



**Brief Critical Considerations with regard to  
Regulations of Doctoral Studies<sup>1</sup>**

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**Abstract:** In February 2011, the first law adopted in Romania has been The National Education Law, i.e. Law No. 1/2011. The new legal provisions address all major aspects of education, including the rights and duties of teachers at any levels. One of the most important decisions in the new law is that, in order to accede to a teaching position in the academic system, one is required to hold a Doctor's Degree. The old legal provisions did not make this condition mandatory. For this reason, legal provisions governing the doctorate are highly momentous and presented in this study. Among the topics to be found herein, the readers will recognize: the duties and rights of doctoral students, doctoral supervisors, the duration of doctoral studies, the degree awarded, the duties of the National Council for Degrees, University Titles and Credentials (CNATDCU), etc. We would also like to point out the fact that, despite their novelty, these regulations are not without any fault and should not be taken lightly, as they are prone to a multitude of interpretations and criticism.

**Keywords:** Law No. 1/2011; doctorate; PhD doctoral student; doctoral supervisor

### **1. Introductory Remarks**

The emergence of *The National Education Law No.1/2011*<sup>4</sup> has constituted, to the Romanian education system, an authentic revolution claiming a re-visitation of the

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<sup>1</sup> Opinions expressed in the present study do not constitute the official viewpoint of above-mentioned higher education institutions and do not, under any circumstance, render them liable in this respect.

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entire ensuing legal scaffolding; at the same time, it has entailed significant changes in all areas of education, including the area of academic doctoral studies.

The doctoral degree, i.e. the last academic cycle, the highest theoretical and practical training in a certain field of knowledge, has, therefore, been no exception in the great transformation in our education system, and has, nonetheless, given raise to created interesting and contentious discussions due to the re-visiting of the teaching career and its role.

More specifically, it addresses the concept of granting access to quality education and to the teaching profession, as introduced by Law No.1/2011; priorily, Education Law No.84/1995<sup>1</sup>, Law No.128/1997<sup>2</sup> on the Organisation of University Studies No.288/2004<sup>3</sup> constituted the regulatory framework of the educational system. The above legal acts stipulated that Romanian higher education take place pending three educational cycles, i.e. Bachelor's Degrees, Master's Degrees and Doctoral Studies. On the other hand, in order to accede to a teaching position or for promotion up until higher education middle level, members of academic teaching staff were, under no obligation to complete "Advanced", i.e. Master's and Doctoral Studies<sup>4</sup>. For aspiring candidates to the teaching profession to hold a position as a tutor [the lowest academic teaching rank, currently abolished under Paragraph 285 (1) of Law No.1/2011<sup>5</sup>], other than passing the Bachelor's examination held by any university and later, in the course of their teaching career, undergo at least one psycho-pedagogical preparation, was not necessary. In this context, access to the teaching profession was extremely simple, albeit, also marked by fierce competition on account of the huge number of graduates from public and private universities.

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<sup>1</sup> Re-issued in *The Romanian Official Gazette*, Part I, No. 1 of 5 January 1996, with subsequent amendments and additions, currently abolished.

<sup>2</sup> Issued in *The Romanian Official Gazette*, Part I, No.158 of 16 July 1997, with subsequent amendments and additions, currently abolished.

<sup>3</sup> Issued in *The Romanian Official Gazette*, Part I, No.614 of 7 July 2004, with subsequent amendments and additions.

<sup>4</sup> Thus, in theory, it was possible that a lecturer ply his/her profession even as a mere a PhD student. There are cases in which teaching staff have held a lecturer's position for even more than 5 years while being PhD students. In point of fact, when Law No.128/1997 was in force, countless legal exemptions or term extensions were granted to benefit higher education teaching staff not holding a PhD Degree.

<sup>5</sup> In higher education institutions, teaching positions are, as follows: a) Assistant Lecturer; b) Lecturer/Dissertation Supervisor; c) Reader; d) Professor.

The fundamental change brought by Law No.1/2011 resided precisely in the radical change in conditions of entry among academics. At time of writing, we deem that the rationale behind this radical change in human resources perspective, resulting in a current “stalemate” in the higher education system<sup>1</sup>, lies in increasing the quality of education, accountability of academic staff and, last but not least, putting a stop to “mass production” of teachers and graduates of all higher education cycles, with the result of inflation in teachers and “experts”. Naturally, the above measures were not singular in the lawmaking process, in an attempt to provide a quality, student-centered education; however, they were integrated in a complex mechanism triggering establishment or re-organization of bodies and institutions to ensure the quality of education in every way and creating apt instruments for the competent ministry to ensure compliance of universities with the rigors of the system. No doubt, neither can we deny many negative aspects previously associated with higher education system, nor can we ignore that the current regulation has gone from one extreme to another: from an exaggerated leniency, maybe, to an equally exaggerated tension, with no short-term golden path in view.

