

# ACADEMIC IMPOSTURE AND THE WITHDRAWAL OF THE PH.D. DEGREE. PROCEDURES, LEGALITY AND CONSTITUTIONALITY

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## Abstract

*The current article aims in presenting and analysing the notion of 'academic imposture', with relevant aspects of the legislation incident to plagiarism and self-plagiarism, as well as the legality regarding the withdrawal of the Ph.D. title in the previous and current regulations. Is plagiarism a matter of pure legality, or should it have an ethical and moral dimension? By reviewing aspects of historical writings, contemporary examples of authors accused of plagiarism, and also national examples of Ph.D. thesis, this article intends to highlight the interpretations issued by Constitutional Court of Romania, and also emphasize the need to better understand the instruments accessible for issuing a decision of withdrawal/maintaining the Ph.D. title, through a legal, ethical and moral lens.*

**Keywords:** *academic imposture, plagiarism, unconstitutionality, withdrawal of Ph.D. degree, originality.*

## 1. Considerations on academic imposture

In order to discuss the consequences of a situation such as an *academic imposture*, we need to explain a number of terms. Firstly, *imposture* is defined as an 'impostor's act', a 'charlatanry', a 'deception', according to the Explanatory Dictionary of the Romanian Language (hereinafter 'DEX'<sup>1</sup>), i.e. 'a situation in which someone is willing to deceive the good faith of others'. Secondly, according to the same source<sup>2</sup>, the term *academic* refers to an 'exaggerated correctness', mainly because the term is a derivative of the Latin *Academia* which represents 'the idealistic philosophical school, founded by Plato (circa 387 BC) in a garden near Athens, which would have belonged to the

mythological hero Akademos'<sup>3</sup> and for the reason that it refers to an academic work in general.

Therefore, by joining the two antagonistic terms, we are faced with a *deception of exaggerated correctness*, precisely because one who has taken the decision to appropriate an idea or a principle that does not belong to him, will be called a deceiver who has put more effort into copying than into creating something original, copying with *exaggerated correctness*. At first glance, subsequently, academic imposture may constitute a breach of ethics and integrity, and such deception in higher education could have severe consequences for academic teaching and research.

We can consider academic imposture an ancestral heritage in human society, with

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<sup>1</sup> <https://dexonline.ro/definitie/impostur%C4%83>.

<sup>2</sup> <https://dexonline.ro/intrare/academic/175>.

<sup>3</sup> [https://ro.wikipedia.org/wiki/Academia\\_platonic%C4%83](https://ro.wikipedia.org/wiki/Academia_platonic%C4%83).

accusations and suspicions since antiquity. Plato's disciples stopped mentioning the great philosopher's name in their discourses, appropriating some of his ideas, even 'the evangelists themselves have been accused of plagiarism.'<sup>4</sup> Regarding this latter, the Greek writer Nikos Kazantzakis imagines in his work 'The Last Temptation of Christ' that the apostle and evangelist Matthew completed his stories about the saviour by copying ideas dictated to him by an angel. For the latter, however, the nature of the originality of a work is in question. The four evangelists wrote about the miracles and sufferings of Christ, a historical context that cannot be repeated, cannot be imitated. Their originality must be analysed from the perspective of the historical moment in which they were written, just as the originality of any work should be discussed and analysed.

The historical, geopolitical, geographical, ethnographic context are all conditions for determining whether ideas are original or not. William Ralph Inge, former English writer, Anglican priest, Cambridge professor and Dean of St. Paul's Cathedral, asks: '*What is originality? Undetected plagiarism*'. Since everything is perfectible up to God, the originality of the writing of the four evangelists should not be questioned. The four plagiarized, at worst, from the Old Testament so as to fit the one they believed at the time to be the Messiah. But, then, it could also be about interpretation and twisting of the prophets' sayings. The original presumes, first of all, something that has not been imitated, something truly new. In such circumstances, if we remain on the religious side of the discussion, the foundations of all religions

would break down, because in the specific writings of each religion a common denominator can be found, however small and insignificant. Yet the Bible, the Talmud in Rabbinic Judaism and even the Vedas, the scriptures of Hinduism, share many common teachings, but each considers itself part of an original, unique and true whole.

Academic imposture manifests itself through unethical behaviours, including actions that violate established norms of integrity in academia, particularly through plagiarism and self-plagiarism.

