

## THE LAWS OF EDUCATION IN ROMANIA AFTER 1990

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**ABSTRACT:** *THE SOCIO-ECONOMIC REALITY OF A RULE OF LAW BRINGS TO THE FORE THE QUALITY AND EFFICIENCY OF A LEARNING SYSTEM THAT SYSTEMATICALLY AND CONSCIOUSLY INFLUENCES THE ACTIVE AND PASSIVE SUBJECTS OF A DETERMINED SOCIETY. EDUCATION WILL ALWAYS REMAIN A SYSTEM OF TRANSMISSION OF LIFE EXPERIENCE AND EMPOWERMENT TO ADAPT TO THE NEEDS OF SOCIETY, REGARDLESS OF THE CURVE OF EVOLUTION.*

**KEYWORDS:** *LAW, EDUCATION, NATIONAL PRIORITY, PUBLIC GOOD, DECLINE, ACCOUNTABILITY;*

In its multi-perspective, education can be defined in many ways, including "all the methods used in this pedagogical activity", "a systematic and conscious developmental influence", "training", "routing", "growing" etc . but it can not be defined in all its complexity, but only analyzed on cycles of realizing the identity of the individual or society.

From the etymological point of view, the word *education* comes from the French *education*, which in its turn derives from Latin, *educatio, educationis*, and can designate "an essential way of transmitting life experience to the generations of children, young people and adults, and at the same time a system of empowerment to adapt to the needs of society." <sup>1</sup>

In this context, we show that the first law of education after 1990<sup>2</sup>, although proclaiming the university autonomy, which it defines in art. 89 paragraph 1, as "*the right of the academic community to lead, to exercise its academic freedoms without any interference*", loses sight of the fact that university space and the university community are nothing more than a space where culture is at home and where cohesion, values, informal norms, human capital, social capital, recirculation and organizational trust make a common body<sup>3</sup>.

This normative act confuses the university space with the material patrimony of the institution, having no connection with the students of the university education, and from the analysis of art. 90, there is no link between the university community and university space, despite the fact that education has been declared national priority.

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<sup>1</sup> <https://dexonline.ro/definitie/educa%C8%9Bie>

<sup>2</sup> Law no. 84 of June 24, 1995.

<sup>3</sup> See also Flavius Cristian Mărcău, „Hindering the Process of Democratization in Romania as a Consequence of the Social Protests in the Early 90s”, in *Research and Science Today*, No. 1(17)/2019, pp. 69-76

The same direction, paved "with good intentions", is also emphasized by Law no. 1 in 2011, the current education law, which, instead of redefining and completing these notions, took them almost ad-literam.

Radiographing knowledge in the field, the relationship between the university community and the university space could be translated by the manner - "the university community is an elevated living environment, founded in an academic order, established and applied in a university space in which people live, who trust each other trust the same set of values, especially in formal and informal norms, acting jointly and individually to achieve the educational goal, that is to create values and behavioral skills according to the headquarters of the society and the time " .<sup>1</sup>

Another anomaly, the results of which were analyzed superficially in 2009, was the good of higher private higher education.<sup>2</sup> Here, in fact, a money-making industry is born. Chapter XI of the same law regulates private education<sup>3</sup> as an alternative to state education or as a complement to it - art. 103 paragraph 1.

Article 103 paragraph 2 - "*Accredited private education institutions are part of the national education and training system and are subject to this law.*" From the interpretation of this provision, it follows that private educational institutions that are not accredited are outlawed. What happens in this case to those enrolled in these schools and what is the value of the diplomas, certificates issued by these units? What do the harmed have to do? And especially what the state does to remedy existing situations and to prevent such situations in the future, given that at the time of the adoption of the law there were many private institutions of non-accredited education authorized to operate on a temporary basis.<sup>4</sup>

Private education functions, according to art. 104, as follows:

"a) *is organized and operates on a non-profit basis;*

b) *is organized on the principle of non-discrimination and rejects democratic, xenophobic, chauvinistic and racist ideas, trends and attitudes;*

c) *complies with national standards.* "

The law distinguishes between higher education and cooperative education<sup>5</sup>, where art. 113 specifies that the private higher education operates according to Law no. 88 of 17 December 1993 on the accreditation of higher education institutions and the recognition of diplomas, published in the Official Gazette no. 307 of December 27, 1993, in compliance with the provisions of Law no. 84 of 1995, despite the fact that no other provisions are strictly laid down for private higher education in this last normative act.