## 2. PhD Students

Resuming our analysis on doctoral studies, i.e. the last cycle of higher education, and on the new vision of the lawmaker in human resources matters with regard to acceding to higher education teaching positions, we may mention that, at present, the quality of PhD holder or student is an imperative condition for any candidate to work in higher education. Thus, in accordance with Section 2 of Law No.1/2011, Art.294 and following, employment in a teaching or research position is provided for either a determinate or an indeterminate duration. Indeterminate-term employment in any teaching or research capacity is made possible only by public competition, set up by higher education institutions, but not before candidates earn a Doctor’s Degree. Contest for accession to teaching or research positions is open to both Romanian and foreign citizens, without discrimination, under the law.

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<sup>1</sup> In a brief digression, we deem it necessary to mention that, when speaking about a stalemate within the higher education system, recent legal provisions have not, on their own, triggered the effects under scrutiny. In this respect, we cannot overlook the extremely malign effect *Government Emergency Ordinance No.34/2009 on Budgetary Rectification in 2009 and by the regulation of certain financial-fiscal measures*, issued in *The Romanian Official Gazette*, Part I, No. 249 of 14 April 2009, with subsequent amendments and additions have had, leaving Romanian society paternalised by public financing.

Notwithstanding provisions in labor law, any determined duration shall not exceed three years. As an exception to this exception, doctoral students may be employed for a maximum period of 5 years (Ioan, 2012, 112). Fixed-term employment contract between university and teaching / research staff, following a contest, may be renewed, dependant on an individual's professional results; evaluation is based on the criteria adopted by the Senate and in relation to the needs of employment and financial resources of the concerned institution, under current legal provisions.

Thus, the law lends a *sine qua non* attribute required to accede to the teaching profession to a doctoral or doctoral student (facilitated legally by registering in a programme of doctoral studies and acquiring the PhD).

### **3. Cases of Persons who have Acquired the Quality of PhD Candidate under Provisions of Government Decision No. 567/2005 on Organisation of Doctoral Studies<sup>1</sup>**

One might wish to note the discriminatory context created by the new regulation between doctoral students enrolled in doctoral studies under the old regulation, i.e. under Government Decision No.567/2005 on Organisation of Doctoral Studies, and doctoral pursuants enrolled in doctoral studies under the new regulation. Thus, once enrolled in PhD under Law No. 1/2011 and Government Decision No.681/2011 on approval of the Code of Doctoral Studies, doctoral students acquire the status of doctoral assistant lecturers doctoral students or research assistants, filling the teaching position for a fixed duration. At the time of writing, PhD students enrolled under old regulations are not allowed to hold a teaching position in the absence of a doctor's title, and cannot be assimilated with doctoral assistant lecturers or doctoral research assistants, as they are not enrolled under the new regulations. Concurrently, in accordance with the transitional and final provisions of Law No.1/2011<sup>2</sup>, specifically, Paragraph 362 (1) - (4), tutors'

<sup>1</sup> Issued in *The Romanian Official Gazette*, Part I, No.540 of 24 June 2005, with subsequent amendments and additions, currently abolished.

<sup>2</sup> Art. 362 in Law No.1/2011 reads: „(1) Members of teaching staff who, at the time of entry into force of the present law, hold a tutor's position and receive a Doctor's Degree within the span of 4 years from entry into force of said law, legally hold an assistant lecturer's position. (2) Upon fulfillment of 4 years from entry into force of said law, labour contracts of employees holding a tutor's position are legally terminated. (3) Upon fulfillment of 4 years from entry into force of said law, labour contracts of employees holding an assistant lecturer's position or a research assistant's position and who are not PhD students or have not been granted a Doctor's Title are legally terminated. (4) As an exception to provisions in Art. 301 Par. (2), persons who, upon fulfillment of 4 years from the entry

positions have been transformed into assistant lecturers' positions whereby their holders, although largely non-holders of PhD's, received exemption so as to meet conditions under the new law. Therefore, this leads to the paradoxical situation of denying access to a teaching career to persons keen on individual professional and theoretical training, while those who do not meet the requirements of the new law are allowed to continue filling a teaching function. Such a situation seems, to our mind, discriminatory, albeit, regrettably, remedies are not in sight.