Therefore, plagiarism and self-plagiarism are some of the most deceptive aspects of academic imposture. According to Law No 206/2004 on Good Conduct in Scientific Research, Technological Development and Innovation (hereinafter 'Law No 206/2004'), plagiarism is 'the presentation in a written work or an oral communication, including in electronic format, of texts, expressions, ideas, demonstrations, data, hypotheses, theories, results or scientific methods extracted from written works, including in electronic format, of other authors, without mentioning this fact and without reference to the original sources'<sup>5</sup>. The same article also defines self-plagiarism and highlights it as: 'the description in a written work or an oral communication, including in electronic format, of the same author or authors, without mentioning it and without reference to the original sources'<sup>6</sup>.

Henceforth, to consign someone else's work as your own shows a lack of basic awareness and a lack of education. Plagiarism is first and foremost a matter of ethics: 'Not appropriating the intellectual work of others, not copying another and

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<sup>4</sup> Viorel Roş, '*Contrafacerea și plagiatul în materia dreptului de autor: retrospectivă istorică și încercare de definire*', *Romanian Journal of Intellectual Property Law* no. 1 /2004, p. 17.

<sup>5</sup> Art. 4 para. (1) letter d) of Law no. 206/2004.

<sup>6</sup> *Ibidem*, letter (e).

presenting what is merely a poor copy as your own is first and foremost a matter of ethics, of morality, and only afterwards a matter of law. That's why plagiarism is a moral concept and a matter of good morals'<sup>7</sup>.

Plagiarism can have serious consequences for the career of the plagiarist or alleged plagiarist, despite the presumption of innocence. The label of plagiarist can remain even after the author's death; see cases where famous authors such as Homer, William Shakespeare, Constantin Hamangiu, I. L. Caragiale, Helen Keller, Dan Brown, J. K. Rowling, etc. have been accused of plagiarism. Although some of these accusations were unfounded, they have had and continue to have consequences for the reputation of these authors.

Plagiarism is currently a topic of public interest in Romania, involving in recent years a series of scandals with various politicians, notorious being the case of plagiarism of the former Prime Minister Victor Ponta. The consequence of this plagiarism was the start of an investigation by the National Council for the Accreditation of University Degrees, Diplomas and Certificates (hereinafter 'NCAUDDC'), following which the former Prime Minister's doctoral degree was withdrawn, triggering a wave of debate in civil society, but also political consequences for his career.

An accusation of plagiarism was also made in 2016 against the current Chief Prosecutor of the European Public Prosecutor's Office, Laura Codruța Kövesi. According to iThenticate reports, 34% of chapters 2, 3 and 4 of her Ph.D. thesis

contained plagiarized passages. By Decision no. 3 of 30 October 2016 of the President of the Legal Sciences Commission of the NCAUDDC, the structure of the Working Commission established to analyse the authenticity of the aforementioned complaint of plagiarism was established, professors Claudia Ghica Lemarchand, Vlad Constantinesco and Radu Chiriță being part of this Commission.

In the Joint Report on the Ph.D. thesis entitled 'Combating Organized Crime through Criminal Law Provisions' presented in 2011 by Mrs. Laura Codruța Kövesi, the above-mentioned committee proposed the following: 'Maintaining the Ph.D. title of Mrs. Codruța Laura Kövesi, the withdrawal of which we consider to be an excessive and inappropriate sanction; 2. the publication of the Joint Report of our Commission and its attachment to all copies of Ms. Kövesi's thesis present in all libraries in the country - especially in the West University of Timișoara, where the thesis was presented; 3. Prohibiting the publication of the thesis in its current state, when - although plagiarism cannot be held - in our opinion, it is below the quality standards of a Ph.D. thesis'<sup>8</sup>.

Therefore, the members of the committee noted that Ms. Kövesi's Ph.D. thesis contains several paragraphs that can be qualified as plagiarized and some on which certain suspicions of plagiarism may be kept, as these paragraphs were taken without citing the source, but they have 'little scientific value, (...) which do not add anything significant to the scientific debate'. In this context, a question arises: is the

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<sup>7</sup> Viorel Roș, Ciprian Romițan, 'Ură, hulă, plagiate și educație (pentru o lege antiplagiat)', in the volume of the Conference «Controversies in Intellectual Property», Universul Juridic Publishing House, Bucharest, 2019), p. 122.

