

A LOOK AT HOW WORK LOAD QUOTAS ARE SET IN HIGHER EDUCATION

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*Motto: "Happiness in intelligent people is the rarest thing I know."
Ernest Hemingway, The Garden of Eden*

ABSTRACT: *Work is a part of our lives. If respect for human rights is important for the quality of life, it is certainly important in workplace interactions. The existence of quality regulations on all levels is essential to ensure respect for one's human rights. This article reviews international regulations related to work time and rest periods which pertain to the area of human rights regulations, as well as the fundamental rules in our national law. Setting the work load quota is a factor which, when correctly determined, ensures both the protection of employees against exploitation, as well as performance criteria. Higher education is a domain where intellectual creativity is an important part of the work result. Beside the time where physical presence before the students is necessary, a fraction of the work time is attributed to the activity of scientific research. Presence before the students entails various degrees of exertion, depending on the level of the study program, the type of the activity, and other criteria that are specific to the activity of teaching. In order to set the work load quota in a balanced manner, all factors that are specific to this activity must be kept in mind. This article presents, for the first time, the result of research on the manner in which the provisions of Law no. 1/2011 of national education on the teaching load, work time and rest periods have been transposed into university regulations, procedures and methodologies.*

KEY WORDS: *labor law; capping the work load; work time; higher education;*
JEL CODE: 31; 38

1. INTRODUCTION

"Laws are our shore, and they are our mother" ("Legile sunt matca și mama noastră"), said Dimitrie Cantemir, demonstrating the place that law occupies in civilized society. Just as there is no society without man, nor man without society, man and

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society do not exist without law, morals, religion, art, economy. Law is not only a science, but is equally a technique and an art, seen as a set of norms that organize life in a community, it is a technique for human beings living together which is destined to defend society from excesses. As for the form of the law, the literature in the domain (Popa, 2008, p. 29) specifies the fact that studying the law cannot be done separately from studying its form. Consequently, the essence of the law must find appropriate means for expression, adequate forms. In the words of Hegel, “laws materialize through form first, through the fact that they are cast as law (...)”. (Hegel, 1969, p. 242) This is the circumstance that gives a law the possibility to be known, and, consequently, to be respected, applied. In legal theory, these specific means of expressing the content of the law also bear the name of sources of law. The material sources of law are conceived as veritable “givens of law, realities exterior to it. Considered as such, as sources of law, are the configuration factors of the law, natural law and human reason, judicial conscience” („dat-uri ale dreptului, realități exterioare ale acestuia. Sunt socotite astfel, izvoare ale dreptului, factorii de configurare a dreptului, dreptul natural și rațiunea umană, conștiința juridică”). (Popa, 2008, p. 143) According to Djuvara, „positive law is (...) the secretion of the judicial conscience of a given society” („dreptul pozitiv este (...) secrețiunea conștiinței juridice a societății respective”). From the outside, a positive law forms and evolves under the impact of the natural, and historic and social environment, and, from the inside, through the interactions of its branches, sub-branches, institutions and norms. The human factor is the most powerful active force in constituting and altering a positive law. The everyman or everywoman does not wait for judicial law to make them happy, but does put forth hope that it will contribute to the materialization of their projects for a peaceful life led in safety. Which is to say that they submit to a fair law and do not submit – in one way or another – to a law that they feel as unjust. (Mihai, 2008, p. 111)

The legal relations connected to labor entail respect for certain rights that are fundamental for natural persons. Their enshrinement in a judicial form was not an easy process. Labor relations are associated with fundamental rights such as workplace equality, the absence of discrimination, the prohibition of forced labor and slavery, the right to equal pay for equal work, the right to a fair and favorable remuneration, the right to rest, the freedom of association, and even the right to a family life. (Ruggie, 2008, pp. 15-16)

We should note that the rights that bear a personal character which are associated with labor relations are numerous. These rights have been ultimately enshrined through judicial norms with an international character due to the importance that society attributes to them. Their protection offers the individual the possibility to make the most of their personality. We could say that they contribute to the outlining of a value that is not explicitly protected as a right for the very reason that it is the result of several rights that exist simultaneously: human dignity. The international enshrinement of a right to dignity happened recently, being mentioned for the first time in 1946, in the United Nations' Declaration of Human Rights. The definition and content of such a right are, without a doubt, extremely complex matters and, for this reason, international conventions and national legislations, while they explicitly protect it in various contexts, do not define it. There are opinions according to which the intrinsic meaning of the notion of dignity can be discovered intuitively, being determined mainly by cultural factors (Schachter, 1983, p. 849). We subscribe (Fodor, 2017, p. 80), however, to those

who opine that the main elements taken into consideration are similar among all cultures, in spite of any differences that may exist, and so, dignity is one of the universal human rights associated with the structure and functionality of society, and not culture. (Donnelly, 2009, pp. 78-84)

