

From Problems to a Model of Action: Romanian University Ethics Commissions - Case Study

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To cite this article:

Cristina Mihaela Salca Rotaru, Laura Manea. From Problems to a Model of Action: Romanian University Ethics Commissions - Case Study. *International Journal of Law and Society*. Vol. 5, No. 1, 2022, pp. 134-142. doi: 10.11648/j.ijls.20220501.25

Received: January 29, 2022; **Accepted:** February 22, 2022; **Published:** March 3, 2022

Abstract: Research on issues of academic ethics from the perspective of ethics committees has been the subject of specialized literature, especially for Research Ethics Commissions and to a lesser degree for committees that investigate and sanction the unethical behavior - Ethical Sanctioning Commissions. The sanctioning commissions play a very important role in maintaining the ethical climate of higher education institutions, by raising awareness amongst the members in the academic community on the effects of committing unethical deeds. Also, legal regulations have a significant impact on the maintain and enforce of an ethical climate in higher education institutions and any other institution or organization. This study: (i) starting with concrete problems facing these ethics commissions in Romania, in the backdrop of the legislation in force and the national jurisprudence and (ii) taking into account the actions taken by the authors, during the period of 2019-2021, to solve these problems, (iii) propose a useful model of actions for all those ethics committees that find themselves in similar situations. The proposed model of action follows the Plan-Do-Check-Act cycle, but in seven steps. In this cycle, the final step, the seventh, may be the first in case of partially solved of the previously ethical issues identified. The presented vision of the ESC's activity opens up new directions of research, at least in terms of conducting comparative studies either on the role and place of these commissions or on the related legislation and even finding new solutions to the problems presented.

Keywords: Ethics, Academic Ethics, Ethics Commission, Ethical Sanctions, High Education Institutions, Legal Regulation, Model of Action

1. Introduction

Ethics, as a science, is generally associated with morals [1, 2] and not with legal sciences, being also considered to be a philosophical discipline. The question of Ethics, though seen as an independent domain, does manifest in other areas as well. This statement is supported by the numerous areas of research and growing scientific articles being published, in various domains such as: medical ethics [3–5], bioethics [6–9], public health ethics [10], engineering ethics [11–13], the ethics of legal professions [14], environmental ethics [15, 16], ethics in media and journalism, business, politics [17–21] and a lot of other areas.

The academic environment, the one which fosters the youth for an equitable and sustainable society, has been lately confronted with a series of ethical challenges. Most of these

challenges are in the area of research, elaboration and publishing scientific works, in one of the three major forms of manifestation: data fabrication, data falsification and plagiarism [22–27]. These have led to the claim that such ethical breaches can change the public perception on the trustworthiness of science and the integrity of scientists [28], thus transforming into social, political, economic, cultural or even environmental issues.

On an institutional level, the organs called upon to ensure an ethical climate in higher education institutions (HEIs) are the university ethics commissions. There are two categories of ethics commissions: (i) the ones that gives ethical advice on conducting research on human or animal subjects (Research Ethic Commission - REC) and (ii) others that rule on claims of violation of ethics by a member of the academic community- we will call these as ethical sanctioning commission (ESC).

Specialty literature [29–35] has mainly focused on the

activity of REC; which is why there are few studies in regard to the activities of the ESC. In academic communities, their institutions and members, the role of ESC is an extremely important one, as it helps raise awareness and bring consciousness on what constitutes good and bad ethical conduct in the academic environment [36–38] through their actions (namely establishing and enforcing sanctions in case of violations of the ethics regulations) and by the finality of claims/ court actions regarding the ESC decisions.

The ESC activity is governed by the unanimously acknowledged ethics rules and principles, but is dependent on the laws of each state [39]. Thus, the legal regulations have a significant impact on the enforcement of an ethical climate in HEIs and any other institution or organization, be it private or of the state.

The present study (i) starts with the role of ESC in Romanian HEIs, while highlighting the issues generated by contradictory legal regulations (ii) presents the endeavors and results obtained in efforts towards establishing good practice between ESCs and determining the required changes in law and finally (iii) proposes a model of action for ethics commissions confronted with similar situations.

While the limitations of this study are determined by the specifics of Romanian laws and thus subsequently limited at the level of ethics commissions which function within Romanian HEIs, the model of action is proposed to be applicable in general with a wider scope.