<sup>8</sup> Claudia Ghica Lemarchand, Vlad Constantinesco, Radu Chiriță, 'Raportul Comun asupra tezei de doctorat *Combaterea crimei organizate prin dispoziții de drept penal* susținută în anul 2011 de doamna Laura Codruța Kövesi', 30 November 2016, p. 17-18, available at [https://media.hotnews.ro/media\\_server1/document-2016-12-9-21459844-0-raport-plagiat-teza-laura-codruta-kovesi.pdf](https://media.hotnews.ro/media_server1/document-2016-12-9-21459844-0-raport-plagiat-teza-laura-codruta-kovesi.pdf).

measure of banning the publication of the Ph.D. thesis a fair and legal measure?

The right to express opinions and views, and the right to do so in writing, are fundamental human rights. According to the Romanian Constitution, the citizen has the right to 'freedom of expression, of thoughts, opinions or beliefs and freedom of creation of any kind, whether by speech, writing, images, sounds or other means of communication in public'<sup>9</sup>.

In the same regard, the European Convention on Human Rights (hereafter 'ECHR') protects 'freedom of expression and information'<sup>10</sup>, which includes the right to hold a belief and the right to manifest it individually and in public, as fundamental rights.

The right to have opinions is an essential and fundamental human right, recognized also by the Universal Declaration of Human Rights (hereinafter 'UDHR'), which implies 'freedom to hold opinions without interference by outsiders and freedom to seek, receive and convey information and ideas through any media and regardless of frontiers'<sup>11</sup>.

In view of the above, I consider that the solution proposed by the Commission in the case of Ms. Laura Kövesi's Ph.D. thesis is illegal, since the Commission members point out that paragraphs of insignificant academic value have been taken without citing the source, but consider that these are not sufficient to remove the presumption of good faith of Laura Kövesi in writing the thesis, not considering in this regard plagiarism. Unequivocally, 'the

identification of plagiarism in scientific paper works is not an easy task'<sup>12</sup>, but such a sanction is unfair, as long as it was held that Ms Kövesi did not plagiarise.

I would like to underline that the current regulation, i.e. the Law on Higher Education No 199/2023 (hereinafter 'Law No 199/2023'), provides in Article 71 para. (12) that the Ph.D. thesis is considered as a public document and that 'its annexes will be available for consultation 90 calendar days before the public presentation, on the national platform managed by the Executive Unit for the Financing of Higher Education, Research, Development and Innovation (hereinafter 'EUFHERDI'), in accordance with the legal provisions in force in the field of copyright. After the Ph.D. degree has been issued, the Ph.D. thesis, in printed format, shall be archived in the library of the higher education institution on a permanent basis'<sup>13</sup>.

Simultaneously, the Law no. 199/2023 foresees two hypotheses related to the possibility for the author/Ph.D. candidate to publish his/her Ph.D. thesis:

(i) the hypothesis in which the Ph.D. candidate does not wish to publish his/her Ph.D. thesis separately, in which case 'the digital form of the thesis remains public and will be freely accessible on the national platform managed by EUFHERDI, including after the decision granting the Ph.D. degree has been issued. The thesis will be assigned a copyright protection license'<sup>14</sup>;

(ii) the situation concerns the Ph.D. candidate's decision to choose for a separate publication of the Ph.D. thesis, in which case

<sup>9</sup> Article 30 of the Romanian Constitution.

<sup>10</sup> Article 11 of the Charter of Fundamental Rights of the European Union (2012/C326/02).

<sup>11</sup> Article 19 of the Universal Declaration of Human Rights of 10.12.1948.

<sup>12</sup> Marta-Claudia Cliza, Dragoș-Cătălin Borcea, Laura-Cristiana Spătaru-Negură, 'To be or not to be plagiarism? Unconstitutionality criticisms of art. 170 para. (1) of the Romanian national education law', Challenges of the Knowledge Society, Public Law, 2022, available at <https://cks.univnt.ro/articles/16.html>.

<sup>13</sup> Article 71 para. (12) of Law no. 199/2023.

<sup>14</sup> *Ibidem*, para. (14).

he is given a grace period of maximum 24 months for this publication, during which time his Ph.D. thesis, in digital format, becomes inaccessible to the public. After the expiry of the grace period, if a notification of the separate publication of the thesis has not been uploaded to the platform managed by EUFHERDI, the document in digital format automatically becomes freely accessible, with the assignment of a copyright protection license<sup>15</sup>.

