sciendo International Conference KNOWLEDGE-BASED ORGANIZATION
Vol. XXVIII No 2 2022

THE HIGHER EDUCATION INSTITUTION BETWEEN LEGAL NORMS AND ETHICAL RULES

Teodora DRĂGHICI, Oana-Antonia ILIE

"Nicolae Bălcescu" Land Forces Academy, Sibiu, Romania
teodora24a@yahoo.com, antonia_ilie@yahoo.com

***Abstract*:** *The activity within the higher education institutions has been and is the object of study and research for the specialists in the field of Academic Ethics. The key issues, which are being pursued, concern various aspects of the university environment. In this paper, we want to detail some aspects of the connection between the legal norms, which govern the field of university education, and those of an ethical nature, considering that there is an intrinsic link between the two categories of norms. Academic citizenship is defined as the service that academics provide for the benefit of the higher education institution they represent, including the moral obligation they have as a part of the academic system. The moral authority of the teacher is an authority based on fundamental principles or truths that exist independently of written laws, manifested with the purpose of modeling the moral behavior of the students, teaching them to abide by legal norms as well as other ethical norms. Furthermore, in this paper, the notions and principles regarding the ethical culture of the members of the academic community will be considered.*

Keywords: university, higher education, academic citizenship, moral authority, legal norms; ethical rules

1. General considerations

Education is, without doubt, one of the most important aspects of human existence. Whether we are referring to education in schools, at home, or provided by the community, education is the first major factor in assuring the progress of the society.

The legal consecration of the right to education is found in the *Romanian Constitution*, article 32, and as a supplement to the guarantee of this constitutional provision, art.2 paragraph (7) of Law no.1 / 2011, which provides that "*in Romania, education is a national priority*", thus the Romanian state assuming the responsibility to establish education as a priority for our country.

In order to highlight the specific features of the activity in higher education institutions and to detail the most important elements and principles of this activity, we will make a brief reference to the legal framework in the field of higher education [1], as well as to the rights and duties that the members of the academic community [2] have in the framework discussed above.

Considering that the most important aspects related to the field of higher education, but especially the fact that ensuring the legal framework for exercising the fundamental right to lifelong learning under the authority of the Romanian state, are regulated by the *National Education Law no. 1* of January 5, 2011, published in the Official Gazette no. 18 of January 10, 2011, with subsequent amendments and completions, we have

DOI: 10.2478/kbo-2022-0064
© 2015. This work is licensed under the Creative Commons Attribution-Non Commercial-No Derivatives 3.0 License.

chosen to also mention this normative act. In this law, title III, are found the legal norms regarding the structure, the functions in the didactic field, the organization and the functioning of the higher education in Romania.

2. Correlation of legal norms with ethical rules

The legal norms are in full accordance with the theory of duties and the structure of morality, as well as with the relation between morality and the value of duty. The interpersonal relationships, which are established by higher education institutions, appear inextricably linked to the moral norms, without which they cannot be possible. At the same time, the legal norms that regulate the activity in higher education cannot be conceived apart from the great diversity of moral norms. The set of norms that regulate this activity, is made up of several subsystems, of which, those that interest the present study are the legal norms and the ethical rules. Although there are some essential differences between the two categories, they do have many common features. Law and morality are two important parts of higher education. The interest of our study, in terms of analyzing the links between law and morality, is determined by the fact that legal norms, which regulate the activity of higher education, can be known not only by emphasizing their positive dimensions, but also by substantiating their moral status. If morality has as object of study the internal acts and intentions of the members of the academic community, the law has as object the external, material facts of the university community, in the light of the inner intentions. When the rule of ethics commands or recommends members of the academic community to be correct, it commands or recommends a soulful attitude, an honest intention. As soon as this intention manifests itself on the outside, through a behavioral act, the legal phenomenon appears as a consequence. The fundamental characteristic of the legal and ethical norms, in the sphere of the university activity, is their universality. The whole activity that the members of the academic community carry out, must synchronize the legal norms with the moral conceptions. Moreover, many ethical rules have found legal resonance, and most of the prescriptions of the legal norms are included in the rules of ethics.

