

THE PUBLIC LEGAL EDUCATION IN ROMANIA AND ITALY. A COMPARATIVE PERSPECTIVE*

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Abstract: *Starting from the distinction between the notions of “legal” and “judicial”, the present study aims to highlight ab initio the definition of legal education, how to approach the explanation of legislation for everyone and how to educate citizens in the spirit of justice and respect for law, given the importance of the rule of law. Currently, in Romania, public legal education is an optional school subject, being organized various legal education clubs in schools and high schools, in order to familiarize students with the main regulations that confer rights and obligations to citizens. In parallel, students study the universal rights of the child, concepts related to national and European affiliation, human rights, democratic values (responsibility, justice, freedom, property) in the discipline of Civic Education, compulsory discipline. Unlike the Mioritic area, in Italy aspects of legality are taught in the discipline of Civic Education, but there are proposals to change the curriculum, as well as to introduce qualified teachers in legal sciences to raise this subject to the rank of legal science, in order to achieve a high standard quality of the educational act. The study also develops the topics approached within the discipline, respectively institutions of constitutional law, administrative law, criminal law, contravention law, family law, state organization, commercial law, transport law, culminating with the restriction of some rights and freedoms during the COVID-19 pandemic. Moreover, the author develops the importance of the existence of a legal education related to the upbringing and development of children in the spirit of truth and justice, to understand concepts such as clarity, accuracy, predictability and accessibility, and in the corollary to follow the path of IUS EX AEQUO ET BONO. Finally, the study emphasizes the attempt of non-governmental organizations to introduce*

* Writing this paper was possible due to financial support provided by „Entrepreneurial Education and Professional Counseling for Social and Human Sciences PhD and Postdoctoral Researchers to ensure knowledge transfer” Project, co-financed from European Social Fund through Human Capital Programme (ATRiUM, POCU/380/6/13/123343).

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„Anuarul Institutului de Istorie «George Barițiu» din Cluj-Napoca. Series Historica”, LIX, 2020, Supliment, 2, *Lucrările conferinței internaționale online „ROMANIA-ITALIA-EUROPA. Evoluții istorice - Dinamici culturale - Relații internaționale”, 16-18 septembrie 2020*, p. 79-88.

judicial education in the Romanian curriculum, at least as an optional school subject, in order to create a pedagogy of legality.

Keywords: public legal education, legal education club, legal education laboratory, optional school subject, civic education, legality pedagogy.

I. Brief references about the legal norms hierachy, the supremacy of the Constitution – *nemo censetur ignorere legem*

In the Romanian Constitution, the fundamental political and legal act of the country, are found the main legal norms invested with supreme legal force, this act representing the basis of the other normative acts enacted by the state authorities and institutions¹.

According to this supreme law, in Romania, observance of the Constitution, its supremacy and the laws is mandatory².

In such conditions, it is reiterated both the need to respect the fundamental law, respectively the recognition of its supremacy, and especially the binding nature of the laws, by virtue of the principle of legality³.

In doctrine⁴, it was stated that the supremacy of the constitution represents an intrinsic quality of it that places it at the top of the political-legal institutions of a society organized in the state and determines that the supreme law is the source of all regulations in the legal, economic, political and social fields.

The founder of the theory of the pyramid of norms is the Austrian legal advisor Hans Kelsen, who objectively explained any legal system, according to the ordering of the different norms and sources of law. His theory provided a rational explanation of the principle of the hierarchy of norms as a pyramidal system, and at the top of the Kelsen pyramid he placed a fundamental hypothetical norm called Grundnorm (the foundation), respectively the Constitution⁵.

¹ Ștefan Deaconu, *Constitutional Law*, Edition 2 - revised and added -, Bucharest, C. H. Beck Publishing House, 2013, p. 16. For the observation of the distinction between public authorities and public institutions, see Dana Apostol Tofan, *Administrative Law*, volume I, Edition 3, Bucharest, C. H. Beck Publishing House, 2014, p. 6. In the same sense, Verginia Vedinaș, *Theoretical and practical treaty on administrative law*, vol. II, Bucharest, Universul Juridic Publishing House, 2018, p. 52 et seq.

² Article 1 para. 5 of the Romanian Constitution - Title I General principles, Article 1 The Romanian State. <https://lege5.ro/App/Document/gq4deojv/constitutia-romaniei-republicata-in-2003>, accessed: 14.09.2020.