According to the two hypotheses presented above, Law No 199/2023 requires the author/ Ph.D. candidate 'to notify the Organizing Institution of Doctoral Studies (hereinafter 'OIDS') of this fact and to send the bibliographic indication and a link to the publication, which will then be made public on the national platform managed by EUFHERDI'<sup>16</sup>.

Last but not least, the new legal regulation stipulates a deadline of no more than 180 days from the decision to award the Ph.D. degree, within which 'OIDS is obliged to send to the National Library of Romania a printed copy of the Ph.D. thesis and its annexes, according to Law No 111/1995 on the Legal Deposit of Documents, republished, a copy for the Intangible Fund, as well as a digital copy of them, on electronic support, for consultation on request, at the National Library of Romania, by any interested person, in compliance with the legal regulations in force'<sup>17</sup>.

Therefore, Law No 199/2023 provides for a legal and transparent procedure regarding the publication of Ph.D. theses, so I do not think that we will end up with situations such as the case of Ms. Laura Codruța Kovesi, where, although no plagiarism was found, the publication of her Ph.D. thesis was prohibited.

## **2. Considerations on the withdrawal of the Ph.D. title - former and new legal regulation**

In the former regulation, i.e. in the National Education Law no. 1/2011, Article 170 provided the conditions under which the Ministry of Education could withdraw the Ph.D. title if the 'quality and professional ethics standards'<sup>18</sup> were not fulfilled.

The explanatory memorandum of the draft law on higher education stresses that 'there is a need for a general verification of Ph.D. thesis for which Ph.D. degrees have been awarded, a rethinking of the way Ph.D. degrees is awarded by making universities accountable'<sup>19</sup>. It is also stated that 'the Educated Romania project foresees the consolidation of an ethical climate in the educational system, as follows: integration of modules that provide for the learning of elementary rules on academic writing, correct citation of sources, and respect of ethical principles; support to universities to implement proactive measures regarding the

<sup>15</sup> Article 71 para. (15) of Law no. 199/2023.

<sup>16</sup> *Ibidem*, para. (16).

<sup>17</sup> *Ibidem*, para. (17).

<sup>18</sup> Article 170 of the National Education Act No 1/2011 - repealed - stipulated that: '(1) In case of non-compliance with quality or professional ethics standards, the Ministry of Education and Research, on the basis of external evaluation reports, drawn up, as the case may be, by the CNATDCU, the CNCS, the University Ethics and Management Council or the National Council for Ethics in Scientific Research, Technological Development and Innovation, may take the following measures, alternatively or simultaneously: (a) withdrawal of the status of Ph.D. supervisor; b) withdrawal of the doctoral title; c) withdrawal of the accreditation of the Ph.D. school, which implies the withdrawal of the right of the Ph.D. school to organise an admission competition for the selection of new Ph.D. students.'

<sup>19</sup> Explanatory memorandum to the draft Law on Higher Education, page 9, available at <https://www.cdep.ro/proiecte/2023/200/50/4/em270.pdf>.

respect of ethical rules and subsequent principles of deontology and academic integrity<sup>20</sup>.

We can see from this provision that the current legislator's concern is to discourage plagiarism in the academic environment (and not only) by wanting to create an ethical climate in the academic system and to encourage students to research and document so that the originality of their work does not raise any suspicion of plagiarism.

Correspondingly, analysing the above-mentioned explanatory memorandum, we can highlight that the previous regulation had major shortcomings and a new reform was indispensable. I say this because only on the withdrawal of the Ph.D. title (which is the subject of this topic) have two decisions of unconstitutionality been pronounced over time.

The first unconstitutionality decision no. 624/26.10.2016 issued by the Constitutional Court of Romania (hereinafter 'CCR') regarding the objection of unconstitutionality of the provisions of the Law approving the Government Emergency Ordinance no. 4/2016 on amending and supplementing the National Education Law no. 1/2011 (hereinafter 'Decision no. 624/26.10.2016') concerns the objection of unconstitutionality of the provisions of the Law approving the Government Emergency Ordinance no. 4/2016 amending and supplementing the Law no. 1/2011.

It is important to point out that 'the provision of any civil law (ordinary or organic) or other normative act which would provide that that law or normative act would apply retroactively is unconstitutional.'<sup>21</sup>

In the above-mentioned decision, the CCR established, *inter alia*, the administrative nature of the Ph.D. title, which is subject to legality review under the Law No 554/2004 on Administrative Proceedings (hereinafter 'Law No 554/2004'). Thus, the CCR stipulates that Art. 1 para. (6)<sup>22</sup> of Law No 554/2004 represents 'the legislative enshrinement of the principle of revocability of administrative acts, containing procedural rules establishing the means by which administrative acts which can no longer be revoked, since they have entered into the civil circuit and have produced legal effects, may be subject to legality review, at the request of the issuing authority'.<sup>23</sup> The CCR therefore points out that the principles mentioned above are regulated in Articles 21 and 52 of the Romanian Constitution.

