Law Review ● vol. VII, special issue, December 2017, p. 175-184

# BRIEF CONSIDERATIONS ON "PLAGIARIZING" IN SCIENTIFIC PAPERS, THE OFFICIAL TEXTS OF A LEGISLATIVE OR JUDICIAL NATURE AND THEIR OFFICIAL TRANSLATIONS

*Silviu-Dorin ŞCHIOPU*
Assistant Lecturer, Department of Law, Transilvania University of Braşov,
e-mail: dorinxschiopu@gmail.com

**Abstract**

*According to the Romanian Law on copyright and neighbouring rights, official texts of a legislative or judicial nature and their official translations do not benefit from the legal copyright protection. On the other hand, the plagiarism is defined by the Romanian Law on good conduct in scientific research, technological development and innovation as being the exposition in a written work or in an oral communication, including in an electronic format, of some texts, expressions, ideas, demonstrations, data, hypothesis, theories, results or scientific methods extracted from written works, including in an electronic format, of other authors, without mentioning this thing and without referring to the original sources.*

*As in the doctrine there is no convergent point of view regarding the possibility of plagiarism of the official texts of a legislative or judicial nature and their official translations, in this short article we intend to examine whether the lack of reference to the original sources could constitute or not a form of plagiarism in the current Romanian legal framework. We will argue that, de lege lata,* we must distinguish between retrieving *the official texts of a legislative nature, situation in which the reference to original sources is not mandatory, and retrieving extracts from jurisprudence, case in which it is necessary to mention this thing and to make reference to the original source.*

**Keywords:** *scientific papers, plagiarism, official texts, legal texts, judiciary texts, official translations.*

The scientific legal works, by their nature, are plentiful in official texts of a legislative and judicial nature (jurisprudence), including their official translations. These texts, according to art. 9 letter b) from Law no. 8/14 March 1996 on copyright and neighbouring rights[1], do not benefit from the legal copyright protection.

In the light of this legal text, the Romanian High Court of Cassation and Justice said that, in the case of the scientific works, the *philological concordances are natural* since inserting some texts of legislative and judicial nature in the scientific papers

[1] *Law no. 8/14 March 1996* on copyright and neighbouring rights, published in The Official Journal of Romania, Part I, no. 60 from the 26th of March 1996.

can only be done by using a standard expression, outside of which that knowledge would become inaccurate. In addition, the legal language is characterized by uniformity, this could not be used differently, but requiring a retrieving by the users. Thus, in the case of the scientific papers, the Romanian High Court of Cassation and Justice stated that in this kind of papers the originality is attenuated by the way of expressing the ideas or rendering the information that contain an almost standardized specialized language[2].

Another time[3], the same court mentioned that, in the case of the legislative texts, we have a lack of protection over the name, the identification data and the title of the normative acts, as well as the *non-existence of the illicit character of the reproduction*, in the case of the retrieving of the public data referring to the normative acts. That is why, *the retrieving of the public information* referring to the name of some EU normative acts, their identification data and their title *cannot be assimilated to a reproductive activity without right,* because the sphere of protection of the copyright would unduly extend.

In line with the vision of the High Court of Cassation and Justice of Romania, in the doctrine it is considered that what art. 9 from the Law no. 8/1996 excludes from the protection through copyright, such as the official texts of a legislative or judicial nature and their official translations, cannot be the object of plagiarism[4]. Likewise, according to another author, from the perspective of the Law no. 8/1996 „plagiarism represents the infringement of a moral (and imprescriptible) right to authorship of the scientific work"[5].

If the plagiarism represents the violation of the moral right to the paternity of the scientific work, protected by art. 10 letter b) from the Law 8/1996, then it results that, in what concerns the official texts of a legislative or judicial nature and their official translations, we could not have plagiarism because in their case we cannot talk about a legal right to the paternity of the scientific work that could be infringed since these texts do not benefit from the legal protection of the copyright.