3. Separation of legal norms from the rules of ethics

The moral foundation of legal regulations and their moral legitimacy are expanding as a result of the efforts to establish social relations as thoroughly as possible on the basis of the principles of ethics and fairness. We note a few key issues, which we consider conclusive, in an attempt to separate the two categories of rules – the legal rules and the rules of ethics:

- the legal norm is the expression of the will of the legislator to regulate the activity carried out by the members of the academic communities;
- the analysis of the structure of the legal norms is important in order to establish the place of these norms in relation to the moral norms;
- differences between legal norms and rules of ethics can be established in relation to the way in which they apply, so that, unlike the rules of ethics, the appliance of the legal norms is linked to a certain procedure.

Unlike the rules of ethics, which in all cases remain outside the written legal norms (with which the law establishes certain links, but without them entering the sphere of formal rules of law [3]), the legal norms develop in a symbiosis with the moral norms.

Another difference between ethical rules and legal norms is that coercive force cannot be used to make comply with the rules of morality, while the coercive force of the state can be exercised in order to make comply with the rules of law.

If members of the academic community abided by the ethical rules, and did not violate them because they were compelled to do so, then such conduct would have no moral value, because the members of the academic / university community would not have done the determined good by their own will.

However, if members of the academic community comply with and do not violate the legal norms and are not bound by them, then such conduct would not lose any of its value, as the members of the university community have complied with those rules.

Therefore, the behavior of the members of the academic community may be in accordance with the legal norms, but may not be in accordance with the ethical rules. It is also said that not everything that is allowed is honest, according to the Latin adage, which specifies that *non omne quod licet honestum est*!

In the context of the above, we must remember that not only the legal norms must guide the members of the academic communities in the activity they carry out, but also the other rules, the ethical rules. In other words, the two categories of norms differ in that the ethical rules do not have at hand such strong means of coercion from the state, but some much weaker ones. Although the rules of law differ from the rules of ethics, the relationship between them is one of interdependence and not one of opposition. If, however, such a report were of opposition, that which is contrary to the legal rules would be allowed by ethical rules, and conversely, what is contrary to ethical rules could be allowed by the legal rules. But because, as stated before, that report is one of interdependence, then what is contrary to legal norms cannot be permitted by moral rules. As is often the case, the deeds of the members of the academic community that harm piety, integrity, modesty, are generally contrary to good morals and they should not be permitted. The principle comes from the Roman law and was introduced by the great jurisconsult Papinian *",quae facta laedunt pietatem, existimationem verecudiam nostram et ut generaliter dixerim, contra bonom mores fiunt, nec facere nos posse credentum est"* ?

The boundaries between ethical rules and legal norms are always fluid, which means that they can change. Therefore, it may happen that what was an ethical rule is in the end legally regulated and, consequently, becomes a rule of law, and vice versa, what is a rule of law becomes a moral norm. It is observed that the morality norms differ substantially from the legal norms. But since law is a part of the whole moral order of social life, what is not moral should never be the content of a legal norm. The connection between ethics and law is so close and necessary, that both categories have the same degree of truth or the same value. Both morality and law must be attributed the same character of absolutism or relativity, of naturalness or arbitrariness.

We appreciate that a contradiction or mismatch in this respect is not possible, because in both situations it is a matter of rules of action, which are assumed and complement each other and, consequently, have a unique basis.

4. Academic citizenship and moral authority

Academic citizenship is a concept that is increasingly mentioned in connection with academic ethics, with reference to both the services and the moral responsibilities that the university environment imposes on teachers and students. Academic citizenship is the legal service that academics provide for the benefit of the higher education institution they represent and the moral obligation they have as an active part of the academic system, the scientific community and society in general.

Academic citizenship implies respect for the teaching profession, for the members of the Academy, for the fellow teachers, the students, the public, and, in general, for all the properties, policies, rules and

regulations of the institution. It also implies acting accordingly, taking responsibility for one's own choices and actions, as well as for the consequences of inappropriate choices and actions, and communicating in a professional and polite manner, whether verbal, nonverbal or written, at any time and in any circumstance. In terms of moral obligations, moral citizenship includes the obeisance to the academic legal norms, public service, discipline, as well as directing learning towards the formation of the civic consciousness and of the moral profile of the students, in accordance to the requirements and ethical values of the society.

The members of the academic community are obliged, by a written and also an unwritten, moral contract to offer their services and to come to the aid of the students, colleagues, the institution, the profession and the general public, according to the pyramid of services [4].

