheses, we must distinguish in practice between two equally possible situations:

- The title of doctor has not entered the legal circuit and has not produced legal effects, in which case the challenged text will continue to produce legal effects and the courts with jurisdiction in litigations concerning this hypothesis will continue the judgment by reference to the text of the law in force at the time of issuing the administrative act on the withdrawal of the title of doctor;
- The title of doctor has entered the legal circuit and produced legal effects, representing a condition for access to a position, being the basis for acquiring a professional qualification, a professional status or producing patrimonial effects in the form of benefits and remuneration rights for those who hold the title of doctor. In this case, the courts will apply dec. no. 364/2022 and will admit the actions/appeals brought by those whose title has been withdrawn.

If in the situation where the title of doctor has entered the civil circuit and evidence can be provided in this regard, things are somewhat simpler to analyse, practically having to provide evidence in this regard, things will be somewhat more complicated with regard to titles/degrees that have not entered the civil circuit and have not produced legal effects. In this case, these individual administrative acts may be revoked by the institutions issuing the act, but under the observance of certain principles. Thus, the issuing authority will not be able to intervene and will not be able to rule or review the scientific substance of the doctoral thesis. The issuing authority will have to limit itself in the revocation decision only to the analysis of the aspects related to the legality of the conferral/award procedure, by observing the deadlines provided by law for their revocation. Furthermore, the issuing authority will refer only to the analysis of the legality conditions in force at the time of the award of the title of doctor.

In the decision under review, the Constitutional Court argued for the security of the civil circuit, stating that if these principles are not observed „arbitration and permanent legal uncertainty regarding the holding of the title of doctor would occur".[18]

These implications must also be analysed from the perspective of the whole society on this phenomenon because, as an author of administrative law points out, „From our point of view, the stakes for leaders at the

[16] CCR dec. no. 364/2022, para. 26.
[17] *Idem*, para. 30.
[18] *Idem*, para. 37.

highest level in states today are huge and on the long-term, involving future generations, namely: identifying solutions and mechanisms to increase public confidence in state authorities (…)".[19] The circulation of doctoral theses of a high scientific level must concern the whole society and the mechanisms of verification of authenticity, as well as the authorities involved in this verification, must be clearly regulated by legislation in order not to create a dangerous phenomenon whereby works lacking authenticity and without an adequate scientific level enter the academic world and the people who wrote them wrongfully claim academic titles or patrimonial benefits that not only do not deserve them but that overshadow the idea of scientific act/scientific creation.

3. Conclusions

Although the text declared unconstitutional by CCR dec. no. 364/2022 is no longer in force, being repealed by Law no. 199/2023, the implications of this decision will still have effects in the future.

First of all, due to the fact the litigations started under the auspices of the texts declared unconstitutional and still *pending* will be judged in the light of the rulings of the Constitutional Court and the solutions to admit de actions are obvious, thus changing the practice of the courts which had registered a contrary trend until 2023.

Second of all, CCR dec. no. 364/2022 must be analysed in the light of the terms it uses and the way in which it has managed to integrate the theory of revocability/irrevocability of the administrative act to the practical situation under analysis.

Moreover, we have a clear analysis of the distinction between normative and individual administrative act in this decision, more than in any other coming from this authority. Starting from the legislator's idea of classifying the administrative act in two categories (normative and individual), we reach the practical illustration of this benefit. We are obviously talking about two distinct legal regimes, with different rules that the contentious administrative judge will have to analyse differently.

The Constitutional Court admirably makes a theoretical examination of these notions, explains them and analyses their practical implications in an accomplished manner, which shows the professionalism and legal culture of those called upon to oversee the observance of the Constitution.

Notwithstanding, beyond these aspects, the question which remains is the following: when are we fully capable of writing a doctoral thesis? What is the meaning of taking on the idea of a creative act without plagiarising, aiming only to bring an element of novelty to your chosen scientific field?

Because we can easily see that this is not an easy task. Firstly, we are talking about the idea of creation, about the idea of innovation, about the idea of putting a scientific product on the market with elements of novelty. Secondly, we are talking about compliance with a long string of substantive and formal conditions that the work in question must meet. Thirdly, we are talking about compliance with the relevant legislation. Last but not least, about the observance of certain moral values that the scientific work for which the author will finally be awarded with the title of doctor must fulfil.

One possible answer would be that the desire to receive this title must be beyond the direct benefits that might follow. There must be a desire to research, to innovate, to enrich the scientific world with valuable work. However, this desire should remain the one that motivates those who start on this path of research. These trailblazers should be joined by elements of the state that encourage research by establishing clear legislation, substantive and formal criteria that do not hinder the creative process but facilitate it.

Only when the desire to research is combined with a clear legislative framework will we have the idea of permanent legal security regarding the title of doctor and interventions such as those of the Constitutional Court will no longer be necessary.

All these challenges are coupled with the increasingly topical idea of artificial intelligence successfully competing with human creation. Further normative acts will have to be implemented to curb this phenomenon in which the authentic act of creation becomes irreplaceable by an act of creation coming from an overloaded software. New problems will arise, including legal ones, which will seek to enhance authentic human creation. So, here we are at the beginning of new paths in this matter and new legal solutions are expected.

[19] E.E. Ștefan, *Legality and morality in the activity of public authorities,* in Revista de Drept Public no. 4/2017, p. 96.

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