However, there is also an opinion according to which „the retrieving, by people belonging to the category of research and development staff, in their scientific work, of other elements excluded from the protection through copyright, such as «the official texts of a […] legislative […] or judicial nature and their official translations» [art. 9 letter b) from the Law no. 8/1996], without mentioning that a

---

[2] High Court of Cassation and Justice of Romania, civil and intellectual property section, *decision no. 8 from 11 January 2011.* Accessed August 4, 2017. http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D .Key=id&customQuery%5B0%5D.Value=61726

[3] High Court of Cassation and Justice of Romania, civil and intellectual property section, *decision no. 1978 from 25 March 2011.* Accessed August 4, 2017. http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0% 5D.Key=id&customQuery%5B0%5D.Value=86771

[4] A. Livădariu, *Plagiarism - brief legal considerations*, in „Romanian Journal of Intellectual Property Law" no. 1/2015, p. 34.

[5] A. Speriusi-Vlad, *About plagiarism, copyright and the protection of ideas or a coherent theory of plagiarism*, in „Romanian Journal of Intellectual Property Law" no. 4/2016, p. 88.

retrieving was made and without mentioning the source of the retrieval […] it can be qualified as an act of plagiarism, because, in the absence of any correct quotation of the legal text or of a fragment from a court order, they are falsely presented as being one's own the results of someone else's intellectual work and thinking"[6].

Thus, on the one hand, it is considered that the official texts of a legislative or judicial nature and their official translations can not be the object of plagiarism, and, on the other hand, it is appreciated that the retrieving of these texts, without mentioning the source, can be qualified as a plagiarism act. While the first opinion is based on the provisions of the Law on copyright and neighbouring rights and the attempt to correlate it with the Law on good conduct in scientific research, technological development and innovation[7], the second conception is exclusively based on the latter normative act. Practically, in this case, we find ourselves in the presence of a lack of harmonization of the rules regarding the ethics of the scientific research with the ones regarding copyright.

Law no. 206/27 Mai 2004 on good conduct in scientific research, technological development and innovation introduced the legal definition of plagiarism which in its initial form, according to art. 4 letter d), was defined as „the appropriation of the ideas, the methods, the procedures, the technologies, the results or the texts of one person, regardless of the way they were obtained, presenting them as a personal creation".

Afterwards, wanting a clarification of the text of the law regarding the categories of deviations from good conduct in the activity of scientific research, technological development and innovation[8], the plagiarism received a new definition, in the modified form this representing „the exposition in a written work or in an oral communication, including in the electronic format, of some texts, expressions, ideas, demonstrations, data, hypotheses, theories, results or scientific methods extracted from written works, including in the electronic format, of some authors, without mentioning this thing and without making reference to the original sources"[9]. This is the definition on which it is based the opinion according to which the retrieving of the official texts of a legislative or judicial nature and

[6] S. Florea, *Plagiarism and copyright infringement*, in „Romanian Review of Private Law" no. 1/2017. Accessed July 25, 2017. https://sintact.ro.

[7] *Law no. 206/27 Mai 2004* on good conduct in scientific research, technological development and innovation, published in The Official Journal of Romania, Part I, no. 505 from the 4th of June 2004.

[8] Romanian Government, *Note of substantiation to Government Ordinance no. 28/31 August 2011* on the modification and completion of the Law no. 206/2004 on good conduct in scientific research, technological development and innovation. Accessed August 5, 2017. http://arhiva.gov.ro/upload/articles/114468/nf-og-28-2011.pdf.

[9] *Government Ordinance no. 28/31 August 2011* on the modification and completion of the Law no. 206/2004 on good conduct in scientific research, technological development and innovation, published in The Official Journal of Romania, Part I, no. 628 from the 2nd of September 2011.

their official translations, without mentioning the source, may be qualified as an act of plagiarism.

Having a legal definition of the plagiarism in a normative act which is meant to regulate the good conduct in scientific research, technological development and innovation we might think that this definition is really used in practice for the detection of plagiarism in the case of the scientific works. To exemplify the plagiarism analysis in the case of a scientific work, especially in what concerns the retrieving of the official texts of a legislative or judicial nature and their official translations, we have chosen to present some elements of a report[10] issued by a working committee charged to analyze the veracity of a complaint of plagiarism in the case of a PhD thesis.