The CCR determined that, like any individual administrative act, as soon as it enters the civil circuit, will be liable to produce legal effects incident to non-patrimonial and personal rights, so that 'the possibility of revocation of the administrative act by the issuing authority violates the principle of stability of legal relationships, introduces insecurity in the civil circuit and leaves to the subjective discretion of the issuing authority the

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<sup>20</sup> Explanatory memorandum to the draft Law on Higher Education, page 9, available at <https://www.cdep.ro/proiecte/2023/200/50/4/em270.pdf>.

<sup>21</sup> Gabriel Boroi, Carla Alexandra Anghelescu, Ioana Nicolae, *Fise de drept civil, Ediția a 7-a, revizuită și adăugită*, Hamangiu Publishing House, 2022, p. 3.

<sup>22</sup> "The public authority issuing an unlawful unilateral administrative act may apply to the court for its annulment if the act can no longer be revoked because it has entered into civil law and has produced legal effects. If the action is admissible, the court shall, if it has been seized by the application, also rule on the validity of the legal acts concluded on the basis of the unlawful administrative act and on the legal effects produced by them. The action may be brought within one year from the date of the act's issuance".

<sup>23</sup> Constitutional Court of Romania, Decision No 624 of 26 October 2016, paragraph 49.

existence of rights of the person who acquired the scientific title<sup>24</sup>.

Nevertheless, the CCR stipulates that where 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 Ph.D. title, with specific powers in this field, which may take punitive measures with regard to the withdrawal of the title in question. However, if the legislator opts for the revocation or annulment of the administrative act, this can only operate under the conditions stipulated by the law, i.e. the measure can only be ordered by a court, in compliance with the provisions of Law No 554/2004<sup>25</sup>.

The second decision of unconstitutionality, namely Decision No 364/24.08.2022 of the Constitutional Court of Romania on the admission of the exception of unconstitutionality of the provisions of Article 170 para. (1) letter b) of the National Education Law no. 1/2011 (hereinafter 'Decision No 364/24.08.2022'), refers to the unconstitutionality of the provisions of Art. 170 para. (1) (b) of Law No 1/2011<sup>26</sup>.

The CCR stresses that a distinction must be made between the concept of Ph.D. title and the concept of Ph.D. degree, as the

law regulates a separate procedure for the abolition of each.

Therefore, the CCR holds that, with regard to the withdrawal of the Ph.D. title, Article 146<sup>1</sup> of Law No 1/2011 - annulled<sup>27</sup> - made it clear that the Ministry of Education could decide to withdraw the Ph.D. title, following a finding of unquestionable deficiencies regarding compliance with the standards of quality of the work or compliance with professional ethics, thus halting any legal effects that the Ph.D. title produced from the moment the decision to withdraw it was communicated. Also, with regard to the withdrawal of the Ph.D. degree, Article 146<sup>2</sup> of the same law<sup>28</sup> stipulated that only a final court decision could cancel or revoke the Ph.D. degree.

Given that in the first unconstitutionality decision the CCR stipulated that the Ph.D. title is a document of an administrative nature, in the second unconstitutionality decision the CCR held that 'the Ph.D. degree as a document certifying the title cannot be anything other than an act of administrative nature'<sup>29</sup>.

It follows, therefore, that if the Ph.D. degree/title has not entered the civil circuit and has not produced effects, it will be revoked; if it has entered the civil circuit and has produced effects, it will be annulled. These two situations will only be resolved by a final court ruling, and it will not be

<sup>24</sup> *Ibidem*, paragraph 50.

<sup>25</sup> Constitutional Court of Romania, Decision No 624 of 26 October 2016, paragraph 51.

<sup>26</sup> "Art. 170 (1) In case of non-compliance with quality or professional ethics standards, the Ministry of Education, Research, Youth and Sport, on the basis of external evaluation reports, drawn up, as the case may be, by the CNATDCU, the CNCS, the University Ethics and Management Council or the National Council for Ethics in Scientific Research, Technological Development and Innovation, may take the following measures, alternatively or simultaneously: [...] b) withdrawal of the Ph.D. title;".