By expanding the interpretation of articles 114 and 115 of Law 84, we can say that the tuition fees in particular higher education were set by each institution, and the material basis of

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<sup>1</sup> Adrian Gorun, Horațiu Tiberiu Gorun, A new paradigm of education? (Normative constructions after 1989), Ed. Pro Universitaria, Bucharest, 2014.

<sup>2</sup> Spiru Haret University, a private university, has come to have more students like Harvard University.

<sup>3</sup> Provisions relating to private education are also found at the beginning of the communist period in a law after the 1948 Decree was issued.

<sup>4</sup> Adrian Gorun, Horatiu Tiberiu Gorun, op. cit., p. 44.

<sup>5</sup> It is education that takes place in units that were owned by cooperative units and were funded by these units, school fees and other sources, and secured the material basis themselves. The Ministry of Education only assures the expenses with the teaching staff.

the educational institutions had to ensure the standards of conducting a quality instructive-educational process<sup>1</sup>.

The procedure for the authorization and accreditation of private higher education institutions, according to art. 5 and following, of Law no. 88 of 17 December 1993 was the following: "the institution devoted to the organization and conduct of a higher education activity elaborated a self-evaluation report, based on the general criteria laid down by law, annexed to the application for accreditation and submitted to the Ministry of Education, the National Academic Assessment and Accreditation Board (CNEAA) report was forwarded *immediately*. The evaluation commissions subordinated to it drafted evaluation reports based on the analysis of the evaluation report and the verification of compliance with the standards corresponding to the general criteria contained in the "Chapter II" law, only scriptural. On the basis of the reports of the evaluation commissions, CNEAA elaborated its own report, which is submitted to the Ministry of Education for approval, for each college college. The acts of these bodies were considered to be "public documents" with all the consequences arising here. Based on the opinion of the Minister of Education and the report prepared by CNEAA, the Government of Romania grants the applicants provisional authorization. For the accreditation procedure, two years after the graduation of the first promotion from the faculties, colleges or specializations meeting the standards stipulated by the law, the CNEAA and the subordinated commissions prepared an evaluation report on the basis of which the Romanian Government drew up the draft law on the establishment the higher education institution, with the faculties, colleges and specializations proposed for accreditation. If the report was nugatory, the Government's decision to withdraw the provisional authorization of the respective institution was withdrawn by the Government. "

Of particular importance is the modality of setting up the National Academic Evaluation and Accreditation Council - which is appointed by the Romanian Parliament, at the proposal of the Government, and renewed once every four years, with a third of the total number of members, which was 19-20 members.

It should also be noted that, according to art. 30 of the Law no. 88/1993 and branches of faculties, colleges were subject to the same procedures for provisional authorization and accreditation.

This normative act also established a prohibition, in art. 34 paragraph 1, in that it was forbidden to continue the activity of higher education under conditions other than those provided by Law no. 88/1993, and the persons guilty of breaking the ban will personally respond to their deeds. What has not come true.

On paper it seemed acceptable, but unfortunately the reality was quite different. Many institutions did not meet the provisional authorization criteria and have operated for years without being accredited, not carrying out a quality instructional and educational process, much less being held accountable for the violations.

An example would be that of the Spiru Haret University, where a large period of time had been in operation, several faculties not accredited - the Faculty of Psychology and Pedagogy, etc. Things are a little more complicated in this regard, as 30 faculties, with 50 specializations and over 100 master programs, participated in this structure. Their accreditation was made annually by the Government's decision, which determined which faculties would be accredited for the

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<sup>1</sup> This material basis implies adequate premises, rent or property, equipped own laboratories, library.

respective year, so that the second year of study at the respective faculty within the "Spiru Haret" University could not be accredited for operation; And yet, in the absence of such accreditation, the institution was functioning - the example of the Faculty of Psychology and Pedagogy.

In 2009, the legality of the diplomas issued by these institutions, which were recognized by the Ministry of Education and Research, was discussed. The consequences in this case were the following: graduates of non-accredited faculties within this university, the 2009 promotion, were not awarded bachelor's degrees, and subsequent promotions held the final exam at other relevant universities.

In this case, the graduates of the 2009 promotion were forced to sue the Romanian State and Spiru Haret University before the civil courts to solve this problem, in order to issue license bills. As legal practice is different, there have been cases in which graduates of the 2009 promotion have lost their lawsuits to the civil court and others have won.

Who's to blame? What else to do in this case? It is a fact that these people were misled by the Spiru Haret University with the complicity of the state authorities and paid the school fees as established by the institution, not even ensuring the quality of the educational act or issuing the diploma in question. Unfortunately, they were left with no money or no diplomas. After this big scandal, the university management considered it necessary to close down only a few subsidiaries. Other major changes have not occurred. However, at that time Spiru Haret University enrolled 300,000 students, more than Harvard University. Revenues earned only from student fees were around 100 million euro / year. One of three students was enrolled at the "Spiru Haret" University<sup>1</sup>.