First of all, we must specify that, although the working committee knew the definition of plagiarism provided by Law no. 206/27 Mai 2004 on good conduct in scientific research, technological development and innovation, two of the authors of the survey, in order „to perform a reliable and worthy analysis, taking into consideration the different situations which deserve a different appreciation", retained the following definition: „the plagiarism is a deviation from the scientific honesty, which consists of appropriating with no right the work of a third party, which can be done in different manners that must be differentiated"[11].

Condensing the legal definition of plagiarism, we could say that this represents, in the case of a PhD thesis, the exposition of some *excerpts* from some written works of other authors, without mentioning this thing and without making a reference to the original sources. As the text of the law only mentions „the excerpt", concept though which we understand „the passage taken from a writing" (DEX 1998), it could be considered that by plagiarism we should only understand the identical retrieving of the form without using quotation marks and without accurately indicating the quoted source.

That is why, related to the way of drafting the legal definition, within the report, the two authors distinguish, on the one hand, between *plagiarism-falsification,* meaning the identical retrieving of the exact wording from the original third party author, without using the quotation marks, or accurately indicating the quoted source (situation considered to be targeted by the Law on good conduct in scientific research, technological development and innovation), and the *plagiarism-parasitism,* on the other hand, an attenuated form of plagiarism which consists of retrieving the ideas of an author, expressing them differently through reformulation and without accurately mentioning the source of the retrieving.

---

[10] C. Ghica-Lemarchand, V. Constantinescu, R. Chiriță, *Joint Report on Ph.D. Thesis "Fighting Organized Crime by Criminal Law Provisions" sustained in 2011 by Ms. Laura Codruța Kovesi*. Accessed July 25, 2017. http://www.cnatdcu.ro/wp-content/uploads/2016/04/Raport-comun-nesemnat - LCK.pdf

[11] *Idem*, p. 3.

Likewise, an aspect which is of particular interest to us, the two authors state that „quoting the legislative or regulatory texts in a law PhD thesis cannot be considered a form of plagiarism, there is no form of unauthorized «loan», and no acquiring of the thinking of a third person through falsification or parasitism, this happening even if another author also quoted the same legal source"[12].

The third member of the working committee appreciated that, to the legal definition, it is difficult to qualify a scientific work as plagiarism for the following reasons: the lack of a *quantitative criterion* (the problem of qualifying a PhD thesis as plagiarism in its entirety when it contains only one sentence taken from another author without quoting the other author – the application of the adage *fraus omnia corrumpit*: *fraud corrupts everything*), the lack of a *qualitative criterion* (we cannot have an equivalence between copying a general introduction and copying an absolute original idea), as well as the fact that „the legal text does not regulate the retrieving of those expressions that entered in the *somehow common language of a scientific field*, even if initially they belonged to a determined author"[13].

That is why, according to this member of the working committee „a paper can be qualified as being plagiarized, to the extent that either in term of quantity or in term of quality, its author took the expressions or the ideas of another person without quoting, to a level at which, in the absence of this retrieving, the substance of the paper would be affected, but excluding from this analysis the statements that entered the common language of a field of study, which can be found in the majority of the papers in the field, the original source being lost or notorious"[14].

We specify that the analysis of the PhD thesis is carried out in a first step with the help of some computer programmes. The Ministry of Education, by Order no. 5964 from December 11, 2015 (unpublished in the Official Journal of Romania), established a work group having the mission to recredit the functioning of the higher education system from Romania through the development of administrative solutions in order to implement the best ethical principles in scientific research. The report of the working group predicted, in what concerned the quality control of the PhD thesis, that the universities would carry out an *analysis of similarities* using a programme recognised by the Ministry of Education[15], condition that was then introduced in the Code of Doctoral Studies[16], also being subsequently published the list of software tools recognized by the National Council for Attestation of University Titles, Diplomas and Certificates,

[12] *Idem*, p. 4.