2. Materials and Methods

The present study entails three main independent aspects: (i) establishing the issues with which the ESCs of Romanian HEIs are confronted; (ii) presenting the endeavors and actions undertaken in order to solve the identified issues by using the chronological criterion and the relevance criterion; (iii) generalization of actions and establishing and proposing a model of good practices for the ESCs confronted with similar issues.

Determining the issues of the ESCs of Romanian HEIs is achieved by studying national laws in force, jurisprudence, and specialty literature.

The endeavors and actions undertaken to solve the identified issues are presented in relation with specific actions took by the members of the Ethics Commission of Transylvania University of Brasov and the institutional legal adviser during the time 2019-2021 and the results these actions produced.

The model of action is established by generalizing the problems and the specific actions identified in the previous stages.

3. Results and Discussions

The main result of this study is the quantification of ESC-UnitBv approaches and actions into an action model (Figure 2), useful for university ethics commissions facing similar problems.

In order to achieve this model of action, the intermediate

results obtained aim at:

1. Presentation of the problems encountered by Romanian ESC, considering: national legislation, national bodies involved in the field of university ethics and the role of ESC. The legislative study was carried out only with the year 2011 because this is the year in which these commissions were established in Romania at the level of HEIs. The obtained results reveal the importance of the different national bodies involved in the evaluation of the activity and the verification of the decisions given by the ECS.
2. Presentation of the modalities for challenging ESC decisions and judgments in front of the courts (Figure 1) and the effects of non-unitary jurisprudence.
3. Presentation of actions and approaches conducted by ESC -UnitBv members (through their representative - ESC president) together with institutional legal adviser, to determine legislative changes and establish good practices between Romanian ESC.

3.1. Determining the Issues of the ESC in Romanian HEIs

In order to determine the problems faced by the ESC in the Romanian HEIs, the following steps have been taken:

1. a study on the laws which apply to this matter, from which results: the national bodies which are involved in university ethics; the place and role of the ethics commissions in HEIs and
2. a study on relevant jurisprudence regarding the purposefulness of the ESC decisions.

3.1.1. National Legislation and Bodies

In Romania, Law no. 1 of 2011 of national education (NEL) states that each university must create an university ethics commission, its duties are [40]: analyzing and solving claims in regard to university ethics violations; contribute to the creation of an Ethics and Professional Deontology Code; elaborate an annual report regarding the situation of respecting university ethics and research activity ethics, as well as other duties stated in the current laws and University Charter.

Another important law in establishing the duties of the ESC is Law no. 206 of 2004 regarding good conduct in science research, technological development and innovation. According to this law, good conduct in research and development is based on respecting the moral principles and the good conduct regulations as well as the procedures that help enforce them. Thus, the role of the ESC is to follow and respect the ethics codes which are specific to every field of activity and examining the claims regarding the violations of good conduct in research and development activity [41].

As a conclusion, we can state that the ESC's duties cover two major components: (i) general university ethics, for respecting the principles of the National System for Higher Education (article 118 alignment (1) of NEL) and the prevention and sanctioning of discrimination and (ii) ethics in science research, technological development and innovation, according to Law no 206 of 2004.

On a national level, there are two advisory councils with

duties in regard to ethics, founded by Law no 206 and NEL:

1. Romanian Ethics Council of Scientific Research, Technology Development and Innovation (CNECSDTI, Romanian acronym), functioning within the state authority for research and development (currently the Ministry of Research, Innovation and Digitization) which entails the ethical aspects of the process of research and dissemination of research (for example - fabricating or falsifying data and results, plagiarism, institutional monitoring and evaluation of the process of research and development, but also discrimination, abuse of authority in order to secure authorship or co authorship);
2. University Ethics and Management Council (CEMU, Romanian acronym) functioning within the state authority for education (currently the Ministry of Education) which entails ethical aspects of the learning process (behavior, corruption, obtaining a teaching position, management of HEIs).

The connection between these advisory councils and the ESC is the following:

1. Both CNECSDTI and CEMU can directly receive a claim in regard to ethics violations on which they can rule upon after they received response from ESC. Only CNECSDTI can rule without receiving answer from the ESC.
2. CEMU performs an annual audit of the ESC of HEIs in regard to its entire activity, regardless of whether the HEIs claims and the issues it might have solved (general ethics of research - dissemination).
3. CNECSDTI can receive challenges against the decisions of the ESCs in regard to claims of unethical behaviors in research and dissemination. Although, in regard to CEMU, the law does not explicitly state that it is competent to analyze challenges against ESC decisions, this council receives and analyzes such claims.