In order for the rights related to labor relations to be respected, work load quotas are of an essential importance. In higher education, setting the work load quotas comes with certain particularities that call for a more in-depth study in order to establish criteria that are as fair as possible. This article analyzes Romanian legislation, aiming to determine its correlation with the requirements set forth by international and European Union acts, as well as the manner in which it is transposed by the universities through internal regulations for work load quotas.

2. THE INTERNATIONAL LEGISLATIVE FRAMEWORK REGARDING THE HUMAN RIGHTS RELATED TO LABOR RELATIONS

The uniformization of the vision on the content of the notion of dignity can also be supported by a current phenomenon that tends to harmonize cultural perspective in general, especially in the case of labor relations: globalization. The intensification of the circulation of capital and workforce has led to the spread of best and worst practices in labor relations. Unfortunately, the fierce economic competition has made it so that practices that negatively affect employees are applied where legal protection is insufficient. On an international level, the requirements established through international documents such as the Forced Labor Convention (1930), the Freedom of Association and Protection of the Right to Organize Convention (1948), the Right to Organize and Collective Bargaining Convention (1949), the Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951), the Abolition of Forced Labor Convention (1957), the Convention Concerning Discrimination in Respect of Employment and Occupation (1958), the Convention Concerning Minimum Age for Admission to Employment (1973) and the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999) still have a recommendation status. With the benefit of a control mechanism that is judicial in nature, respectively the European Court of Human Rights (ECHR), the provisions of the European Convention of Human Rights can be implemented with judicial effects. The case law of the ECHR has highlighted various types of human rights violations connected to labor relations, such as violations of the right to a private life through the interception of phone calls or tracking and accessing one's electronic correspondence (*Halford v. the United Kingdom*, 1997; *Bărbulescu v. Romania*, 2017), violations of the right to respect legality in the event of a criminal accusation (perceived as an autonomous notion) by the non-application of the principle of the more favorable law in the case of a lifetime ban on practicing a certain profession (*Gouarré Patte v. Andorra*, 2016), violations of the right to non-discrimination in conjunction with the right to freedom of religion by refusing to acknowledge one's capacity of authorized accountant (despite passing the mandatory examination) for reasons pertaining to religious affiliation (*Thlimmenos v. Greece*, 2000) and violations of the freedom of expression (related to providing information on public interest matters) by imposing punishments for the disclosure of intercepted phone calls between journalists

and politicians which contained incriminating elements, phone calls that represented classified evidence (*Bucur and Toma v. Romania*, 2013).¹

Within the European Union, various international acts with judicial force have continuously aimed to protect human rights when it comes to labor relations, starting with the principles outlined in the Treaty of Rome from 1957, establishing the European Economic Community, to the rights enshrined by the Community Charter of Fundamental Social Rights adopted in 1989 (Gheorghe, 2015, pp. 9-10), as well as those mentioned in the European Charter of Fundamental Rights (2012) and other directives. The European Court of Justice, through its case law, has provided the interpretation of the provisions of the European treaties and other acts, for example in matters that revolved around employee rights (Case C-518/15, *Matzak*, referring to the amount of time that an employee is “readily available” to the employer; Case C-102/16, *Vaditrans*, referring to the weekly rest period of transporters; Case C-270/16, *Ruiz Conejero*, concerning the right to medical leave in the case of an affliction stemming from an infirmity; Case C-103/16, *J. Porras Guisado*, referring to the rights of pregnant women in the case of collective dismissals) (European Employment La Association (EELA), 2018).

