TO BE OR NOT TO BE PLAGIARISM? UNCONSTITUTIONALITY CRITICISMS OF ART. 170 PARA. (1) OF THE ROMANIAN NATIONAL EDUCATION LAW

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Abstract

Plagiarism in Romania became a controversial issue analyzed by the specialists. Also, the problem became not only a subject for the administrative authority (CNATDCU), but also for the courts of law who were empowered to analyze if doctoral theses were authentic or not, solving therefore plagiarism allegations.

Historically speaking, we can discuss about legislation in this field starting with 2004. Could it be considered that doctoral theses defended before 2004 are subject to the application of the respective piece of law?

The current study will try to analyze the legal provisions applicable to the withdrawal of the title of doctor and to argue that this text is clearly unconstitutional from our point of view.

Keywords: *plagiarism, ethics, author, high standards of quality, unconstitutionality.*

1. Introductive Remarks

In recent years there has been considerable debate over the originality of doctoral theses in case of Romanian public officials. For this reason, we have noticed that plagiarism[1] in Romania became a very controversial issue that has been scrutinised by the specialists, when interest in a person increased.

The problem became not only a subject for the Romanian administrative authority, the National Council for Accreditation of University Degrees, Diplomas and Certificates[2] (hereinafter "*CNATDCU*"), but also for the Romanian courts of law who were empowered to analyze if doctoral theses were authentic or not. Depending on the interest manifested in the media, plagiarism allegations soon appear in the discussions.

Historically speaking, in Romania, we can discuss about legislation in this field since the beginning of 2004, which is why we can't help but wonder if doctoral theses that have been defended before 2004 could be subject retroactively to the application of the respective piece of law?

The current study will try to analyze the legal provisions applicable to the withdrawal of the title of doctor and to argue that this text is clearly unconstitutional.

2. Legal Provisions under Review

According to the provisions of **art. 170 para. (1)** of the Law no. 1/2011 of national education[3] (hereinafter the "*National Education Law*"), in force at the time of writing this study:

"***(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, CNCS, 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:*

a) to withdraw the doctor mentor competence;

b) ***to withdraw the title of doctor****;*

c) to withdraw the accreditation of the doctoral organizing school, which implies the withdrawal of the right to organize admissions for doctoral programs in order to select new students.".

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[1] For information on plagiarism in Romania, please see Elena-Emilia Ștefan, *Etică și integritate academică*, 2nd ed., revised and supplemented, Pro Universitaria Publishing House, Bucharest, 2021, pp. 232 and following.

[2] For more information about CNATDCU, please visit its official website http://www.cnatdcu.ro/.

[3] Published in the Official Gazette of Romania no. 18 of 10 January 2011, as further amended and supplemented.

3. Suspicions Regarding the Unconstitutionality of art. 170 para. (1) of the National Education Law

Considering the great number of disputes in which the withdrawal of the title of doctor of certain public persons is challenged, we are sure that such persons could claim exceptions of unconstitutionality regarding the provisions of art. 170 para. (1) of the National Education Law, in order to establish the unconstitutionality thereof.

Therefore, by observing the conditions provided by art. 33 of the Code of Civil Procedure[4] [*the purpose of the request for a writ of summons being to prevent the withdrawal of the title of doctor according to the provisions of art. 170 para. (1) of the National Education Law to be done under the violation of the non-retroactive application of law and predictability of law principles*], the persons concerned would try to avoid harming their fundamental rights which would be permanently affected (the withdrawal of the title of doctor being definitive).

Therefore, under the provisions of art. 29 of Law no. 47/1992 on the organization and functioning of the Constitutional Court (hereinafter "*Law no. 47/1992*") in conjunction with the provisions of art. 146 letter d) of the Romanian Constitution and of art. 2 and art. 11 para. (1) item A letter d) of Law no. 47/1992, the persons in question would make referral requests to the CCR, whereby they would request the courts of law to order the reference to the CCR in order to rule on the unconstitutionality of the provisions of art. 170 para. (1) of the National Education Law.

