
QUO QUADIS ROMANIAN EDUCATION? BRIEF INTROSPECTION

Verginia Vedinaș*

Faculty of Law, University of Bucharest, Romania

Corresponding member of the Romanian Academy of Scientists, Romania

President of the "Paul Negulescu" Institute of Administrative Sciences, Romania

E-mail: prof.verginia.vedinas@gmail.com

Teodor Narcis Godeanu

Faculty of Law, Titu Maiorescu University Bucharest, Romania

E-mail: narcisgodeanu@yahoo.com

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Abstract: This study aims to conduct a brief introspection of the current state of Romanian education, in general and of academic education, in particular. The approach is achieved under four coordinates: legislative evolution; a review of constitutional and legal provisions; a critical approach to academic education and possible solutions.

Keywords: learning; education; right to education; free public education; assessment procedures.

1. Legislative evolution

We consider that before 1990, four major periods occurred in the normative evolution of education regulation [1].

The first stage started with the removal of the totalitarian regime and lasted until 1995. During this period there was no framework law on the matter, but a law was passed that concerned exclusively academic education, namely the Law on the Accreditation of Higher Education Institutions and the Diplomas Recognition No. 88/1993 [2].

The field of education was part of the category of those that continued to be regulated by the old laws adopted in the previous regime but passed through the filter of the newly adopted Constitution, thus submitting to a phenomenon that the doctrine called either the constitutionalizing of law, in general, or the constitutionalizing of some fields of law, such as the constitutionalizing of administrative litigation [3].

* Corresponding author: Verginia Vedinaș. *E-mail: prof.verginia.vedinas@gmail.com*

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Art. 150 of the Constitution [4] obliged to such a solution in its original form, then it became art. 152 after revision and republication, according to which laws and all other normative acts remain in force to the extent that they do not contravene the provisions of this Constitution. The doctrine interpreted the text in the sense that it was followed "the immediate application of the constitutional provisions and the abrogation or implicit modification of the regulations in force, to the extent that they contravene the Constitution" [5].

A second stage is triggered by the passing of the Law on Education no. 84/1995 [6] and it lasted until 2011. During this stage, we can say, euphemistically, that a real "debauchery" took place in the legislative process, which consisted of an avalanche of changes, including the Law on the teaching staff's status no. 128/1997 [7]. The amendment procedure was, as a rule, via the emergency ordinance.

The third stage began in 2010-2011 when the procedure for passing what will become the Law on National Education no. 1/2011, which is still in force.

In order to "learn from the lessons of the past", we recall the unnatural way, totally opposite to the Constitution, in which the old law was adopted, in the sense that, although there was a draft law on national education in Parliament's debate, the Government also appropriated it, then undertook liability for it. After two referrals and two decisions of the Constitutional Court [8], the project was adopted and became the Law on National Education no. 1/2011.

A final stage, the fourth, is currently taking place, through the debate and adoption of the draft law that was triggered following the project initiated at the level of the Presidential Administration entitled "Educated Romania".

It is not the place here to examine to what extent it falls within the scope of the President's powers to initiate actions of this type, to be completed by drafting laws. As we know, the President has no legislative initiative. Nor do we reject, out of hand, such initiatives, if they serve a noble purpose, that of contributing to the progress of the country that the President leads. It remains for the future to determine whether such a goal has been achieved.

What we mean is that, although the legislative stages took place at relatively appreciable timeframes, it is no less true that within them legislative changes took place at a dizzying pace, and all of them were accomplished in the atypical way of emergency ordinances.

As is generally known, they are adopted in completely exceptional moments, outlined by art. 115 in the wording resulting from the revision of the Constitution, when there are extraordinary situations, the regulation of which cannot be postponed, the Government has the obligation to justify the urgency in the text of the ordinance. We also add that there are certain prohibitions and restrictions for the intervention of emergency ordinances, among which is that of not affecting fundamental rights.

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Thus, the right to education is, if we are allowed to express ourselves like this, one of the most fundamental basic rights, given that all other components of the economy, agriculture and services of a society depend, even its future depend on the way how this right is exercised. It is true that, in its caselaw, the Constitutional Court consecrated the solution according to which the constitutional text must be interpreted in the sense of not affecting, i.e., not doing harm, and if it does good, the prohibition no longer exists.

The problem is that it is hard to tell the difference between what harms and what does good. This is because what may mean bad to some may mean good to others and vice versa.

We are going to ascertain and review, in the future, the effects of the future law on education. Equally, we hope that it will not be followed by so many changes, as it has happened so far. That is why, in the doctrine, the solution of an Education Code was proposed, a document that would be able to respond more adequately to this complexity, as well as to the need for stability of the legislation - a Code that should not be adopted by engaging the Government's liability for a draft law [9].

2. The current constitutional framework

Art. 32 of the Constitution regulates the right to education.

