

THE CONTRIBUTION OF DEONTOLOGICAL RULES TO THE EFFICIENT EXERCISE OF THE RIGHT TO EDUCATION

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Abstract

In this article, we intend to analyse the provisions of the code of ethics in pre- university education in order to identify the effective ways in which this normative act will contribute to the improvement of the Romanian education and how the children will continue to benefit of the absolutely necessary right to an adequate education, meant to prepare them for a decent life as adults, in Romania and anywhere else would choose to live. The Romanian Constitution establishes, in Article 32, the child's right to an education, the first provision referring to mandatory education. Thus, to a certain extent and level, in any civilized state, children must receive free education. Romanian pre-university education is currently facing several problems: the drop in birth rate, which results in a small number of children in schools, drop-out at a young age, a lower number of teachers, etc. From our point of view, a major problem of Romanian educational system refers to the low respect of children towards school, teaching and teachers, the main causes of this situation, probably consisting of material shortages and the departure of parents abroad in order to be able to support the family and leaving children without proper moral and emotional support. The new draft of the code of ethics for pre-university teachers intends to enrich the Romanian legislation with another code of ethics and also, it tries to solve, at least in part, some of the Romanian' educational system problems.

Keywords: professional deontology, code of ethics, right to education, human rights and fundamental freedoms, administrative law.

JEL Classification: K10, K23

1. Introductory viewpoints

No civilized contemporary society can function properly and nor evolve if its citizens have not benefited in the first years of life, in their early childhood, from an adequate basic education that eventually carries on for the rest of their life, in various forms of training, appropriate to the specific of each person's activity.

Although Romania is currently faced with an alarming rate of school dropout, it is hard to imagine the life in society of a person who does not have the basic notions, namely cannot write or read. According to data provided by Eurostat in 2017, the school dropout rate in Romania amounts to 18.5%, a percentage that ranks us third among the EU countries. Although on the aggregate the percentage of school dropout has decreased over the last ten years, Romania is an exception in this respect (in 2006 the school dropout rate rose in Romania to 17.9%).

The exercise of fundamental rights implies, for each person, the ability to read and sign documents, make requests, etc. in the official language of the home or residence country (or in the language of a national minority, if applicable). Thus, ensuring the access of all persons to compulsory and free education is becoming one of the fundamental obligations of any contemporary democratic state, being provided for and regulated both in international treaties and in domestic laws.

Beyond the problem of school dropout, there are the problems of those studying and teaching in this system. Thus, in the public space (media and the Internet), there appear always worrying news about the inadequate behaviour of both teachers and pupils. It's all about physical and verbal aggressions, clandestine shootings etc. all confirming that the moral, deontological rules, and natural respect that should exist in the community, largely disappeared.

In this paper we intend to analyse the domestic and international legislation concerning the right to education and the draft Ethical Code of Pre-university Teachers in Romania in the hope that, in one way or another, the Romanian legislator will succeed, together with citizens (younger or

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elder) to somehow harmonize the situation and to eliminate the negative behaviours in kindergartens, schools, high schools and other educational institutions.

2. International and national legal consecration of the right to education

The right to education or training forms part of the people's fundamental rights, by the latter being understood "a set of prerogatives encoded or enshrined in the national law and guaranteed by the international treaties of each individual in its relations with the other natural or legal persons, that express fundamental social values and have the goal of satisfying essential and legitimate human needs and aspirations"³

The consequence of protecting and guaranteeing fundamental human rights through the international treaties to which states are signatory ensures the citizens' possibility to request the international fora, to call to book the State within which one of these rights (implicitly the right to training) is not complied with. On this line, the literature shows that "the recognition of human rights has a global character, which translates the tendency towards a consensus of the international society"⁴. Moreover, human rights "are on principle essentially attached to the quality of human beings and are not attributed to individuals through a particular legal status that could be revoked."⁵

According to the most popular and used classification of human rights, the right to education belongs to the category of economic, social and cultural rights, namely the second generation of fundamental rights enshrined internationally, after civil and political rights (the first generation of rights, in the order of their appearance). These rights have been for the first time regulated in Articles 22-27 of the Universal Declaration of Human Rights and subsequently detailed in the International Covenant on Economic, Social and Political Rights adopted by the UN General Assembly in 1966, thus acquiring mandatory binding force for the signatory States.