4. Unconstitutionality Grounds of art. 170 para. (1) of the National Education Law

4.1. If art. 170 para. (1) of the National Education Law applied to administrative acts whereby titles of doctor were conferred prior to its entry into force, it would violate the principle of non-retroactive application of the civil law, and implicitly, art. 15 para. (2) of the Romanian Constitution

As of 1991, for reasons of stability of the rule of law and protection of fundamental human rights and freedoms, *the rule of the non-retroactive application of the law has received constitutional definition,* being mandatory for the legislator, law enforcement bodies, jurisdiction bodies and participants in the general legal circuit[5].

According to the provisions of art. 15 para. (2) of the Romanian Constitution:

"*The law shall only act for the future, except for the more favourable criminal or contravention law.".*

The principle of non-retroactive application of laws consists therefore in the fact that the law applies only to situations that arise after its entry into force; it applies only to the future and not to the past. The reason of this principle is based on ensuring the civil circuit[6].

Given that the rule of non-retroactive application of the law was defined as a constitutional principle, it became mandatory *erga omnes*, being applied to the parties, to the judge and to the legislator.

In this respect, the legislator should not pass laws concerning past legal situations. If such laws were passed or applied, the respective provisions could be declared unconstitutional by the Constitutional Court, except for the more favourable criminal or administrative law.

Another natural consequence of the principle of non-retroactive application of laws is the immediate application of the law.

Therefore, once the law enters into force, the law will apply to legal situations in progress or which occurred after its entry into force, and not to legal situations already committed.

It is natural and logical for the past to escape the application of the new law, because such law can only require a fact to take place in accordance with its provisions only after its entry into force.

Moreover, the vocation of the new law to invalidate previous legal situations would create uncertainty and would inoculate mistrust in the law, as any possibility of predictability and stability would disappear. Consequently, the provision of a potential law (ordinary or organic) or of another normative act which would provide that the respective law or normative act would apply retroactively would be unconstitutional[7].

In support of the above, by means of Decision no. 830/2008, the CCR found that:

"(...) *the sole temporal field of action of the new law is the initial phase of establishing the legal situation, by essentially modifying the legal regime created by submitting notifications within the legal deadline, in violation of tempus regit actum principle*

[4] Art. 33 of the Civil procedure Code provides as follows:
"*The interest must be determined, legitimate, personal, innate and actual. Notwithstanding, even if the interest is not innate and actual, a request for a writ of summons can be filed in order to prevent the infringement of a threatened subjective right or to prevent the occurrence of an imminent and irreparable damage*.".

[5] Mona-Maria Pivniceru, Pavel Perju, Corina Voicu, *Codul civil adnotat,* Hamangiu Publishing House, Bucharest, 2013, p. 17.

[6] Carmen Tamara Ungureanu et alii, *Noul Cod Civil – comentarii, doctrina și jurisprudență*, vol. I, Hamangiu Publishing House, Bucharest, 2012, p. 17.

[7] Gabriel Boroi, Carla Alexandra Anghelescu, *Curs de drept civil: partea generală,* Hamangiu Publishing House, Bucharest, 2012, p. 15.

and of the constitutional provisions referred to in art. 15 para. (2) on the non-retroactive application" [8] (emphasis added).

The following were established by means of CCR Decision no. 287/2004:

"(...) *the new law shall apply immediately to all situations which will occur, will be modified or extinguished after the enforcement thereof, as well as to all the effects of the legal situations occurred after the repeal of the old law.*" [9].

Therefore, we emphasize the fact that, in order for the principle of non-retroactive application of the law provided by art. 15 para. (2) of the Romanian Constitution to be observed, the measures provided by art. 170 para. (1) of Law no. 1/2011 must bear the capacity to be applied exclusively and with limitation regarding the doctoral theses and the titles of doctor defended, respectively granted under Law no. 1/2011, and not regarding the theses and titles prior to the enforcement of Law no. 1/2011.

This interpretation is all the more necessary if the possibility of ordering the measure of withdrawal of the title of doctor was not regulated at the date of the defence of the doctoral thesis by a candidate to the title of doctor.