The law faculty of the "Spiru Haret" University operated for a period of 3 years, provided that all the other faculties of law in Romania worked on a four-year structure. We are thus in the presence of violation of art. 34 paragraph 1, which established a prohibition in the sense that it was forbidden to continue the higher education activity under conditions other than those provided by Law no. 88/1993, and the persons guilty of breaking the ban will personally respond to their deeds; the interpretation of this article concerning our case law of the "Spiru Haret" University of Law on a structure of three years of study and not four is the following: the representatives of the "Spiru Haret" University and the law faculty of this institution answer staff for the functioning of the faculty of law on a structure of three years of study and not four as stipulated by the normative acts in force. Not until 2017 they were held accountable for the abovementioned violations.

At first glance, this would not raise major problems, but in the depth of society, we will notice that many of the graduates of the Faculty of Law, within the "Spiru Haret" University, are part of the so-called "Constitutional Bars" the basis of court judgments, as an object of activity of associations and foundations, and they are challenged as lawyers; the profession of lawyer is regulated by Law no. 51/1995 establishing a framework for regulating the lawyer's quality and exercising the profession under the aegis of the National Union of Bars in Romania; nor does the Romanian State do anything in the sense that these "constitutional bars" operate out of the law<sup>2</sup>, violating Art. 26 of Law 51/1995, the act being an offense - art. 348 of the CP - exercising a profession without right, referring to art. 26 of Law no. 51/1995.

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<sup>1</sup> <http://www.zf.ro/eveniment/unul-din-trei-studenti-din-romania-invata-la-spiru-haret-fabrica-de-diplome-300-000-de-studenti-si-100-mil-euro-incasari-4634254/-13.09.2016>

<sup>2</sup> See also the judgment of the European Court of Human Rights in Strasbourg, no. 24057/2003, Bota vs. Romania.

In order to achieve the training process, it is always necessary for qualified staff to be inclined towards this complex process and so important for both the individual and society.

In the construction of the new paradigm of education in "Democratic Romania", on July 12, 1997 the status of teaching staff was adopted by Law no. 128, which regulates the terms and conditions of occupation of teaching, guidance, control, auxiliary, prohibitions, conditions for cessation of activity, their rights and obligations, competences, responsibilities, as well as the system of normalization, remuneration and awarding of distinctions and awards and enforcement of sanctions.

According to art. 9, paragraphs 1 and 2, of the Teaching Staff Regulations, the teaching staff may be employed with titular, associate or substitute staff; through a contest consisting of written tests, the hiring of the holders, and written or oral tests on hiring substitutes or interviewing and presenting a *curriculum vitae* for associate staff.

The provision of art. 16 paragraph 6 of the Statute, pointed out to us the possible quality of education: "Exceptionally, in the absence of qualified teaching staff ... they may be enrolled for a period of not more than one school year without substitute studies, who have completed at least one high school, with a baccalaureate diploma and giving a written and oral exam in the required job profile. Priority is given to persons in training for education who are assured of continuity in the job if the post was not occupied by competition and the person who served the previous year as a substitute was rated at least as *good*."

Time has brought a new vision, and during this period, the newsletters issued by the Ministry of National Education were important sources of knowledge and tools for the training of teachers, pupils, parents, trade unions, being the mechanism through which ideas reached and penetrated into public consciousness and the main form of documentation of teachers<sup>1</sup>.

Starting with the years 2000-2001, educational establishments start to enter into partnerships with economic operators who run computer courses for a fee, and at the end of the courses, part of the computers remain the property of the school units<sup>2</sup>. Another channel of information transmission and at the same time a way of attracting attention and motivation in acquiring knowledge necessary to use those computing units and various installed programs to help solve some calculations. A beginning to integrate progress into education.

The beginning of the year 1998 brings to the Governors table the Order 3047, which established the working group for the elaboration of a curriculum for the pre-university education; this group had initially only this task, after which it was extended its competencies in the elaboration of school curricula and school textbooks, and was issued the Notice <sup>3</sup>9079/12 January 1998 through which the Minister of Education highlighted the policy shortcomings of the textbooks.

One week after the notification was issued, Order no. 3127/19 January 1998 launching competitions for the development of analytical programs and pedagogical innovations, putting the foundation stones necessary for the reform in education.

Following the extension of this competence of the Working Group of the Ministry of National Education, the Order no. 3330 of February 25, 1998, which stipulated that the National

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<sup>1</sup> Adrian Gorun, Horatiu Tiberiu Gorun, op. cit., p. 129.

