ABOUT THE PREREQUISITE SITUATION IN THE CASE OF THE OFFENSE OF MISAPPROPRIATION OF A WORK

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Abstract[1]

Article 197(1) of Law no. 8/1996 on copyright and related rights, republished, criminally sanctions the appropriation of a work or part of a work by a person who has not contributed to the creation of that work and who presents it as his/her own creation. The act of appropriating a work or part of a work can be done in various ways, such as: publishing works under one's own name, as if it were made by the author, signing an intellectual creation, as co-author, in the literary, scientific, musical, artistic or fine art field without having any contribution to its creation, etc.

Analysis of the legal text shows that the material element of this offense consists of two cumulative actions, namely the act of appropriating, without right, in whole or in part, the work of another author and the act of presenting it as one's own intellectual creation.

At the same time, the analysis of the author of this study shows that in order to be able to prove the commission of this offense it is necessary that the appropriation is followed by the presentation of the work as one's own creation. It should be emphasised that in the absence of the action of presentation, it cannot be held that the offense provided for and punished by art. 197(1) of Law 8/1996 on copyright and related rights, republished, has been committed.

Keywords: *work, copyright, appropriation of authorship, without right, prerequisite, plagiarism, originality.*

1. Introductory concepts

As I have pointed out in other papers[2], *„work"* means „the original intellectual creation in the literary, artistic or scientific field, whatever its mode of creation, mode or concrete form of expression and regardless of its value and destination". The work, regardless of the field to which it belongs (literary, artistic or scientific) and regardless of the manner or form in which it has been expressed (in writing, in speech, in images, in sounds or by any other means of communication to the public), is protected by *copyright*[3].

In this respect, in accordance with the provisions of art. 7 of Law no. 8/1996 on copyright and related rights, republished[4] „(a) literary and journalistic writings, lectures, sermons, sermons, pleadings and any other written or oral works, and computer programs; (b) scientific works, written or oral, such as: communications, studies, university courses, school textbooks, scientific projects and documentation; c) musical compositions with or without text; d) dramatic works, dramatical-musical works, choreographic works and pantomimes; e) cinematographic works, as well as any other audiovisual works; f) photographic works, film stills, as well as any other works expressed by a process analogous to photography; g) graphic or plastic works of art, such as: works of sculpture, painting, engraving, lithography, monumental art, scenography, tapestry, ceramics, glass and metal

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[1] The study is based on a form I presented orally at the National Conference on Criminal Business Law, 8th ed., Bucharest, 7-9 July 2020 (online). The present study contains a revised, amended and supplemented form with both doctrine and case law.

[2] R. Pârvu, C.R. Romițan, *Dreptul de autor și drepturile conexe, Lexicon juridic,* All Beck Publishing House, Bucharest, 2005, p. 74. From the outset, I must point out that this study is based on references and texts written by me or co-authored by me and published in various works: C.R. Romițan, *Nașterea și evoluția dreptului de autor*, Universul Juridic Publishing House, Bucharest, 2018; C.R. Romițan, *Însușirea în întregime sau în parte a operei unui alt autor*, published in the volume of the Conference *„Contrafacerea, concurența și protecția produselor tradiționale în Uniunea Europeană*", Universul Juridic Publishing House, Bucharest, 2017, pp. 253-278; C.R. Romițan, *Drepturile morale de autor*, Universul Juridic Publishing House, Bucharest, 2007; C.R. Romițan, *Protecția penală a proprietății intelectuale,* All Beck Publishing House, Bucharest, 2006; C.R. Romițan, M.L. Savu, *Drepturile morale ale artiștilor interpreți sau executanți*, in *„Drepturile artiștilor interpreți sau executanți*", Universul Juridic Publishing House, Bucharest, 2008; C. Duvac, C.R. Romițan, *Drepturile morale de autor. A brief retrospective on the regulation of these rights internationally and domestically. Protecția penală a drepturilor morale de autor*, in Revista Română de Dreptul Proprietății Intelectuale no. 3/2012, pp.90-117; C.R. Romițan, *Drepturile morale de autor sub imperiul Legii nr. 8/1996,* in Revista Română de Dreptul Proprietății Intelectuale no. 1/2007, pp. 138-164; C.R. Romițan, *Drepturile morale de autor și protecția acestora prin mijloace de drept penal*, in Revista Română de Dreptul Proprietății Intelectuale no. 1/2004, pp. 72-88.