The right to education is provided within the Article 26 of the Universal Declaration of Human Rights, which recognizes the right of all persons to education, which must be free of charge (at least primary education) and subsequently detailed in Article 13 of the *International Covenant on Economic, Social and Political Rights*, according to which the member states (of the Covenant) "agree that education must pursue the full development of the human personality and the sense of its dignity and strengthen the observance of human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace." The Pact also establishes an obligation for Member States to monitor the way in which educational establishments actually operate, the way in which scholarships are awarded and the "continuous improvement of the material conditions of teaching staff" (Article 13 (2) (e) of the Covenant).

With a view to achieving these goals, which favour both individuals' personal development and the proper functioning of the states, in Article 13 (2) it is developed the concrete manner through which the right to education becomes achievable, being set up: compulsory and free primary education for all persons; secondary, technical and vocational education, which should also be accessible to all and free of charge; free higher education and accessible to everyone, depending on each individual's purposes and intellectual capabilities.

If the right to education is assured to all persons and can be fully exercised by them, it also becomes possible to exercise the other fundamental human rights and the State, whose citizens are educated and cultivated, can only evolve.

Establishing free and mandatory primary education generates a correlative obligation for society members. Thus, the family of each child has an obligation to watch over the minor's

³ Corlăţean Titus, *Protecţia europeană şi internaţională a drepturilor omului*, Editura Universul Juridic, Bucureşti, 2012, p.10.

⁴ *Ibidem*, p.14.

⁵ Rennucci, Jean-Francois, *Droit europeen des droits de l'homme*, L.G.D.J., Paris, 2001, p. 28.

education, to enrol in school within the institutions organized for that purpose by the State, and to ensure school graduation in optimal terms by him/her.

The State fulfils its obligation by establishing specialized institutions (schools) in a sufficient number for all children, in locations as possible easily accessible to all, trains teachers who work in these schools, and children, as beneficiaries of the right to education, are enrolled and brought at school by their legal representatives (parents or guardians). Also, parents are recognized the right to choose the public or private educational institutions which they consider to be the most adequate for the intellectual development of their children.

At European level, Article 2 of *Protocol 1 to the European Convention on Human Rights* specifies that "no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The right to learn, as a central element of the right to education, implies that the State ensures equal opportunities for all, which implies the rejection of discrimination.⁶ Thus, each state separately, in a sovereign manner and taking into account the international standards in the field, establishes the educational plans, the practical way in which the primary, secondary and university institutions should operate, taking into account the requirements of the labour market, families' expectations, economic and social development, etc.

The Convention on the Rights of the Child of 1990 states in Article 28 that any child has the right to education, and States have an obligation to ensure the exercise of this right in optimum conditions. Thus, from this provision it also follows that at internal level should be established the working manner of schools, the school curricula, the number of compulsory classes etc., but everything must be done in such a way that the child, as beneficiary of the right to education, to be able to integrate subsequently into the labour market, be able to use the education received both in the country and abroad, be able to reach their legitimate goals and to have a satisfactory living standard.

Next, paragraphs 2 and 3 within the Article 28 stipulates that the states parties will have to take "all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention." (Article 28 (2)), as well as the fact that it is necessary to foster international cooperation in the field of education "in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods." (Article 28 (3)).

An effective and correct education of the child should follow, according to Article 29, the following purposes:

“(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) the development of respect for the natural environment. “

Further, paragraph 2 stipulates that "No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of

⁶ Corlăţean, Titus, *op. cit.*, p.81.

the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

Internally, the Constitution of Romania, recognizing the importance of education for the good development of life in a democratic society with responsible citizens and aware of their rights and obligations, establishes, in Article 32, the *Right to Learn*, which implies ensuring by the State the compulsory and free of charge general education, high school, vocational and higher education (university). The list of the educational forms within Article 32 (1) is not exhaustive, being provided the possibility to also organize "forms of training and improvement". Also, Article 13 (1) of the Law no. 1/2011 states that "learning perpetually is a right guaranteed by the law". To this end, it has been also materialized in Romania the concept of the Third Age University⁷, which shows that in the Romanian academic environment, special importance is attached to the idea of continuous learning /training, throughout the entire lifetime⁸.