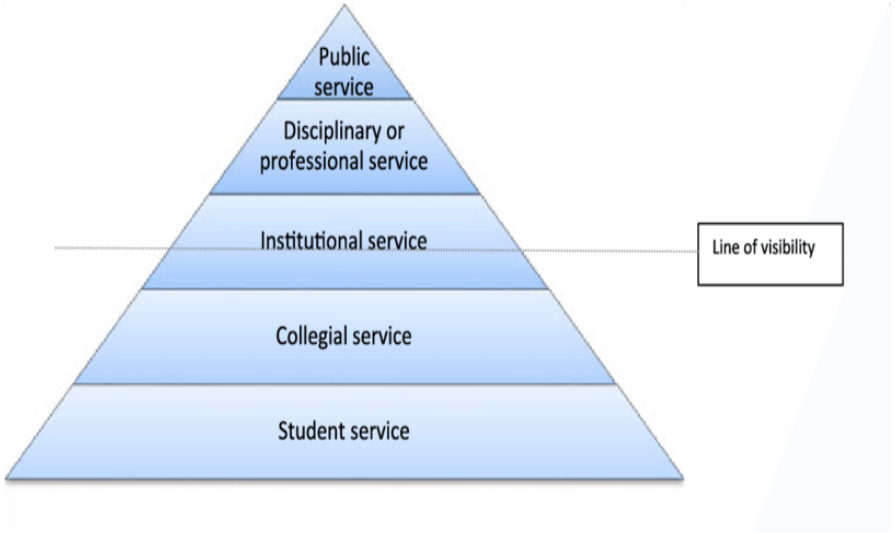


Figure 1: The Pyramid of Services

It is considered that the fundamental purpose of the didactic activity is the formation and development of the character, respectively the moral profile of the students' personality. We can say, therefore, that the fundamental purpose of the moral education is to train the individual to become a moral subject and a citizen with moral conduct. In order to fulfill his mission as a moral trainer, the teacher must assume the role of a leader with moral authority: just as a good leader leads by example, a teacher leads the moral development and character formation of students through his high moral standing.

The moral authority of the teacher is an authority based on fundamental ethical standards, principles or truths that exist independently of written laws, and can only be acquired by manifesting faultless moral conduct and by providing a model for character formation.

Moral authority will transform every learning context into a moral context, every lesson into a moral discourse. This discourse must be centered on values such as humanity, the betterment of society, character development, integrity, responsibility, moral behavior. The teacher on whom the formation of the student's moral profile depends must be a spokesperson and representative of humanistic values, he must sign a contract with humanity, an objective that involves more than reaching the set learning targets in the curriculum but also assuming dimensions such as resolving conflicts and moral dilemmas, providing formative

feedback, counseling, mentorship, career guidance, etc.

According to V. Slastenin, the modern teacher must possess:

- organizational and educational work skills;
- high culture;
- good knowledge of a foreign language;
- the ability to obtain information independently;
- high moral qualities [5].

By high moral qualities we refer here to moral qualities such as patriotism and civic conscience, intelligence and tact, adherence to moral principles, honesty, justice, simplicity and modesty, a benevolent attitude towards people. Thus, the moral authority of the teacher will result in the development of such high moral principles in the student also.

Teachers will appreciate and encourage students' knowledge and erudition, ability to communicate (sociability, openness, tact), empathy and moral purity (honesty, justice, humanity, altruism). Regardless of the means used, traditional or technological, it is always essential to humanize the teaching process and the educational process in general, and to carefully involve in the individual development of students, in solving the problematic situations they may go through at some point.

Modeling a moral behavior thus means teaching a student to abide by the legal norms as well as other ethical norms, to take responsibility for his actions, to be honest, to be attentive to the needs of the others, to show empathy and concern for humanity.

5. The concept of ethical culture in the academic community

The meaning of the concept of ethical culture can be, at its best, derived from the following statement, belonging to Albert Einstein: "*without an ethical culture, humanity knows no redemption*".

The legal norms are considered to be the legal basis for the ethical rules in higher education in Romania [6], due to the fact that they regulate the activity in this field from a legal point of view. The social deeds, committed by the members of the academic communities in the exercise of their duties, are regulated by the legal provisions, adopted by the legislator.

