

***Decision No 364 of 8 June 2022 on the exception of unconstitutionality of the provisions of Article 170 (1) (b) of the National Education Law No 1/2011, published in the Official Gazette of Romania, Part I, No 831 of 24 August 2022.***

## **Summary**

**I. As grounds for the exception of unconstitutionality**, it was claimed that the provisions of Article 170 (1) (b) of the National Education Law No 1/2011, regarding the withdrawal of a PhD title by the issuing authority, were contrary to the constitutional provisions of Article 1 (5) on the principles of legality and legal certainty, of Article 15 (2) on the non-retroactivity of the law, of Article 21 on free access to justice, of Article 52 on the right of the persons aggrieved by a public authority and of Article 126 (2) on the regulation of jurisdiction and judicial procedure through law. It was argued that the administrative acts that have entered the civil circuit and produced legal effects could no longer be revoked by the issuing authorities and that their cancellation could be operated by the competent court of law.

**II. By examining the exception of unconstitutionality**, the Court noted that, according to Article 169 (2) of Law No 1/2011, following the graduation of a scientific PhD study programme, the institution organizing the PhD study programme conferred the diploma and title of Doctor of Science. Article 168 (7) stipulates that the PhD title is awarded by order of the Minister of Education, Research, Youth and Sports, after validation of the doctoral thesis by the National Council for Attestation of University Degrees, Diplomas and Certificates (CNATDCU). The doctoral diploma is awarded after the graduation of a doctoral study programme, which certifies that a PhD title has been obtained and is held [Article 169 (1) of Law No 1/2011]. Therefore, the law operates with two distinct concepts, namely “PhD title” and “doctoral diploma”, for each of which it regulates a different revocation procedure.

As concerns the revocation of the PhD title, the impugned text of law stipulates that, in case of non-compliance with the quality or professional ethics standards, the Ministry of Education, Research, Youth and Sports may order the withdrawal of this title, which ceases to produce legal effects as of the moment of notification of the order of withdrawal (Article 146<sup>1</sup>). According to Article 146<sup>2</sup> of the law, the doctoral diploma is revoked or annulled by final decision of a court of law, in which case the issuing institution brings an action for the annulment of the diploma within one year from the date of issuance of the order to withdraw the PhD title.

In its case-law, the Court has classified PhD titles as acts of an administrative nature and so, doctoral diplomas, the documents that certify the abovementioned title, can only be acts of an administrative nature. Thus, the aforementioned doctoral diplomas can be revoked in case they have not entered the civil circuit and have not produced legal effects, and annulled if they have entered the civil circuit and produced legal effects. According to the case-law, in principle, all administrative acts can be revoked as follows: normative ones at any time, while individual ones with some exceptions; the exempted individual administrative acts also include the administrative acts that have entered the civil circuit and generated subjective rights guaranteed by law. Or, the scientific PhD title is an individual administrative act which, once entered into the civil circuit, produces legal effects in the field of personal, property and non-property rights.

The impugned text regulates the withdrawal of a PhD title, regardless of whether or not it has entered the legal circuit and produced legal effects. Since the issuing body cancels it for reasons prior to its issuance (non-compliance with the standards of quality or professional ethics), this withdrawal has the legal nature of a revocation. But the principle of revocability of administrative acts is not absolute, it includes exceptions, such as the individual administrative acts that have entered the civil circuit and generated subjective rights guaranteed by law, which cannot be revoked, but only annulled by an authority other than the issuing one. Consequently, since PhD titles and doctoral diplomas that have entered the civil circuit and generated subjective rights guaranteed by law fall into this category, they cannot be revoked.

The withdrawal of a PhD title – an administrative act – that has entered the civil circuit and generated subjective rights guaranteed by law cannot take the form of a revocation ordered by the issuing institution, but that of an annulment, and so, the Court, through Decision No 624 of 26 October

2016, imposed the requirement that this be carried out exclusively by a court of law. It is not enough that only the annulment of the diploma be carried out by a court of law, because this operation is a formal one, a natural consequence of the title cancellation. Therefore, regardless of their name, once they enter the civil circuit, administrative acts are annulled by courts of law and not by their issuing institutions, precisely because they can no longer be revoked.

If the principle of revocability of administrative acts has an implicit constitutional enshrinement in Articles 21 and 52 of the Constitution, exceptions thereto are also implicitly contained in the same provisions, read in conjunction with other values, requirements and principles with constitutional enshrinement. In this respect, the Court referred to Article 1 (5) of the Constitution, in its legal certainty-related component, which outlines the content and limits of the revocability of administrative acts. Thus, once an administrative act has entered the civil circuit and produces legal effects, the principle of legal certainty prohibits its revocation by the issuer itself.