It is important to note that these councils became active at different times, depending on the elaboration of the legal text which specifically established their structure and functioning (CNECSDTI by Ministerial Order no 5712/2016; CEMU by Ministerial Order no 6085/2016). As a result, although the NEL created the background in regard to national academic ethics bodies, during the time between 2011 and 2016, the lack of legal regulations for organizing and functioning of this national councils was the cause of their lack of activity [42, 43], even if the ESCs were functional.

3.1.2. The Role of ESC in Romanian HEIs

The role of the ESC can be seen from a general perspective, determined by the principles and common rules of ethics, as well as from a specific perspective, determined by the legal regulations. From this general perspective, we can state that the members of any academic community know the rules of general academic ethics principles [44]. From a specific perspective, establishing the occurrence of unethical behaviors and a specific sanction is known only by the members of a certain academic community. These differences

are also found in specialty literature [45] which shows that, from the perspective of harmonizing ethical behaviors, the local conditions remain important and should not be left aside in searching for greater "coherence" [46].

By studying the duties of an ESC, as established by NEL and Law 206, we can clearly state that the role of an ESC in Romanian HEIs is to ensure the respect of academic ethics and enforce sanctions on persons who, as a result of thorough investigation, were proven to be guilty of violating academic ethics.

Considering the establishment of the ESC in 2011, the elaboration of ethics codes and functioning regulations of the ESC occurred during 2011-2013. Depending on the vision of the academic community, each of the 92 universities in Romania has: (i) an ethics code which contains the ethics principles and the rules of ethical academic conduct and which, according to the NEL is a part of the University Charter and (ii) a regulation with procedures for filing claims, investigation and sanctioning.

In order to perform the duties of the ESC, an important aspect to be considered is the fact that the members of the ethics commissions are teachers and students, who do not have specialized training in this regard. They are elected due to their professional prestige and moral authority. This coupled with a lack of clarity and legislative incoherence has led to major differences between the procedures of different ESCs, among which we must mention: the steps to file a claim before the commission, ensuring anonymity of the parties involved in the procedure of investigating the claim, terms for solving these claims [47], procedures of communicating with the parties which are involved, the legal regime and the enforcement of the decisions of the commission [48, 49], ensuring a balanced component of ESCs (which includes teaching and support staff and the students).

Another important aspect is that of the independence of the ESC in regard to the top-management bodies of the university. Because of the fact that the ESC's independence is not clearly stated in law, but can be deduced from interpreting the current text of law (article 306 and 307 of NEL), some of these commissions are found subordinate to the top-management bodies. The effect of this subordination provides the possibility for the management bodies of HEIs to intervene in decisions of the ESC by withholding to approve, change or cancel them.

The above-mentioned issues were and, unfortunately, still are the basis of the improper functioning of many ESCs with the result of sustaining an negative ethical climate within HEIs [47, 50].

3.1.3. ESC Problems Resulting from Relevant Jurisprudence

One of the rights of each person is that of filing a complaint with an authority, through administrative or judicial procedure, in case he believes he was wrongfully sanctioned.

The methods of contesting the decision of the ESC are:

1. Any type of sanction can be contested in front of the court of law. From the Figure 1 and its explanations,

result the competence issues of the courts of law and the effects it produces.

2. The sanctions of the ESC in regard to violating the regulations for research and dissemination can be contested at the same time in front of the courts and before the CNECSDTI.
3. The sanctions given in regard to the violation of the academic ethics regulations in general and those regarding academic management are analyzed by CEMU in the procedure of solving the challenge, although the law does not clearly state this.
4. Any of the decisions given at previous points 2 and 3 can be contested before the courts of law, according to the principle of free access to justice.

Because the procedure stated at the first point can be performed at the same time as those in points 2 and 3 and the results can be different gives rise to the problem of how such decisions received can be enforced by the HEIs top-management. Relevant for the activity of the ESC, but also for the present study, are the solutions given by the courts of law in case the decisions of the ESC are legally contested. Legislative inconsistencies and different interpretation of the law had generated a non-unified case law, with negative effects on the activity of the ESC [51].