National Education Law No. 1/2011, as subsequently amended and supplemented, provides in Article 1 that this legislative act regulates the "framework for exercising under the authority of the Romanian state the fundamental right to learning throughout the entire lifetime ", the law establishing "the structure, functions, organization and functioning of the national system of state, private and confessional education." According to this law, Romanian education is adapted to social needs and realities from Romania, being focused on quality and skills, prohibits discrimination, ensures equal opportunities, etc. Article 64 (1) and (2) provides that "in the pre-university system, it applies the National Curriculum drafted in accordance with the needs specific to personal development and the labour market needs of each community, based on the principle of subsidiarity". Next, the National Curriculum is defined as "the coherent set of framework curricula and pre-university education curricula."

Compulsory education includes currently 11 classes, being intended that by 2020 12 classes to become compulsory (Article 16 (1), of Law 1/2011). Moreover, in 2017 was proposed a draft law through which compulsory education will have 15 classes.

3. The professional deontology of teachers in pre-university education

As concerns the professional deontology of teachers, the National Education Law No. 1/2011 provides that within the pre-university education institutions, the Teachers' Council, made up of the "total number of teachers in the school institution with legal personality" (Article 98 (1) of Law No. 1/2011), presided by the director, has among the attributions the establishment of the Code of Professional Ethics and monitoring the compliance with its provisions (Article 98 paragraph 2 letter b) of Law No. 1/2011). Thus, from this legal provision it can be concluded that each pre-university education institution has its own code of ethics providing for the obligations of teachers and pupils, as well as the disciplinary sanctions applicable in the event of their infringement. In this context, we consider that the project under discussion regarding the adoption of a unique Code of ethics for teaching staff in pre-university education appeared probably due to the fact that the current regulations fail to meet the needs imposed by the realities it faces.

As we have shown in the introduction of this paper, the difficulties met by education are quite serious, so the adoption of more stringent legislation comes into prominence as a necessary measure. Of course, depending on the seriousness of the offense committed, the responsibility towards the guilty can be disciplinary, civil, contraventional or criminal. Thus, a teacher with over 30 years seniority in education has been recently convicted of committing the offense of abusive conduct which consisted of having offended pupils of first grade (shot by pupils) and received a sentence of eight months prison, the way of execution being the postponement of punishment. In

⁷ Mirică, Ștefania Cristina, *Învățarea pe tot parcursul vieții prin Universitatea Vârstei a Treia*, „Revista de Drept Public”, no. 4/2016, pp. 66-71.

⁸ Safta, Marieta, *Drept constituțional și instituții politice, vol. 1 Teoria generală a dreptului constituțional. Drepturi și libertăți*, Ed. Hamangiu, Bucharest, 2014, p. 203.

the same way (criminal or other, as appropriate) should be sanctioned all persons who, through their inappropriate conduct and lack of respect for the specific values of Romanian education, regardless of whether they are teachers, pupils, their parents, or any other person. On the Internet there can be found (recent and very recent) shootings that show the inadequate behaviour of both teachers and students (with violence among them or towards teachers). But in the media are shown especially scandals arisen without being monitored also the consequences, the sanctions applied, the measures taken to remedy the situation, etc.

The project concerning the Code of Ethics for Pre-university Education, which was put forward to public debate this autumn, contains a total of 17 articles which regulate only the obligations of the teaching staff, without reference to the obligations of educables, i.e. students.

As stated in the Article 1 (2) of the project, the Code is "applicable to all persons in the national pre-university education system of state, private and confessional, responsible for training and education and who, according to the provisions of Article 88 (2) - (3) of the National Education Law No. 1/2011, as subsequently amended and supplemented, are the teaching staff, auxiliary didactic staff, teaching staff for management, guidance and control, and associate teaching staff working within the state / private and confessional pre-university education institutions, in the school inspectorates and the Teaching-Staff Resource Centres, hereinafter referred to as "Teaching Staff", and who have the moral obligation and the professional duty to know, observe and apply the provisions of this Code. "

In the article 2 is also shown the purpose for which is to be adopted, namely "the code operates as a system of standards of conduct contributing to the institutional cohesion and that of groups of people involved in the educational activity, by forming and maintaining a climate based on cooperation, fairness and competition according to correct rules and procedures. "

Next there are listed the values and principles that need to be observed in teaching: impartiality, independence, objectivity, moral and professional responsibility, integrity, confidentiality, respect for the best interests of the child, decency, etc. From our point of view, the observance of these principles and values is indispensable for the good progress of the educational process and they are also regulated by the National Education Law No. 1/2011.

Further there are listed, in turn, in the articles with obligations of teachers in relation to students (Article 5), their parents (Article 6), relationships with colleagues (Article 7), with representatives of local institutions (Article 10) and management obligations of teachers with leading positions (Article 8).