Thus, a possibility that doctoral students enrolled under provisions of Government Decision No.567/2005 on Organization of Doctoral Studies, can access a teaching position as assistant lecturers would result if Law No.1/2011 were modified to the purpose of their inclusion as doctoral students enrolled under Government Decision No.681/2011 on approval of the Code of Doctoral Studies or their exemption from the requirement of doctoral graduation. However, this version is one that depends on furthering legislative initiatives in Parliament, whereas parliamentary procedures are lengthy. Under these conditions, based on the most optimistic scenarios, amending the law to eliminate discrimination would occur, at the earliest, towards the end of this or next year, while doctoral students would have already presented their thesis publicly, which would thus prove belated.

A further option would reside in claiming the unconstitutionality of Law No.1/2011 although, in this case, judicial proceedings would extend over minimum 2 years, which would, again, be too lengthy.

One of the most visible changes that the Code doctoral studies in Romania<sup>1</sup> brought along has been that the number of doctoral students meted out to one PhD supervisor is severely limited by almost 50%, from previously 15 under the old law, to 8 under Government Decision on Approval of the Code of Doctoral Studies No. 681/2011. It is obvious that, in the short term, this change was intended to cut down the number of doctorate degrees awarded per annum in higher education

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*into force of said law, hold an assistant's position in a higher education institution are not applied said provisions. Upon fulfillment of 4 years from the entry into force of said law, labour contracts of these employees who have not been granted a Doctor's Title are legally terminated. (5) Upon fulfillment of 4 years from entry into force of said law, labour contracts of employees holding a lecturer's/ dissertation supervisor's position or a higher-ranked academic teaching position and have not been granted a Doctor's Degree are legally terminated. (6) Upon fulfillment of 4 years from entry into force of said law, labour contracts of employees holding a researcher's position or a higher-ranked research position in a higher education institution and have not been granted a Doctor's Degree are legally terminated."*

<sup>1</sup> Issued in *The Romanian Official Gazette*, Part I, No.551 of 3 August 2011.

institutions, by minimum 50% . A further measure directed towards an education based on quality, as opposed to quantity (in the view of the enacting agents of Law No. 1/2011), provided that higher education institutions should be meted out state-funded doctoral study places, based on a heavily-disputed classification of higher education institutions in Romania. Thus, the classification of universities by Order of The Minister of Education, Research, Youth and Sports, under provisions of Article 146 of Law No.1/2011<sup>1</sup>, established by Ministry of Education, Research, Youth and Sports No.5262/2011 Recognition of Classification of Universities, the state divided funds allotted for doctoral studies, sanctioned by Order of the Minister of Education, Research, Youth and Sports No.5272/2011 the breakdown of tuition for academic studies for admission to doctoral studies for the academic year 2011 to 2012<sup>2</sup>.

According to Art. 164 Par. (1) of the Act, in the course of doctoral studies, enrollees in the programme acquire the quality of doctoral students. Doctoral students are employed by OIDS or any member OIDS as research assistants or assistant lecturers, for a specified duration. Nevertheless, assistant lecturers hold a permanent position, even within the confines of the doctoral period, as the employment contract is concluded for a determined duration.

A joint interpretation of Art.164 Par. (1) with Art.290, Art.291 Par. (3) and Sentence 4 of Art.294 Par. (4) reveals that doctoral students belong to the permanent teaching or researching staff, a status acquired following a public contest and conclusion of a fixed-term contract for up to five years. As, upon expiry of five years, the employment contract is terminated under law, whereas the capacity of doctoral student is forfeited, we may conclude that thesis presentation is to occur within this period and that the maximum duration of doctoral studies is of five years.

Bearing in mind that the national Education Law calls a doctoral contract of the PhD student either PhD studies contract or, interchangeably, employment contract and that the (partly remunerated) teaching activities and research benefit from work experience and specialized all the rights of research assistants or assistant

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<sup>1</sup> Issued in *The Romanian Official Gazette*, Part I, No.637 of 6 September 2011.

<sup>2</sup> Issued in *The Romanian Official Gazette*, Part I, No.637 of 6 September 2011.

professor, under Art.290 Par. (2) of the Act, we deem that this is a hybrid type of employment contract.<sup>1</sup>

Therein, Par. (3) of Art.164 in the Law stipulates: “Doctoral students may carry out teaching activities in accordance with the contract of doctoral studies, for up to 4-6 conventional hours per week. Teaching activities beyond this threshold shall be remunerated in accordance with the law in force, and fall under the Labor Code, under rights and obligations of employees and their legal due taxes to state social insurance, unemployment insurance, health insurance for work hazards and occupational diseases.”

It should also be noted that, at present, although the tutor’s position has been disbanded, assistants lecturers - PhD students, employed by determined-term employment contract for up to five years, notwithstanding the Labor Code, are, in actual fact, former university tutors. We may infer this both from the university teaching load in tutors assigned under prior regulations [Art. 81 Par. (1) letter e) of Law No.128/1997<sup>2</sup>] and from provisions in Paragraph 362. (1) of Law No.1/2011 relative to the transition from a tutor’s position an assistant lecturer’s position.

