THE CONSTITUTIONAL PERSPECTIVE ON THE PROCEDURE OF WITHDRAWAL, RESPECTIVELY OF RENUNCIATION OF THE TITLE OF DOCTOR

Georgian RĂDĂȘANU*

Abstract

The purpose of this article is to address the issues arising from the regulation of the procedure for withdrawing the doctoral degree, respectively the one on establishing the right to voluntarily renounce this quality, in the context of the provisions found in the National Education Law no. 1/2011.

The first part of this study begins with the treatment of the particular hypothesis of the withdrawal of the doctoral degree following the verifications performed by CNATDCU and the proposal made in this regard to the Ministry of Education. As we will see, the way in which such a procedure was regulated raises numerous questions regarding its constitutionality in relation to those retained in the Constitutional Court Decision no. 624/2016. Following analysis of the legal provisions in force, we will identify the hypotheses that may arise in practice, formulating some proposals de lege ferenda to ensure, on the one hand, compliance with those retained by the Court in the aforementioned decision, and, on the other hand, to establish a certain coherence and predictability regarding the mechanism for withdrawing the doctoral degree.

The second part concerns a thorough look at the hypothesis of voluntary renunciation of the title of doctor, as a result of which we bring to attention, among other things, the creation of a working variant that supports the fairness of such a mechanism conceived by the Romanian legislator, but which, above all, supports the constitutionality of the future regulation, taking into account also the considerations illustrated by the Court in the same decision.

Keywords: *diploma, withdrawal, CNATDCU, waiver, order.*

1. Introduction

This article aims to treat the issues resulting from the way of regulating the procedure for withdrawing the PhD title, respectively the one regarding the establishment of the right to voluntarily renounce the same quality, in the context of the provisions found in the Law on National Education no. 1/2011, with the amendments and additions subsequently made by GEO no. 94/2014 and GEO no. 4/2016 and, in particular, of the intervention of the CCR Decision no. 624 of 26 October 2016.

The first part of this study begins with the treatment of the particular hypothesis of the withdrawal of the doctoral degree following the verifications performed by the National Council for Attestation of University Degrees, Diplomas and Certificates (hereinafter, CNATDCU) and the proposal made in this regard to the Ministry of Education. First of all, given the distinct legal regime of nullity compared to revocation, which operates in the field of administrative acts, we consider that it is necessary to achieve a natural delimitation between the two hypotheses, so that the rule benefits from an increase of „clarity in its application. It is also necessary to analyze carefully whether the act that really needs to be annulled by the court is the doctor's degree, as provided by the current provisions of art. 146^1 of the National Education Law no. 1/2011 (hereinafter, Law no. 1/2011) or, possibly, the ministerial order ordering the withdrawal of the doctor's degree.

The second part, which aims at an in-depth look at the hypothesis of voluntary renunciation of the title of doctor, begins with the analysis of this right established by the legislator delegated by GEO no. 94/2014, starting from its very nature and continuing with any interference resulting from its exercise. In this context, we intend to show, among other things, the possible effects produced by the manifestation of the will of the doctoral holder in relation to the legal regime of nullity, especially considering the role of CNATDCU in investigating possible violations of ethical standards in scientific research. Alternatively, we also draw attention to the creation of a working variant that could support, from a certain perspective, the fairness of such a mechanism conceived by the Romanian legislator, taking into account the considerations illustrated by the CCR in Decision no. 624/2016.

* PhD Candidate, Faculty of Law, "Nicolae Titulescu" University of Bucharest; Legal staff assimilated to judges and prosecutors, Ministry of Justice (e-mail: radasanu.georgian@yahoo.com).

2. The particular hypothesis of the withdrawal of the doctoral degree

2.1. Preliminary analysis of incidental legal provisions

In the context of studying the legal liability of the doctoral student or the doctoral supervisor for violating the deontological norms in the research and preparation of doctoral theses, an issue that caught my attention was the procedure related to the withdrawal of doctor's title in the context of entry into force of Law no. 139/2019 for the approval of the GEO no. 4/2016 on amending and supplementing the National Education Law no. 1/2011(hereinafter, Law no. 1/2011)[1].

Specifically, according to art. 146[1], newly introduced in the content of Law no. 1/2011: *„The title of doctor shall cease to have legal effect from the moment of communication of the order of its withdrawal."* Also, according to art. 146[2] which was also introduced by the same emergency ordinance: *„(1) The doctor's diploma shall be revoked or canceled by final judgment of a court. (2) By way of derogation from the provisions of paragraph (6) of Article 1 of the Law on administrative litigation no. 554/2004, as subsequently amended and supplemented, the issuing institution shall bring the action within one year from the date of the provision to withdraw the doctor's title."*

Regarding art. 146[1] of Law no. 1/2011, we mention that it aims at communicating the disposition of withdrawal of the doctoral title contained at the end of the ministerial order, as a rule, provided in art. 2 of the order and having the following wording: *„The General Directorate of Higher Education within the Ministry of National Education and Scientific Research communicates this order to institution X, which will carry it out, and to the person nominated in art. 1."* We appreciate that by introducing this article in the Law no. 1/2011, there is no structural change of the moment from which the withdrawal of the PhD. produces legal effects, thus not abandoning the principle of form symmetry[2].

Applying this principle to the above situation, CNATDCU is the body that, following the validation of the decision of the doctoral dissertation commission, proposes granting the doctorate to the Ministry of Education and Research and on the basis of this the ministerial order is issued by which the title of doctor is conferred. Similarly, in the conditions in which it is concluded that the doctoral thesis does not comply with the ethical standards of scientific research, CNATDCU proposes to the ministry the withdrawal of the doctoral degree, based on the provisions of art. 170 para. (1) lit. b) of Law no. 1/2011. Following the issuance of the legal opinion by the specialized directorate within the ministry, by order of the minister, the doctoral degree is withdrawn.

Instead, art. 146[2], newly introduced in the content of Law no. 1/2011, brings a substantial change in the matter by the fact that the legislator creates, impermissibly, a dichotomy between the title of doctor, which is granted by order of the minister, and the proof of having such a quality, which is done through the diploma doctoral certificate issued by the university organizing doctoral studies[3]. Specifically, as we saw above, the order to withdraw the title of doctor is communicated both to the person concerned and to the university organizing the doctoral studies, in order to carry it out. The latter approach was involving, among other things, the obligation of the university to proceed administratively with the abolition of the doctoral degree. However, according to the new amendments, this can no longer be done by the university in a purely administrative process, but it is necessary to initiate a jurisdictional mechanism, to notify the court with an action to annul the diploma, within a year from the date of the order to withdraw the title of doctor (date of the ministerial order).

Such a provision poses real problems from the perspective of the legal relationship between an administrative act - the ministerial order by which the title of doctor was withdrawn - and the decision of the court - a judicial act. First of all, the question naturally arises as to what happens if the university, on the basis of the university autonomy that it could invoke in favor, understands not to introduce such an action in time?