³ Dana Apostol Tofan, *op. cit.*, p. 50.

⁴ Ioan Muraru, Emilia Ștefania Tănăsescu, *Constitutional law and political institutions*, vol. I, ed. 14, Bucharest, C. H. Beck Publishing House, 2011, p. 63.

⁵ Hans Kelsen, *Théorie générale du droit et de l'Etat*, Paris, L.G.D.J, 1997, p. 168.

In Romania, the hierarchy of legal norms is as follows:

1. The Romanian Constitution and the constitutional laws (in this register, we mention that the jurisprudence of the Constitutional Court is also a source of law);⁶
2. organic laws;
3. ordinary laws;
4. emergency ordinances and Government ordinances;
5. Government decisions;
6. normative administrative acts issued by the central public administration, autonomous administrative authorities and government agencies;
7. normative administrative acts issued by the local public administration bodies (County Council, Local Council, General Council of the Municipality of Bucharest).

Carefully corroborating the constitutional provisions iterated above, it is undeniable that all citizens have the obligation to respect not only the Constitution, but also other normative administrative legal acts enacted by public authorities or institutions, the notion of "law" being used in a broad sense, comprising all normative acts adopted and issued in a state governed by the rule of law⁷.

Thus, *Nemo censetur ignorare jus / legem* = no one is supposed to not know the law⁸.

However, it is possible that by his act, a citizen violates the provisions of legal norms, violating the rule of law or disturbing the proper and normal conduct of social relations, affecting rights and harming the legitimate interests of his peers, endangering the coexistence of freedoms and social balance. In this case, the legal responsibility intervenes, which is always legal, since no one can do justice to himself, respectively no one can be a judge in his own case.

Thus, the citizen who does justice to himself, on his own initiative and without the force of the state, respectively the intervention of the authorities and judicial bodies, harms another person or his property. The most well-known text that threatens to punish the one who does justice is a decree of the Roman emperor Marcus Aurelius, which stated that an individual is not allowed to do justice himself. („*Etenim*

⁶ Constitutional laws are those for revising the Constitution.

⁷ The normative administrative act includes mandatory regulations of principle, formulated in the abstract, in order to apply to an indefinite number of cases and persons, unlike the individual administrative act which represents a manifestation of will that creates, modifies or extinguishes rights and obligations for the benefit or in charge of a predetermined person. Anton Trăilescu, *Administrative law*, special part, Bucharest, C.H.Beck Publishing House, 2019, p. 8.

⁸ No one can invoke ignorance of the law.

aequissimum, praetori visum est, unumquemque non sibi ipsum jus dicere)⁹.

According to the above, the principle of free access to justice is highlighted in the constitutional philosophy, since any person can appeal to justice for the defense of his rights, freedoms and legitimate interests, no law can restrict the exercise of this right. Moreover, the parties have the right to a fair trial and to the settlement of cases within a reasonable time.

The resulting undeniable conclusion is that the notions of "legal" and "judicial" are interconnected, as the legal refers to law, the right being the art of knowing what is good and just (*Jus est ars boni et aequi*), the principles of law being: to live honorably, not to harm another, to give to each his own (*Juris precepta sunt hec: honeste vivere, alterum non laedere, suum quique tribuere* - Ulpian), and the judiciary to justice, this being the steadfast will and eternal to give to each what is his (*Justitia est constans et per petu voluntas jus suum cuique tribuendi*).

2. Legal education *de lege lata*

We emphasize, *ab initio*, that currently, in Romania, legal education is an optional school subject, being organized various legal education clubs in schools and high schools, in order to familiarize students with the main regulations that confer rights and obligations to citizens.

In parallel, students study the universal rights of the child, concepts related to national and European affiliation, human rights, democratic values (responsibility, justice, freedom, property) in the discipline of Civic Education, compulsory discipline.

Specifically, according to Order no. 5003/2014 on the approval of school curriculum for primary education, grades III and IV, issued by the Ministry of National Education, the list of school curriculum for primary education, grades III and IV is approved, the act being published in the Official Gazette of Romania, Part I, no. 24 bis, and at position no. 25 of Annex no. 1 we can also find the discipline "Civic Education"¹⁰.