Therefore, art. 170 para. (1) of the National Education Law, provided that it applies to administrative acts issued prior to the entry into force of this law, shall prejudice the provisions of art. 15 para. (2) of the Romanian Constitution, thus being unconstitutional.

4.2. Article 170 para. (1) of the National Legislation Law infringes several constitutional provisions and flagrantly disregards the binding effect of CCR Decision no. 624/2016

We consider that the provisions of art. 170 para. (1) letter b) of the National Education Law infringe the provisions of art. 1 para. (3) and (5) in conjunction with those of art. 147 para. (1) and (4), of art. 16 para. (1) and (2), of article 21 in conjunction with those of art. 24, art. 52 para. (1) and (2), as well as those of art. 126 para. (2), all of the Romanian Constitution, by flagrantly disregarding the binding effect of CCR Decision no. 624 of 26 October 2016[10], as we will detail below (hereinafter "*CCR Decision no. 624/2016*").

As a preliminary point, we should start from the context in which CCR Decision no. 624/2016 was ruled.

First of all, CCR Decision no. 624/2016 was ruled on the background of the approval of the draft law for the approval of the GEO no. 4 of 10.03.2016 on the amendment and supplementation of the National Education Law no. 1/2011[11] (hereinafter "*GEO no. 4/2016*").

In the same context, there was also the ruling of CCR Decision no. 412 of 20.06.2019 regarding the objection of unconstitutionality of the Law approving Government Emergency Ordinance no. 4/2016 on the amendment and supplementation of the National Education Law no. 1/2011[12] (hereinafter "*CCR Decision no. 412/2019*"), but without any relevance from the perspective of the provisions of art. 170 para. (1) of Law no. 1/2011 criticized in this study, these provisions not being subject to subsequent constitutional review.

Returning to CCR Decision no. 624/2016, as we have noted, this was ruled by reference to the content of legislative initiative PL-x no. 66/2016 the scope of which was the approval of GEO no. 4/2016 including on the provisions of art. 170 of Law no. 1/2011[13] (hereinafter the "*Draft law*").

According to the Draft law, the provisions of art. 170 of Law no. 1/2011 were amended as follows (extract):

"*12. Art. 170 is hereby amended and shall read as follows:*

«Art. 170 - (1) In case the quality or professional ethics standards for the titles of doctor granted under the order of the Minister are not observed, the Ministry of Education, Research, Youth, and Sports, based on external evaluation reports drafted as the case may be, by the CNATDCU, CNCS, 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:

a) to withdraw the doctor mentor competence;

b) to withdraw the title of doctor granted by Order of the Minister of National Education and Scientific Research;

c) to withdraw the accreditation of the doctoral organizing school, which implies the withdrawal of the

[8] Published in the Official Gazette of Romania, Part I, no. 559 of 24 July 2008.

[9] Published in the Official Gazette of Romania, Part I, no. 729 of 12 August 2004.

[10] CCR Decision no. 624 of 26 October 2016 regarding the objection of unconstitutionality of the Law approving Government Emergency Ordinance no. 4/2016 on the amendment and supplementation of National Education Law no. 1/2011, published in the Official Gazette of Romania, Part I no. 937 of 22.11.2016.

[11] Published in the Official Gazette of Romania, Part I, no. 182 of 10.03.2016, approved by Law no. 139/2019 approving Government Emergency Ordinance no. 4/2016 on the amendment and supplementation of National Education Law no. 1/2011, published in the Official Gazette of Romania, Part I, no. 592 of 18.07.2019.

[12] Published in the Official Gazette of Romania, Part I, no. 570 of 11.07.2019.

[13] Please see this draft law available on the website of the Chamber of Deputies http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=1554.

right to organize admissions for doctoral programs in order to select new students.»".

As can easily be seen, by making a simple comparative analysis between the provision of art. 170 para. (1) letter b) and the provisions of art. 170 para. (1) letter b) of the Draft law, there are no substantive amendments, being identical both in relation to the hypothesis, disposition, and in relation to the sanction (regarded as structural elements of the legal norm).