Related to this aspect, as formulated in art. 146[2] of the National Education Law: *„(2) By derogation from the provisions of par. (6) in art. 1 of the Law on administrative litigation no. 554/2004, with the subsequent amendments and completions, the issuing institution introduces the action in annulment of the diploma, within one year from the date of the disposition of the withdrawal of the title of doctor."* by reference to the provisions of art. 6 para. (1) of the Law administrative litigation no. 554/2004 (hereinafter, Law no. 554/2004)[4]: *„Special administrative jurisdictions are optional and free of charge."*, it follows that the intention of the legislature was to impose an obligation on the issuing institutions to bring such an action.

However, if they choose not to introduce such an action in time, given that art. 146[1] of Law no. 1/2011

[1] Published in the Official Gazette of Romania, Part I no. 592 of July 18, 2019.
[2] On the contrary, see the opinions expressed in the article on amendments to the National Education Law no. 1/2011 by Law no. 139/2019, available at: https://pressone.ro/legea-de-conservare-a-diplomei-plagiatorului, accessed on 05.03.2022.
[3] In the same vein, ibidem.
[4] Published in the Official Gazette of Romania, Part I no. 1154 of December 7, 2004.

stipulates that the title of doctor ceases to produce legal effects from the moment of communication of the disposition of its withdrawal, such an omission cannot produce legal consequences regarding the ministerial order that continues to produce its effects based on its executory character[5].

On the other hand, even if the diploma has not been annulled by the court, it remains, at first sight, an administrative act attesting/proving a previously acquired right also by means of an administrative act, this time constituting rights - the ministerial order granting the title of doctor. By extrapolating and applying this reasoning to the field of road traffic, it can be said that if the right to drive a vehicle is acquired after passing a written exam and a practical test, this being the constitutive moment of the right, the subsequent issuance of the driving license is made exclusively for the purpose of proving the existence of such a right (in fact, between these two moments the driver benefits from a provisional proof of the right to drive, valid for a certain period of time until the moment of taking possession of the driving license).

Therefore, the diploma of the Ministerial Order (the latter having both a constitutive role and a probative force of law) is nothing but an act that contributes to the proof of the doctoral degree, therefore an exclusive act with probative force. Being considered an accessory document of the original ministerial order, under the conditions of operating an implicit abrogation by the new order, such a diploma cannot prove a thing that is no longer in existence, being devoid of any legal force and, implicitly, probative.

Drawing a parallel this time with the regime of weapons and ammunition, we mention that according to art. 45 of Law no. 295/2004 on the regime of weapons and ammunition[6]: *„(1) The annulment of the right to carry and use lethal weapons shall be ordered by the competent bodies if the holder of the right is in one of the following situations: (...) (2) cancellation of the right to carry and use weapons, **the weapon permit is withdrawn by the police body that ordered the measure**, and the weapons and the entire amount of ammunition held are immediately deposited with a gunsmith authorized for this purpose, unless which are raised by the police."* Therefore, the cancellation of the right to carry and use lethal weapons is ordered by the competent bodies for one of the situations set out in the law, but the weapon permit is withdrawn by the police body that ordered the cancellation (as an administrative measure). For example, applying the new amendments to this situation would mean that the police body, although having ordered the cancellation of the right to carry and use lethal weapons, would be required to notify the court in order to withdraw the weapon permit, which would be totally absurd. Therefore, returning to our hypothesis, I consider that it would have been preferable for the abolition of the diploma to remain a purely administrative step, in the competence of the institution organizing the doctoral studies.

The question remains, however, what happens if an action is taken to annul the diploma, but the court rejects the application for annulment? Can it be considered that the intention of the legislator by introducing this provision was that in which the court in its analysis acquires, implicitly, the possibility of censoring the ministerial order by which the doctor's degree was withdrawn?

I believe that the answer to these issues could come only from the analysis and understanding of the causes, but also from the way in which such a legislative solution was reached.

2.2. The evolution of the legislative process

First of all, we must start from the fact that the text of the emergency ordinance on amending and supplementing the Law no. 1/2011 specified that the doctoral degree ceases to produce legal effects from the moment of communication of the disposition of withdrawal of the title. And in this case it can be easily seen an amalgamation, which could lead to confusion. In particular, it is not the diploma that ceases to produce legal effects as a result of the withdrawal order, but the very title of doctor granted by the initial ministerial order. As I mentioned earlier, by operating a tacit repeal by the new order, the cessation of legal effects can only concern the constitutive act of rights and not an act that serves as proof of a right. Therefore, I appreciate that such a mention was completely useless, creating more confusion.

Further, the *Draft Law for the approval of the GEO no. 4/2016 regarding the amendment and completion of the National Education Law no. 1/2011 (PL-x no. 66/2016)*, adopted by the Chamber of Deputies, provided in art. 146[1] that the certificates and diplomas of bachelor, master and/or doctor cease to produce legal effects, from the moment of communication of the disposition of their withdrawal. Practically, we proceed to an extension of the category of documents, adding in addition to the doctoral and bachelor's or master's degrees, otherwise no other changes are made, which is why we appreciate that the arguments presented above are valid in this new context.

A similar form was adopted by the Romanian Senate, as a decision-making chamber, providing that

[5] With the mention that, as we will see later, this poses serious problems from the perspective of the binding nature of those retained by the Constitutional Court in the Decision no. 624/2016.

[6] Republished in the Official Gazette of Romania, Part I no. 425 of June 10, 2014.

the administrative act establishing the scientific title is annulled from the date of issuance of the revocation act and produces consequences only for the future[7]. As can be easily seen, the legislator also creates here, impermissibly, a derogation from the legal regime of nullity (which provides for the *ex nunc* effect of the operation of nullity), stating that the annulment of the act establishing the scientific title of doctor produces effects only for the future, practically, the completed documents or the benefits obtained as a result of obtaining the doctor's degree remain unaffected. Or, according to art. 1254 of the Civil Code: *„(1) A contract which is absolutely null or may be annulled is deemed never to have been concluded. (2) The termination of the contract entails, under the conditions laid down by law, the termination of the subsequent acts concluded on the basis of the contract. (3) If the contract is terminated, each part must return to the other, in kind or in equivalent, the received prestations, accordance with art. 1639-1647, even if they were received successively or were continuous."* Therefore, the annulment of an act (even an administrative one) can, in principle, only produce retroactive effects, from the moment of its conclusion and, by no means, for the future[8].

However, it must be taken into account that according to art. 1 para. (6) of the Law no. 554/2004: *„The public authority issuing an illegal unilateral administrative act may request the court to annul it, in case the act can no longer be revoked because it entered the civil circuit and produced legal effects. If the action is admitted, the court shall rule, if it has been notified by the summons, on the validity of the legal acts concluded on the basis of the illegal administrative act, as well as on the legal effects produced by them. The action may be brought within one year of the date of issue of the act."*

In this regard, we note that following the notification of unconstitutionality from both the Romanian Government and a group of parliamentarians, the Romanian Constitutional Court, in control prior to the promulgation of the law, admitted the objection of unconstitutionality and found that the *Law for approval of the GEO no. 4/2016 on amending and supplementing the National Education Law no. 1/2011* is unconstitutional, as a whole.