[13] *Idem*, p. 15.

[14] *Ibidem*.

[15] *Report of the Working Group on Clarification of the Institutional and Normative Framework on Quality Control of Doctoral Theses and the Ethical Issues of Scientific Research*, p. 3. Accessed July 25, 2017. http://oldsite.edu.ro/index.php?module=uploads&func=download&fileId= 21897.

[16] *Government Decision no. 134/2 March 2016* on the modification and completion of the Code of doctoral studies approved by the Government Decision no. 681/29 June 2011, published in The Official Journal of Romania, Part I, no. 182 from the 10th of March 2011.

and used by higher education institutions organizing doctoral studies and the Romanian Academy in order to establish the degree of similarity for scientific papers[17].

In principle, the report (analysis) of similarities provides one or more similarity coefficients which, generally, have the following specifications: *the first similarity coefficient* indicates the percentage of text with all the similar sentences discovered by the system in other documents, and *the second similarity coefficient* indicates the percentage of text with all the similar fragments which exceed a certain number of words[18]. The report of similarities also contains a list of documents identified as possible sources for some fragments from the PhD thesis.

In the case of the analysis of a scientific paper such as a PhD, each similarity identified by the programme must be analysed in order to decide if that particular similarity represents a plagiarism or not. Such an analysis was carried out by the working committee charged to examine the veracity of the referral of plagiarism.

In what concerns the *retrieving of some legislative texts identified by the software to be an unauthorised quotation,* the first two authors of the analysis *did not retain the plagiarism* in the following situations: *a)* the rows that only describe the procedure and the rules imposed by a normative act (the order of the arguments and their formal presentation being identical) *does not constitute a real idea supported by the author of the unquoted source, but an exposition of legal provisions with terms taken from the law; b)* the identical passages detected by the computer programme correspond to some articles from the law, the quoted articles; *c)* the full and identical iteration of the measures which are described in a national strategy, which is designated as the source in the text before retrieving and developing various provisions, even if it is not quoted in the note, it is equivalent to a reference to a normative act, *official provision, not formally assigned to an author; d)* the text retrieves the terms of the foreign law, so there is no plagiarism; *e)* the text iterates legal terms from foreign legislations, thus existing a reference to the foreign legal source; *f)* the text exposes the legal dispositions, without a personal demonstration, an exposition and the use of the established legal terms.

We have mentioned only a few of the situations in which the computer programme identified a retrieval which following the analysis carried out by the working committee was not been retained as plagiarism. However, for example, the retrieving of the terms imposed by the European and internal legislation for the

---

[17] *Order no. 3485/24 March 2016* of the Ministry of Education and Scientific Research regarding the list of software tools recognized by the National Council for Attestation of University Titles, Diplomas and Certificates, and used by higher education institutions organizing doctoral studies and the Romanian Academy in order to establish the degree of similarity for scientific papers, published in The Official Journal of Romania, Part I, no. 248 from the 4th of April 2016.

[18] See, for example, Babeş-Bolyai University, *Decision no. 12.372/29 June 2016 of the Council for Doctoral Studies regarding the approval of the Procedure for Generating and Analyzing the Similarity Report*. Accessed July 25, 2017. http://doctorat.ubbcluj.ro/documente/reglementari_ubb/HotarareCSUD 12327-29iun.2016_ GenerareAnalizaRaportSimilitudine.pdf

description of an offense, as it was noted *„the same presentation structure"* in the PhD thesis as in the source document, it was retained as *plagiarism-parasitism.* Likewise, in the case of presenting a legal definition, when, although it was appreciated that a big originality cannot be required, it was noted „ a similarity of presentation of the arguments from the point of view of *the formal presentation and of the structure of the demonstration"* [19].

The third member of the working committee, in what concerns the retrieving of some legislative texts identified to be an unauthorised quotation, appreciated that, in the case of the description of some legal provisions, the plagiarism is excluded in the conditions in which „it is normal that anyone who describes these provisions should use the same notions"[20].