<sup>27</sup> Art. 146<sup>1</sup> The Ph.D. title shall cease to have legal effect from the moment of communication of the withdrawal of the title.'

<sup>28</sup> Article 146<sup>2</sup> '(1) The Ph.D. degree shall be revoked or annulled by final decision of a court. (2) By way of derogation from the provisions of paragraph (6) of Art. 1 of the Law on Administrative Proceedings No 554/2004, as amended, the issuing institution shall bring an action for annulment of the degree within one year from the date of the order withdrawing the Ph.D. degree.'

<sup>29</sup> Constitutional Court of Romania, Decision No 364 of 24 August 2022, paragraph 21.

possible for the institution issuing the document to revoke it, as this would create uncertainty as regards the legal relationship in question.

For the annulment of the Ph.D. title 'the jurisdiction lies with the court, seized under the terms of the general law on the matter, namely Law No 554/2004. In this case, the withdrawal takes the form of annulment of the act, in which case the court will only verify the legality of the procedure for conferring/awarding the Ph.D. title and issuing the Ph.D. degree, without having the power to assess the quality of the work itself, its scientific level or the scientific nature of the work of the holder of the Ph.D. title.'<sup>30</sup>

Likewise, in the above-mentioned unconstitutionality decision, the CCR also held that the aspects pointed out by the Ph.D. committee and confirmed by the NCAUDDC, as provided for by Law No 1/2011 (art. 168), which determine the conferral of the Ph.D. title will no longer be re-evaluated in terms of the scientific value of the thesis by another committee, since there is no legal or constitutional basis for this. The CCR also stipulates that 'once the Ph.D. committee has pronounced itself, no other committee can become its censor, so that it cannot carry out a re-examination and re-evaluation of its assessment, overturn its findings and give its own verdict. Those established by the Ph.D. committee and validated by the NCAUDDC are non-censurable aspects of the administrative act issued, since they concern the value assessment of the content of the Ph.D. thesis, and engage the responsibility of the authority issuing the act. An axiological reassessment of the Ph.D. thesis and the invalidation of the Ph.D. title on grounds

unrelated to the principle of legality creates a real risk to legal certainty'<sup>31</sup>.

However, if the court cannot rule on the scientific merits of the Ph.D. thesis, as pointed out by the CCR in paragraph 32 above, neither can the authority that issued the Ph.D. degree reconsider and thus reassess the scientific merits of the thesis. Therefore, in view of this argument, the CCR held that 'the annulment or revocation, as the case may be, of the Ph.D. title/diploma cannot be reconsidered for these aspects, but only for aspects relating to the legality of the conferral/award procedure, in compliance with the deadlines laid down by law for their annulment/revocation, as well as with the conditions of legality in force at the time of their award. Thus, this would lead to arbitrariness and permanent legal uncertainty regarding the holding of the Ph.D title'<sup>32</sup>.

In light of the above, the previous legal regulation provided for an unlawful procedure to revoke the Ph.D. title, which was corrected by the CCR from 2016, i.e. 2022, by issuing the unconstitutionality decisions presented above. It appears that from the year of entry into force of Law No 1/2011 (10 January 2011), until 2016, i.e. for almost 6 years, the Ph.D. title was unlawfully withdrawn.

In the new legal regulation, i.e. in Law No 199/2023, the Ph.D. degree is defined as follows: 'the degree awarded after the successful completion of a Ph.D. programme is called a Ph.D. degree, the content of which expressly mentions the disciplinary or interdisciplinary field of the Ph.D.'<sup>33</sup>.

At the same time, para. (2) of the same article underlines the means in which the

<sup>30</sup> Constitutional Court of Romania, Decision No 364 of 24 August 2022, paragraph 32.

<sup>31</sup> *Ibidem*, paragraph 36.

<sup>32</sup> *Ibidem*, paragraph 37.

<sup>33</sup> Art. 47 para. (1) of Law no. 199/2023.



Ph.D. title is obtained: 'the Ph.D. degree confers the title of Doctor of Science, corresponding to the acronym Dr. or in a professional field, corresponding to the acronym Dr. P.'<sup>34</sup>.

Law No 199/2023 provides in Art. 168 para. (1)<sup>35</sup> which are violations of the rules of deontology and ethics in the process of academic research, plagiarism being one of them.