From a terminological point of view, through the correlation with education, in the doctrine it was stated that the right to learning is considered to represent a component of the right to education [10], being the most important component of the right to education [11].

By art. 32, the following is achieved:

- the scope of the forms through which this fundamental right is achieved is delimited [12];
- the scope of forms or categories of institutions is established, respectively public, private, or confessional institutions, as the case may be;
- it consecrates the principles of constitutional rank based on which the right to education is achieved in Romania: the conduct of education at all levels in Romanian, which is the State's official language, according to Art. 13 of the Constitution, with two exceptions: the possibility for education to take place in an international language and the national minorities acknowledge right to learn in their mother tongue and the right to be trained in this language, which is guaranteed, in the modalities provided by law; free public education, which is carried out according to the law. The reference to the law was distorted in reality, in the sense that public education was turned into a private one, by the fact that, at many public universities, the number of paid seats is many times higher than the number of free ones. We believe that the phrase "as stipulated by law" should be interpreted in the sense that

it imitates the number of years in which you can finish a college or the number of exams to pass a subject.

By what is happening at present we appreciate that the state makes unfair competition to private education, which it should support, and it is not acceptable. Another principle established by art. 32 of the Constitution is that of guaranteeing academic autonomy [13], as stipulated by law. This means that autonomy is limited. It signifies the possibility that each educational institution has to establish its quality standards, of course, under the terms of the law [14].

The Constitutional Court ruled that academic autonomy is not limitless [15], it granted academic communities the right to establish their mission, institutional strategy, structure, needs, organization and operation, and management of material and human resources, but all this must be done in strict compliance with the legislation in force, within the limits and under the terms imposed by it [16].

A final element established by art. 32 is the one that regulates the freedom of religious education, which the state provides for, in accordance with the specific requirements of each belief. Currently, a number of 18 religious beliefs recognized by the Romanian state operate in Romania [17], and they are stipulated in the annex to Law No. 489/2006 [18].

3. Some critical considerations regarding academic education

We have already addressed this issue in the previous section, where we reviewed the freeness of public education and showed how, in practice, public universities have a number of paid seats that is several times higher than the number of seats with or without tuition fees. The fact that one can move, based on the average grade, from one seat category to another does not save the problem. We remember that the law was passed at a time when, together with the late founding rector of the "Vasile Goldiș" Western University of Arad, prof. Aurel Ardelean, PhD, I was exercising a mandate as a senator.

Another aspect concerns how academic careers are built, and how progression through academic degrees is achieved.

We believe that the main problem is that the emphasis is no longer on substantive aspects, of value, but rather on aspects of form and procedure, embodied in formal criteria, in correspondence with certain criteria taken from other systems, which have other traditions, other specifics.

With regard to citations, for example, it has reached a real entanglement, so that it is no longer relevant who, where and how they cite you, but the simple citation.

No one is saying there should not be regulatory rules. Nevertheless, we must be careful not to compromise the substance through them.

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A last aspect is the teaching staff's evaluation/self-evaluation system and, most sensitively, the evaluation conducted by students. Have things really changed so much that those who traditionally evaluate students end up being evaluated by them? The question is whether they have the maturity to do it. To distinguish between a good teacher and a bad teacher. I always tell the students' series that in time they will come to understand that the bad teachers are the good ones.

And malice must not mean constructive exigency, but destructive exigency. The true teacher must show exigency that builds, not that demolishes. We ask, rhetorically, of course, how many of the students have the discernment to differentiate between the two extremes or forms of manifestation. Not to mention that other serious phenomena also happen, in which different third parties are involved. Under the cover of anonymity, incredible things happen, which affect, emotionally, but not only, the life, dignity, and career of valuable teaching staff. There are cases where elite professors, recognized for their demanding nature, have resigned from universities because of these practices.

4. Conclusions

We wanted, through the present study, to draw attention to some of the sensitive and obviously criticizable issues faced by Romanian education, in general, and higher education, in particular. We appreciate that not only we, the teaching staff but also the factors with responsibilities at the State level must be aware of them. A true partnership between educational institutions and decision-makers, from the legislative and executive spheres, is required, so that once identified, the issues to be solved. Unfortunately, we find that not enough attention is paid, to be generous in expressing, to genuine experts, the points of view of universities, but also to the consultation of personalities who have validated, through their activity and experience, the professional value of reference. We must not only consider unions and employers' organizations. The Constitution indeed states in art. 102, that the Government consults the interested social bodies, but these are not only the unions, but also the church, civil society, as a whole, the academic world. In addition to the Romanian Academy, which is the supreme forum of Romanian spirituality, there is the Romanian Academy of Scientists, there are branch academies. which we have the feeling that they are not even remotely involved in the process of legislating education and training in Romania. This is our message. Education is a much too important issue for its destiny to be "appropriated" exclusively by the political class. A confluence of creative energies, a collaboration of values and a leaning towards preserving, through education, the Romanian national and spiritual identity is required.