While the doctrine, due to the lack of harmonization of the rules regarding the ethics of the scientific research with the ones regarding the copyright, does not present to us a unitary position on plagiarism in the case of the official texts of a legislative or judicial nature and their official translations, on the one hand, being considered unable to be the object of a plagiarism, but, on the other hand, being appreciated that the retrieval of these texts, without referring to the source of the retrieval, can be qualified as an act of plagiarism, this report of analysis of a scientific paper offers us at least some guidelines.

As far as we are concerned, we consider that, in relation to other scientific papers, the extract *ad litteram* from the legislation cannot be considered plagiarism, aspect highlighted in the above-mentioned report[21]. Also, neither to the obligation of the author of the scientific paper to delineate his contribution – his personal creation – from the rest of the scientific paper, the lack of quotation marks cannot be considered plagiarism, because due to the legal irrebuttable presumption *„nemo censetur ignorare legem"* (*no one is thought to ignore the law)*, the citizens are presumed to know the law and could implicitly distinguish between the official text of a legislative nature and the personal contribution of the author.

However, taking into consideration the way in which the analysis of the scientific papers is carried out with the help of some computer programmes, it is inevitable to reveal the similarity with the official texts of a legislative nature. That is why, so that the suspicion of plagiarism in relation to the document indicated as a possible source in the report of similarity (e.g. the scientific paper of another author who retrieved extracts from the same legislative act) could be removed *ab initio*, it is preferable to indicate the original source (the normative act) at least in the text, although the source is not quoted in a footnote, the mention thus made being equivalent to a reference to the normative act.

---

[19] C. Ghica-Lemarchand, V. Constantinescu, R. Chiriță, *Joint Report on Ph.D. Thesis "Fighting Organized Crime by Criminal Law Provisions" sustained in 2011 by Ms. Laura Codruța Kovesi*, p. 10.

[20] *Idem*, p. 16.

[21] *Idem*, p. 12.

The official texts of a judicial nature, the case law, represent another category of texts which according to art. 9. letter b) from Law no. 8/14 March 1996 on copyright and neighbouring rights, do not benefit from the legal copyright protection. Jurisprudence, as opposed to the legislative texts, involves the personal operation of interpretation made by the judge whose result is the court order, the latter being the result of the judge's intellectual work and thought.

Since the jurisprudence is the product of another's intellect, although the law does not recognize a moral author's right to the judge, such as the right to claim acknowledgement of the authorship over his rulings, to the obligation of the author to delineate the personal intellectual contribution from the rest of the content of the scientific paper, we can only conclude that the lack of mentioning the retrieval and the lack of reference to the original source (court order) would represent a plagiarism. Therefore, *de lege lata*, we must make a distinction between the retrieval of the official texts of a legislative nature, situation in which the reference to the original sources is not required, and the retrieval of some extracts from jurisprudence (official texts of a judicial nature), case in which it is necessary to mention this thing and to make reference to the original source.

As one of the authors of the previously mentioned report noted, the legal definition of plagiarism does not contain any quantitative criterion[22]. If we were to make full application of the principle *fraus omnia corrumpit* (fraud corrupts all), it would come to the situation in which the exposition in a written work of some texts, expressions, ideas, demonstrations, data, hypotheses, theories, results or scientific methods extracted from written papers, of other authors, no matter how small the retrieval would be and with no reference to the original sources, would attract the stigma of plagiarism on the entire scientific paper.

Since such a situation would be unnatural, taking into consideration that plagiarism represents a *serious offense* to good conduct in the scientific research and in the university activity[23], in the end we conclude that a redefinition of the plagiarism regulated by the Law on good conduct in scientific research, technological development and innovation is required especially in order to clarify the correlation between the Law on copyright and neighbouring rights and the Law on good conduct in scientific research, technological development and innovation.

---

[22] C. Ghica-Lemarchand, V. Constantinescu, R. Chiriță, *Joint Report on Ph.D. Thesis "Fighting Organized Crime by Criminal Law Provisions" sustained in 2011 by Ms. Laura Codruța Kovesi*, p. 15.