#### 4. Doctoral Supervisors

A further change worth dwelling on pertains to gaining a PhD supervisor’s status. Previously, under provisions of Government Decision No. 567/2005 on Organization of Doctoral Studies, a PhD supervisor was required to be: a professor, a consultant professor, a Member of the Academy or a Senior Researcher of the 1-st rank with a PhD title in the required field. He/she would be appointed by the Order of the Minister of Education and Research, on proposal of the Organizing Institution of Doctoral Studies (*OIDS, Romanian abbrev.: IOSD*), under approval of The National Council for Titles, Diplomas and Certificates (*NCTDC, Romanian*

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<sup>1</sup> Unlike an apprenticeship contract, based on provisions of Law No. 279/2005, issued in *The Romanian Official Gazette*, Part I, No.522 of 22 July 2005, with subsequent amendments and additions, for which Art. 4 Par. (1) stipulates: ” The apprenticeship contract with the employer is a special individual labour contract on a fixed duration, based on which a natural person, henceforth called *apprentice*, commits himself/herself to undergo professional training and work for and under the authority of a legal or natural person henceforth called *employer*, who binds himself/herself to ensure pay of wages and ensure all conditions needed for professional development”, a contract concluded by the doctoral student is not expressly invested with legal qualification.

<sup>2</sup> The average weekly teaching workload broken down in conventional hours, concerning activities under Art. 80 Par. (1) letter a)-f) is set, *as follows*: academic tutor - 4-6 hours; in addition, a tutor shall perform 6 weekly hours of peer attendance.

*abbrev.: CNATDCU*), whereby this approval would be given following evaluation of both teaching and research and national or international relevancy. Doctoral supervisors would carry out their teaching and research activities at employing higher education institutions, alternatively, at institutions forming consortiums with the concerned OIDS or by joining one single OIDS<sup>1</sup>.

Currently, acquiring a PhD supervisor's capacity is governed by provisions in Article 166 of Law No.1/2011. The significant difference is given by the introduction of minimum standards developed by NCTDC.

Acquiring the right to supervise doctoral theses is conditioned under Article 166 Par. (2), by the function (position) of a lecturer / dissertation coordinator, respectively, researcher of III-rd rank or higher. As the law does not specify, this position can be held in any higher education institution, regardless of its classification [Art.193 Par. (4) of Law No.1/2011] and obtain the certificate of entitlement.

Holding a certificate of entitlement constitutes a prerequisite for obtaining PhD supervisorship and of a Professor's title, at the same time.

Entitlement, according to Art.300 Par. (1) of Law No.1/2011 consists in:

- a) writing a thesis pursuant of entitlement;
- b) public presentation the thesis of entitlement to a special commission composed of minimum of 3 persons with a doctoral supervisor's capacity, in the country or abroad;
- c) reception of the thesis of entitlement, as a result of public presentation;
- d) obtaining the Certificate of Entitlement.

The entitlement thesis is aimed at showcasing the teaching and researching capabilities and performances, by documenting professional achievements obtained after earning a Doctor's Degree in Science, which stands proof to the originality and relevancy of academic contributions, and anticipates independent scientific and professional development in their future research and/or academic careers [Art.300 Par. (2) of Law No.1/2011].

In order to participate in the entitlement examination, according to Par. (3) of Art.300 in conjunction with Art.219 Par. (1) a) , following conditions shall be met:

- a) holding a title of Doctor of Science;

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<sup>1</sup> Art.5 Paragraphs (1)-(3) in *Government Decision No.567/2005* on Organization of Doctoral Studies.  
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- b) compliance with minimum standards set forth by the Minister of Education, Youth and Sports, on NCTDC's proposal.

Request for examination of entitlement is addressed to NCTDC; thereupon, the latter appoints members of the experts' commission and recommends bestowal of entitlement certificate, which is approved by the Order of the Minister of Education, Youth and Sports, under Art.300 of the Law.

In accordance with line (3) of Par. 166, in order to supervise doctorates, teaching and research staff members who have acquired this right shall conclude an employment contract with an OIDS or member of an OIDS and be members of a doctorate school, following entitlement.

Par. (1) in conjunction with Par. (3) of Article 166 shows that the right to PhD supervisorship can be achieved solely after concluding an employment contract<sup>1</sup> with an OIDS and acquisition of membership quality to a doctoral school. *We recommend eliminating the second sentence in Paragraph (3) of Article 166, as it repeats provisions in Paragraph 1 of same article, and as the language in this text is illogical.*

Minimum standards for NCTDC acceptance of the dossier to obtain the certificate of entitlement do not depend on the teaching position or professional degree and are identical with the standards for granting the title of Professor.