Likewise, Law No 199/2023 defines in Article 169 plagiarism as 'the presentation as an allegedly personal scientific creation or contribution in a written work, including in electronic format, of texts, ideas, demonstrations, data, theories, results or scientific methods taken from written works, including in electronic format, of other authors, without mentioning this fact and without reference to the original sources'<sup>36</sup> and self-plagiarism as: 'the republishing of substantial parts of one's own previous publications, including translations, without properly indicating or citing the original'<sup>37</sup>.

We note that there is a consistent attitude of the Romanian legislator, in the sense that, as presented above, the definitions given by Law No 206/2004 to plagiarism and self-plagiarism are similar to those in Law No 199/2023.

As regards to the sanctions established for non-compliance with the rules of academic ethics and deontology (plagiarism and self-plagiarism), Article 171 of Law No 199/2023 provides that these violations are verified by specialized commissions, the law stipulating a procedure by which these commissions can be notified.

Therefore, such committees 'examine complaints of plagiarism, taking into account the conditions of legality in force at the time of the writing of the Ph.D. thesis which formed the basis for the issue and award of the Ph.D. degree, correspondingly, without being able to re-evaluate the scientific substance of the Ph.D. thesis'<sup>38</sup>.

Yet, the legislator has taken into account in the new Higher Education Law the unconstitutionality Decision no. 364/24.08.2022 pronounced by the CCR, highlighting that the scientific background of the Ph.D. thesis cannot be re-evaluated.

The complaint notified to the committee regarding the alleged violation of the rules of ethics and university deontology ends with a decision which 'is an administrative act and must explicitly include in its text the facts that led to the sanctioning of the person concerned, the legal basis, respectively the considerations for which the university ethics committee rejected the arguments put forward by the complainant'<sup>39</sup>.

Pursuant to the above-mentioned decision, the higher education institution will submit the teaching staff (auxiliary and research) to sanctions as stipulated in Article 172 of Law No. 199/2023.

Law no 199/2023 provides in paras. (8)-(11) of Art. 172 what happens in the following scenarios where: (i) the committee referred to under Art. 171 of the Law considers that there is plagiarism in the content of a Ph.D. work, and the decision issued by this specialized commission has not been challenged before the NCAUDDC, the National Commission for Ethics in

<sup>34</sup> *Ibidem*, para. (2).

<sup>35</sup> "(1) Deviations from the rules of ethics and deontology in academic teaching and research include: h) plagiarism".

<sup>36</sup> Article 169 lit. d) Law no. 199/2023.

<sup>37</sup> *Ibidem*, letter e).

<sup>38</sup> *Ibidem*, article 171 para. (8).

<sup>39</sup> *Ibidem*, article 171 para. (10).

University Management (hereinafter 'NCEUM') or the National Council for Ethics in Scientific Research, Technological Development and Innovation (hereinafter 'NCSERTDI') within a period of 30 days from the communication; (ii) the NCAUDDC determines that there is plagiarism in a Ph.D. work; (iii) an action has not been formulated, as stipulated in para. (6) of Art. 172<sup>40</sup>, respectively:

- within 10 days from the communication of the decision of the NCAUDDC, the decision is transmitted to the rector who, within a maximum of 30 days, has the obligation to file an action for annulment of the Ph.D. degree, for degrees awarded by the higher education institution, if the Ph.D. degree has entered the civil circuit and has given rise to subjective rights guaranteed by law. If the rector does not initiate the action for annulment of the doctoral degree, the Ministry of Education shall bring its own action for annulment of the Ph.D. degree and refer the matter to the NCEUM;

- within 10 days from the communication of the NCAUDDC decision, it is communicated to the rector, who, within a maximum of 30 days, orders the revocation of the Ph.D. degree, for degrees awarded by the higher education institution, if the Ph.D. degree has not entered the civil circuit and has not given rise to subjective rights guaranteed by law;

- within 10 days of the communication of the NCAUDDC 's decision, it is communicated to the Minister of Education, if the Ph.D. title has been

confirmed by order of the Minister. The Ministry of Education, within a maximum period of 30 days, shall bring an action for annulment of the Minister's order confirming the Ph.D. title, if the order has entered the civil circuit and has given rise to subjective rights guaranteed by law;

- this is communicated to the Minister of Education, if the Ph.D. title has been confirmed by order of the Minister. The Ministry of Education shall, within a maximum of 30 days, order the revocation of the Minister's order confirming the Ph.D. title, if it has not entered the civil circuit and has not given rise to subjective rights guaranteed by law<sup>41</sup>.