[3] For developments on the protection of copyright works, see V. Roș, *Dreptul proprietății intelectuale. Dreptul de autor și drepturile conexe*, vol. I, C.H. Beck Publishing House, Bucharest, 2016, pp. 180-181.

[4] Republished in the Official Gazette of Romania no. 268/27.03.2018, giving the texts a new numbering.

plastics, drawings, design and other works of art applied to products intended for practical use; h) architectural works, including plans, models and graphic works forming architectural designs; i) plastic works, maps and drawings in the field of topography, geography and science in general".

Also, according to art. 8 of the same normative act, „the subject matter of copyright shall be derivative works created from one or more pre-existing works, namely: a) translations, adaptations, annotations, documentary works, arrangements of music and any other transformation of a literary, artistic or scientific work that themselves entail creative intellectual work; b) collections of literary, artistic or scientific works, such as encyclopaedias, anthologies and collections and compilations of protected or unprotected material or data, including databases, which, by reason of the selection or arrangement of their subject matter constitute intellectual creations"[5].

In one of my works[6] I pointed out that, since ancient times, written works brought to the public's attention „*have aroused passions and convulsions of political, religious, moral or august anger*"[7]. In this regard, in the „*Preface*" to the „*Istoria cărții*" („*History of the Book*") by Albert Labarre, one of the world's foremost scholars on the book, this „*cure for the soul*"[8], it is stated: „*Books are stolen, books are stolen from, books are stolen with, books are stolen at*. *Then they swear on the books*"[9].

2. Regulation and some considerations on the material element of the offense

According to art. 197(1) of Law no. 8/1996 on copyright and related rights, republished, „it is an offense and punishable by imprisonment from 6 months to 3 years or a fine for a person who appropriates, without right, in whole or in part, the work of another author and presents it as an intellectual creation of his/her own".[10]. According to para. (2) of the same article, „the reconciliation of the parties removes criminal liability".

Before the amendments made by Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code[11], the text of art. 141 of Law no. 8/1996 on copyright and related rights had the following content: it is an offense and is punishable by imprisonment from 3 months to 5 years or a fine from lei 2,500 to lei 50,000 „*the deed of the person who appropriates, without right, the authorship of a work or the deed of the person who brings to public knowledge a work under a name other than that decided by the author*".

An analysis of the two texts shows that, in the new regulation, a single deed is incriminated, which is carried out through two actions and in order to be considered an offense, they must be cumulatively fulfilled (appropriation of the work and presentation of the same work as one's own work). By contrast, the old rules penalised two separate deeds, on their own, namely the deed of misappropriation of authorship (the first deed) and the deed of making a work known to the public under a name other than that chosen by the author (the second deed).

At the same time, we note that the special minimum penalty limit has increased from 3 months in the previous regulation to 6 months in the current version, while the special maximum limit has decreased from 5 years in the old regulation to 3 years in the current regulation.

Finally, we note that, at the time of the present study, the legislator has regulated the possibility of reconciliation of the parties*,* which may also result in the removal of criminal liability, according to art. 16 para. (1) letter g) CPP.

From reading the new text, *i.e.,* art. 197 para. (1) of Law no. 8/1996, republished, we observe that the legislator transposes, in fact, we believe unintentionally, part of the words previously quoted from the „*Preface*" of Albert Labarre's „*History of the Book*", namely, „*books are stolen*" - the appropriation in full of the work of another author and „*books are stolen from*" - the appropriation in part of the work of another author.

