

## **THE RIGHT TO LANGUAGE TRAINING OF THE FOREIGNERS IN ROMANIA**

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*The issue of education access, having as consequence the access to the labor market for the people from other countries on Romanian land, in the context of optimal management of the migration flows towards the European Union as well as of the integration process, represents a challenge regarding the efficiency of current law application in order to observe the fundamental right to education.*

*Language training and language competencies acquirement in/for the destination country is established by Governmental Emergency Ordinance no 194/2002 regarding the foreigners' regime in Romania, Governmental Ordinance no 44/2004 regarding foreigners' social integration who have acquired international protection or residence right in Romania, as well as the citizens of the member states of the European Union and of the European Economic Area, and the Ordinance no 5924/2009 that establishes the methodology regarding the organization and development of the course of initiation into Romanian language, of the procedures regarding the elaboration, approval and distribution of the curriculum and books for the course of initiation into Romanian language, and of the procedures regarding the evaluation of the participants to the course of initiation into Romanian language for adult foreigners who have acquired a form of protection or a residence right in Romania, as well as for the citizens of member states of the European Union and of the European Economic Space. The positive aspects and the gaps of current law represent the discussion topic of this article.*

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The issue of education access, regarding in particular the language training and the language competencies acquirement of the immigrants from other countries, in the language of the country they are in, represents a challenge in terms of the efficiency of current law application at the moment for the observance of the fundamental education right.

The absolute and adequate implementation of the Union aquis in the field of rights, obligations, discrimination/ non-discrimination, immigrants' protection has materialized at the level of

national legislation in a body of regulations that establish explicit and unreserved immigrants' rights including the right to education and language training in Romanian language.

Romanian legislative basis regarding the right to education and language programs for immigrants, having a right of residence or protection in Romania is represented by Governmental Emergency Ordinance no. 194/2002 for foreigners in Romania [1], Governmental Ordinance no. 44/2004 regarding the social integration of aliens who were granted international protection or a right to stay in Romania and the citizens of the member states of the European Union and European Economic Area [2] and the Order nr.5924/2009 approving methodology for the organization and development of the initiation course in Romanian, of the procedures relating to the preparation, approval and distribution of curricula and textbooks for the initiation course in Romanian and of the procedures relating to the assessment of the participants to the initiation course in Romanian language for the foreigners adults who were granted a form of protection or a right of residence in Romania, as well as the nationals of member states of the European Union and European Economic Area [3].

Governmental Emergency Ordinance no. 194/2002 regarding the foreigners in Romania devotes Section IV to the regulation of the integration modality of the immigrants in the Romanian economic, social, and cultural life, the article 79 paragraphs 1 and 2 setting that the Romanian state provides the conditions for the integration of foreigners, who were granted a right of residence in Romania, in the economic, social and cultural life and their access to the education system in order to acquire language skills through the organization and development of Romanian language courses. According to article 132 paragraph 1, by explicitly outlining the rights of infant immigrants sets that the foreign infants living in Romania have access to compulsory education under the same conditions as the underage Romanian citizens, benefiting of a free Romanian language initiation during a school year.

Starting from the general frame (Governmental Emergency Ordinance no. 194/2002) regarding the legal regime applicable to nationals of other countries, the Romanian lawmaker regulates the social integration (including the acquisition of language skills) to immigrants through Ordinance no.44 / 2004. Distinguishing between the categories of immigrants (nationals of other countries who were granted a form of protection in Romania / nationals of other countries who were granted a form of stay in Romania) and customizing by age (infants / adults), within each category of immigrants the right to education through access to language programs and integration in the host country is established by article 10, article 14, article 35 index 1 paragraph 1, article 35 index 2, article 35 index 3 paragraph 3 indicate. The right to benefit of language

training programs and concrete ways to access them by the immigrants can be found in the content of the provisions of Governmental Decision no.1483 / 2004, which approves the Methodological Norms for the application of Governmental Ordinance no.44 / 2004.

Order no. 5924 / 2009 approving the methodology for the organization and developing of the initiation course in Romanian, of the procedures relating to the preparation, approval and distribution of curricula and textbooks for the initiation course in Romanian, and of the procedures for the evaluation of the participants to the Romanian language initiation course for adult foreigners who were granted a form of protection or a right to stay in Romania, as well as the citizens of the member states of the European Union and European Economic Area, establishes concrete framework for organizing language training programs for adults. In annex no. 1, the legal text establishes the organization and development of the Romanian language initiation course for adult foreigners in the following conditions determined by article 3 paragraph 1 "Every school year, the enrollment for the Romanian language initiation courses is performed before the start of the first semester, from August 25<sup>th</sup> to September 5<sup>th</sup>"; article 6 (1) The Romanian language initiation courses develop throughout a school year, which fixed annually by the Minister of Education, Research and Innovation; (2) The number of hours per week is 4 (four).