Basically, the law offers two hypotheses when the degree is granted by the university: (i) the hypothesis in which 'the Ph.D. degree has entered the civil circuit and has given rise to subjective rights guaranteed by law', in which case the rector is obliged to file an administrative action for the annulment of the Ph.D. degree, and (ii) the hypothesis in which 'the Ph.D. degree has not entered the civil circuit and has not given rise to subjective rights guaranteed by law', in which case the rector orders its revocation.

Two hypotheses are also foreseen in the situation where the Ph.D. title has been established by order of the Minister, where if (i) 'the order has entered into the civil circuit and has given rise to subjective rights guaranteed by law', the Ministry of Education formulates an action in administrative litigation aimed at annulling the Minister's order confirming the Ph.D.

<sup>40</sup>Art. 172 para. (6): "If the decision of the CNATDCU or CNEMU, as the case may be, differs from that of the ethics committees at the level of higher education institutions, it shall be implemented by the higher education institution within 30 calendar days of its communication. Failure to implement the decisions of the CNATDCU or the CNEMU, as the case may be, constitutes a breach of public accountability, sanctioned in accordance with Art. 174 para. (5). The final decision shall be communicated to the person under investigation and to the person who made the referral to the NATDCU or the NCEUMC, as the case may be, within 10 calendar days of the issuance of the decision. The right to apply to the court is guaranteed."

<sup>41</sup> Art. 172 paras. (8)-(11) of Law no. 199/2023.

title and (ii) 'the order has not entered into the civil circuit and has not given rise to subjective rights guaranteed by law', the Minister of Education orders the revocation of the Minister's order confirming the Ph.D title.

It is therefore easy to understand that Law No 199/2023 was drafted taking into account the two unconstitutionality decisions handed down by the Constitutional Court of Romania, which we have analysed in this paper.

### 3. Conclusions

The law has its limits in assessing human behaviours. Even God, in his many attempts, did not succeed with the Ten Commandments in leading the Jewish people to obedience, but was always directed to forgiveness.

That is why, in this case too, when discussing academic imposture, the law cannot prohibit or regulate conscience or common sense. We have to cross the border and go into the academic realm in order to discuss plagiarism and self-plagiarism. We have seen what the definitions of these terms are, and they are ultimately limited to 'citation of source'. This means, on the face of it, that the aspiring Ph.D. must acknowledge the work of another researcher who was himself a trailblazer.

With regard to the application of the law in force, in relation to the unconstitutionality decisions that we have analysed, the reference that the re-examination of the substance of the Ph.D. thesis from the point of view of the scientific value of the work on which plagiarism is suspected is not allowed either by another commission or by the court, beyond the legality and constitutionality of such a measure, could still constitute an incorrect measure.

Firstly, in order to get to the point of re-examining the content/background of the

Ph.D. thesis, a reasonable suspicion must hang over it. Secondly, if the first condition is met, it is incumbent on the academic community to ensure that what is contained in the Ph.D. thesis cannot cause harm. It does a disservice to the society that has direct access to that work, risking the take-up of incorrect, false, plagiarized ideas that will inevitably lead to the perpetuation of intellectual and cultural impostorism.

The solution proposed by the CCR, concerning the fact that the court cannot analyse the merits of the Ph.D. thesis from the point of view of the scientific value of the work, is justified and correct, since the court may not have the necessary expertise to analyse the subject under review. However, I consider that the CCR's decision that the issues raised by the Ph.D. committee and validated by the NCAUDDC 'may not be re-examined by another committee from the point of view of the scientific value of the thesis' is not as justified and correct, there is no constitutional or legal basis for doing so', since if plagiarism is suspected and the CNATDCU has incorrectly validated the points made by the Ph.D. committee, a plagiarized work with no scientific value could enter the civil circuit.

It is totally inappropriate for the annulment/revocation of the Ph.D. degree/title to be made solely on matters relating to the procedure for conferring or awarding the title or the Ph.D. degree. In essence, a person's decision to obtain a Ph.D. is due to a sense of duty to deal with an academic subject in a manner that can only benefit society. The legal relationships that arise from this title represent pecuniary effects and benefits. Thus, re-examination of the Ph.D. thesis is a duty, not an option, and the annulment/revocation of the Ph.D. degree/title should be a sanction designed to discourage any further attempt to minimize the importance of an endeavour such as Ph.D. studies.

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