In other words, we can say that the offense provided for in art. 197 para. (1) of Law no. 8/1996 on copyright and related rights, republished, sanctions criminally, theft, „intellectual theft", in everyday speech, *i.e., appropriation of a work or part of a work* by a person who did not contribute to the creation of that work and

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[5] For details on the definition of certain genres of works, see R. Pârvu, C.R. Romițan, *op. cit.,* pp. 74-77; N.R. Dominte, *Dicționar de dreptul proprietății intelectuale,* C.H. Beck Publishing House, Bucharest, 2009, pp. 131-138; F. Bujorel, *Dicționar de dreptul proprietății intelectuale,* Universul Juridic Publishing House, Bucharest, 2012, pp. 163-169.

[6] C.R. Romițan, *Însușirea în întregime sau în parte a operei unui alt autor*, in the volume of the Conference „*Contrafacerea, concurența și protecția produselor tradiționale în Uniunea Europeană*", *op. cit.,* p. 353.

[7] R. Tătărucă in „*Preface*" to Albert Labarre, *Istoria Cărții (The History of the Book),* translation by C. Secăreanu, European Institute Publishing House, Iași, 2001, p. 7.

[8] More than three millennia ago, on the frontispiece of the library of Pharaoh Ramses II, it was written „*The book is the cure for the soul*" (A. Sîrghie, *Istoria scrisului, a cărții și a tiparului*, Alma Mater Publishing House, Sibiu, 2005, p. 163).

[9] R. Tătărucă, *op. cit*., p. 9.

[10] After the republication of the law, which was made on the grounds of the Law no. 74/2018 amending and supplementing Law no. 8/1996 on copyright and related rights, the text of art. 141 was renumbered as art. 197.

[11] Published in the Official Gazette of Romania no. 757/12.11.2012.

which he/she *presents as his/her own creation*. The act of appropriating a work or part of a work can be done in various ways, such as: publishing works under one's own name, as if it were made by the author, signing an intellectual creation, as co-author, in the literary, scientific, musical, artistic or fine art field without having any contribution to its creation, etc.

As can be seen, *the material element* of the offense provided for and punished by art. 197 para. (1) of Law no. 8/1996, republished, consists of *two cumulative actions*, namely the *action of appropriating, without right, in whole or in part, the work of another author* and the *action of presenting the appropriated work as one's own intellectual creation*[12].

An analysis of the legal text shows that, in order to be able to prove the commission of this offense it is necessary that the appropriation is followed by the presentation of the work as one's own creation. We must note and specify that in the absence of the action of presentation, it cannot be held that the offense provided for and punished by art. 197 para. (1) of Law no. 8/1996 on copyright and related rights, republished, has been committed.

In the public space, particularly in the media, and not only[13], this deed is called *plagiarism* and it is said that there are several forms of plagiarism, namely plagiarism by reposting, self-plagiarism, online plagiarism (copying texts from a network), *copy-paste* plagiarism, subtle plagiarism, gross plagiarism, disguised copying or unconscious plagiarism.

This latter form of „*unconscious plagiarism*" was introduced into common parlance by the judge who decided on the case „*My Sweet Lord"* (1970) v. „*He's So Fine*" (1962) on the famous Beatles drummer George Harrison who, in 1970, after the break-up of the band, recorded his first solo single. Ronnie Mack, songwriter of The Cliffons, noticed similarities between the two songs and filed a lawsuit against George Harrison, accusing him of plagiarism. He, in his defense, pointed out that the song was inspired by the religious hymn in the public domain „*Oh Happy Day*", but admitted the similarity to the song „*He's So Fine*". The judge in the case ruled that George Harrison was guilty of *„unconscious plagiarism"* being initially ordered to pay the songwriter $1.5 million in damages, then only $587,000. From a legal point of view, the case is important because it introduced the concept of „*unconscious plagiarism*"[14] into common parlance.

As I have already pointed out[15], all forms of *„plagiarism"* mentioned *above do not legally exist and are not incriminated.* If we incriminate similarity and resemblance then we condemn development, research and creation in general. If we accept that similarity and resemblance is plagiarism then there should be one treatise on civil procedure, one treatise on criminal procedure, one treatise on history, one treatise on anatomy and the examples could go on in every field. In other words, we would have one book in each area.