Moreover, Article 166 Par. (2), Sentence 3 sets forth: "The quality of Doctor is awarded by Order of the Minister of Education, Youth and Sports, at NCTDC's recommendation for entitlement, in keeping with standards and procedures developed by the Ministry of Education, Youth and Sports. Said standards are established based on evaluation considering internationally relevant criteria, are NCTDC-recommended and approved by Order of the Minister of Education, Youth and Sports. Minimum standards for NCTDC acceptance of the dossier, with the aim of earning the certificate of entitlement are non-dependent of the teaching positions or professional degrees and identical with the standards for granting the title of Professor."

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<sup>1</sup> For an in-depth analysis, see: Șerban Beligrădeanu, *An accurate exegesis of Art.299 in The Education Law No.1/2011 on conditions pertaining to conditions in which teaching and research staff in higher education may continue working after retirement age (Corecta interpretare a art.299 din Legea educației naționale nr.1/2011 privitoare la condițiile în care personalul didactic și de cercetare din învățământul superior își poate continua activitatea după împlinirea vârstei de pensionare)*, issued in *Dreptul* No.4/2011.

Accordingly, the following evolution may take place:

- a) obtaining the certificate of entitlement;
- b) filling a teaching position (minimum a lecturer's / dissertation supervisor's position) or a research scientist's position of minimum rank III;
- c) closing a contract of employment with an OIDS or an OIDS member-institution and reception of a doctoral school member capacity.

As, up to present, no certificates of entitlement have been granted as yet, doctoral supervisors may be currently recruited amongst:

- persons who have acquired this status prior to Law of Education entry into force;
- experts who have doctoral supervisorship status in one of the EU countries, in the European Economic Area and the Swiss Confederation;
- experts who have doctoral supervisorship status in one of the higher education institutions outside the EU, EEA and Swiss Confederation established by the Minister of Education, Youth and Sports;
- experts who have doctoral supervisorship in institutions abroad, outside the EU, EEA and the Swiss Confederation and are not listed by The Ministry of Education, Research, Youth and Sports, on condition of an international Convention of mutual recognition.

Other experts and doctoral supervisors abroad may obtain PhD supervisorship right in Romania, following their entitlement.

A doctoral supervisor is allowed to coordinate a maximum number of 8 doctoral students concurrently, but only in the subject area s/he has been validated in and only within one OIDS, except in cases of joint supervisorship, in accordance with Article 166 Par.(5) of Law No. 1 / 2011. As the law fails to specify, a PhD supervisor may guide students in several subject areas for which s/he is entitled, under the terms of Article 166 Par. (3) and Art.167 Par. (1) of the Act, namely, the existence of a work contract in which the employer is an OIDS, in the presence of membership to a doctoral school and supervisorship solely within the respective OIDS.

Doctorate supervisors undergo evaluation every five years. Assessment procedures are established by the Ministry of Education, Youth and Sports, on recommendation by NCTDC.

## 5. Doctoral Studies Programmes

Another significant change in the regime of doctoral studies is lent by confining doctoral programs to full-time studies and the inherent disbandment of '*non-attendance*' studies<sup>1</sup>. This change correlates with the provisions relative to doctoral students who, under the new regulations, are employed as assistant lecturers and required to carry out teaching activities tantamount to 4-6 conventional hours per week. In this respect, the fact that, currently, doctoral studies are run only in full-time regime, is, again likely to operate an even more severe selection among PhD candidates. As a result, increasingly, doctoral candidates should devote an important part of their time to teaching and self-preparation, as opposed to previously regulated requirements that, under this aspect, were more lenient. It is easy to understand how these new regulations are likely to shape doctoral studies as a form of training, in actual fact, dedicated to teachers, as it becomes highly difficult, if not impossible, for any person keen on self-improvement in a certain subject area, on account of the required intensive research programme.

Doctoral study programmes can be broken down in two types:

- a) Scientific Doctorate, aimed at generating original scientific knowledge, with international relevancy, based on scientific methods, solely organized in full-time attendancy. Scientific doctorates are a prerequisite to a professional career in higher education and research.
- b) Professional Doctorate in the Arts or Sports, aimed at creating original knowledge based on the application of scientific methods and systematic reflection on artistic creations or competitive sports, both nationally and internationally, and may constitute a basis for a professional career in higher education and research in the Arts and Sports.

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<sup>1</sup> In accordance with provisions in Art. 140 Par. (4) Sentence I in Law No.1/2011: "Doctoral programmes may be organized solely under full-time regime." Priority, according to provisions of Art.16 Par. (1) in Government Decision No.567/2005, "Doctoral studies programmes may be organized under full-time and non-attendance regime."