These problems are based on the lack of express regulations regarding the legal nature of the ESCs acts which permitted different approaches in the court of law (Figure 1) (chart made using the tools in Coggle):

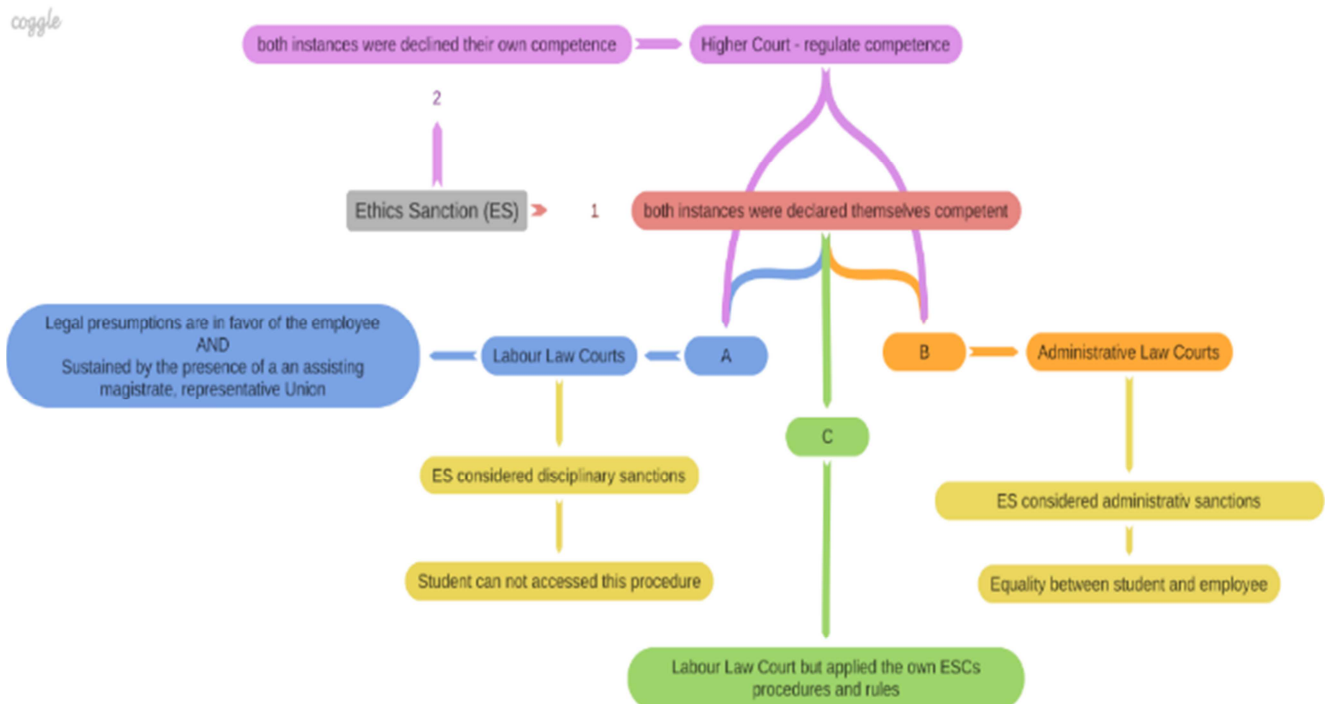


Figure 1. Ways of contesting and the main differences.

The result of research on national jurisprudence [49], in case of contesting the sanctions enforced by the ESC (Figure 1), has shown the following possibilities:

Route 1:

They considered themselves to be solely competent in solving the challenge:

- a) Labor law courts (route A), as there was an individual employment contract between the sanctioned party and the HEI. In this case: (i) ethical sanctions are considered to be disciplinary sanctions (ii) in front of the court of law, the legal presumptions are in favor of the employee who (iii) is supported by the presence of an assisting magistrate- the representative of the union.
- b) Administrative law courts (route B), as a result of the fact that, although there is an individual employment contract between the sanctioned party and the HEI, those consider: (i) the ESC is a specific administrative body and (ii) its decisions are administrative acts which are subject to

legal control by the administrative law courts.

- c) Labor law courts (route C), as there is an individual employment contract between the sanctioned party and the HEI, but without enforcing the specific rules of labor law, but entailing a specific investigation of ethics and the procedure it establishes.