Considering democracy as the realm in which each individual can act independently of the norms of social coexistence, adopted by the state authorities, even if the rule of law leads to the freedom to act, is wrong. This freedom must not be unlimited, but in all cases it must be subordinated to the legal conscience of members of the academic community. For this reason, it is considered that "normally, those who respect the law must be defended against those who do not respect it" [7].

This consideration makes clear the importance that should be accorded to knowing and respecting the legal norms, in the context of their juxtaposition with the ethical and moral norms. This is because the ethical culture of the academic communities implies, as we have assessed in the previous sections, a combination of impartiality, intellectual honesty and lack of conflicts of interest.

We appreciate that recognizing the responsibilities of each member of the community and considering that the role of each is to achieve the general interests of citizens, a particular importance should be accorded to the role of *The Code of Ethical Conduct and Professional Ethics* of the members of academic communities that constitutes the basis where the academic rules of ethics are fundamented.

This *Code of Professional Eth*ics, where the ethical norms are grounded, adopted at the level of each higher education institution, regulates the standards for carrying out the activity in higher education and establishes the fundamental principles that must be respected by the members of the academic communities.

The norms and rules of a civilized behavior, which should make the subject of a science of behavior, are constantly evolving, keeping pace with the progress of society. It is a very natural phenomenon, considering that the ethical and the aesthetic norms are a reflection of the social existence. It is a mistake to consider that the rules of conduct could be learned on their own, apart from external influences. But, before becoming a reflex, civilized behavior in the university environment, from this point of view, is mandatory [8].

Originating from a code of ethics of universal value, the rules of conduct do not imply the acquisition of artificial attitudes. For this reason, it is known that the civilized attitude can not involve variations justified by the current mood we are in or by the people we are dealing with. However, the sure criterion by which a member of an academic community can form his own code of conduct is the objective-dialectical conception, in the light of which each individual must crystallize his own ideal of life and his attitude towards the higher requirements and interests of society.

6. Conclusions

We are convinced that the role of a modern university is not only to train specialists and researchers, but also civilized people, cultured people, people of character, who respect their peers and institutions, as moral people.

At the same time, it should be noted that the activity carried out within the academic communities has always had one of the strongest objectives, namely to organize the exerting, and to concretely apply the law and other normative acts adopted by the legislator. It is observed, therefore, how the executive power is in a close connection of inter-institutional collaboration with the other power, the legislative one, according to the principle of separation of powers in the state [9].

It should be noted that, in all aspects of social and professional life, members of the academic community are subject to a special statute, which imposes strict rules to follow and also requires them to behave in such a way that makes them worthy representatives of the public institution in which they operate. Thus, the discipline of ethics wants to correct behaviors, to appeal to the morality of the individuals who form the academic environment and to find solutions for specific ethical problems (plagiarism, lack of fairness, inequity).

We believe that academic values such as professionalism, justice, fairness, honesty, transparency and respect, as soon as they are appropriated by as many members of the university community as possible and become a rule of daily conduct, only then can it be said that society is moving in the right direction towards the achievement of academic and scientific performance.

As a result, we consider that being moral is not only the right way, it is also the most practical way to live, form and work in the chosen field, and in society.

References List

[1] Legea educatiei nationale nr.1/2011, art. 114 alin.(2).
[2] Legea educatiei nationale nr.1/2011, art. 127 alin. (1) si alin. (2).
[3] Djuvara, M. Teoria generală a dreptului, Vol. II, Bucureşti, 1930, p. 576.
[4] Magherescu D. Deontologia funcţiei publice, Craiova, Editura Sitech, 2005, pp. 122-123.
[5] Bruce Macfarlane, Journal of Higher Education Policy and Management Vol. 29, No. 3, November 2007, pp. 261–273.
[6] Legea educatiei nationale nr.1/2011, art. 130 (1).

[7] Niţă N. Corupţia endemică - cauză principală a subminării democraţiei în România, în vol.: „Marea criminalitate în contextul globalizării”, Editura Universul Juridic, Bucureşti, 2012, pp. 222-223.
[8] Niţă N. Managementul excelenţei în instituţiile de ordine şi siguranţă publică, Editura Tehnopress, Iaşi, 2013, pp.141-144.
[9] Bogdan A., Bogdan A.M. Instituţii şi relaţii internaţionale, Editura Universitaria, Craiova, 2009.