Doctoral study programmes take place at a Doctoral School, under coordination of a doctoral supervisor. They include:

- a) a training programme based on advanced academic studies within the doctoral school;
- b) an individual programme of scientific research or artistic creation.

According to Art. 159 Par. (3), *the length of academic doctoral studies commonly consists of 3 years*. In special cases, the length of doctoral studies can be extended by 1-2 years, under approval of the university senate, at the PhD supervisor's proposal and considering available funds. The study areas regulated on a European level and the duration of doctoral studies are compliant with relevant regulations.

Government Decision No.567/2005 on Organisation of Doctoral Studies, under Article 7 Par.(1), provided that the "*cycle of doctoral studies commonly extends over 3 years*" and, in Article 10 Par. ( 1) that "advanced university training programmes [...] have a duration of 2-3 semesters " additionally, in Article 11 Par. (1) that " scientific research programmes extend over 3-4 semesters. "

From the conjunction of the two follows that the duration of academic cycles of studies used to be, for both stages, of 5-7 semesters. Thus, after completion of the second stage followed the stage of public presentation of the thesis, that would fall outside the three years mentioned in Article 7 Par. (1).

Currently, the duration of the two stages of academic study programmes is not stipulated under law or in the Code of Doctoral Studies. Consequently, public presentation of the thesis is to be made after conclusion of the three (or four, respectively) years provided under Art. 159. (3) of Law No.1/2011, but should not exceed two years from expiry of the three years. This results from the joint interpretation of Art.164 Par. (1) with Art.290, Par. 291 line (3) and Sentence 4 of Art.294 line (4) , priorily addressed in the present study.

## **6. Joint Supervisorship**

Doctoral studies may be also organized under joint supervisorship; in this case, the doctoral student is working under the concurrent guidance of a supervisor from Romania and a supervisor from abroad or under the direction of two joint PhD supervisors in different institutions in Romania, based on a written agreement between the concerned organising institutions. A joint doctorate may also occur if

supervisors are in the employ of the same OIDS, but have expertise in different specialisations / different fields of study, or if one of the doctoral supervisors has reached retirement age, according to University Charter provisions.

Only graduates with a Master's Degree or an equivalent thereof are entitled to partake in a contest for admission to doctoral studies.

Along these lines, the old regulation<sup>1</sup> provided that doctoral studies may also be organised under international joint supervisorship. In that case, the doctoral student would carry out his/her work under the guidance of a PhD supervisor from Romania and a PhD supervisor from another country under a written agreement between the organising institutions concerned.

We may, therefore, recognize, that, currently, the scope of joint supervisorship has been extended to the interdisciplinary doctorate and to the case (generated by retirement of teaching staff provisions introduced by Law No.1/2011), when the supervisor reaches the age of retirement<sup>2</sup> pending PhD tutoring<sup>3</sup>. In such cases, the doctoral student is taken over by another supervisor in the same OIDS whose "load" is thus increased in terms of number of doctoral students, of standardized teaching activities and who becomes the main supervisor.

## 7. Doctoral Thesis

The Doctoral Thesis is drafted as specified by OIDS Regulation for Organization of Doctoral Studies and, at the same time, as specified in regulations to be found in the Code of Doctoral Studies.

The committee for public presentation of the thesis is recommended by the PhD supervisor and approved by OIDS management. The Doctoral Committee consists of at least five members: the President, in his capacity as OIDS representative, the doctoral supervisor and at least three official referees from the country or abroad,

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<sup>1</sup> Art. 15 in Government Decision No.567/2005 on Organisation of Doctoral Studies.

<sup>2</sup> Șerban Beligrădeanu, *loc. cit.*

<sup>3</sup> Art. 289 Par. (4) of Law No.1/2011: „Teaching and research staff acting as doctoral supervisors shall retire upon the age of 65 and:

a) are allowed to continue supervisorship of doctorates pending at the date of retirement until the age of 70;

b) after the age of 65, are allowed to tutor new doctoral students solely in joint supervisorship with a member of the teaching or research staff who does not reach retirement age pending entire duration of the respective doctorate.”

experts in the subject area in which the thesis has been developed, out of which at least two are employed outside OIDS. Members of the doctoral committee shall hold a Doctor's Degree and, at least the teaching position of a senior lecturer or of a II<sup>nd</sup> degree researcher or have supervisorship status in the country or abroad<sup>1</sup>.

The thesis is to be presented in an open session before the doctoral commission, after undergoing evaluation by all reviewers. The PhD thesis delivery may take place in the presence of at least four of the members of the PhD commission, with the mandatory participation of the Chairperson and of the PhD supervisor. Public presentation must include: a session of questions from members of the doctoral committee and from the audience.