In the same sense, in a decision of the Paris Court of Appeal of 9 March 1964, in which the author of an article published in the magazine „Elle" on Napoleon's relationship with Maria Walewska was accused of illegally reproducing passages taken from Count Phlippe d' Ornano's *Marie Walwska, l'epouse polonaise de Napoleon* , the court rejected the charge of counterfeiting, stating that „*it is certain that every historian has the right to treat a subject which has already been treated by others; that his/her exposition will necessarily have similarities with previous ones; that successive works dealing with the same historical subject, even if they have many similarities, will be different both because of the author's own talent and because of his commentaries, the way in which common sources are used and his own interpretation of the subject*" and that the defendant's article, viewed in this light, had nothing of a slavish copy of d'Ornano's book, but on the contrary had a certain originality[16].

Without wishing to enter into a polemic with anyone, I would just like to point out the following example: two students who do not know each other, from different universities, each independently choose the same topic to present as a dissertation. Do you think their work will be similar, resembling? Yes, certainly their work will be similar, but it doesn't mean they plagiarised from each other. Therefore, the similarity, the similarity is the objective consequence of the topic analysed, of the standardised language they are obliged to use, of the

[12] In the same sense, see V. Roș, *op. cit.,* (2016), p. 670. For a detailed analysis of this offense, both under the auspices of the regulations before the amendments brought by Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, and after, see C.R. Romițan, *Protecția penală a proprietății intelectuale,* All Beck Publishing House, Bucharest, 2006, pp. 168-172; C.R. Romițan, *Însușirea în întregime sau în parte a operei unui alt autor*, *op. cit.,* pp. 260-278; F. Bujorel, *Infracțiuni contra drepturilor de creație intelectuală*, Universul Juridic Publishing House, Bucharest, 2015, pp. 68-79; L.T. Poenaru, *Protecția dreptului de autor în dreptul penal*, C.H. Beck Publishing House, Bucharest, 2015, pp. 259-295.

[13] Law no. 206/2004 on good conduct in scientific research, technological development and innovation, published in the Official Gazette of Romania no. 505/04.06.2004.

[14] A comparison of the lyrics of the two songs and the musical composition is available online at *https://youtu.be/sYiEesMbe2I* (accessed 29.01.2020), *apud* A.M. Marinescu, *Cazuri de plagiat în muzică,* in Revista Română de Dreptul Proprietății Intelectuale no. 3/2019, p. 64.

[15] C.R. Romițan, *Însușirea în întregime sau în parte a operei unui alt autor*, *op. cit*., p. 272.

[16] See „Revue internationale du droit d'auteur", 1965, pp. 199-215, *apud* Y. Eminescu, *Dreptul de autor. Legea nr. 8 din 14 martie 1996, annotated*, Lumina Lex Publishing House, Bucharest, 1997, pp. 201-202.

bibliographical sources analysed.

A simplistic interpretation of art. 197 para. (1) of the Law, one could conclude that even a single paragraph of a copyrighted work, if misappropriated, can form the basis for a criminal charge. Such an interpretation cannot be accepted. Also, the charge of misappropriation of a phrase cannot be accepted. Let's not throw this deed into derisory. Identically retrieved texts must be of a certain „quantity"[17].

We also consider that a specialist expertise in cases of appropriation of a work in whole or in part is superfluous. The prosecuting authority and the judge alone can determine whether the appropriated part is identical to that in a previous work, whether it is protected, and whether the removal of this part „kills" the work likely to be misappropriated, *i.e.*, plagiarised, in everyday language.

The High Court of Cassation and Justice, having to resolve a charge brought against university professors, finding that they had appropriated 87% of a pre-existing work, ruled that „*the citation and indication of bibliographical sources were not made in relation to academic norms and the nature of the work, respectively, and in relation to the proportion of the text reproduced in the whole of the defendants' work*"[18]. If we were to remove the text borrowed from the pre-existing work, *i.e.*, 87%, what would survive from the new work?! In this case, given the provisions of art. 197 para. (2) of Law no. 8/1996, republished, according to which the reconciliation of the parties removes criminal liability, the Supreme Court took note of the parties' willingness to reconcile and ordered the cessation of the criminal proceedings.