A careful and corroborated reading of the mentioned order reveals that the curriculum for the discipline Civic Education represents a curriculum offer for the 3rd

⁹ D. Alexandresco, *Principles of Romanian Civil Law*, unpublished work, printed after the author's manuscripts (4,000 pages) containing the doctrine and jurisprudence to date, posthumous work, Bucharest, SOCEC & Co. Graphic Workshops, Societate Anonimă, 1926, *passim*. file:///C:/Users/User/Downloads/BCUCLUJ_FG_214239_1926_001.pdf, accessed: 14.09.2020.

¹⁰ Published in "Official Gazette", Part I no. 24 of January 13, 2015.

In accordance with Art. 65 para. (4) of the National Education Law no. 1/2011, with subsequent amendments and completions, based on Government Decision no. 185/2013 on the organization and functioning of the Ministry of National Education, with subsequent amendments and completions.

and 4th grades of primary education, with a time budget of 1 hour / week, during a school year.

In this regard, we iterate the application of a new competency-based curriculum design model, which replaces the goal-based design model. Competence-centered curriculum design responds to research in cognitive psychology, according to which competence is used to transfer and mobilize knowledge and skills in new situations.

Moreover, the civic education approaches proposed by the current program are consistent with the spirit and recommendations contained in:

1. The Recommendation of the European Parliament and of the Council of the European Union on key competences from the perspective of lifelong learning (2006/962 / EC);

2. The report to UNESCO of the International Commission on Education in the 21st Century;¹¹

3. UN Convention on the Rights of the Child, 1989.

A very important fact should not be ignored, namely that the school curriculum of the Civic Education discipline aims at integrating students in the community, achieved by moral and civic literacy of children, developing positive attitudes towards oneself and towards others.

A first remark following the observation of (I) the presentation note of the program of the discipline Civic Education, related to (II) the general competences, (III) the specific competences and examples of learning activities that refer to (1) the application of some norms of conduct in daily life, (2) the manifestation of habits of moral-civic behavior in living contexts in the known environment, (3) cooperation with others to solve simple work tasks through the manifestation of availability, is that

¹¹ The Recommendation of the European Parliament and of the Council of the European Union on key competences from a lifelong learning perspective (2006/962 / EC) outlines, for graduates of compulsory education, a "European training profile" structured on eight key competence areas:

1. Communication in the mother tongue,
2. Communication in foreign languages,
3. Mathematical and basic skills in science and technology,
4. Digital competence,
5. Learning to learn,
6. Social and civic competences,
7. Entrepreneurship and entrepreneurship,
8. Cultural awareness and expression.

Competences are defined as sets of knowledge, skills and attitudes to be formed by the end of compulsory schooling and which every young person needs for personal fulfillment and development, for active citizenship, for social inclusion and for employment in the labor market. The structuring of these key competencies is done at the intersection of several educational paradigms and targets both some "academic" fields, as well as inter- and transdisciplinary, metacognitive aspects, achievable through the combined effort of several curricular areas.

according to which the discipline of civic education does not refer to *sui-generis* legal education, but mainly to the formation of competencies, skills related to norms of conduct, respectively the generation of a moral-civic behavior in a democratic society.

Following the chronological thread, for the gymnasium level, the Ministry of Education, Research and Innovation issued Order no. 5097/2009 on the approval of school curriculum for the subjects of study in lower secondary pre-university education, the gymnasium cycle, approving the curriculum for the subjects of study in the curricular area "Man and society", grades V - VIII, respectively Order no. 5098/2009 on the approval of school programs for study subjects in pre-university education approving the school programs for optional subjects in the curricular area "Man and society", *id est*:

Civic culture - curriculum at the decision of the school for the 5th grade,

Civic culture - curriculum at the decision of the school for the sixth grade,

Intercultural education - curriculum at the decision of the school for secondary education,

Economic education - curriculum at the decision of the school for secondary education.¹²

Through the discipline Civic Culture, in the gymnasium the civic education of the students is continued and deepened, initiated in the primary education, regarding the practice of a civic behavior in a democratic society, defined by democratic values and principles, by democratic practices and by active citizenship.

Thus, we note with interest the fact that, during the gymnasium, the contents of the discipline curriculum mainly predominate legal notions and legal items, *exempli gratia*¹³ citizenship, citizens' rights and duties, integration and globalization processes, human rights, the Romanian Constitution, the legislative authority, civil disobedience (deliberate and non-violent non-compliance with the law).

However, students do not study in the discipline of Civic Education basic notions of law, and do not learn about corruption, injustice, violation of rights and legitimate interests, or crime.