Based on public presentation of the thesis and the reports of official referees, the commission shall further evaluate and discuss the doctoral qualification to be awarded to the thesis. Ratings attributable are: "Excellent", "Very good", "Good", "Satisfactory" and "Unsatisfactory". As a rule, an "Excellent" is received by up to 15% of candidates who obtain their PhD title in any OIDS, during an academic year.

If the PhD student has met all requirements set by the research programme and evaluations on his/her thesis allow the assignment of the qualification: "Excellent", "Very good", "Good" or "Satisfactory", the doctoral commission shall submit a PhD proposal to NCTDC for validation. After evaluating the case, NCTDC shall suggest the Minister of Education, Research Youth and Sports whether (or not) to grant the PhD title to the candidate.

If the qualification of "Unsatisfactory" is lent, the doctoral commission shall specify the content elements to be re-written or completed and require a renewed public presentation of the thesis. The second public presentation of the thesis takes place before the same PhD commission as in the first instance. If, following the second presentation, the qualification "Unsatisfactory" is granted renewedly, the PhD title is not to be awarded and the PhD student expelled.

The PhD title is awarded by Order of the Minister of Education, Research, Youth and Sports, after NCTDC validation of thesis.

Art.168 Par. (8) of the Act provides that, if NCTDC brings forward arguments to invalidate the thesis, OIDS shall receive a written motivation of termination from the Ministry of Education, Research, Youth and Sports, drafted according to

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<sup>1</sup> Art. 67 Par.(4) in *Government Decision No. 681/2011* on approval of the Code of Doctoral Studies.

NCTDC notes. The doctoral thesis may be re-submitted NCTDC within one year from its first invalidation. If the doctoral thesis is invalidated a second time, the PhD title shall not be awarded and the PhD student shall be expelled (Ioan, 2012, p. 87).

*We note that there are no provisions in place for the option of appealing NCTDC thesis invalidation. Even in the assumption of good faith on the part of NCTDC members, the solution seems unnatural, as the law establishes that it should play the role of “a supreme court” in this area.*

In this respect, we suggest the addition of a new paragraph to specify the right to challenge thesis invalidation and amendment, based on the Order of the Minister of Education, Research, Youth and Sports No. 3759/2011, on the approval of Organization and of National Titles, Diplomas and Certificates Council and its structure<sup>1</sup>.

Additionally, in order to optimally carry out NCTDC activities, we suggest that the first mandate be only for the duration of one year, while, for subsequent mandates, NCTDC members meet minimum and compulsory standards for certificate of entitlement grant – this, considering the decisive role held by NCTDC in professional training at the highest level and quality assurance in higher education.

## **8. Penalties**

In non-observance cases of quality standards and professional ethics, under Art.170 Par.(1) of the Act, the Ministry of Education, Research, Youth and Sports, based on external evaluation reports by: NCTDC, by CNCS , the Board of Ethics and Academic Management and the National Ethics Council for Scientific Research, Technological Development and Innovation, may take the following steps, alternately or at the same time:

- a) withdrawal of PhD supervisorship;
- b) withdrawal of PhD title;
- c) withdrawal of doctoral school accreditation, which involves withdrawing the right to organize doctoral school entrance examination to select new PhD students.

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<sup>1</sup> Issued in *The Romanian Official Gazette*, Part I, No.138 of 23 February 2011.

*We may observe a logical inconsistency, i.e. NCTDC validates a doctorate thesis only to write, at a later date, an external evaluation report showing non-compliance with quality standards and professional ethics with regard to the same doctoral thesis. Hypothetically, in a situation like this, it would certainly spell a questionable performance of specific tasks. Therefore, we suggest that NCTDC not have, among its tasks, an external evaluation of the thesis that it has validated. In this regard, regulations approved by Order of the Minister of Education, Research, Youth and Sports No.3759/2011 should undergo an amendment, by adding a new paragraph to Article 3 which expressly provided the above.*

Re-accreditation of a doctoral school may be obtained after a lapse of minimum 5 years after forfeit thereof and only after resuming accreditation procedures.

Restoring PhD supervisorship can be obtained after a minimum of five years from the forfeit thereof, on OIDS proposal, based on an internal evaluation report, whose assessments are validated by an external evaluation carried out by NCTDC. Positive results of these procedures are mandatory conditions for approval by the Ministry of Education, Research, Youth and Sports.