In relation to the aforementioned aspects and going further to the considerations of CCR Decision no. 624/2016 on the provisions of art. 170 of the Draft law, the following are noted:

"*In this context, the Court notes that the possession of the title of doctor can be a condition for accessing a position, for acquiring a professional quality, a professional status and sometimes has implications including patrimonial, where the legislator understood to reward the person who holds the title of doctor with salary benefits corresponding to this scientific training. However, the new legal provisions fail to establish the extent to which the legal relations concluded by the person in question, in the capacity of doctor, are affected and they are limited to provide on the effects of the "act of revocation whereby the administrative act establishing the scientific title is annulled", which will be produced "for the future only". The failure to regulate the effects of the unilateral act of waiver or withdrawal of the title of doctor, as the case may be, entails the risk that the former holder of the title of doctor to continue to benefit from those rights acquired under the title, although he/she no longer meets the capacity under which they were awarded. The legal treatment thus regulated identifies the infringement of the intellectual property right of the original author, provided that plagiarism has patrimonial consequences, on the one hand, and creates the possibility of the person who has deviated from the observance of professional ethics standards to continue to enjoy the results of his fraud, on the other hand. However, the Court considers that such a purpose of the law is unacceptable form a legal and social point of view, as it encourages illicit behaviour and removes punitive and preventive nature of the sanction of withdrawal of the title of doctor.*"[14].

After the ruling of CCR Decision no. 624/2016, the legislative initiative continued, but was exclusively focused on the provisions of art. 146^1 and 146^2 of the National Education Law, which means that the rulings made by the Constitutional Court in the aforementioned decision are perfectly valid and generally binding in relation to the content of the norm that currently substantiates the provisions of art. 170 para. (1) letter b) of Law no. 1/2011.

It cannot be argued that the provisions of art. 146^1 and 146^2 are in conjunction with the provisions of art. 170 of the National Education Law, coming in its supplementation, given that, by means of a systematic interpretation of the two articles (found in Section VIII, Chapter III of Title III of the National Education Law) it is obvious that they refer to art. 141 and not to art. 170 (found in Section XII, Chapter III of Title III of the National Education Law).

Moreover, according to the provisions of art. 146^1 of the National Education Law:

"The title of doctor shall cease to produce legal effect as of the date of the notification on the title withdrawal.".

Therefore, it is obvious that this text of law refers to the effects of the withdrawal of the title of doctor by means of a withdrawal provision, not being clear what the provision is and whether it is subsequent to the sanction of annulment provided by art. 146.

The withdrawal provision is not the same with the withdrawal order, being totally different terms, therefore, we cannot consider that art. 146^1 supplements the provisions of art. 170 para. (1) letter b), from the perspective of the effects produced by the issuance of an order of the Minister of Education for the withdrawal of the title of doctor.

This interpretation clearly results from the fact that after the draft of law was declared unconstitutional in its entirety, although the criticisms referred to in the decision of the court expressly aimed at the ambiguity and inaccuracy of the provisions of art. 170 were obvious, the legislator did not understand to amend art. 170 and continued the legislative initiative exclusively in relation to the provisions of art. 146^1 and 146^2.

The arguments formulated by the President of Romania by the notification of unconstitutionality on the Law for the approval of GEO no. 4/2016 in the form adopted by the chambers of the Parliament, after the pronouncement of CCR Decision no. 624/2016 are also in this respect.

Specifically, the analysis of the arguments[15] of the President of Romania shows very clearly, among other things, that:

"*In this case, in relation to the considerations of Decision no. 624/2016, the re-examination could target at most interventions on the amending provisions of art. 168, respectively of art. 170 of Law no. 1/2011.*"[16].

That the re-examination did not aim at modifying the provisions of art. 170, although even the President of Romania saw this obligation, is a clear proof that the text currently in force is unconstitutional.

[14] See CCR Decision no. 624/2016, para. 55.
[15] See page 6 of the Notification of unconstitutionality filed with CCR under no. 3173 of 19.04.2019.
[16] See CCR Decision no. 412/2019, para. 13, final thesis.