Route 2:

Both courts declined their own jurisdiction (namely both courts ruled that they are not competent to rule on the matter), thus a higher court had to rule and regulate competence. In this situation, the decisions regarding the competence were not unified, as the higher courts ruled either in favor of labor law courts (route A) or administrative law courts (route B).

Under these conditions, the activity of the ESC faces difficulty in regard to which procedure it must be consider (the labor law or the administrative law) in order to apply the ethical sanctions.

Students are also members of the academic community, and

they also must respect the ethics rules of HEIs. By applying the rules of route A discrimination can be achieved because, based on the same act - plagiarism, for example, in the case of a sanctioned student, compared to a teacher, the contestation of the sanction applied to the student will fall under the exclusive competence of the administrative courts (the student has a studies contract with the HEI).

In case a student was sanctioned by the ESC, the courts did not decline their own jurisdiction, although the object of the claim was the decision of the ESC, similar to the case of investigating a member of the teaching staff. As a result, in the opinion of the authors, the teacher, compared to student, can benefit from a more favoring way in front of the courts.

The effects generated by the cancellation of the sanctioning decisions of the ESC based only on the different legal framing and not as a result of evaluating unethical facts has had a profoundly negative impact on the activity and image of the ESC, but especially the academic ethics. Considering that each university publishes the annual report of the ESC, a negative perception appeared in regard to some commissions and/or universities in relation to the court decisions. This negative perception can be the source of diminishing the positive impact of the activity of ESC, a lack of confidence in the procedures and decisions of the ESC, and fosters continued unethical behavior and climate in the academic community.

3.2. Actions Undertook in Order to Solve the Problems

As stated above, starting with the year 2016, legal regulations were elaborated (Orders no 6085/2016 and no 4783/2017) which concretely established the role of CEMU to audit the activity of the ESC. The audit of the ESC-UTBV by CEMU in 2018 was the moment that pointed out the following: (i) the necessity to identify and disseminate good practices between Romanian ESCs, (ii) identifying legislative gaps, as well as (iii) the need for involvement in creating and maintaining an ethical culture within academic communities.

The first step was taken in 2019 (27th-28th June) by organizing the first international conference *Ethical Value in Nowadays Society* (Valorile Etice în Societatea Actuală -VESA), which took place at Transylvania University of Brasov, Romania.

The purpose of organizing the VESA Conference was to bring together, for the first time in Romania, the members of ethics commissions and legal advisers from universities to debate in the presence of guest members of CEMU and CNECSTDI - issues of academic ethics, the legislative framework and their impact on the higher education system. At the same time, interdisciplinary scientific communication sessions took place, grouped on 5 panels: University Ethics; Profession Ethics; Ethics and Responsibility; Ethics in Public Administration and Ethics in Research and Dissemination.

The results of this action were structured in two directions:

- 1) Determining the two national bodies (CEMU and CNECSDTI) to become aware to the above-mentioned problems of the ESCs. Specifically, on 5th December 2019, on the occasion of a national event organized by

CEMU regarding academic ethics named "The future of ethics and academic integrity. Dissemination of international good practices" (Viitorul eticii și integrității academice. Diseminarea bunelor practici internaționale), where a report of the debates which took place within the VESA workshop was also presented.

- 2) Forming a consensus in the academic community in regard to ethics issues, establishing interpersonal connections, exchange of ideas and good practices with colleagues of international academic community.

Given the situation of the pandemics of 2020, the conference was postponed to 2021. However, the collaboration with CEMU was not interrupted.

On the request of CEMU, on 25th February 2021, within the event named "University ethics and deontology in Romania: realities and perspectives" (Etica și deontologia universitară în România: realități și perspective) organized by this council, was presented a detailed study on the procedure and legislative issues invoked in 2019, named "Difficulties in the functioning of the ethics commissions generated by the current laws". Based on this presentation, the authors were included in a CEMU workgroup formed with the task of elaborating specific proposals for legislative changes in order to harmonize the laws regarding the ESC's activities and procedures. These proposals were (i) presented in 2nd June 2021 before the responsible state institutions with duties to ensure an ethical climate for the entire academic community, but especially members of the REC and ESC and (ii) presented for public consultation by the ESCs members on 4th June 2021 within the second VESA conference.