3. The prerequisite situation of the offense

In order to be able to establish that this offense has been committed, it is first necessary to examine *whether there is a prior protected work of intellectual creation* and here we are considering both a *whole work* and *part/parts of a work.* In other words, this offense is conditional on a *prerequisite situation*, namely *the pre-existence of an entire protected work or protected parts of a work*.

In order to establish that the prerequisite situation is fulfilled, the content of the pre-existing work or of the appropriated part thereof must be analysed with reference to the limitations provided for in art. 9 of Law no. 8/1996, republished, which provides that „***the following are not eligible for legal copyright protection****: ideas, theories, concepts, scientific discoveries, processes, methods of operation or mathematical concepts as such and inventions, contained in a work, regardless of the manner in which they are taken up, written, explained or expressed; official texts of a political, legislative, administrative or judicial nature and official translations thereof; official symbols of the State, public authorities and organisations, such as: coat of arms, seal, flag, emblem, badge, and medal; means of payment; news and press information; simple facts and data; photographs of letters, deeds, documents of any kind, technical drawings and the like; materials resulting from an act of reproduction of a work of visual art, the term of protection of which has expired, unless the material resulting from the act of reproduction is original in the sense that it is the author's own intellectual creation." (s.n.).*

It follows from an analysis of this text that the taking from another work of any of the ideas, news, theories, data, facts and other elements provided for in the text **cannot constitute an offense** because part of a work which is not protected by copyright is taken and, therefore, *the author of the pre-existing work does not have any right to the elements taken* which are excluded from protection. In the same sense, at a legal debate on the subject of „plagiarism", Mrs. Constanța Moisescu, a former judge at the Bucharest County Court, stated that: „*the taking of quotations is not a deed because they are not original*" and for plagiarism to exist it is necessary „*to appropriate in part or in whole protectable elements*"[19]. In the same sense, other authors[20] have considered that if elements are taken from scientific works that are not subject to protection because they belong to the public domain, we are not-dealing with an illicit reproduction of the scientific work in question.

As our supreme court has also ruled in a case[21], „*originality is a criterion to be taken into account both in determining whether a written work is a protectable work and in assessing the lawfulness of the reproduction, which is determined by the form of expression of the ideas*. *The more technical the idea, the less originality and the weaker the legal protection*". Originality, said James Stephens, Irish novelist and poet, „*lies not in saying what no one else has said, but in saying exactly what you think yourself*"[22].

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[17] For further developments, see C.R. Romițan, *Însușirea în întregime sau în parte a operei unui alt autor*, *op. cit*, pp. 273-274.

[18] HCCJ, crim. s., dec. no. 356/A/2014, given in public sitting on 04.11.2014, available at *www.csj.ro* (accessed on 17.03.2024).

[19] Debate „*Copy Paste*" - „*About plagiarism*", organised by *www. juridice.ro*, Bucharest, 13.06.2016. The audio-video recording of the event can be found online at *https://dezbateri.juridice.ro/6153/copy-paste* (accessed on 28.01.2020).

[20] For developments, see V. Roș, A. Livădariu, *Condiția originalității în operele științifice*, in Revista Română de Dreptul Proprietății Intelectuale no. 2/2014, p. 28.

[21] HCCJ, civ. and intellectual property s., dec. no. 8/11.01.2011, available online at *www.scj.ro* (accessed on 14.03.2024). In the same sense, see also the HCCJ, civ. and intellectual property s., dec. no. 1978/25.03.2008, available online at *www.scj.ro* (accessed on 14.03.2024).

[22] *http://www.citatecelebre.net/citate-inspiratie/james-stephens/* (accessed on 19.08.2017).