2.3. The considerations set out in Decision no. 624/2016 and the manner of its transposition by the legislator

In upholding the unconstitutionality of the law as a whole, the Court held in its Decision no. 624/2016[9] that: „50. In this constitutional and legal context, the amending provisions of art. 168 para. (72) of Law no. 1/2011, according to which **"the administrative act establishing the scientific title is annulled from the date of issuance of the revocation act and produces effects only for the future" constitutes a violation of the principle of irrevocability of individual administrative acts, with serious consequences on subjective rights born as a result of entry in the civil circuit of the respective act. The possibility of revoking the administrative act by the issuing authority violates the principle of stability of legal relations, introduces insecurity in the civil circuit and leaves to the subjective disposal of the issuing authority the existence of certain rights of the person who acquired the scientific title**."

Therefore, in order to ensure some stability, without any abuse by the body issuing the act, the CCR has stated that: „if there are suspicions of non-compliance with procedures or standards of quality or professional ethics, (...) the administrative act may be subject to the control of an entity independent of the entity that issued the doctoral degree, with specific competencies in this field, which may take sanctioning measures regarding the withdrawal of the title in question. However, if the legislator's option is for the revocation or annulment of the administrative act, it can operate only under the conditions stipulated by law, respectively the measure can only be ordered by a court, in compliance with the provisions of Law no. 554/2004. Moreover, this is the solution enshrined in the jurisprudence of the HCCJ (see Decision no. 3068 of 19 June 2012 or Decision no. 4288 of 23 October 2012), according to which the provisions of Law no. 1/2011 does not constitute exceptions from the rule of irrevocability of individual administrative acts, regulated by the common law in the matter, respectively by Law no. 554/2004."

Hereinafter, as regards the legal regime applicable to the sanction of nullity, as we also stated above: „52. The Court notes that the amending law operates with autonomous notions, the legal regime of

[7] https://www.senat.ro/legis/PDF/2016/16L207FS.PDF, accessed on 05.03.2022.

[8] We say "*in principle*" because in civil matters, for example, there may be situations where certain legal effects produced by the null and void legal act are recognized and maintained in order to preserve other principles of law that conflict with retroactivity (eg best interests of the child). In this context, the following exceptions can be listed: the case of putative marriage [art. 304 para. (1) of the Civil Code], the situation of children from an annulled marriage [art. 305 para. (1) of the new Civil Code], the case of the minor in good faith at the conclusion of the marriage, who retains the full capacity to exercise acquired as an effect of the conclusion of that marriage and subsequent annulment of the marriage [art. 39 para. (2) the new Civil Code] etc.

[9] Regarding the admission of the objection of unconstitutionality of the provisions of the Law for the approval of the GEO no. 4/2016 on amending and supplementing the National Education Law no. 1/2011, published in the Official Gazette of Romania, Part I no. 937 of November 22, 2016.

which obviously differs. Thus, the legislative solutions adopted are likely to create difficulties of application, as they lead to contradictory effects by using contrary legal institutions in the case of the provisions according to which "the administrative act establishing the scientific title is annulled from the date of issuance of the revocation act for the future "or those according to which" IOSUD cancels the diploma "based on the" order of the minister of withdrawal of the title "of doctor / certificate of habilitation. Thus, according to the legal provisions, an act of revocation "cancels" an administrative act ascertaining the scientific title, and the annulment of the diploma is made on the basis of an act by which the title is withdrawn. **Beyond the inaccuracy of the hypotheses of the incidence of the law, given that the institution of revocation / withdrawal has effects for the future, and that of annulment also has effects for the past, the Court finds that these provisions, confusing and without legal rigor, generate uncertainty unitary application of the law, a circumstance likely to infringe the principle of legal certainty, a principle which requires that the rules be clear, coherent and unequivocal, and in order to be correctly interpreted and applied, the terminology used must be certain and sufficiently predictable. 53. The Court therefore finds that the provisions under which "the administrative act establishing the scientific title shall be annulled from the date of issue of the act of revocation and shall take effect only for the future" and those according to which "IOSUD cancels the diploma" withdrawal of the title of doctor / certificate of habilitation, included in the provisions of the sole article points 13 and 17, contravene the principle of legality, provided by art. 1 para. (5) of the Constitution**."

Following this Court decision, the Romanian Senate in the re-examination procedure eliminated most of the provisions of the law challenged in Court (this also after finding the violation of the principle of bicameralism), retaining in its content only the two provisions: art. 146[1]: „The title of doctor ceases to produce legal effects from the moment of communication of the order of its withdrawal.", respectively art. 146[2]: "(1) The doctoral diploma is revoked or annulled by the final decision of a court. (2) By way of derogation from the provisions of para. (6) of art. 1 of the Law on Administrative Litigation no. 554/2004, as subsequently amended and supplemented, the issuing institution shall bring the action for annulment of the diploma within one year from the date of the disposition of the withdrawal of the title of doctor."

In view of these arguments retained by the Court in Decision no. 624/2016, it can be said that in the process of transposing this decision the intention of the legislator was, at least prima facie, to submit, implicitly, to judicial review and the act ordering the withdrawal of the title of doctor, respectively the ministerial order. I say this because even if it is expressly provided that only the diploma is the act subject to judicial review, naturally, in case of dismissal of the action for annulment, the ministerial order ordering the withdrawal of the title would continue to produce legal effects as a result of its maintenance in the civil circuit, which would leave empty the content of art. 146[2] of Law no. 1/2011. On the other hand, a contrary interpretation could even contradict those held by the Court as regards the need to comply with the principle of the stability of legal relations, assuming that the existence of the rights of the person acquiring a scientific title is made subjectively available to the issuing authority.

Furthermore, it can be noted that by his choice, the legislator chooses to transpose the Court's decision by unjustifiably retaining some elements of the legislation prior to the amendment, but which could ultimately lead to a diversion of the binding effect of the court's decision, as well as to an impermissible removal from the rules governing the contentious procedure. In view of this situation, in the following we will analyze the existing options regarding the concrete application of the current legal framework, taking into consideration those retained by the Court in the aforementioned decision.

2.4. Application of the provisions *de lege lata*

Prior to this, we specify that according to art. 1 para. (6) of Law no. 554/2004[10]: „The public authority issuing an illegal unilateral administrative act may request the court to annul it, in case the act can no longer be revoked because it entered the civil circuit and produced legal effects. If the action is admitted, the court shall rule, if it has been notified by the summons, on the validity of the legal acts concluded on the basis of the illegal administrative act, as well as on the legal effects produced by them. The action may be brought within one year of the date of issue of the act."

As can be seen, the second sentence of this paragraph concerns, in essence, the possibility for the court, on the basis of the principle of availability, to rule on the annulment of all legal acts concluded on the basis of the illegal administrative act (in our case, the diploma) to rule on all legal effects produced by these acts. This means that the court may proceed with the annulment of all acts that are closely related to this

[10] In the conditions in which the derogation from the content of art. 146[2] para. (2) of Law no. 1/2011 refers only to the provisions contained in the third thesis of para. (6) in art. 1, the provisions found in the other theses being applied accordingly.

administrative act, practically the acts concluded between the moment of issuing the diploma by the institution organizing the doctoral studies and the moment of communicating the disposition to withdraw the title of doctor- accessory end (*e.g.*: return of salary increases received as a result of obtaining a doctorate).