In 2021, as a result of the impact of the 2019 conference, VESA passed on to a new level. Thus, CEMU becomes one of the partners of this conference, an action which ensured that all national ESCs received the information through the secretary office of the council. At its second edition (June 3-6, 2021), VESA brings together three partners: Transylvania University of Brasov, CEMU and Universul Juridic Publishing House, thus harmoniously combining the scientific part with institutional representation and a new framework for disseminating research results in the vast and interdisciplinary field of ethics.

This time, debates and research on ethics, especially academic ethics, considered the context of new challenges posed by the pandemic and new trends in the field, combined in an interdisciplinary scientific approach, so that to facilitate the exchange of good interinstitutional practices among participants. By bringing together, again, in the specially organized workshop the presidents of CES and legal advisers from universities in the presence of representatives of the CEMU and CNECSTDI, it was possible to identify new problems and solutions needed to harmonize the activity of the commissions and the legislative framework in the field.

At the same time rose the awareness on the necessity of the creating of an informal frame of communication between the members of the academic community in regard to ethics. By registering the third partner of the conference, under the

auspices of Pro Universitaria Publishing House (part of Universul Juridic Publishing House), the first journal in ethics field at national level was launched, namely *Ethics and Deontology* (Etică și Deontologie). The journal ensures both, the dissemination of good practices and the researches carried out and the scientific papers developed in the field. The journal is ruled by an international science board, uses the double-blind peer-review procedure for publishing articles and aims to become a landmark of national research in this area, a connecting point for international research and a specific and specialized source for ethical practitioners and other interested parties.

3.3. Model of Action

Although ethics is a field which benefits from attention even from antiquity, the problems of academic ethics are considered permanent novelties.

Not all academic communities have a background and adequate laws for ethics. A specific example is that of

Romania, but there are similar situations in other countries as well. It is obvious that ethics has an important role in current society; however, in order to achieve the desired results, it is not enough to develop the ethical principles and their application. We must also support the activity of those called upon to supervise the maintaining of an ethical climate and the potential sanctioning of those who do not respect it. Otherwise, the principles and regulations are without result, as the discussion about ethics will be nothing more than plain theory.

The Romanian ECSs took almost 8 years (2011-2019) to take specific actions in solving the problems which they were faced with from the time they were founded. The issues are not completely resolved in 2021; the progress of solving these issues would have been probably far more advanced if specialty literature undertook such subjects or suggested some models of action for similar situations.

Therefore, the authors, based on their ten years of experience, suggest the following model of action, according to Figure 2.

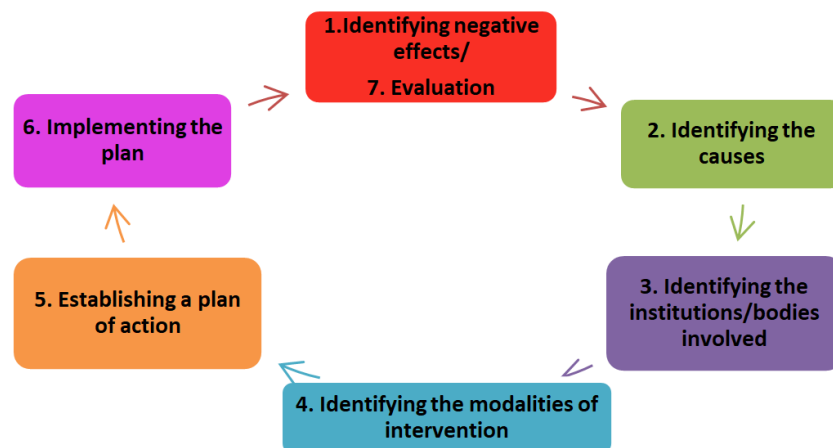


Figure 2. Model of action.

It is obvious that the action plan must follow the PDCA (Plan-Do-Check-Act) cycle; however, the specifics of this is determined by the need to initially identify some dysfunctions in maintaining an ethical climate in any community and, specific to this study, the academic community formed as a HEI (red box, point 1).