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Author Contributions

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Disclosure Statement

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4. Decision no. 1431/2010 published in the Official Gazette no.758 of November 12, 2010.
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10. The Constitution of Romania, Official Gazette no. 233/ November 21, 1991.
11. Toader, T., Safta, M. Educația înțeleasă ca drept fundamental (Education understood as a fundamental right).

Notes:

- [1] See the paper *Antologia legilor învățământului din România* (Anthology of Romanian Education Laws), edited by the Institute of Education Sciences, Bucharest, 2004.
- [2] Published in the Official Gazette no. 307/ December 27, 1993.
- A. Iorgovan, Ioan Vida, *Constituționalizarea contenciosului administrativ român* (Constitutionalizing of Romanian administrative litigation), in *Dreptul* no. 5-6/1994, pp. 3-16.
- [3] The Constitution of Romania was published in Official Gazette no. 233/ November 21, 1991. It was revised by Law no. 429/2003, published in the Official Gazette no. 758/October 29, 2003, and republished in the Official Gazette no. 767/ October 31, 2003.
- [4] Ion Deleanu in M. Constantinescu, I. Deleanu, A. Iorgovan, I. Muraru, Fl. Vasilescu, I. Vida, *Constituția României, comentată și adnotată* (Constitution of Romania, commented and annotated) RA Monitorul Oficial, Bucharest, 1992, p. 317.
- [5] Published in the Official Gazette. no. 606/ December 10, 1999.
- [6] Published in the Official Gazette no. 158/ July 16, 1997.
- [7] By Decision no. 1431/2010 published in the Official Gazette no.758 of November 12, 2010.
- [8] the Court found that the Government acted unconstitutionally when it undertook liability for a draft law under the Government's debate and found the triggering of a legal conflict of a constitutional nature between the Government and the Parliament. Later, the Constitutional Court "changed its mind" and assessed that its Decision no. 1431/2010 could not prevent the initiated procedure and found the existence of a second legal conflict of a constitutional nature between the Government and the Parliament by Decision no. 1525/2010, published in the Official Gazette no. 818 of December 7, 2010, generated by Parliament's refusal to debate the censure motion submitted by the parliamentary opposition. The Court held that, once the motion was initiated, its debate could not be stopped. Given that the debate did not take place and the motion was not submitted to the parliamentary adoption procedure, it was considered that the motion was rejected, and the law passed, based on art. 114 of the Constitution para. (3), which provides that if the Government has not been dismissed by voting a motion of censure, the bill is considered adopted, and the application of the program or general policy statement becomes mandatory for the Government.
- [9] Tudorel Toader, Marieta Safta, *Educația înțeleasă ca drept fundamental* (Education understood as a fundamental right), quoted art., p. 118.
- [10] Bianca Selejan-Gușan in I. Muraru, E.-S. Tănăsescu (coord.), *Constituția României, Comentariu pe articole* (Constitution of Romania, Commentary on articles), 3rd ed., Ed. CH Beck, Bucharest, 2023, p. 269.
- [11] Flavia Lucia Ghencea, *Pentru o viață mai bună, ramâi mai mult la școală. Dreptul la educație, temei al traiului decent* (For a better life, stay longer at school. The right to education, basis of decent living), in Anca -Janina Niță (coord.) *Dreptul la un nivel de trai decent și componentele sale esențiale* (The right to a decent standard of living and its essential components), Ed. Universul juridic, Bucharest, 2022, p. 121.
- [12] By para. (1) of art. 32.
- [13] Consecrated by art. 32 para. (6) of the Constitution.

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[14] Bianca Selejan-Guțan in I. Muraru, E.-S. Tănăsescu (coord.), Constituția României, Comentariu pe articole (Constitution of Romania, Commentary on articles), quoted op., p. 271.

[15] CCR decision no. 1646 of December 16, 2010, published in the Official Gazette no. 119 of February 16, 2011.

[16] CCR decision no. 161 of February 8, 2011, published in the Official Gazette no. 304 of May 3, 2011.

[17] It is about the Romanian Orthodox Church; the Serbian Orthodox Bishopric of Timișoara; the Roman Catholic Church; the Romanian Church United with Rome; the Archdiocese of the Republic of Armenia; the Old Rite Russian Christian Church of Romania; the Reformed Church of Romania; CA Evangelical Church of Romania; Evangelical Lutheran Church of Romania; the Unitarian Church of Romania; Unitarian Church from Transylvania; Union of Christian Baptist Churches of Romania; the Christian Church according to the Gospel of Romania - the Union of Christian Churches according to the Gospel of Romania; Romanian Evangelical Church; the Pentecostal Union - the Romanian Apostolic Church of God; Seventh-day Adventist Christian Church of Romania; Federation of Jewish Communities of Romania; The Muslim Cult; Jehovah's Witnesses Religious Organization.

[18] Republished in the Official Gazette no. 201 of March 21, 2014.