In this context, we remind that the action for annulment can be exercised even if the court rejects the action of the issuing institution, but the one who has the quality of doctor requests by counterclaim the annulment of the ministerial order by which it was decided to withdraw the doctorate. This working hypothesis can be met practically if this order entered the legal circuit, producing legal effects subsequent to the disposition of the withdrawal of the doctoral degree.

In the event that it has not had legal effect, the issuing institution (Ministry of Education) will be able to proceed directly with its revocation, in which case if the court is notified, however, with an action for annulment, it will be able to order its rejection as not being within the jurisdiction of the courts. In such a case, but also in the hypothesis when the annulment by counterclaim was not requested, I appreciate that the interested party will then be able to invoke the court decision rejecting the action in annulment of the diploma directly before the Ministry of Education, for administrative revocation of the order concerning the withdrawal of doctoral degree.

Returning to the hypothesis of rejecting the action for annulment, insofar as the interested party requested the annulment of the order to withdraw the doctor's degree, the court will be required to rule on its validity, the order being considered an act that is closely related to the diploma conferring the title of doctor (although strictly formal it cannot be considered that this is an act issued on the basis of the diploma). Such a conclusion is also required by the fact that, logically, the diploma cannot continue to exist in the conditions in which this order, based on its enforceability, continues to produce legal effects.

Of course, in the event that the interested party did not request such annulment by counterclaim, invoking the invalidity of the order only as a mere defense of substance, the court will not be able to proceed with the annulment of the administrative act, although in the considerations it will be possible to show Minister was issued in violation of legal provisions. However, on the basis of such a decision, the interested party may subsequently bring an action for annulment of the Minister's order ordering the withdrawal of the doctor's degree.

Therefore, even in the hypothesis of the existence of two articles uncorrelated with all the legislation, provisions that can create more confusion than clarity in practice, we appreciate that the courts, until new legislative interventions, by virtue of the mandatory nature provided by art. 147 para. (4) of the Romanian Constitution, republished, will be required to ensure a consistent interpretation of the provisions previously mentioned with those retained by the CCR in the content of Decision no. 624/2016.

2.5. Proposals *de lege ferenda*

First of all, starting from the provisions of art. 1 para. (6) of Law no. 554/2004[11] and of art. 146^1 and 146^2 of Law no. 1/2011, corroborated with those ruled by the constitutional court in the aforementioned decision, it can be seen that the ministerial order granting the doctoral degree is the administrative act (constituting rights) that produced concrete legal effects in favor of the one who has acquired the quality of doctor (salary benefits, hierarchical advancement, obtaining grants, etc.) and, therefore, the one who needs to be subject to judicial control, the diploma certifying only the existence of such a right. Moreover, taking into account the fact that the issuing institution brings an action for annulment[12], it is not possible to speak at the same time of the revocation of an administrative act following a legal action, the revocation remaining the exclusive attribute of the issuing body and not of the courts.

Secondly, regarding art. 146^1 of Law no. 1/2011: *„The title of doctor ceases to produce legal effects from the moment of communication of the disposition of its withdrawal."* it can be seen, in this new context, that the article becomes partially applicable, and the situation when the action concerns an action for annulment is not covered. Therefore, in order not to create confusion about the moment from which the doctoral degree ceases to produce legal effects, I consider it necessary to achieve in this context a delimitation between the two working hypotheses that may arise (revocation, respectively annulment of the administrative act).

Therefore, in order to comply with the binding effect of Decision no. 624/2016, but also in order to ensure a certain legislative coherence, I appreciate that the form of the text provided in art. 146^1 of Law no. 1/2011 could be the following: *„(1) The Ministerial Order granting the doctoral degree is revoked by the issuing institution in case it has not entered the civil circuit, no legal effects being produced. Otherwise, it can only be set aside by a final judgment of a court. (2)*

[11] *„The public authority issuing an illegal unilateral administrative act may request the court to annul it, in case the act can no longer be revoked because it has entered the civil circuit and produced legal effects. If the action is admitted, the court shall rule, if it has been notified by the summons, on the validity of the legal acts concluded on the basis of the illegal administrative act, as well as on the legal effects produced by them. The action may be brought within one year of the date of issue of the act."*

[12] According to art. 146^2 para. (2) newly introduced, but also by reference to the provisions of art. 1 para. (6) of Law no. 554/2004.

By derogation from the provisions of para. (6) in art. 1 of the Law on administrative litigation no. 554/2004, with the subsequent amendments and completions, the issuing institution introduces the action in annulment of the order, within one year from the date of the disposition to withdraw the doctoral title. (3) The title of doctor ceases to produce legal effects from the moment of communication of the order / disposition of its withdrawal / communication of the revocation order or, as the case may be, of the finality of the court decision."

Firstly, given the importance of complying with the rules of legislative technique, we have chosen for a single article covering both issues, since the statement concerning the production of legal effects (in a separate article) cannot be located, in our view, before the article which regulates the procedure itself of revocation, respectively annulment of the administrative act.

Further, we went on the idea of achieving a clear delimitation between the legal regime applicable to the revocation, respectively the annulment of the ministerial order, nuanced and the fact that the action for annulment cannot target anything other than the ministerial order granting the doctorate. Hence, the need to maintain the derogation provided by *de lege lata* from the provisions of para. (6) in art. 1 of the Law no. 554/2004, in which the term for introducing the action for annulment starts to run from the date of the disposition to withdraw the doctoral degree / the date of the order of withdrawal of the doctoral degree. Naturally, the court, based on the principle of availability, will be able to proceed, among other things, with the abolition of the doctoral degree, given that the latter act was issued on the basis of the order granting the doctoral degree. Last but not least, we proceeded to the realization of two working variants, the phrase *„from the date / date of communication of the order of withdrawal of the title of doctor"* being able to present an extra clarity and predictability compared to the phrase "*from the date / date of communication the disposition to withdraw the title of doctor."*

3. The particular hypothesis of voluntary renunciation of the title of doctor

3.1. Preliminary aspects

Another issue that caught my attention in the context of the analysis of the doctoral student's responsibility for violating the norms of deontology is the one related to his possibility to request the renunciation of the doctor's degree.