Once the dysfunctions were identified, we must establish their cause (green box, point 2). Based on our experience, the sources can be both internal, as well as external for the HEI. Among the internal sources, we mention: the defective regulation of the duties and procedures of ESC, top management influence in the activity of the ESC; a component outside of the law. External sources are the most important ones as it is difficult to intervene on it and they affect all ESC from that specific state. Those come from insufficient or incoherent regulation in regard to ethics in the academic environment, to the ESC duties and procedures, to national bodies and institutions which are involved.

In any of the causes, we should identify the institutions and bodies involved and the means in which they intervene in the procedure or process of maintaining an ethical climate (mauve

box, point 3). In regard to internal causes, the following can be involved: the university senate, the board, the rector, the specialized HEI commissions, the doctoral school, the legal office of HEI or even the ESC. We must also mention the fact that those listed above are parts of the HEI structure, but this structure can be different from one country to another. In regard to external causes, the following institutions are usually involved: the institutions involved in establishing laws (Parliament, Government, ministries); national specialty councils and commissions; competent bodies tasked with solving challenges in this domain and the courts of law.

Identifying the modalities of intervention (blue box, point 4) also entails establishing the moment in which each of the previously mentioned causes intervenes in the ESC procedure. Establishing such connections allows for the establishing of a coherent action plan (orange box, point 5). For example:

1. regarding an internal cause, we study: the caseworks of an ESC within a HEI; internal procedures; conformance of laws in the procedures laid out; the bodies and people involved in defining the procedures and after that a specific plan of action is established and internally

communicated.

2. regarding an external cause, we study: the caseworks on a broader level, even reaching a national level, depending on the identified problems; research and study papers in the domain; the laws which apply; the bodies and people who are involved and their role and functional connections between them; the possibility of involving other actors as well as any other specific action resulting from the national specifics. Based on this information, one can establish a specific model of action which can involve more ESCs with similar issues.

In regard to implementing the plan of action (pink box, point 6), the experience of ESC - UNITBv leads us to state that an important role is to create awareness in the national bodies and people who are involved. This awareness will bring focus (i) on the issues that need to be resolved and (ii) on the negative effects which exist and will continue to exist if the change does not occur soon.

We also recommend involvement of several entities with similar problems in order to provide weight to all endeavors in this matter. If possible, we also recommend a simultaneous approach of all these entities. As, in case there are functional or causal connections between them, it is easier to find specific solutions.

Creating awareness in any form (articles, conferences, workshops, evaluation visits) of the problems and actions undertook are an important element in implementing the plan of action. A beneficial effect of awareness is the social acknowledgement of the importance of ethics and maybe increasing the percentage of problems solved.

The final step, the evaluation (red box, point 7), though is the final step, can become the first in case of partial solution of the identified problems. In this case, though not favorable, resuming the procedures is inevitable, but the steps will be shorter. We recommend the careful revision of step 4 - Identifying the modalities of intervention and step 5 - Establishing a coherent plan of action, in order to identify new and adequate modalities, as a result of the previous evaluation. A new implementation will be the subject of the next evaluation.

4. Conclusion

This study draws attention primarily to the role and importance of ESCs in maintaining an ethical climate at the level of HEIs. ESCs can thus be considered a regulator of the behavior of members of the academic community, where it has the role of proposing and developing rules of ethics within the academic community and intervenes at the time of violation of the rules of ethics through the specific procedures of investigation and sanctioning.

Secondly, the importance of legislation regarding the work of these committees and on institutional relations with bodies and committees on ethics at the national level, is revealed. In this respect, the authors demonstrate the effect of national legislation on the activity of the ESCs and on the totally different way in which the courts interpret appeals against ESCs decisions and judgments.

Finally, the ways in which the authors, being involved in the ESCs activity, intervened in order to bring about the changes necessary for the proper functioning of the ESCs, were transformed into a model of action that we propose for debate to the international academic community and the members of the ESCs within them.

ESC members, at least those from Romanian ESCs, feel the need for a greater involve of researchers and practitioners in the field of academic ethics from the perspective of the role, place and importance of ESCs at HEIs level.

This study reveals new directions that may be the subject of future studies, on both the form of comparative research on the legislation applicable to the ESCs and the form of the presentation of new solutions to the problems presented, and perhaps even with regard to national and international policies in this area.

Acknowledgements

We gratefully thank Prof. PhD. Eng. Ioan Vasile Abrudan, Rector of Transilvania University of Braşov, on his continued professionalism and support in the organization of VESA conference under the aegis of our university.

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