The over-regulation of the right and of the access to language programs through the last piece of legislation, namely the Order nr.5924 / 2009 determines, in many cases, the impossibility to exercise the right with consequences for the priority if the social integration process and of the labor market in the host country of the foreign person.

Entering the country and installing the alien is a bureaucratic process and customized for each case, so that in most situations the foreigner cannot predict the moment of acceptance / installation in the host country and the moment when he/she can participate in language training (for example, the alien who entered the country in October, according to the methodology of development of the Romanian language courses, will have to wait for his/her participation in the training program until September, the following year).

Also, for the host country, too, the acceptance process of the immigrants is a continuous process so that, as with the stranger, the state cannot anticipate the entry / installation of a certain number of immigrants at a particular time and in a certain area of the country, forecasting that will allow the development of the language training program in the parameters required by the legal provision.

The imposition of the abovementioned legal act led to a strict schedule (4 hours / day, 1 day / week, throughout a school year), with no possibility to adapt it to the needs of the foreign adult, can be a hindrance in using the recognized right.

The integration into the host society and into the labor market requires primarily knowledge of language, and language programs should be more differentiated, more efficient and more specific, customization needs being imposed for groups of citizens.

If in the case of the foreign infants, the legislative regulations relating to language courses do not raise difficulties in accessing them, in the case of foreign adults language programs must be tailored to their needs.

The direct and immediate consequence of non-capitalization by immigrants of the right to language classes is considered to be the lack of opportunity for integration in Romanian society, the impossibility to capitalize formal or informal skills acquired in the home country and the impossibility of accessing the labor market in the host country.

The Union Institutions "emphasize that learning the host language is the basis of success on the European labor market oriented towards services; they also stress that the member states must ensure that there are enough opportunities for language learning, so that language barriers in the labor world cease to be an obstacle, [...]" [4].

The immigrant's integration on the labor market in the host country and in society requires a continuous two-way process involving the foreigners, especially in terms of acquiring language skills, and the state, and the host society. Assuming the duties of the integration process, including the provision by the state of training programs tailored to the needs of the foreigner and the his/her accessing to available programs that can provide solutions to the problem of social integration and employment of the alien.

The refusal to exercise the right to language training by the immigrant should not be understood in the restrictive conditions of Order nr.5924 / 2009 (given the high rate of drop-out rates) as a refusal to assume his/her tasks in the integration process but as an inability to actually capitalize the law as a result of the maladjustment of legal proceedings to the needs of the right holder.

In turn, we believe that the state should legislate so that the rights can be capitalized, keeping it at the level of the implementation of normative acts the reasons of the basic normative acts. Thus, Governmental Ordinance 44/2004 on the social integration of immigrants regulates the organization of language courses (article 35 index 1,2) but taking the Union requirements on flexibility and adaptability of integration measures, saying in article 35 index 5 that "The National Refugee Office may contract under the law, depending on the number of beneficiaries

and in the extent of available funds, the services of non-governmental organizations to organize sessions of cultural accommodation, counseling and learning the Romanian language to the individuals referred to in article 351 paragraph (1) and to the aliens who were granted a form of protection in Romania”.

The fact that the legislator in the Governmental Ordinance 44/2004 did not foresee any restrictive conditions on supporting language courses by other legal entities, leads us to consider that a uniform application of the Union requirements, and a consistency in the policies rules for integration as excessive regulation by the Order no.5924 / 2009 were not justified. The legislator’s will to overregulate the language training of foreigners appears as a deprivation of the subject to capitalize leverages his/her right.

Although it is difficult to accept, currently the immigrants’ integration is not just a process of inclusion of the individual newcomer in the host society but it is primarily an individual process conditioned by the legal parameters of each country of destination. S. Carrera in his study *Typology of different integration programs in the UE* thinks that the very notion of integration is not defined as a process of social inclusion of the immigrants but has rather become a notion with the consent of legal and political mechanisms of control by which the states decide who enters and who stays on their territory, integration actually expressing the transition from social inclusion measures to the legal regulation and legal [5].

Starting from this legal perspective of integration and models of integration, (multiculturalism - based on respect for and protection of cultural diversity and on the guarantee of the identity of immigrant communities, of the assimilationism - based on the assimilation complete newcomers into the host society, of the exclusionism - based on the rejection of integration immigrants into the communities), the Romanian legislator needs to outline more precisely his/her position towards the immigrant by regulating important issues aiming at integration, including language training but also through permissiveness in regulating certain minor legal aspects in the integration process (conditioning the start of the courses to some unimportant dates for the training program).