According to the provisions of art. 168 para. (7^1) of Law no. 1/2011 introduced by the GEO no. 94/2014: *„The holder of a scientific degree may request the Ministry of Education and Scientific Research to renounce the title in question. In this case, the Ministry of Education and Scientific Research takes note of the waiver by a revocation order issued for this purpose."* Also, in accordance with the provisions of par. (7^2) of the same article*: "The administrative act establishing the scientific title shall be annulled from the date of issuance of the revocation order. The procedure for renouncing the title, as well as the one regarding the annulment of the administrative act ascertaining the scientific title shall be approved by order of the Minister of Education and Research."*

Analyzing the merits of the regulation, it can be seen that the legislator (delegate) does not establish what happens to the legal acts concluded or to the effects produced between the moment of granting the doctoral title and the one of issuing the revocation order. We mention that related to this, the CCR by Decision no. 624/2016 established that: ***„by the additions brought to the sole article points 11 and 13 of the criticized law, together with the renunciation of the doctoral degree, the legislator does not establish the status of the doctoral dissertation they will produce in terms of legal (labor) relations, as a result of the unilateral act of renunciation.*** *Also, the additions brought by the sole article point 17 of the criticized law regarding the withdrawal of the doctoral title / cancellation of the diploma do not foresee the legal effects of the applied civil sanction. 55. In this context, the Court notes that the holding of a doctoral degree may be a condition for access to a post, for the acquisition of a professional quality, for a professional status, and sometimes has implications including patrimonial, where the legislator has understood to reward the person who holds the title of doctor with salary increases corresponding to this scientific training. However, the new legal provisions fail to establish the extent to which the legal relations concluded by the person concerned as a doctor are affected, limiting themselves to ruling on the effects of the "act of revocation annulling the administrative act establishing the scientific title" which will occur "only for the future." Non-regulation of the effects of the unilateral act of renunciation or withdrawal of the doctoral degree, as the case may be, raises the risk that the former holder of the doctoral degree will continue to benefit from those rights acquired under the title, although no longer meets the quality.* ***The legal treatment thus regulated legitimizes the infringement of the intellectual property right of the original author, in the conditions in which plagiarism has patrimonial consequences, on the one hand, and creates the possibility for the person who has deviated from the observance of professional ethics standards to enjoy continued by the result of his fraud, on the other hand. However, the Court considers that such a***

purpose of the law is unacceptable from a legal and social point of view, as it encourages illicit behavior and eliminates the punitive and preventive character of the sanction of withdrawal of the doctor's degree."

Consequently, the renunciation of the title of doctor cannot be corroborated in any way with the legal regime governing the revocability of the individual administrative act, an institution which can operate only *ex nunc*. If the renunciation, as configured by the legislature, leads to the idea of producing effects strictly for the future, then this only contradicts the idea of maintaining the effects already produced on the basis of obtaining the title of doctor. Therefore, in order to cover this vice, the waiver must be linked to the institution of annulment of the individual administrative act (which has produced legal effects), an institution which by its nature can operate only *ex tunc*.

Moreover, the CCR went further with its reasoning, ruling that the very regulation of such an option in favor of the holder of a doctor's degree, without expressly providing for the effects of renouncing the doctorate, does not meet the conditions regarding the clarity and predictability of the norm, enshrined in art. 1 para. (5) of the Romanian Constitution, republished. Also, in the Court's view, the regulation of such a right in favor of those holding the title of doctor in conjunction with the fact that the administrative act establishing the scientific title (in this case, the doctor's degree) is annulled from the date of issuance of the revocation order and not at another time (practically the revocation order acquiring an enforceable character) leads to an impediment or even termination of the investigation procedure of the way in which the doctoral title was obtained**. Therefore, this, coupled with the fact that the withdrawal of the doctor's degree operates as a sanction for violating the ethical standards of scientific research, makes the provision of the possibility of giving up the doctor's degree lead in the future even to an encouragement of plagiarism, which contradicts the very reason and manner of conducting doctoral studies.**

3.2. Proposals *de lege ferenda*

Considering these aspects, we appreciate that it is necessary to analyze **two working variants**:

I. A first option that is perhaps closest to the nature of the research activity carried out by doctoral students, as well as to those retained by the court of constitutional contentious in its jurisprudence is the very abolition of such a possibility[13]. In fact, if we look closely at what might be the reason why a person decides to exercise such a right, we can only imagine, at least at first glance, that it could be related to possible violations of the ethical rules specific to the research activity. In this context, it can be difficult to explain what could lead a person who has made a sustained (long-term) effort to make the decision to give up all the sacrifices that have been behind obtaining a scientific degree.

A variant that we imagined and that could justify, at least theoretically, such an option is the one in which the holder of the doctoral degree, for various reasons, no longer wants to associate his name with the doctoral school / IOSUD. Thus, the maintenance of the title would lead to the possibility of implicitly causing possible image damage to the right holder. But even so, given that the title of doctor is obtained through an individual effort made by each individual researcher, it cannot be argued that it may be influenced by some causes external to his research and creation activity. It is true that some of these can seriously damage the image of an institution and thus create a shadow of a doubt about the results obtained by other people within the same institution, but, nevertheless, we must start from the premise that in this field, up to on the contrary, the work done by each doctoral student is unique and must enjoy a related recognition in terms of energy, time and effort in carrying out this activity. In conclusion, we do not exclude that particular situations can be imagined that would determine the existence of such a right, but they must be viewed with some caution, so as not to divert the very purpose pursued by its establishment.

a. Returning to the elimination *de plano* of the exercise of such a right, we appreciate that in the analysis of this variant we must start from the very nature of this right (waiver) established by the legislator.

According to Professor Beleiu, subjective civil law is the possibility recognized by civil law to the active subject - natural or legal person - by virtue of which he may, within the limits of law and morality, have a certain conduct, to claim appropriate conduct - to give, to do or not to do something - from the passive subject, and to ask for the help of the coercive force of the state, in case of need[14]. Similarly, it has been defined as the legal possibility of the holder of a right to engage, within the limits of the law, in a certain

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[13] In this sense, we mention that at the level of the Chamber of Deputies (the decision-making chamber being the Senate) there is already registered a Legislative Proposal for the abrogation of par. (7^1) and (7^2) of art. 168 of the National Education Law no. 1/2011 (Pl-x no. 572/2021), being sent for report and opinions to the specialized commissions, project available at: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam= 2 & idp = 19688, accessed on 05.03.2022.

[14] Gh. Beleiu, *Romanian Civil Law, Introduction to Civil Law. Subjects of civil law*, 11th ed., revised and added by M. Nicolae, P. Trușcă, Universul Juridic Publishing House, Bucharest, 2007, p. 75.

conduct, by virtue of which he may claim the person obliged to behave appropriately, which may be imposed, in case of necessity, by the coercive force of the state[15].

On the other hand, the existence of a subjective right must not be confused with its exercise, so that the legal possibility is not similar to the materialized possibility (that is to say, the actual enhancement of the legal possibility)[16]. In this sense, the objective law ensures the respect of the subjective right, but the protection provided by the objective law is not unlimited, absolute, which makes the objective law a limit and a control for the subjective right[17].