In the *above* case*,* with regard to the chapters alleged to be unlawful, *i.e.*, appropriated/plagiarised, the High Court ruled that *„they are natural, since the insertion of veterinary medical knowledge accepted as common knowledge and of texts of a legislative, administrative and judicial nature can only be done using standard wording, outside of which such knowledge would become inaccurate. Both medical language and legal language are characterised by uniformity, and cannot be used differently, but must be taken up exactly by users. Given the nature of the two works being compared, determined by their belonging to the category of scientific works in the field of veterinary medicine, it should be noted that in such works originality is attenuated by the form of expression of ideas or of rendering information, which contain a specialised, almost standardised language".*

In the sense of those mentioned, in the specialised literature, Prof. Viorel Roș[23] pointed out that the form of expression must be analysed according to the genre of the work in question, because there are areas in which the analysis of an institution or event can only be made in certain terms already established, and if one were to try to use terms other than those established, for fear of being accused of violating the provisions of art. 197 of Law no.8/1996, republished, one would end up in the undesirable situation that the essence of the information rendered would be distorted, would be imperceptible. For example, in the case of scientific works in any field (law, medicine, history, mathematics, etc.), the originality of the form of expression is limited by the rigor of scientific language, by the need to formulate as concisely and explicitly as possible the ideas, theories, concepts, arguments in support of the demonstration to be made.

Along the same lines, in a study published in 1937 in „Pandectele săptămânale", the jurist Eugen Petit, adviser to the High Court of Cassation and Justice[24] said: *„Jurists know that in all the classical law treatises the same ideas are repeated almost word for word, without it being possible to know sometimes who wrote them first. They are so widespread that we can say that they are in the public spiritual domain, that is, they belong to everyone. By reproducing such passages, no one bothers to show their origin. This is why we believe that it is not enough to find a passage or two reproduced from another author in a book or magazine article to be able to make a serious accusation of plagiarism"[25].*

For the purposes of the above, we all know that our legal field is a field that relies mostly on normative sources (legislation) and texts written by other authors. Therefore, any work of law starts from documents on the legal regulations in the subject we want to analyse, then on the opinions of other authors expressed in the doctrine and then on our interpretations, of the one who does the work. *Thus, much of the work we want to produce will have similarities with previous work, and the originality of the text of the new work will be limited by the rigor of the scientific language.*

Also, in an interview with the „*Cultural Observatory*", Professor Mihai Lucian said that: „*the author of a book cannot disregard previously published books in the same field; in principle there can be no plagiarism in the case of reproductions of well-known truths; the principle est modus in rebus can and must govern the diagnosis, in the sense that a full accusation of plagiarism cannot be made when there is evidence that the identical or similar passage(s) are mere oversights if the work as a whole is considered*"[26].

If we were to look at it any other way, then we would hinder development and end up with the undesirable situation of no one writing in a particular field (law, history, mathematics, medicine, science, etc.). It cannot be accepted that if an author has previously dealt with a topic, subject, field, and the data, information, facts, ideas presented there cannot be presented in a subsequent work, and if they are presented, it means that the second author „plagiarised" the first. In this hypothesis we are not in the presence of an infringement of art. 197 para. (1) of Law no. 8/1996 on Copyright and Related Rights, republished, because the appropriation concerns elements that are not protected by copyright.

However, in the situation presented, for certain categories of personnel carrying out *scientific research, technological development and innovation activities,* expressly provided for in Law no. 319/2003 on the status of research and development personnel[27], as well as for other categories of personnel, in the public or private

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[23] V. Roș, *Contrafacerea și plagiatul în materia dreptului de autor. Retrospectivă istorică și încercare de definire,* in Revista Română de Dreptul Proprietății Intelectuale no.1/2004, p.112.

[24] Eugen-Dimitrie Petit, was born on 28.01.1882 in Iași and died in 1959. He was a prominent jurist, magistrate, publicist, author of legal works, advisor to the High Court of Cassation and Justice. For details of Eugen Petit's life and work, see *www.wikipedia.org/wiki/Eugen-Petit* (accessed 01.03.2024).

[25] See M. Romițan, *Unele considerații cu privire la noțiunea de plagiat,* in Revista Română de Dreptul Proprietății Intelectuale no. 2/2008, pp. 119-122, where, thanks to the kind permission of the management of Wolters Kluwer Romania, publisher of „Pandectele române", who gave us their consent, Eugen Petit's article was published. Originally, the article *Plagiarism*, was published in „Pandectele săptămânale no. 34/1937, pp. 793-794, under the signature of Eugen Petit.