Article 35 index 5 of Governmental Ordinance 44/2004 provides the possibility of outsourcing the language courses by non-governmental organizations, respectively by associations and foundations organized according to Governmental Ordinance 26/2000, discriminating the legal entities that can participate in the outsourcing of such services. According to the above mentioned dispositions, providers of training services to adults having the legal organizational form of non-governmental organizations (associations and foundations) but also companies or

freelancers are excluded (the latter) unduly from an activity that could be carried by them. The legislator has left from a wrong premise, the appropriate adult educational activity corresponding to the classification from the Code of economic activities in Romania 8559 - other forms of education can be made according to the Law 1/2011 – the national education law by public and private providers of education and training who are certified / accredited in terms law (Article 331 paragraph 1), and not only by the non - profit organizations. This prohibition exists in its former shape of the national education law No 84/1995 in Article 104 which specifies that any form of private education cannot function unless the non-profit principle. Moreover, foreign languages courses are organized and authorized under Governmental Ordinance no. 129/2000 considering that for the same legal regime, Romanian language courses must obey the same laws, too.

The condition that the outsourcing of language courses to be made exclusively by non-governmental organizations, respectively associations and foundations organized according to Governmental Ordinance 26/2000, appears as a restrictive condition in terms of the acquisition of these services according to Emergency Governmental Ordinance 34/2006 on the assignment of public acquisitions contracts, of public works concession contracts and of service concession contracts. According to Article 21 from Emergency Governmental Ordinance 34/2006 contracting authorities have an obligation to purchase through electronic means both direct and competitive purchases in percentage of at least 60% in 2016, at least 80% in 2017, and 100% since 2018. The exclusion from the acquisitions procedures of the private providers of education and training that are certified / accredited by law as companies or freelancers should appear as a violation of the principle of non-discrimination and equal treatment postulated in Article 2 of Emergency Governmental Ordinance 34/2006. This ban could also lead to numerous appeals of the education and training providers that were excluded from the procedure that would delay, justifiably, the access to language training and acquisition of language skills of nationals of other countries, making it hard to apply Governmental Ordinance 44/2004 regarding the social integration of immigrants to language courses.

Thus, article 14 paragraph 1 and Article 35 paragraph 1 from Governmental Ordinance 44/2004 talking about the right to language training for migrants who have the right to stay in Romania but also for beneficiaries of a form of protection, uses the term "they benefit of free courses [ ...] ", the term used by the legislator establishing the voluntary nature of training giving the immigrants the opportunity to capitalize or not this right. We believe that the legislator in view to effective integration should rule including the compulsoriness of language courses at least for

certain categories of foreigners (for example, foreigners who have the right to stay in Romania etc.).

A study of the Council of Europe shows that a Western European legislator considered in 8 of 12 cases that language training is indispensable for the foreigner, ruling the binding nature of it [6].

According to the legislation the course of initiation in Romanian language is structured in levels of acquired knowledge, the documents released by the Ministry of Education attesting that this course was completed. In terms of optimal functioning of the Common European Framework of Reference for Languages (CEFR) the provision of Romanian legislation to align to the course stairs / assessment on the framework levels is extremely useful both in terms of creating a referential regarding the levels of mastery of the Romanian language from a foreign adult's perspective who is involved in an ongoing program and especially in terms of language certification levels. The legislator should also realize a referential for a free introductory course in Romanian language, referential that addresses the objectives and the content of the training, the evaluation / the certification of the acquired skills. The existence of such a referential would also be useful in the process of outsourcing to suppliers of language training programs. The French referential based on five evaluation criteria of training providers (the organization and development of the provider, access ways, the objectives and the content of the training, the trainers' skills, the capacity to evaluate the level gained in the training program) [7] can be a starting point in the elaboration of a training / evaluation system for the Romanian language.

Another important aspect is the funding of language programs. Romanian legislator opted for the gratuity of the initiation training, procedurally conditioning the access to it.

The legislation of community states is various in terms of funding of the language courses, according to a study made by the Council of Europe, most of them imposing a system of sanctions and incentives given based on the percentage of the foreigner's participation to the course and the successful testing graduating - "The sanctions may be of a financial nature taking the form of some reductions or taking full responsibility for the course / certification fees " [8].

We believe that granting the free courses just for getting a certain level of linguistic competence (for example, B1), with the subsequent possibility for the foreigner to acquire higher levels of certification through full or partial payment of the course / test, is the correct solution and of interest of the foreigner in integration programs.

We believe that the foreigners' access to language courses should be much easier, through the lack of the conditions imposed by the Order no.5924/2009, and by beginning courses only once a year, the long development period (the length of a school year).

Maintaining Governmental Ordinance 44/2004 with the introduction of the possibility for the competent authority to organize language training programs based on existing requests at some point would be a beneficial legislative change. Also, from our point of view, it is useful to provide for a minimum number of hours for the language training program with the opportunity for the course initiator to rate the ways of supporting, and the introduction of the possibility of accessing the courses in e-learning system.

The immigrants' impossibility to access the free language courses, organized into levels of linguistic competence, and the impossibility to capitalize language skills acquired in informal contexts represent issues that a future legislative change would have to consider.

Currently, we believe that, from the perspective of Order no.5924 / 2009, the legislator's will to overregulate the language training of immigrants appears as a negative model that the host country's legal system could have on the lives of immigrants.

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