As regards the obligations in relation to educables, we mention: watching, monitoring and prohibiting aggression towards students, combating abuses, prohibiting sexual harassment and sexual relations with students, eliminating any form of corruption (exams fraud, favouritism, influence peddling etc.). These obligations, concerning both the protection of physical and psychological integrity of students, and the prohibition of any form of corruption, are also regulated by other civil, labour, criminal, disciplinary and contravention rules of domestic law. We understand that, when a teacher commits a corruption act carrying out his/her job duties, he /she will be held liable in criminal, civil, contraventional and disciplinary terms (as applicable) depending on the seriousness of the offense and its consequences, but without doubling the sanctions (*non bis in idem*).

In relationships with parents or legal representatives, teachers should ensure the confidentiality of information related to child's situation, be communicative, not require the purchase of certain teaching materials, suggest activities or deepen studies favourable to the child, not receive material goods or money for the educational services provided, etc.

Pursuant to Article 7, Colleagues Relations, teachers must show mutual respect, tolerance, respect for the private life of others, but not override breaches of professional law and deontology, namely to report intellectual frauds and plagiarism etc. These aspects are also found in the already existing codes of ethics, but their application is probably not effective at institutional level.

According to Article 8, teaching staff with positions of leadership, guidance and control must ensure the effective management of the educational institution, promote specific ethical and moral standards, monitor compliance with ethics codes and forbid any form of abuse or harassment of teachers from subordination.

Article 9 provides that teachers and the entire staff in the institution are not allowed to carry out activities such as: the use of facilities and the material base to obtain material advantages, the consumption of ethno botanic, psychotropic or alcoholic substances in school premises, the organization of bets or games of luck, etc.

In the relations with the institutions and representatives of the local communities, according to Article 10, the teaching staff must contribute effectively to rendering quality educational services and prove responsibility and transparency in "providing information to state institutions in protecting the rights of the educable, when the interest / need for education of the educable requires this (Article 10 letter b) of the Code). We notice that this latter obligation has a very general nature and can refer to a very wide range of situations, which means that, in each case severally, taking into account the legislation in force and the specific characteristics of the problem, the teacher has to decide what information to communicate and how to handle the problem in relation to state institutions.

Chapter III of the draft Code of Ethics regulates, by means of two articles, 11 and 12, the manner in which liability for the persons that violates the provisions of the Code is to be involved. Thus, any person towards whom a provision of this Code has been violated should/can formulate in writing an intimation describing the committed act and require that the guilty be held liable. The intimation will be addressed to the Ethics Commission of the County /Bucharest, which has the competence to settle the allegedly committed offence. Ethics Commission of the County /Bucharest will settle the intimation within 30 days, and the settlement procedure is established by Order of the Ministry of Education. Through this provision, the competence to settle the deviations from deontological norms is attributed to a commission independent of the educational institution to which belongs the teacher who has committed the offence.

The Code does not provide for the sanctions applicable to the violation of obligations established through it, but specifies, within Article 13 that it "does not substitute the laws and regulations in force in the field of education and cannot contravene them" and that the Ethics Commission of the County /Bucharest does not substitute the disciplinary research commissions formed on the basis of the National Education Law No. 1/2011. From this article we deduce that this code, if adopted, would constitute a generic, complementary document of the legislation in force. It is also unclear under what circumstances the Ethics Commission of the County /Bucharest will have the competence to solve the possible intimations, probably only if it is a violation of an obligation stipulated by this code alone. In the other cases where the violated rules are provided by other normative acts, the Commission should refer the intimations to the disciplinary commissions provided by other legal norms.

The latest specifications show that any changes to this Code, as well as the sanctions applicable to the violation of obligations established by it are within the competence of the National Ethics Council and will be drafted subsequently to their entry into force. From our point of view, this is a failure of the draft Code, which should have included the possible sanctions applicable to the violation of the obligations imposed on the teachers.

4. Conclusions

In this article, we analyzed the content of the provisions of the code of ethics in the pre-university education project in order to identify the effective ways in which this normative act could contribute to the improvement of the Romanian education, the way in which the children will continue to benefit from the right to a proper education that would prepare them for decent life as adults, both in Romania and anywhere else would choose to live.

From our point of view this law project is incomplete as it fails to establish the sanctions for breaking its rules and leaves this part to a further document.

We consider that the Romanian educational system could be improved by a more responsible moral attitude from the part of the teachers, pupils and their parents.

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