The unconstitutionality of the provisions of art. 170 para. (1) letter b) in force at the time being results from the fact that even at the time being they are not in accordance with CCR Decision no. 624/2016, by omitting the following:

a) to establish the extent to which the legal relations concluded by the person in question, in the capacity of doctor, are affected;

b) to regulate the effects of the unilateral act of waiver or withdrawal of the title of doctor.

Secondly, the unconstitutionality of the claimed legal text also results from the perspective of the legislator's failure to comply with other requirements established by the Constitutional Court by Decision no. 624/2016.

Specifically, according to para. 51 of the aforementioned decision, the Court provides the following*:*

"In such a case, if there are suspicions on the non-compliance with the procedures or standards of quality or professional ethics, the Court notes that the administrative act can be subject to the control of an entity independent of the entity which issued the title of doctor, with specific powers in this area, which can take sanctioning measures with regard to the withdrawal of the title in question.".

As we have pointed out, the Constitutional Court expressly held, when admitted the objection of unconstitutionality and annulled the draft law in its entirety, that the withdrawal of the title of doctor can be performed only following a procedure carried out by an entity independent of the entity which issued the title of doctor.

According to the provisions of art. 170 of the National Education Law, the withdrawal of the title of doctor shall be established by the order of the Ministry of Education, Research, Youth and Sport, entity which issued the title of doctor, exclusively based on evaluation reports drafted by CNATDCU, body in full dependence on the issuer of the administrative act, which violates the provisions of the CCR Decision no. 624/2016.

CNATDCU was established based on art. 140 para. (3) of Education Law no. 84/1995[17], wording according to which:

"*For the confirmation of university titles, diplomas and certificates, the Ministry of Education and Research establishes the National Council for Accreditation of University Degrees, Diplomas and Certificates. The members of the council are university professors, personalities of scientific, cultural and moral prestige, recognized nationally or internationally. They are selected on the basis of university senate proposals. The Council operates according to its own regulation, approved by order of the Minister of Education and Research*.".

Article 140 para. (2) of the Education Law no. 84/1995 provided the following*:*

"(2) For the exercise of its tasks, the Ministry of Education and Research shall constitute expert structures and shall be supported by advisory bodies, at national level, composed on criteria of professional and moral prestige: the National Council for the Education Reform, the National Council for Accreditation of University Degrees, Diplomas and Certificates (...).".

Therefore, right from the establishment, CNATDCU represented a specialized structure of the Ministry of Education, contributing to the fulfilment of the tasks of this Minister.

The situation is not different even today, as art. 217 of the National Education Law provides the following:

"*(1) For exercising its duties, the Ministry of Education, Research, Youth, and Sports sets up expert records and is supported by specialized bodies nationwide, established based on professional prestige and moral criteria: National Council of Statistics and Forecast of Higher Education (CNSPIS), the National Council for Accreditation of University Degrees, Diplomas and Certificates (CNATDCU)* (…).

(2) The Councils mentioned in paragraph (1) have a technical secretariat that is established and operates by order of the Minister Education, Research, Youth, and Sports.

(3) The establishment, organization and operation regulations, the structure and composition of the specialized organisms provided in paragraph (1) are regulated by order of the Minister Education, Research, Youth, and Sports, in compliance with the law. Their budgets are managed through the Executive Unit for the Financing of Higher Education, of Research, Development and Innovation (UEFISCDI) and is constituted on a contractual basis between the Ministry of Education, Research, Youth, and Sports and UEFISCDI or other legally constituted sources, managed by UEFISCDI. (…)".

This fact also expressly emerges from the analysis of the provisions of art. 1 of the Regulation on the organization and functioning of CNATDCU[18], according to which:

[17] Published in the Official Gazette of Romania, Part I, no. 167 of 31.07.1995, currently repealed.

