



NEWS REPORT

Update of flash report nr: 339 - RO 21 New Education Code

Date: 20 January 2011

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Title: Romanian Constitutional Court findings in favor of the new Education Code and the President promulgates it as Law 1/2011

Country: Romania

Context

Issue at stake: After delays and constitutional complaints, a new Education Code has been adopted, including *inter alia* a prohibition of discrimination including specific prohibition of segregation, provisions on education in the languages of national minorities, norms on private and religious education, special education, the statute of the educational personnel

Ground of discrimination: race/ethnic origin, religion/belief, disability, age

Source: Legislation: Law 1/2011, Constitutional Court decision from 4.01.2011

Field: education

Legislative provisions: Law 1/2011

Content

Case/law/political development: In September 2009, the Government engaged its responsibility before the Parliament, in order to proceed to the adoption of the draft new comprehensive Education Code [*Legea Educației Naționale*], by-passing further parliamentary debates. Subsequently, the opposition parties seized the Constitutional Court to complain against the adoption procedure and the content of the new law.¹ The Constitutional Court found that the constitutional procedures for adopting the bill had not been observed and ruled against it in November 3, 2010.²

¹ See RO 21 Flash Report from 26.09.2009.

² Romanian Constitutional Court, Decision 1.431 from 3.11.2010.

Following the decision of the Constitutional Court, the draft was submitted to the Parliament to follow ordinary procedures on 18 October 2010 and was adopted on 14 December 2010 in a joint session of the Parliament. The President of the Senate and a group of 108 Members of the Parliament from the opposition parties, once again filed complaints challenging both the constitutionality of the adoption procedures and of the substantive provisions of the law.

On 4 January, the Constitutional Court decided that the petition was inadmissible in regard to the complaints related to the adoption procedure and found that the articles challenged are constitutional. The petition was filed in connection to: Art. 45 alin. (5), (6), (7) and (9), Art. 46 alin. (2), on education for persons belonging to national minorities, Art. 121, Art. 125 alin. (1) lit. a), b), c), Art. 125 alin. (2), on the role of the Ministry of Education in relation to different educational institutions, Art. 128 alin. (5) on tertiary education, Art. 132 alin. (5), on the structure of tertiary education, Art. 212 alin. (3), Art. 215 alin. (1), (3) and (4), on the leadership of universities and Art. 361 alin. (2) on final provisions. On the same day, the Romanian President promulgated the law as Decree 3/2011.

The bill was published as Law 1/2011 in the Official Gazette of 10 January 2011 and provides for the structure and the functioning principles of public, private and religious (confessional) education.

Relevant provisions of the law: The new Education Code includes provisions on the structuring principles for national education, the structure of the education system, the organisation of education, education in the languages of national minorities, private and confessional education, special needs education, the statute of the educational personnel. In Article 3 the law provides as defining principle ‘the recognition and the guarantee of rights of persons belonging to national minorities, the right to preserve, develop and express ethnic, cultural, linguistic and religious identity’ as well as the principle of ‘ensuring equal opportunities.’

The Education Code provides in Article 2 that Romanian, European Union and European Economic Area States citizens and minors who were recognised a form of protection in Romania have equal right to access to education and professional formation in the national education system. The previous prohibition of discrimination regardless of ‘race, nationality,

ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV status, belonging to a vulnerable group category as well as any other criterion' mentioned in Article 9 of the prior draft was replaced by a vaguer principle of equity defined as absence of discrimination in general in access to education. Only discrimination in tertiary education is prohibited expressly in Article 118 and in Article 202. While the previous Code defined segregation in education in Article 5(48) and in Article 8, such provisions disappeared from the current law.

Education in the language of national minorities is provided for in Article 10 and Article 45 and the following. Primary education in mother tongue is guaranteed to national minorities and for secondary education, classes in the languages of national minorities are organised upon the request of parents and guardians.

Article 12 and Article 48 and following of the Law mention the support for pupils with special educational requirements and the specific arrangements available.

Religion is a subject for primary and secondary and vocational education in the case of the 18 state-recognised religions, and it is guaranteed irrespective of the number of pupils willing to take the subject. The Code maintains in Article 18 the current procedure according to which the parents or the legal guardian can file a written request so that the student will not take the class. Only the 18 state-recognised religious denominations can sign partnerships with the Ministry of Education to secure teaching of classes of Religion as solicited by the pupils, a mechanism which was contested in the past.³

Internet link source and additional information: The text of the new Education Code in Romanian is available at:

http://www.cdep.ro/proiecte/2010/500/80/7/leg_pl587_10.pdf (04.01.2011).

Decisions of the Constitutional Court are available at www.ccr.ro (10.01.2011). The press release of the Constitutional Court is available at:

<http://www.juridice.ro/131510/curtea-constitucionala-obiectii-de-neconstitutionale-a-legii-educatiei-nationale-inadmisibile.html> (5.01.2011)

³ Liga PROEUROPA, EDUCAȚIA RELIGIOASĂ ÎN ȘCOLILE PUBLICE, Editura Pro Europa, Târgu-Mureș 2007 available at: <http://www.proeuropa.ro/educatie.html> (15.09.2009).