<sup>2</sup> Padeș Gymnasium School, 2001.

<sup>3</sup> The notification was addressed to the Institute of Educational Sciences, program managers of the World Bank PHARE, the general director of pre-university education, publishers and authors and potential authors.

Curriculum in pre-university education as implemented after this order - the curriculum, the curricula and the textbooks - should be applied from the 1998/1999 school year. But these have undergone changes as a result of the problems that have arisen.

Thus, the Order no. 4150/13 July 1998 which established the new Framework Plan only for the first-year education for the 1998/1999 school year, as well as several directives for the other pre-university education cycles, for which the primary, secondary and lyceum schools would be applied starting with the school year 1999/2000, and for the school year 1998/1999 they will apply the one in force, which was approved by the Order of the Minister no. 4634/03 August 1995.

At the same time, this Order 3330/25 February 1998 contains the first conclusions of the Working Group, which tones the fundamentals of the strategy for the correct application of the curriculum: "decentralization, flexibility of the curriculum and of the curricula, the orientation of the learning to the formation of the capacity, stimulating creative and critical thinking, curricular orientation towards individual learning and training needs, stimulating student's independent work, and problem-solving skills.<sup>1</sup> "

Taking some of the 3330 order, Order 4150 of the same ministry, through the new plan, allowed schools to make their *own schedules*, having the option to decide autonomously about 25% of the pupils' school curriculum. As a novelty it is worth mentioning that mandatory study years are from 8 to 9 years of age, and religion is included as a discipline in the Aria - Man and Society, which is part of the common trunk.

Here we mention that "religion is no longer a compulsory discipline for pupils whose parents ask schools in writing that their son / daughter may no longer attend religious classes."

The heterogeneity of education and training, the heterogeneity of motivation, thinking, age, and teaching methods of teaching staff in this field of activity, was one of the issues over which no larger leader has drawn his attention or passed too easily, despite the fact that the formation of values and the drawing of behavioral attitudes is possible only by a well-trained and vocation teacher in the field.

But this was not the only problem, the avalanche of orders issued between December 1997 and December 2000<sup>2</sup> created confusion; difficulties were encountered, difficulties arising either from the human, material or financial crisis, or from poor organizational capacity. Another weak point of this huge wave of order was that implementation monitoring was left behind and many of them have not been implemented<sup>3</sup>.

Many of these orders were not only addressed to those in the system but also to other actors who were not in co-operation with the Ministry of National Education; those relationships

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<sup>1</sup> Adrian Gorun, Horațiu Tiberiu Gorun, *op. cit.*, p 131.

<sup>2</sup> OMEN 3178 / 20.01.1998 - on the re-launch of classical-Latin and Greek language studies, OMEN. 3279 / 17.02.1998 on the new policy of manuals, OMEN 3351 / 05.04.1998 on the elaboration and implementation of the National Curriculum in University Education, OMEN 3458 / 23.03.1998 on the design and application of the transferable credits system in university education, OMEN 3570 / 14.4.1998 on the study of modern languages in schools, OMEN 3231 / 01.02.1999 on technological education in schools and universities, OMEN 3420 / 12.03.1999 on the study of Information Technology, Informatics and Computer Assisted Technologies, in the context of the implementation of the new Plans- educational framework, OMEN 3044 / 13.01.2000 curricular reform in universities, OMEN. 3621 / 13.04.2000 on the introduction of European studies in schools and universities, etc.

<sup>3</sup> Year 2000 was an election year, and attention was moved elsewhere.

had to be regulated by a more legally-enforceable act - laws or decisions and government ordinances.

It should also be mentioned that an important role in the implementation of the Framework Educational Plans was given by the County School Inspectorates, where the general managers, the specialized inspectors, the directors used and use the curriculum at the school's decision in personal interests, in order to obtain material advantages for themselves or others, by setting up rules for substitutes and even for unqualified substitutes. Granting teaching rules to certain categories of staff above the statutory statutory rule or moving the teaching and auxiliary staff at will, in violation of the provisions of the staff mobility methodology. Political incitement to the appointment of teaching staff in leadership positions within educational establishments most often had negative effects. These issues have been perpetuated so far, where a substitute teacher's job was "bought" with 30,000 lei, at the level of 2015.

The main amendments to the Law no. 84/1995 are as follows: education becomes obligatory until the age of 17, ie 9 classes; the state had an obligation to promote the principles of permanent education; the development of education in all grades in Romanian, the documents for enrollment in school written in Romanian; official cults recognized by the state can organize theological education, only for gymnasium and lyceum - private cycle; organizing and approving the network of educational establishments in accordance with the need for current and prospective training, supported by local government support; curriculum definitions and final exams, funding, etc.