[18] Approved by Order no. 3482/24.03.2016 of the Minister of National Education and Scientific Research, published in the Official Gazette of Romania, Part I, no. 248 of 4 April 2016, currently repealed by Order no. 4621/2020 approving the Regulation on the organization and functioning of the National Council for Accreditation of University Degrees, Diplomas and Certificates, published in the Official Gazette of Romania, Part I, no. 564 of 29.06.2020.

"*The National Council for Accreditation of University Degrees, Diplomas and Certificates, hereinafter referred to as CNATDCU, is an advisory body, without legal personality, of the Ministry of National Education and Scientific Research, hereinafter referred to as MENCŞ.".*

Furthermore, in order to point out the total dependence of CNATDCU on the Ministry of Education, we also mention the provisions of art. 19-21 of the aforementioned normative act, according to which:

"*Art. 19. – The activity of CNATDCU, under the law, shall be technically supported by a technical secretariat approved by order of the Minister.*

Art. 20. – The material and financial resources required for the functioning of CNATDCU and its working commissions shall be ensured by MENCŞ, under the law.

Art. 21. - CNATDCU budget shall be managed through the Executive Unit for the Financing of Higher Education, of Research, Development and Innovation (UEFISCDI) and is constituted on a contractual basis between the Ministry of Education, Research, Youth, and Sports and UEFISCDI or other legally constituted sources, managed by UEFISCDI.".

Therefore, it is obvious that the general binding effect of the CCR Decision no. 624/2016 is infringed by regulating the possibility of performing the analysis underlying the withdrawal of the title of doctor by CNATDCU, the administrative act not being subject to the control of an entity independent of the entity which issued the title of doctor.

Another notice is that, according to the opinion of the Constitutional Court, expressed in para. 51 of the CCR Decision no. 624/2016,

"*(...) the administrative act can be subject to the control of an entity independent of the entity which issued the title of doctor, with specific powers in this area, which can take sanctioning measures with regard to the withdrawal of the title in question.* (…)".

Therefore, the independent entity and not the entity which issued the title of doctor shall be entitled to take sanctioning measures (including the withdrawal of the title). However, according to the legislative formula criticized for unconstitutionality, the Minister who has issued the title can also withdraw the title, which means the revocation of an individual administrative act that entered the civil circuit.

Moreover, also in direct connection with the principle of the right to a fair trial, the principle of the right of defence and the principle of non-discrimination, the Court notes the following in para. 51:

"*However, if the option of the legislator is to revoke or annul the administrative act, the legislator can operate only under the conditions provided by the law, respectively the measure can only be ordered by a court of law, in compliance with the provisions of Law no. 554/2004. In fact, this is the solution defined by the case law of the High Court of Cassation and Justice (see Decision no. 3.068 of 19 June 2012 or Decision no. 4.288 of 23 October 2012), according to which the provisions of Law no. 1/2011 do not represent exceptions to the rule of irrevocability of individual administrative acts, regulated by the common law in the matter, respectively by Law no. 554/2004*.".

Therefore, even if the Court refers to revocation and annulment in the paragraph above, in relation to the fact that the sanction of "withdrawal" is a *sui generis* one, in what concerns the procedure generated after the application of this sanction, addressee must benefit from the same securities as in case of revocation, respectively annulment.

The qualification that the Constitutional Court gives to the scientific title of doctor is also relevant in this context, namely "*(...) administrative nature act, a quality that calls the incidence of the norms on the contentious administrative*"[19].

It is well known that the legal regime of the administrative acts is governed by the principle of revocability, together with the principle of legality, "*having implicit constitutional definition (art. 21 and 52 of the Constitution) and legal support (art. 7 para. (1) of Law no. 554/2004 of the contentious administrative). (...) all administrative acts can be revoked, the normative ones at any time and the individual ones with some exceptions, and the administrative acts that entered the civil circuit and generated subjective rights secured by the law are also among the exempt individual administrative acts. However, the scientific title of doctor in an individual administrative act which, once entered the civil circuit, produces legal effects in the field of personal, patrimonial and non-patrimonial rights.*"[20].