It can be stated that the exercise of a right may be limited, *inter alia*, by the exercise of the right in good faith, by the observance of public order and good morals (art. 14 of the Civil Code), by the observance of the law and the purpose for which that right is recognized by law, finally, by the non-existence of an abuse in the exercise of that right. In the light of the foregoing, the compatibility of those limitations with the right to renounce the scientific title of doctor is called into question.

b. As a preliminary point, it is important to note that the abuse of law involves the exercise of subjective civil law beyond its internal (not external) limits, for a purpose other than that for which it was instituted. In this sense, according to art. 15 of the Civil Code: *„No right may be exercised with the intent of causing harm or damage to another person or in an excessive and unreasonable manner, and therefore contrary to good faith."* In order to ensure compliance with its internal limits, according to art. 1353 of the Civil Code: *„A person who causes damage by the very exercise of their rights does not have the obligation to make reparations for the damage, unless the right is exercised abusively."*

Therefore, the classification of abuse of law may be based either on a subjective element, that of intent to harm or damage, or on a more objective element, namely the existence of excessive and unreasonable conduct which makes it contrary to good faith. Analyzing the operation of the exercise of the right to renounce the doctoral degree, it is found that the affectation of at least two competing rights / interests belonging to different persons can be questioned.

b.1. First of all, by exercising this right, the copyright of the person whose work was plagiarized may be infringed. As is well known, one of the conditions for exercising the right of summons is that it should not be prejudicial to the person from whose work it was taken. Such situations may arise when taking large quotations (and not for the purpose of criticism, analysis, commentary, etc., but in support of a certain point of view stated by the author himself) so that for the reader it becomes uninteresting to read anymore the work from which it was quoted. By such conduct, contrary to the exercise of the right of citation in good faith, the owner of the work may suffer certain damages, including property damage (e.g. reduction of the sales circulation of the book from which it was taken), which will eventually lead to an infringement of his right to property.

However, as is clear from the settled case-law of the ECtHR, the State has a positive obligation to provide the legal framework to prevent violations of the rights established in the ECHR, including property rights (in this case an intellectual creation). In that context, A. Clapham[18] and A. Mowbray[19] classify positive obligations in five categories as regards the category of positive obligations of the Member States of the Convention: the obligation to ensure the legal framework, the obligation to prevent infringements of the rights set out in the Convention, the obligation to provide relevant information and advice on violations of rights, the obligation to respond to violations (*e.g.* by conducting an investigation) and the obligation to provide resources to persons to prevent violations. Clapham concludes that the most visible type of positive obligation (also confirmed in Mowbray's study) is the obligation to protect human rights under the Convention from violations by non-state actors.

Therefore, in addition to the criminal liability that operates in case of violation of the right to property (*e.g.* the crime of destruction), the state may resort to other ways of liability to ensure the desire for doctoral studies, an example of this being given by administrative liability -disciplinary, liability that results in specific sanctions (withdrawal of the plagiarized article, withdrawal of the doctor's degree, withdrawal of the quality of doctoral supervisor etc.).

b.2. Secondly, by exercising this right in bad faith, the exercise of another right / prerogative is infringed, the one belonging to CNATDCU in the investigation of possible violations of deontological norms in the drafting of doctoral theses. As this right is

[15] T. Pop, *Civil Legal Report, in Civil Law Treaty, vol. I, General Part*, Academy Publishing House, Bucharest, 1989, pp. 70-71.

[16] Gh. Beleiu, *op. cit.,* p. 76.

[17] O. Ungureanu, C. Ungureanu, *Civil law. The general part,* 2nd ed., revised and added by Cornelia Munteanu, Universul Juridic Publishing House, Bucharest, 2017, p. 134.

[18] Andrew Clapham, *Human Rights Obligations of Non-State Actors* (OUP Oxford, 2006), p. 524, *apud* C. Aalbers, N. Vîlcu, *Positive obligations of the state in the jurisprudence of the European Court of Human Rights in the field of domestic violence, Handbook for practitioners in the justice sector to ensure access to justice for victims of domestic violence*, Chisinau, 2019, p. 16.

[19] Alastair Mowbray, *The development of positive obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart Publishing 2004), p. 5, apud C. Aalbers, N. Vîlcu, *op. cit*., p. 16.

currently configured, it seems to suggest that its exercise would lead to an effective blockade of an investigation that could be initiated in the event of a notification of deviations from the rules of ethics.

This was also signaled by the CCR in the content of Decision no. 624/2016, where it was stated that: ***„voluntary renunciation of the doctoral degree leaves without object the legal provisions regarding the activity of the bodies empowered to analyze suspicions regarding non-compliance with procedures or standards of quality or professional ethics, as the unilateral manifestation of will in the meaning of renouncing the title gives up the activity of investigating the bodies that may order the sanction of withdrawal of the title. Thus, the fulfillment of a purely optional condition, respectively the request of the person holding the quality of doctor to take note of his renunciation of the title, prevents the initiation of an investigation procedure of the way in which the title was obtained or, in the situation where such a procedure it is in progress, it ends arbitrarily.*** *It is obvious that the law creates the premises as persons suspected of obtaining a doctorate by fraud of legal proceedings to prevent the application of a sanction by voluntarily renouncing the title. The illicit conduct of the acquisition, in whole or in part, of a scientific work, the creation of another person, and presented as a personal creation, which determines legal effects both in employment relationships and in relationships arising from intellectual property rights, will remain, therefore, not sanctioned by virtue of the legal provisions that provide for the voluntary renunciation of the title.* ***Thus, given that the law provides for the withdrawal of the doctor's degree as a sanction for non-compliance with the standards provided for its development, including plagiarism, in case of voluntary renunciation of the doctorate, the new provisions do nothing but encourage dishonest, illegal behavior. -a field that should be characterized by rigor, professionalism and ethical probity****.”*

However, as we have seen above, no right can be exercised in order to harm or damage another, in which case one can naturally speak of an exercise in bad faith of him. The state through its legal / infralegal regulations has the obligation to ensure an effective protection of the property right, regardless of the methods of liability that may operate (civil, administrative-disciplinary or criminal, but in all cases respecting the principle of proportionality of legal liability). Therefore, it can be seen that by the unconditional exercise of this right, the premises of an institutional blockade are created regarding the investigation of possible deviations from the deontological norms in the elaboration of doctoral theses. This implicitly leads to the lack of an effective remedy for the protection of the copyright of the author of a literary, artistic or scientific work, as well as for other works of intellectual creation.

c. Moreover, as has been well noted in the doctrine, the use by the legislator of the word *„purpose”*, from the content of art. 15 of the Civil Code, refers to the finality of the right, to its social purpose, which makes it possible to be considered as an abuse of law and an antisocial exercise of the right[20]. In this context, the possibility that the perpetrator of the infringement of intellectual property rights will go unpunished will even lead to an encouragement of the phenomenon of committing such antisocial acts for the field of scientific research, which, in our opinion, contradicts the very purpose of doctoral studies. It is as if the legislator instituted a case of impunity in the case of crimes against property in the situation when the perpetrator subsequently repairs the damage caused. For example, a person who wishes to commit a crime against property knows that, if caught, he will benefit from a case of impunity anyway if he returns the property or repairs the damage. Clearly, such regulation can only encourage the commission of such offenses as long as their perpetrators are practically at risk. This will ultimately lead to the removal of both the deterrent effect of sanctions and the exemplary function that the sanctioning system must have in criminal matters, which can only lead to a violation of the constitutional provisions contained in art. 1 para. (3) and (5) of the Romanian Constitution, republished.