Students should also be familiar with the principles of law, which is the hierarchy of legal norms in the state, the fact that compliance with the law is mandatory, the proper distinction between child, adolescent and young person, children's rights and

¹² Published in "Official Gazette", Part I no. 761 of November 9, 2009.

In accordance with the provisions of the Education Law no. 84/1995, republished, with subsequent amendments and completions, based on Government Decision no. 51/2009 on the organization and functioning of the Ministry of Education, Research and Innovation.

See also "Official Gazette", Part I, no. 760 bis of November 9, 2009.

¹³http://programe.ise.ro/Portals/1/Curriculum/progr_gim/OS/Cultura%20civica_clasele%20a%20VII-a%20-%20a%20VIII-a.pdf, accessed: 14.09.2020.

human rights, items about the child's identity, notions about relationships family, degrees of kinship, the child's right to be raised and cared for by parents, the right of visit of the non-resident parent in case of divorce, domestic violence, consumer protection, but also issues related to alcohol, tobacco, life, culminating in the relationship child with school, school violence, bullying, non-discrimination.

In other words, students should study relevant details of the Highway Code, the difference between misdemeanor and crime, important details about the acts and property of the minor, the young person's ability to work, the means of communication used by child, participation in decision-making, but also information about the juridical system.

These notions are taught in an optional subject, namely legal education, or in legal education clubs¹⁴.

For example, the VeDem Just Association launched in 2019 the first Legal Education Laboratory in Romania, together with the Marin Preda High School in Bucharest, an initiative that is part of the national project EDUIURIS and consisted of arranging a classroom and equipping it with a library where students can discover the main specialized works and different normative acts, as well as legal education guides¹⁵.

In the current context, students should understand what it means to restrict rights and freedoms during the COVID-19 pandemic, the possibility for public authorities to impose the wearing of a mask during classes in an attempt to minimize the spread of the SARS-CoV-2 virus¹⁶.

¹⁴ <https://ziare.com/stiri/justitie/educatia-juridica-ar-putea-fi-introdusa-in-scoli-acum-e-momentul-cum-sa-respecti-reguli-despre-care-nu-stii-ca-exista-1600610>, accessed: 14.09.2020.

<https://ziare.com/scoala/elevi/premiera-in-scoli-vedem-just-a-lansat-primul-laborator-de-educatie-juridica-video-1586623>, accessed: 14.09.2020.

¹⁵ https://educatiejuridica.ro/wp-content/uploads/2019/11/Ghid-Elevul-si-Legea_web-1.pdf, accessed: 14.09.2020.

¹⁶ Coronaviruses are a large family of viruses that can cause disease in both animals and humans. In humans, it causes respiratory infections, from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). The latest coronavirus discovered causes COVID-19 coronavirus disease, an infectious disease. <https://www.cdt-babes.ro/articole/coronavirus-infectia-COVID-19.php>, accessed: 14.09.2020.

In such a situation, the Romanian Government erroneously stipulates on its official Facebook page when it exposes "mandatory protection measures against the new coronavirus (COVID-19)" as COVID-19 is an infectious disease caused by the new coronavirus, which is scientifically known as SARS. -CoV-2. Thus, severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is the strain of virus that causes coronavirus disease 2019 (COVID-19), the virus being initially known as the novel coronavirus 2019.

The same association recently proposed amending the legislation so that all minors requesting the issuance of an identity card at the age of 14 must be compulsorily¹⁷.

By the other way, in **Italy**, aspects of legality are taught in the discipline of Civic Education, but there are proposals to change the subject, as well as to introduce qualified teachers in legal sciences to raise this subject to the rank of legal science, in order to achieve a high quality standard. educational act¹⁸.

Another reason would be that future citizens should be aware of their rights, their role in the state and society, and in the world. Moreover, reading only social networks determines a legal illiteracy, the new generations not being able to make a consistent legal assessment of the events and facts in which they take part.

Specifically, according to Law no. 92/20 August 2019 on the introduction of school education in the civic field certifies that Civic Education develops in educational institutions knowledge of the Italian Constitution and the institutions of the European Union to justify, in particular, the sharing and promotion of the principles of legality, active and digital citizenship, environmental sustainability and the right to health and well-being of the person. Moreover, in this sense, starting with September 1 of the first school year since the entry into force of this law, in the first and second cycle of education, the transversal teaching of civic education is established, which develops knowledge and understanding of structures and social, economic, legal, civic and environmental profiles of society, the initiatives of responsible awareness of citizenship being initiated since kindergarten.

