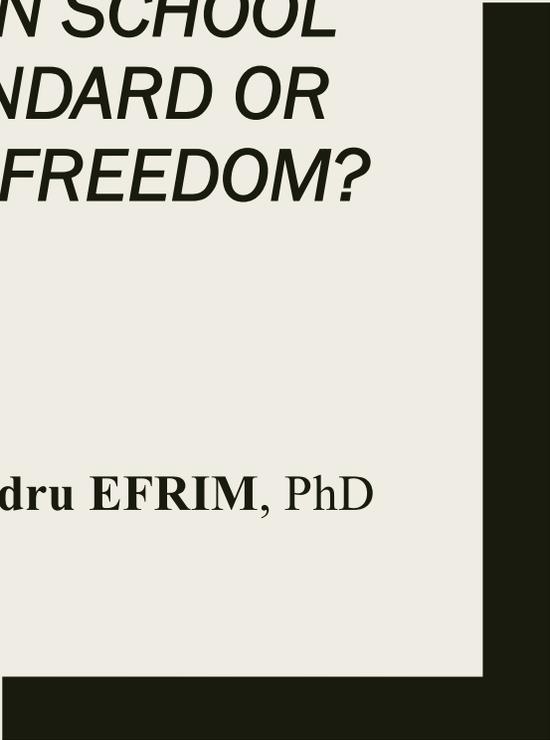


***GOVERNMENT MONOPOLY ON SCHOOL
TEXTBOOKS: A QUALITY STANDARD OR
LIMITATION OF EDUCATIONAL FREEDOM?***

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1. Introduction

- The importance of the content of education – curriculum
- the State, as the main provider of education but also as a guarantor of respect for the fundamental right to education, often tends to adopt an interventionist attitude
- thorough and restrictive regulation weighing against the choices available for the beneficiaries of education
- recent steps taken by the Romanian Government:
 - tried to establish a unique publishing house owned by the state, authorized to draw up and print the textbooks accepted in the school system;
 - tried to implement a system for authorizing school textbooks by a public authority subordinated to the Government allowing the use of up to maximum 3 school textbooks for each teaching subject

2. Context

- 19th century, most of the newly-established European nation-states acknowledged the importance of organizing a public education system
- Romania:
 - 1864 the first law of public education was adopted in the Romanian Principalities
 - Constitution of 1866: art. 5 freedom of education
- Dictatorial regimes 1938-1989 – school textbooks used as propaganda tools
- After 1989: renouncing the unique textbooks system

2017

1. The Government adopted ***Emergency Ordinance no. 76/2017***, the object of which was the establishment of the Didactic and Pedagogical Publishing Society - S.A., having a social capital entirely owned by the Romanian state, represented by the Ministry of National Education, as a sole shareholder. According to this normative act, the newly established society main purpose was to publish the compulsory school textbooks.
 - the Constitutional Court ruled on the unconstitutionality of this initiative
2. Parliament adopted ***The law regarding the School textbook***, a legislative project initiated by the Government aimed at regulating the “basic school textbook system in pre-university education” . This law provided that the Ministry of National Education will select, by means of an evaluation procedure, a maximum of 3 manuscripts for each subject that will be approved for use in the public education system.
 - the Constitutional Court ruled on the unconstitutionality of the law

3. The restriction of choice regarding school textbooks and the principle of pluralism

- the Constitution of Romania stipulates in art. 8 the principle according to which: “*Pluralism in the Romanian society is a condition and a guarantee of constitutional democracy*”.
- the pluralism envisaged by art. 8 of the Constitution implies “**categorial pluralism and intra-categorial pluralism**”
- the democratic society implies “**the fact of pluralism**”
- the diversity of conflicting doctrines cannot be reduced in any way by the will of the state or any of its powers
- In the factual situation presented in the introductory part, there is the question of intra-categorial pluralism

Intra-categorial pluralism

- D.C. Dănișor: *"the rule imposed by intra-categorial pluralism is that the state cannot create or authorize a single association in a certain sphere of social relations"*
- the Constitution expressly recognizes the assertion of pluralism through the exclusion of excessive limitation of options in the exercise of rights such as the right of political association, religious freedom, economic freedom
- art. 8 of the Constitution not only makes a statement: it imposes pluralism
- From the wording of the constitutional text according to which pluralism is also a guarantee of constitutional democracy, there is a **genuine right for citizens to claim pluralism**
- Maddalena Colombo: *"Schools are holders of single, group and community interests, often facing reciprocal opposition, so that they cannot take sides on the basis of a supposed "authoritarian knowledge" and simultaneously behave using participatory approaches. Therefore they are managing plurality both within and between institutions, making the task even more ambitious."*

Relevant legal national provisions

The Romanian Constitution:

- The freedom of conscience, manifested in the form of freedom of thought and opinion, which includes the corollary that no one can be compelled to adopt an opinion or adhere to a religious belief contrary to his beliefs. (Article 29 (1))
- The principle according to which parents or guardians have the right to ensure, according to their own beliefs, the education of minors under their responsibility. (Article 29 (6))
- The freedom of the person to develop his/her spirituality and to get access to the values of national and universal culture. (Article 33 (2))

National Education Law no. 1/2011

- art. 21 par. (3): *"The State guarantees the right to differentiated education based on educational pluralism, in accordance with age and individual peculiarities."*
- art. 59 establishes the principle according to which: *"Educational alternatives may be initiated and organized in the pre-university education system"*.

The existence and recognition of pluralism regarding the content of the educational offer offered through school textbooks from several sides:

- the freedom of conscience, thought, and opinions, which requires a freedom of developing them, not just the exercise of, resulting from individual's freedom to develop his/her spirituality and personality;
- the freedom of parents or legal guardians to ensure the education of their children under their own beliefs;
- the freedom of professional initiative of the teachers.

4. Conclusions

The Government's prerogatives, when invoking qualitative standards attempting to limit to an excessive extent the individual freedoms mentioned above, must be limited to such an extent that they do **not affect the substance of individual rights** in accordance with the requirements imposed in the Romanian Constitution, by art. 53, which states that *the restriction of the exercise of rights or freedoms may be ordered only if it is necessary in a democratic society and the measure must be proportionate to the situation having caused it, applied without discrimination, and without infringing on the existence of such right or freedom.*

This principle has been developed and applied extensively in the case law of the European Court of Human Rights when assessing any alleged violation of fundamental rights recognized by the Convention. As a result, I appreciate that the present analysis benefits from relevance that goes beyond the legislative initiatives in Romania.

OBRIGADO!