As a matter of fact, as noted in the CCR Decision no. 224/2017: *„(...) the provisions of art. 1 para. (3) of the Constitution, according to which "Romania is a rule of law [...]", imposes on the legislator the obligation to take measures in order to defend public order and safety, by adopting the necessary legal instruments in order to prevent the state of danger and the phenomenon criminal law, excluding any regulations likely to encourage this phenomenon.”*

Although the above aims to prevent and stop the criminal phenomenon, the same considerations apply *mutatis mutandis* to the prevention and sanctioning of the plagiarism phenomenon, which is, in fact, an activity similar to the acquisition, without right, of another's property, but which manifests in the field of intellectual property. Therefore, the state cannot adopt regulations that would lead to an encouragement of these phenomena, but, on the contrary, it must adopt firm measures to repress such reprehensible conduct.

d. Nor can it be argued that the waiver of a doctor's degree is a strictly private matter, which concerns exclusively the beneficiary of that right, which requires, in a correlative manner, the existence

[20] O. Ungureanu, C. Ungureanu, *op. cit.,* p. 161.

of an unconditional obligation on the competent body to issue the scientific title. This may be the case when the public interest does not overlap with the private interest. However, insofar as an individual right / interest competes with a general one, the waiver can no longer operate under the same conditions, as it has to borrow certain characteristics specific to the public policy regime. In fact, the French doctrine[21] also showed that: *„Even if the waiver is provided by law, it does not allow all waivers and the question of their legality is necessarily raised. In this respect, the doctrine agrees that public policy may oppose the existence of a waiver or prohibit early waivers."*

An example that we can mention in such a situation is the one given by the provisions regarding the crime of destruction [art. 253 para. (3)-(5) Criminal Code]. Specifically, criminal liability may be incurred for an offense of destruction even if the property belongs to the perpetrator, but at the same time the property is part of the cultural heritage or if the act of destruction, degradation or misuse of their property, committed by fire, explosion or any other such means, is likely to endanger other persons or property. Obviously, the limitation of the attributes of the right to property (especially that of disposition) is justified by the need to protect the rights of citizens (in other cases, public order, health or morals, national security, etc.) practically by the existence of an interest (public) superior to the one of private order and which is in close correlation with the provisions of art. 53 of the Fundamental Law. Therefore, the disposition of these goods will no longer be a strictly private matter, restricted to the sphere of civil law, but through the intervention of the general interest a justified (proportional) limitation of the exercise of the property right will be attracted.

Similarly, such reasoning applies to the waiver of a doctorate. Considering the content of the obligations of doctoral students during doctoral studies (presentation of topics in national conferences, publication of articles in specialized journals etc.), any sanctions that may be applied by CNECSDTI (body under the Ministry of National Education), the procedure for publicly defending the doctoral thesis, the procedure for granting the doctoral degree, the procedure for withdrawing it, in which CNATDCU has an essential role - an independent body subordinated to the Ministry of National Education, respectively, the procedure for challenging the order withdrawal in administrative litigation etc., it cannot be argued that the exercise of the right to renounce the title of doctor concerns exclusively the sphere of private relations of the holder of the title of doctor. Therefore, such a waiver, borrowing elements specific to the general interest, correlatively attracts a number of natural limitations to the exercise of this right.

As a matter of fact, part of the judicial practice[22] has ruled in the same direction, stating that: *„the granting of the doctoral degree and the complex content of the rights and obligations incumbent on the holder are not purely private, personal, naturally acquired matters and to which, in correlation, the renunciation of the doctoral degree would represent a right of a private nature. The way of obtaining the scientific title of doctor, following the completion of the third cycle of the university study program according to art. 158 of Law no. 1/2011, is a first argument why the right claimed by the plaintiff is not "unconditional", in the expression used in the summons, because the legal nature of the right waived is a complex one, and the incidental interests are not are of a purely private nature, which concerns exclusively the holder of the doctoral degree, but also public interests.[23]"*

Therefore, we can conclude that, given its nature, the waiver of such a right can be made *in extremis* (as we will see below), only with the fulfillment of certain conditions (preliminary procedures) in order to protect, on the one hand, part of the competing rights (*e.g.* of the copyright), but also of the institutional prerogatives granted by the legislator to some key institutions in managing the issue of plagiarism in Romania.

e. Last but not least, if we also analyze from the perspective of comparative law, it can be found that such a solution is not provided for in the legislations of other European states[24]. The natural reasoning behind the lack of such a right is, as we have seen above, the one that restricts the possibility of initiating

[21] G. Jèze, *Les principes généraux du droit administratif*, T. 1 p. 14, rééd. Dalloz 2005; Cl. Blumann, *La renonciation en droit administratif français*, LGDJ 1974 *apud* S. THÉRON,. *"Le renoncement en droit public: tentative de délimitation*". Jacquinot, Nathalie. *Le renoncement en droit public*. Université Toulouse 1 Capitole: Presses de l'Université Toulouse 1 Capitole, 2021. (pp. 7-21) Web. <http://books.openedition.org/putc/14532>.

[22] Sentence no. 2286/2019 of 18.09.2019, pronounced by the Bucharest Court of Appeal, Administrative and Fiscal Litigation Section, available at: www.sintact.ro, accessed on 05.03.2022; Sentence no. 27/2020 of 05.03.2020, pronounced by the Galati Court of Appeal, Administrative and Fiscal Litigation Section, available at: www.sintact.ro, accessed on 05.03.2022.

[23] In the sense that *„the subjective right constituted by the above legal text is an unconditional one (the limitation targeting only the sphere of the addressees, respectively the persons holding a scientific title), it being born directly in the patrimony of the addressees of the law, while the conditions for exercising the right, the only condition is a manifestation of will of the right holder materialized in a request addressed to the Ministry of Education and Scientific Research."*, see Sentence no. 3589/2016 of 16.11.2016, pronounced by the Bucharest Court of Appeal, Administrative and Fiscal Litigation Section, available at: www.sintact.ro, accessed on 05.03.2022.

[24] For a more detailed analysis of this issue, see: Sentence no. 2286/2019 of 18.09.2019, pronounced by the Bucharest Court of Appeal, Administrative and Fiscal Litigation Section, available at: www.sintact.ro, accessed on 05.03.2022.

investigations by universities that have awarded a doctorate. Related to this[25], it is well known that in most European countries the main role in granting and withdrawing the doctorate belongs to the universities organizing doctoral studies and less to the ministries of education and research or other bodies under their authority[26]. Therefore, presumably granting such a possibility, implicitly, the prerogative of withdrawing the diploma after finding the violation of deontological norms would become ineffective (sanctioning), the role of universities becoming rather illusory in this mechanism, which would lead to an impermissible impairment of university autonomy (as it has crystallized over time in these European states).

II. Alternative

Subsidiarily, if however, it is desired to maintain such a right at the legislative level (taking into account the arguments put forward in support of the unconditional nature of the exercise of the right), I consider that it would be necessary to mitigate the temporal enforceability of the revocation order issued following the waiver statement. Specifically, such a thing could be done by stipulating a deadline (from the date of issuance of the revocation order) within which the CNATDCU should be required to launch its own investigation into possible breaches of ethical standards in scientific research. In that case, the enforceability would have been suspended for the duration of the investigation pending a decision to that effect.