With regard to the development of skills and learning objectives, the specific objectives for the development of specific skills and learning objectives are set out in accordance with the National Guidelines for the Kindergarten Curriculum and the First Cycle of Education, as well as the National Indications and New Scenarios document and with the National Guidelines for High Schools and the Guidelines for Existing Technical and Vocational Institutes, taking into account the following aspects:

- a) The Constitution, the institutions of the Italian state, the European Union and international bodies; the history of the national flag and anthem;
- (b) The 2030 Agenda for Sustainable Development, adopted by the UN General Assembly on 25 September 2015;
- (c) education in the field of digital citizenship;

¹⁷<https://ziare.com/stiri/politie/vedemjust-vrea-ca-minorii-de-14-ani-sa-fie-instruiti-si-sa-obtina-mai-intai-un-certificat-de-cetatean-responsabil-si-abia-apoi-buletinul-1589118>, accessed: 14.09.2020.

¹⁸<https://www.orizzontescuola.it/educazione-civica-venga-affidata-in-via-esclusiva-agli-abilitati-in-discipline-giuridiche-ed-ecnomiche-cosi-si-eviterebbe-lesubero/>, accessed: 14.09.2020. file:///C:/Users/Asus%20VivoBook/Downloads/MINGARDO.pdf, accessed: 14.09.2020.

- (d) fundamental elements of law, in particular as regards labor law;
- (e) environmental education, eco-sustainable development and the protection of the environmental heritage, identities, productions and territorial and agri-food excellence;
- (f) education in the legality and contrast of mafias;
- (g) education on respect for and consolidation of cultural heritage and common public goods;
- (h) basic training in civil protection.

The phenomenon under analysis denotes an aspect of overwhelming importance, namely the fact that in Italy, in accordance with school autonomy, emphasis is also placed on essential digital skills and knowledge, which are to be developed gradually, taking into account the age of students and pupils¹⁹.

3. The importance of the existence of a legal education

¹⁹ <https://www.miolegale.it/norme/legge-92-2019-insegnamento-educazione-civica/>, accessed: 14.09.2020.

The following essential digital skills and knowledge are:

- (a) analyze, compare and critically evaluate the credibility and reliability of digital data sources, information and content;
- (b) interaction through various digital technologies and identification of appropriate digital means and forms of communication for a given context;
- (c) engage in and participate in the public debate through the use of public and private digital services; seeking opportunities for personal growth and participatory citizenship through appropriate digital technologies;
- (d) to understand the behavioral norms that must be observed in the context of the use of digital technologies and interaction in digital environments, to adapt communication strategies to certain segments of the public and to be aware of cultural diversity and generations in digital media;
- (e) create and manage digital identity, be able to protect your reputation, manage and protect data produced through various digital tools, environments and services, respect the data and identities of others; use and share identifiable personal information while protecting yourself and others;
- (f) be aware of the privacy policies applied by digital services with regard to the use of personal data;
- (g) be able to avoid, using digital technologies, health risks and threats to physical and psychological well-being; be able to protect yourself and others from possible dangers in digital environments; Be aware of how digital technologies can affect psychophysical well-being and social inclusion, with a focus on bullying and cyberbullying behavior.

In a society based on *the rule of law* and not *the rule of men*, raising and educating children in the spirit of truth and justice is essential for them to step on the path of IUS EX AEQUO ET BONO²⁰.

Legal education aims to contribute to social progress and individual development by promoting the culture of liberal democracy, to unite people on rights and duties, to strengthen the promotion of freedom, democracy, the rule of law, good governance, rights and fundamental human freedoms, without distinction as to race, color, sex, language, religion, political or other opinion, nationality and social origin, property status, status at birth or other status.

All children should know that they have the right to the protection and care necessary to ensure their well-being, that they can freely express their opinion, which is taken into account according to their age and degree of maturity. In all actions concerning children, whether carried out by public authorities or private institutions, the best interests of the child must be a primary consideration and children must be aware of this.

In the corollary, a child who knows his rights can see if his family and friends respect these rights and will be able to respect the rights of others. By understanding children's rights we can contribute to a better world.

²⁰http://revista.universuljuridic.ro/wp-content/uploads/2016/07/04_Revista_Universul_Juridic_nr_02-2016_PAGINAT_BT_I_Chelaru.pdf, accessed: 14.09.2020.