[26] L. Mihai, *Citarea constituie o obligație legală*, available at: *http://www.observatorcultural.ro/Citarea-constituie-o-obligatie-legala.-Interviu-cu-Lucian-Mihai*articleID_9334-articles_details.html* (accessed on 24.08.2010).

[27] Published in the Official Gazette of Romania no 530/23.07.2003. From a reading of art. 1 para. (1) and para. (2) of Law no. 206/2004, we note that this normative act has a limited scope and applicability. Thus, according to art. 1 para. (1), *„Good conduct in scientific research, technological development and innovation activities, hereinafter referred to as research and development activities, shall be based on a set*

sector, benefiting from public research and development funds*,* the following provisions *may apply* Law no. 206/2004 on good conduct in scientific research, technological development and innovation[28]. It should be stressed, as has been pointed out in the legal literature[29], that this normative act „*does not regulate nor does it guarantee authors an exclusive intellectual property right over elements such as texts, expressions, ideas, demonstrations, data, hypotheses, theories, results or scientific methods included in previously published works*".

Therefore, Law no. 206/2004 on good conduct in scientific research, technological development and innovation does not prohibit the extraction of these elements from previous published works, but only sanctions their extraction „*without citation*", *i.e.*, „*without mentioning this and without reference to the original sources*". As one author[30]pointed out, under the provisions of Law no. 206/2004, „*lying about alleged academic performance is sanctioned*". Also, from the analysis of the above, it is clear that the object of regulation of this normative act is not copyright but „*good conduct in scientific research, technological development and innovation activities*"*.*

Therefore, the categories of persons to whom the provisions apply Law no. 206/2004 on good conduct in scientific research, technological development and innovation are limitatively and expressly provided for by the law, and no other interpretation can be given, except by unjustifiably extending the application of that law.

Following the above, we consider that the definitions of plagiarism stipulated in art. 4 letter d) of Law no. 206/2004[31] and in art. 169 letter d) of Law no. 199/2023 on higher education[32], should not be generalised to all categories of persons who, in one way or another, produce a work of intellectual creation, but only to the categories of personnel expressly established by law, as we have shown.

4. Conclusions

In conclusion, in order to be able to consider the commission of the offense provided for and punished by art. 197 of Law no. 8/1996 on copyright and related rights, republished, it is necessary, first of all, to analyse *whether there is a protected prior work of intellectual creation* and here we have in mind both a whole work and part/parts of a work. In other words, this offense is conditional on a *prerequisite situation*, namely *the pre-existence of an entire protected work or protected parts of a work.*

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of rules of good conduct and procedures designed to ensure compliance with them" Para. (2) also states that „*The rules of good conduct are laid down in this Law and are supplemented and detailed in the Code of Ethics and Professional Conduct for Research and Development Personnel, hereinafter referred to as the Code of Ethics, laid down by Law no. 319/2003 on the Statute of research and development personnel, as well as in the codes of ethics by field, drawn up in accordance with art. 7(b)*". Also, art. 3 of the above-mentioned normative act states that „*The provisions of this statute shall apply to research and development staff working within the national research and development system, within other organisational structures with state, private or mixed capital, public institutions, as well as within associations or individually.*"

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

[29] S. Florea, *Plagiatul și încălcarea drepturilor de autor*, in Revista Română de Dreptul Proprietății Intelectuale no. 4/2016, p. 113.

[30] *Ibidem.*

[31] According to art.4 letter d) of Law no. 206/2004, plagiarism constitutes „*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 fact and without referring to the original sources*"*.*

[32] According to art. 169 (d) of Law no. 199/2023, constitutes plagiarism „*the presentation as an allegedly personal scientific creation or contribution in a written work, including in electronic format, of texts, ideas, demonstrations, data, theories, results or scientific methods taken from written works, including in electronic format, of other authors, without mentioning this fact and without referring to the original sources*". Law no. 199/2023 was published with the Official Gazette of Romania, Part I, no. 614/05.07.2023.

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