To the extent that no violations are found, then the revocation minister's order will be consolidated, thus becoming enforceable (for the unlikely hypothesis that could arise in practice and which I have previously set out). However, in such a context, in order to maintain the fairness of the procedure, one can also imagine the situation when the holder of the doctoral degree can withdraw his declaration of renunciation, in which case the issuing institution will be able to revoke the order by which the request for waiver was noted, as this order has not yet taken effect.

In case of violations, the director general of CNATDCU will be the one who will propose to the minister of education and research the revocation of the previous order (the one by which the waiver was taken). Similarly, taking into account that this order has not yet produced legal effects (its enforceability being extended), the issuing institution will be able to proceed with its revocation, without the need to notify the court. Therefore, the Ministry of Education will proceed to revoke this order, ordering, at the same time, the notification of the court with action in annulment of the diploma / ministerial order ordering the granting of the doctoral degree, of course, in cases where he entered the circuit civil law, producing legal effects[27]. Subsequently, it will be applied the regime described in the proposals *de lege ferenda*, made on the occasion of the analysis of art. 146^1 and 146^2 of Law no. 1/2011.

Also, in the event that an investigation is initiated by CNATDCU and, at the same time, a declaration of resignation is submitted, we consider that a provision (even infralegal) would be necessary to provide that the issuance of the ministerial order is postponed until upon completion of the research by CNATDCU. A possible issuance of the order during it would empty of content the very role of this institution in discovering the facts of plagiarism in the writing of doctoral theses.

One last mention we want to make is the one related to the application of art. 168 para. (7^1) thesis II of Law no. 1/2011 which stipulates that: *„The procedure for renouncing the title, as well as the one regarding the annulment of the administrative act ascertaining the scientific title shall be approved by order of the Minister of Education and Research."* From the investigations carried out so far, no ministerial order could be found to provide a detail of the two procedures, which means that, in principle, the rule may not be applicable[28]. However, in judicial practice[29], it has been shown that the person concerned, even in the absence of such a methodology, given the nature and manner in which this right was created by the legislator, may request the administrative court to oblige the Ministry of Education to issue the revocation order, which takes note of the applicant's renunciation of the doctor's degree.

In view of such a hypothesis, we are of the opinion that, if it is chosen to maintain such a variant, it would be necessary to provide a case of suspension of the trial insofar as a parallel investigation by

[25] For a detailed analysis, see: G. Bocşan, *Responsibility of the doctoral student, the doctoral supervisor and the members of the commission for public defense of doctoral theses for violating the rules of ethics in the thesis preparation activity*, in the Romanian Journal of Intellectual Property Law no. 2/2018, pp. 16 et seq.

[26] O astfel de soluție poate părea justificată, ținând cont de avansul acestor state europene în materia cercetării științifice. Fără a ne propune să dezvoltăm acest subiect, apreciem că rolul CNATDCU (un organism independent și format din specialiști pe domenii de cercetare), astfel cum a fost acesta configurat de legiuitorul român, este unul esențial în ansamblul architectural al acordării și retragerii titlului de doctor, mai ales, în acest stadiu în care se află ciclul studiilor doctorale din țara noastră. Bineînțeles, pe viitor poate fi imaginată și ipoteza în care IOSUD-urile pot decide retragerea titlului de doctor, în urma unor anchete interne, astfel cum regăsim, în prezent, și pe teritoriul celorlalte state membre, însă o astfel de soluție necesită timp și o anumită pregătire în vederea asigurării unei implementări eficiente, care să ofere garanții solide.

[27] This second variant will be applied in the context of the amendments previously proposed in art. 146 of the National Education Law no. 1/2011.

[28] For the list of ministerial orders issued by the Minister of Education, see: https: //www.edu.ro/legisla%C8%9Bie-ordine-de-ministru, accessed on 08.03.2022.

[29] Sentence no. 3589/2016 of 16.11.2016, pronounced by the Bucharest Court of Appeal, Administrative and Fiscal Litigation Section, available at: www.sintact.ro, accessed on 05.03.2022.

CNATDCU was launched, until when pronouncing a solution in this regard (but not more than a certain interval). It should be noted that such a solution requires a correlation with the situation when, following the finding of violation of deontological norms, the interested party introduces a contentious action challenging the veracity of those retained by CNATDCU in the analysis report.

4. Conclusions

This article aimed to address issues from a constitutional perspective resulting from the regulation of the procedure for withdrawing the doctoral degree, respectively the one on establishing the right to voluntarily renounce this quality, in the context of the provisions of the National Education Law no. 1/2011.

In the context of the analysis of the particular hypothesis of the withdrawal of the PhD title, we have identified a series of problems that may arise in practice, formulating in this respect also some proposals *de lege ferenda* by which to ensure, on the one hand, the observance of those retained by the CCR in the content of Decision no. 624/2016 and, on the other hand, to establish a certain coherence and predictability with regard to the mechanism for withdrawing the doctorate title.

First of all, given the distinct legal regime of nullity compared to the revocation operating in the matter of administrative acts, it was necessary to achieve a natural delimitation between the two hypotheses, so that the norm would benefit from an extra clarity in its application. I also appreciated, among other things, that the act that really needs to be annulled by the court is the ministerial order ordering the withdrawal of the doctoral degree and not the diploma, which is basically nothing more than an act of probative value, this approach may also remain within the competence of the issuing body.

In the context of the analysis of the hypothesis of voluntary renunciation of the doctorate, I have pointed out, initially, that on the basis of its legal nature, the exercise of such a right cannot be carried out unconditionally, since it naturally borrows some characteristics of the public policy regime. That is why, in addition to the option of eliminating such a possibility, we have also proposed the creation of a working variant (apparently administrative)[30] to support the constitutionality of the future regulation, taking into account those retained by the constitutional court in the content of Decision no. 624/2016, but, especially, the probity characteristic of doctoral studies.

This option could imply a temporal attenuation of the enforceability of the revocation order that is issued following the declaration of waiver, by stipulating a time limit (to run from the date of issuance of the revocation order) in which the CNATDCU is to be held to initiate its own investigation into the possible violation of ethical standards in scientific research, in which case, the enforceability will be suspended for the duration of the investigation, until a decision to that effect has been taken. In so far as it is found that no violations have occurred, then the order of the minister of revocation will be strengthened, becoming enforceable. However, in such a situation, in order to retain fairness, I have shown that it is also possible to imagine the situation where the person holding the title of doctor can withdraw his declaration of waiver, in which case the issuing institution will be able to proceed to the revocation of the order by which the request for withdrawal was taken into account, in view of the fact that the order did not have legal effect.

Finally, in the event that an investigation was launched by CNATDCU and, at the same time, a waiver is submitted, I considered that a provision would be necessary to provide that the issuance of the ministerial order is postponed until the completion of the investigation by CNATDCU. In the event that an action is brought in administrative litigation in order to oblige the Ministry of Education to issue the revocation order, for identity reasons it is necessary to provide a case of suspension of the trial, insofar as a CNATDCU investigation was launched in parallel, until when pronouncing a solution in this regard.

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[30] If it is chosen to maintain the exercise of such a right.

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