The Court held that a distinction must be drawn between, on the one hand, the annulment of a PhD title by the courts of law and, on the other hand, the judicial review of the revocation of such a title by the issuing administrative body. The two situations evoke distinct hypotheses, outlined depending on whether or not they have entered the civil circuit and produced legal effects. It follows that, if they have entered the civil circuit and produced legal effects, both the PhD title and the ascertaining document can be cancelled only by court decision, because, otherwise, if left to the institution having issued the act, this operation imprints and induces uncertainty on the legal relationship already established.

In view of the above, Article 170 (1) (b) of the National Education Law No 1/2011 violates Articles 21 and 52, read in conjunction with Article 1 (5) of the Constitution with reference to the constitutional requirements regarding the limits of the principle of revocability of individual administrative acts, being constitutional only insofar as it refers to the withdrawal of a PhD title that did not enter the civil circuit and did not produce legal effects.

Therefore, the competence of the issuing public authority to withdraw a PhD title that has entered the civil circuit and produced legal effects is excluded, this competence resting with the courts of law, referred to under the general law in the field, namely Law No 554/2004. In this case, the withdrawal takes the form of an annulment of the act in question, in which case the court will only verify the legality of the procedure of conferring/awarding the PhD title and of issuing the doctoral diploma, without having the competence to assess the quality of the work, its scientific level or the scientific nature of the activity of the holder of the PhD title.

The author of the exception also raised the problem of a lack of rigor of the phrase “in case of non-compliance with the quality or professional ethics standards”, which, through its general scope, does not specify them, as such and temporally, being contrary to the constitutional provisions of Article 1 (5) in its component related to the quality of the law, and to Article 15 (2) on non-retroactivity.

The Court noted that, once it has been established that only courts of law can annul a PhD title/diploma that has entered the civil circuit and produced legal effects, it follows that the impugned text applies only to titles/diplomas that have not entered the civil circuit and have not produced legal effects and which can be revoked for the reasons previously referred to by the institution having issued the respective act.

Regarding the meaning of this phrase, the Court found that it varied over time because the standards related to quality or professional ethics vary depending on the normative regulation in force at the time of conferring/awarding the PhD title. In order to determine the content of this phrase according to the legal regulation in force, the Court noted that, according to Article 168 (4) and (5) of Law No 1/2011, based on the public presentation of the doctoral thesis and the reports of the official referents, the doctoral commission evaluates and deliberates on the grade for the doctoral thesis and proposes to award the PhD title, proposal submitted to CNATDCU for validation. Following the evaluation of the file, CNATDCU proposes to the Minister of Education, Research, Youth and Sports the granting or non-granting of the PhD title.

Obviously, the decision of the doctoral commission, as validated by CNATDCU, which leads to the conferring/awarding of the PhD title, cannot be re-examined by another commission in terms of the scientific value of the work, as there is no constitutional or legal basis in this regard. The conclusions of the doctoral commission, as validated by CNATDCU, are aspects of the issued administrative act that cannot be censored, as they refer to the assessment of the value of the content of the doctoral thesis,

and engage the responsibility of the authority issuing the act in question. An axiological reassessment of the PhD thesis and the cancellation of the PhD title on grounds extraneous to the principle of legality create a genuine risk to legal certainty.

It was also noted that, as neither the court has the competence to rule on the scientific background of the doctoral thesis prepared, nor does the issuing authority have the competence to reassess its scientific background. Thus, the annulment or revocation, as the case may be, of the PhD title/diploma cannot be made with regard to these aspects, but only to aspects related to the legality of the conferral/award procedure, in compliance with the terms provided by law for their annulment/revocation, as well as with the legality conditions in force at the time of their granting. Otherwise, this would lead to arbitrariness and permanent legal uncertainty regarding the holding of a PhD title.

As for setting a deadline within which the issuing authority may revoke the administrative act, the Court found that, under this decision, it followed that the revocation of a PhD title may be made by the issuing authority only for as long as it has not entered the civil circuit and has not produced legal effects.

**III. For all these reasons,** by a majority vote, the Court upheld the exception of unconstitutionality and found the constitutionality of the provisions of Article 170 (1) (b) of the National Education Law No 1/2011 insofar as they refer to the withdrawal of a PhD title that did not enter the civil circuit and did not produce legal effects.