Frequent changes to the legal framework in the field have led to persistent uncertainties and the illicit use of important components in the system. Emergency Ordinance no. 206/2000, approved by Law no. 71/2001 amends the Law no. 84/1995 regarding the material basis and the financing of the educational units and institutions.

Thus, the financing of the state pre-university education units is carried out from the budgets of the county councils, the General Council of the Bucharest Municipality, the local councils.

The buildings, representing land and buildings used by the state-subsidized schools and institutions of the Ministry of Education and Science, belong to the public property of the state, the commune, the towns, the municipalities, the counties and the county school inspectorates. The rest of the assets belong to the respective institutions.

The establishment of another destination of the material basis of the schools<sup>1</sup> is possible only with the approval of the competent Minister<sup>2</sup>. If their alienation or change of destination is done without the above mentioned opinion, it is an offense and the acts drawn up are nullified.

Even the new law on education, which is in force at present, does not clarify the problems of education, although it speaks with fervor of skills and performance, despite the fact that, in essence, it is a merger of the old law of education no. 84/1995 with the status of teaching staff and other normative acts previously issued in the field. We are basically following a republication of the 1995 Education Law with a renumbering of items, adding or removing some of them. It should be noted, however, that this law also brings new elements, but many problems are not discussed or treated superficially.

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<sup>1</sup> and other pre-university education institutions and units.

<sup>2</sup> The Ministry of Education and Research, the Ministry of Education, Research, Youth and Sport.

In other words, the problem of education in contemporary Romania is becoming more acute, when the rate of school abandonment increases, the rate of illiteracy has the same trend<sup>1</sup>, the quality of the educational act decreases, the school does not give so much value to the social, the curricular area is not correlated with the real needs of society with the job stock, and the list can continue.

We turn our attention to the main changes brought about by this normative act, as well as the consequences of the new law on education.

Liability for the content and consequences of applying Law no. 1/2011 published in the Romanian Official Gazette, Part I, dated January 10, 2011, was assumed by Prime Minister Emil Boc<sup>2</sup>, in solidarity with the Government of Romania at that time (scriptically speaking, since practically no one was held accountable of "those who ruled" for what happened to Romanian education).

A classification of universities and hierarchy of study programs, the elimination of age criteria in professional ascension, additional funding for performance came about as a result of the entry into force of this law. Education is mandatory from 9 classes to 10 classes and mandatory attendance of courses until the age of 18. It establishes the openness of the pre-university education and the role of the local public authorities in ensuring the conditions for the pre-university education in their area of competence.

A novelty is also the passage of primary education to the 5-class structure, by introducing the class 0 - the preparatory group from the kindergarten goes to grades I-IV. And the gymnasium cycle, which will take the 9th grade high school and become a 5 year education cycle, complicates things.

With regard to early 0-6 years of education, which is made up of the pre-school level, it takes place in nurseries, kindergartens and day care centers that are re-entranced, after 18 years, under the authority of the relevant ministry, as well as from the pre-school level.

According to the law of education, as a novelty, "the pre-university education system consists of the total authorized and accredited state-owned, private and confessional education institutions", but the relations of interdependence were overlooked.

Article 96, paragraph 1, states that "in the private and confessional education, the board of directors includes representatives of the founders. The management of the board is provided by the person designated by the founders. In compulsory general education, the board of administration also includes a representative of the local council. "

Unfortunately, practice has shown that many board members do not have the capacity to understand the importance of making a decision about the educational system. The school, regardless of whether it is state, private or confessional, is morally responsible to society, for the mere fact that education is a public good<sup>3</sup>.

Of all levels of education, most affected by the provisions of Law no. 1/2011, higher education remains, regardless of whether it is state or private higher education. This environment has been contaminated by those commerce-type universities that have been set up by court

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<sup>1</sup> In 2017 - the illiteracy rate in Romania was 6% -day EUROSTAT.

<sup>2</sup> He was a university lecturer at the Faculty of Political and Administrative Sciences at "Babeş Bolyai" University, Cluj Napoca.

<sup>3</sup> Adrian Gorun, Sociological Study on Law no. 1/2011. Education and the Community, Teaching and Pedagogical Ed., Bucharest, 2013, p.142.



rulings, and which, while operating "out of the law", resist and persist in the system, issuing diploma under the aegis of the ministry. And so continues the degradation of education and the educational process, which further downs other important sectors of the Romanian space.

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