[23] According to art. 325 from the *National Education Law no. 1/5 January 2011* (published in The Official Journal of Romania, Part I, no. 18 from 10th of January 2011), the persons – who have been proven to have carried out serious offenses to the good conduct in the scientific research and in the university activity – cannot occupy teaching and research positions, by cancelling the exam for the teaching or research position occupied, and the labour contract with the university lawfully terminating, regardless of the time when the plagiarism was committed.

**References**:

1. *Law no. 8/14 March 1996* on copyright and neighbouring rights, published in The Official Journal of Romania, Part I, no. 60 from the 26th of March 1996.

2. *Law no. 206/27 Mai 2004* on good conduct in scientific research, technological development and innovation, published in The Official Journal of Romania, Part I, no. 505 from the 4th of June 2004.

3. *National Education Law no. 1/5 January 2011*, published in The Official Journal of Romania, Part I, no. 18 from 10th of January 2011.

4. Romanian Government, *Note of substantiation to Government Ordinance no. 28/31 August 2011 on the modification and completion of the Law no. 206/2004 on good conduct in scientific research, technological development and innovation*. Accessed August 5, 2017. http://arhiva.gov.ro/upload/articles/114468/nf-og-28-2011.pdf.

5. *Government Ordinance no. 28/31 August 2011* on the modification and completion of the Law no. *206/2004* on good conduct in scientific research, technological development and innovation, published in The Official Journal of Romania, Part I, no. 628 from the 2nd of September 2011.

6. *Government Decision no. 134/2 March 2016* on the modification and completion of the Code of doctoral studies approved by the *Government Decision no. 681/29 June 2011*, published in The Official Journal of Romania, Part I, no. 182 from the 10th of March 2011.

7. *Order no. 3485/24 March 2016* of the Ministry of Education and Scientific Research regarding the list of software tools recognized by the National Council for Attestation of University Titles, Diplomas and Certificates, and used by higher education institutions organizing doctoral studies and the Romanian Academy in order to establish the degree of similarity for scientific papers, published in The Official Journal of Romania, Part I, no. 248 from the 4th of April 2016.

8. *Report of the Working Party on Clarification of the Institutional and Normative Framework on Quality Control of Doctoral Theses and the Ethical Issues of Scientific Research*. Accessed July 25, 2017. http://oldsite.edu.ro/index.php?module= uploads&func=download&fileId= 21897.

9. Babeş-Bolyai University, *Decision no. 12.372/29 June 2016 of the Council for Doctoral Studies regarding the approval of the Procedure for Generating and Analyzing the Similarity Report*. Accessed July 25, 2017. http://doctorat.ubbcluj.ro/documente/ reglementari_ubb/HotarareCSUD12327-29iun.2016_GenerareAnalizaRaportSimili tudine.pdf

10. C. Ghica-Lemarchand, V. Constantinescu, R. Chiriță, *Joint Report on Ph.D. Thesis "Fighting Organized Crime by Criminal Law Provisions" sustained in 2011 by Ms. Laura Codruța Kovesi*. Accessed July 25, 2017. http://www.cnatdcu.ro/wp-content/uploads/ 2016/04/Raport-comun-nesemnat-LCK.pdf

11. S. Florea, *Plagiarism and copyright infringement*, in „Romanian Review of Private Law" no. 1/2017. Accessed July 25, 2017. https://sintact.ro.

12. A. Livădariu, *Plagiarism - brief legal considerations*, in „Romanian Journal of Intellectual Property Law" no. 1/2015.

13. A. Speriusi-Vlad, *About plagiarism, copyright and the protection of ideas or a coherent theory of plagiarism*, in „Romanian Journal of Intellectual Property Law" no. 4/2016.

14. High Court of Cassation and Justice of Romania, civil and intellectual property section, *decision no. 8 from 11 January 2011*. Accessed August 4, 2017. http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=61726

15. High Court of Cassation and Justice of Romania, civil and intellectual property section, *decision no. 1978 from 25 March 2011*. Accessed August 4, 2017. http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=86771