By introducing this sanction – the withdrawal of the title of doctor – direct effects are created in the procedure of the contentious administrative, adding another way of ceasing the effects of an administrative act, by means of a special law.

Therefore, in connection with this *sui generis* sanction, the provisions and securities regulated by means of the Law no. 554/2004[21] of the contentious administrative must be observed, the measure can only be ordered by a court of law, any other procedure giving rise to discriminatory situations and seriously affecting the principle of legality.

[19] See para. 48 of CCR Decision no. 624/2016.
[20] See para. 49 of CCR Decision no. 624/2016.
[21] Published in the Official Gazette of Romania, Part I, no. 1154 of 7.12.2004, as further amended and supplemented.

On the other hand, it should be noted that the sanction on the withdrawal of the title of doctor, introduced by an imprecise, unclear legal norm borrows elements from both the nullity and revocability of the administrative act, which is contrary to the stated constitutional principles.

Moreover, we hereby point out that the application (without any time limit!) of the sanction on the withdrawal of the title of doctor, on the one hand, encourages and maintains the superficiality and inconsistency of key state institutions in the field of education (line ministry, CNATDCU), which, despite the fact they have validated and conferred/granted this title, can at any time change their minds (including in the event that previous evaluations have led to the adoption of the decision to maintain the scientific title, as in this case), even on the basis of new criteria, non-existing at the time of awarding the title, and on the other hand, violates the principle of security of legal relations, by generating mistrust and disrespect in higher education institutions in Romania.

The fact that the annulment of the doctor diploma is referred to the analysis of the courts of law does not mean that such thing covers the unconstitutionality defects underlying the issuance of the withdrawal order, as the court invested with the annulment of a doctor diploma only finds that the title was withdrawn and exclusively following this finding, without no analysis on the legality of that procedure, annuls the doctor diploma.

Last but not least, neither the fact that the addressee of the administrative act of withdrawal of the title of doctor can subsequently resort to the court of law on the verification of its legality can cover the unconstitutional defects underlying the issuance, as the court of law does not have the possibility to verify neither the independence of the body within which the withdrawal procedure is carried out, nor the framework in which the specialized commission (appointed by the same body dependent on the issuer of the act) decides on the referral.

We would also like to point out that the subjects of law concerned, for example, do not benefit from the established concept of challenge of the members of the commission if they are not impartial and they cannot request the change of venue of the referral to an independent body (the court is to verify if the grounds of the change of venue are substantiated), as in case the withdrawal of the title of doctor were considered in court proceedings.

5. Concluding Remarks

The identification[22] of plagiarism in scientific paper works is not an easy task, and the legislator fails to clarify the legal framework.

Depending on the interest manifested in the media, plagiarism allegations soon appear in the discussions, the methodology of elaboration of these scientific papers being under suspicion[23].

We believe that the CCR Decision no. 624/2016 is flagrantly infringed by the fact that the procedure underlying the order of the withdrawal of the title of doctor is carried out by a body that is totally dependent on the issuer of the administrative act.

Furthermore, by the fact that the concerned subjects of law cannot support their point of view[24] in this procedure, the constitutional provisions governing the right to a fair trial and the right to defence are flagrantly violated, by creating discrimination among persons whose administrative act is annulled and among persons whose administrative act is revoked.

For all the reasons set out in this study, we believe that the arguments claimed by the concerned persons in legal proceedings could lead to the referral to the CCR, in order to pronounce a decision to establish that the provisions of art. 170 para. (1) of the National Education Law are unconstitutional.

And this could even happen in the very near future...

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[22] Please see Elena Emilia Ștefan, *Etică și integritate academică*, second edition, revised and supplemented, Pro Universitaria Publishing House, Bucharest, 2021, pp. 260 and following.

[23] Elena Emilia Ștefan, *Metodologia elaborării lucrărilor științifice*, Pro Universitaria Publishing House, Bucharest, 2019.

[24] The same would be if the withdrawal of the title of doctor would be requested before an independent court of law, by means of an evaluation performed by independent experts appointed by the court and with the permanent presence of the person in question throughout the proceedings.

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