## **9. Transitional Provisions**

One of the most contentious provisions contained in the new Code of Doctoral Studies addresses the transition from old doctorates to new ones. In this regard, to ensure that the transition from doctorates is held in accordance with Government Decision No.567/2005 on Organisation of Doctoral Studies, the Government Decision No.681/2011 on the Code of Doctoral Studies also provides transitional arrangements notably in Art. 76 and in the following, i.e. in Par. (2): “[...] *doctoral students who have enlisted in doctoral programmes before the entry into force of Law No. 1/2011 in an education form other than full-time, are allowed to continue their studies in this form to complete their education*”, and Par. (4): “[...] *if doctoral students whose doctoral theses have not been priority analyzed within the specialized department or researchers’ team until October 1, 2011, the provisions of this Code, including provisions regarding the appointment a guidance committee, under due consideration of the current procedural stage, i.e. advanced academic training programme or research programme. If until conclusion of the thesis a guidance committee has not been appointed, the public presentation can only occur by agreement of the PhD supervisor.*”



It follows that, although PhD students enrolled prior to the 2011-2012 academic year are granted the right to continue their PhD under the old regulations (as is normal, bearing in mind that there is a contract among the PhD supervisor, the PhD student and OIDS, the execution of which takes into account the legal framework at the time the contracting parties expressed their will); the same article provides that students whose doctoral theses were analyzed preliminarily prior to October 1, 2011 fall under the new law. In other words, for most PhD's in progress, oddly enough, the lawmaker has decided, to change rules during the game.

Such an attitude, although understandable for practical reasons, cannot translate into a legal act, as *the law makes provisions only for the future, with the exception of a more favorable penal law*, in accordance with Article 15 paragraph (2) of the Romanian Constitution in 1991. In these circumstances, the provisions in this article appear, to our mind, to be contrary to the Romanian Constitution and, as a consequence, the government decision as such is rendered unconstitutional. Nevertheless, according to the provisions of the Romanian Constitution and Law No.47/1992, government decisions cannot form the object of constitutionality contentions; as a result, the remedy for this unlawful situation is, in our opinion, to be found in the provisions of Article 4 in Law No.554/2004 on Litigative Administration, with subsequent amendments and additions, which establishes the legal regime of exception of illegality and sanctions the possibility for a legally invested court of law to censor public administration acts contrary to law and, therefore, contrary to the Constitution. In this respect, the legality of a unilateral administrative act (and of a legal act, the legal doctrine and case law of the High Court of Cassation and Justice expressed consistently in the admissibility of a plea of illegality brought against a normative administrative act<sup>1</sup>) may be investigated at any time in the process, by way of exception, as an integral procedural part or at the request of the initiating party. In this case, the court of law, noting that the

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<sup>1</sup> Court Ruling No. 3156 of 31 May 2011, by The High Court of Cassation and Justice, <http://www.scj.ro/SCA%20rezumate%202011/SCA%20dec%20r%203156%202011.htm>, from which we quote:

*Art.4 Par. (1) in Law No.554/2004 on Exception of Illegality is equally applicable to unilateral administrative acts both with individual and normative function. This is the case, as Art. 4 Par.(2) makes non-distinctory references to unilateral administrative acts irrespective of their normative or individual nature. Normative unilateral administrative acts may, at any time, be subject to control of legality, not solely by dint of exception of illegality, but also by dint of direct court procedures (Art. 11 Par. 4 Law No. 554/2004). In point of fact, the above theories are sanctified in The High Court of Cassation and Justice case law- i.e. in: Resolution of the High Court of Cassation and Justice No. 3268/2006, Resolution of the High Court of Cassation an Justice No. 3726/2007). There from results that the primary court of law has pertinently addressed the exception of illegality.*

administrative law acts a prerequisite to the resolve of litigation, shall notify the relevant administrative court, thereby suspending the case. The Administrative Litigation Court shall rule, following an emergency procedure, in an open session, summoning the parties to the trial. The Administrative Litigation Court may be appealed, announced within 48 hours from the verdict or from notification; the judgement takes place within three days of registration, accompanied by publicly summoning the parties. If the administrative court has found the act unlawful, the competent court lifting the exception shall hear the case, notwithstanding the act of confirmed illegality.

Returning to the transitional provisions of the Code of Doctoral Studies, Section 12 reads: "The Tertiary Cycle - Doctoral Studies" cannot apply to academic programmes in progress at the entry into force of Law No.1/2011 other than with regard to the procedure of thesis presentation, while the program itself observes provisions in force at its inception.

## 10. Conclusion

Without re-stating the above, we shall merely conclude that, at present, legal regulations of doctoral studies prove deficient in their correlation with the existing social reality; some are discriminatory and have, to put it mildly, a wording that is ambiguous and susceptible to the most varied of interpretations. Under these conditions, it is necessary to pay an increased attention to activities within doctoral studies, precisely on account of deficiencies, which can only be detrimental to a regular educational process.

## 11. References

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\*\*\* The National Education Law No. 1/2011.

\*\*\* Government Decision No.681/2011 on approval of the Code of Doctoral Studies.