3. RIGHTS AND SATISFACTIONS CONCERNING WORK TIME AND REST PERIODS

A document by the International Labor Organization presents the importance of rest periods in labor relations. As a prime benefit of correctly determined rest periods, the document mentions physical and mental well-being, before referring to workplace health and safety, and increased productivity. This order in which the positive effects are enumerated highlights the importance given to the inner feeling of content. International regulations center on rest periods within the context of the normal work schedule, work carried out under difficult working conditions or during the nighttime, and then daily rest for work carried out in prolonged shifts, the weekly rest periods and the annual leave (International Labour Organisation, n.d.). Work time and rest periods are the subject of several international conventions, such as the Hours of Work (Industry) Convention (1919), the Hours of Work (Commerce and Offices) Convention (1930), the Weekly Rest (Industry) Convention (1921), the Weekly Rest (Commerce and Offices) Convention (1957), and the Holidays with Pay Convention (revised, 1970)

On a European level, the standards concerning work time and rest periods are established in Directive 3003/88/EC. According to this directive, the medium amount of work time cannot exceed 48 hours per week, with the average being calculated based on a period of 4, 6 or 12 months, according to the national legislation. In normal working conditions, for the situations where the work time exceeds 6 hours per day, it is mandatory to allow a break during the work schedule; for every 24 hours, the employee is entitled to 11 hours of continuous rest; for every seven-day period, the employee is entitled to 24 hours of rest in addition to the 11 hours of daily rest; the employee has the right to a minimum of 4 weeks of paid leave. The directive specifies that its provisions

¹ The cases were selected from the *Work-Related Rights* fact sheet published by Press Unit, November 2019, available at https://www.echr.coe.int/Documents/FS_Work_ENG.pdf, accessed on January 20, 2020.

are applicable to all areas of activity in the public or private sector where labor is carried out under normal conditions.

The analyses carried out at European level have highlighted that the predictability of the work schedule, flexibility in organizing the schedule, and tailoring the work schedule to the family needs of the employee lead to a reduced level of dissatisfaction related to work. (European Foundation for Living and Working Conditions, 2008).

In the European Union, in 2019, Directive (EU) 2019/1158 on work-life balance came into force. In some European states, such as Belgium, Italy and Norway, the legislation provides for the possibility to provide labor on-call. This manner of providing labor entails that the employee is available to the employer for a period of time where they can be at home or work without actually providing the labor for which they are employed unless the conditions that make the provision of said labor necessary arise. Most often, such regulations apply to physicians, firefighters or workers in the hospitality or public catering industry. The European Court of Justice has established in several of its decisions (C-303/98, *Simap*; C-151/02, *Jaeger*; the joined cases from C-397/01 to C-403/01, *Pfeiffer et al.*) that time spent at the employer's office on an on-call basis represents work time. In Romania, such a type of work is not provided for or regulated expressly in the labor legislation.

The aforementioned standards are easily applicable in cases where the activity that the employee's work consists in is carried out at "the workplace." There are, however, situations where the activities that must be carried out according to the labor agreement do not wholly take place at the office / offices of the employer, and instead do so in other locations or even at home.

The teaching staff working in higher education find themselves in such a situation. The attributions that these employees must fulfill can be grouped into teaching activities, scientific research, extra-curricular activities with the students, and administrative activities. Teaching activities, be they courses, seminars, practical training or projects, generally entail the presence of the teacher at the office of the employing institution. This is not, however, an absolute rule, as seminars can, for example, be carried out in courthouses, archives, museums or other locations where the debate can make use of certain elements which cannot be reproduced in a seminar classroom. Other teaching activities, on the other hand, such as drawing up manuals, course materials or any other such items necessary for teaching can require the teacher to travel to libraries, or they can be drawn up at home, where several favorable conditions are usually met: quiet, the organization of one's schedule according to the needs of their family life, the comfort necessary for work, the accessibility of the resources necessary for carrying out one's tasks. This also applies to research activities, which involve, aside from studying and producing scientific works or carrying out scientific experiments, travel to and participation in symposiums, conferences and other professional meetings. Administrative activities, such as drawing up documents required by the educational process or extra-curricular documents meant to provide guidance for students can require the teacher to be present at the educational institution or not. On an international level, in the conventions referring to labor relations, there are no special standards specified for labor in the domain of education.

4. SETTING THE WORK LOAD QUOTA, THE WORK TIME AND REST PERIODS FOR TEACHING STAFF IN HIGHER EDUCATION. NATIONAL REGULATIONS²

At national level, the regulations concerning work time and rest periods in the Labor Code are in agreement with the European legislation. The work time for adults is set at 40 hours per week (art. 112) and, exceptionally, it can be extended to 48 hours per week, including overtime, under the condition that the average of the work hours, determined on the basis of a reference period of 4 calendar months or, under exceptional circumstances, 12 calendar months when there are objective reasons connected to the labor organization, does not exceed this number (art. 114). (Roş, 2019, pp. 71-73) Working overtime can generally occur only at the request of the employer and the consent of the employee. (Roş, 2017, pp. 200-201) Overtime is compensated through paid time off in the following 60 days (art. 122 par. 1), and, in cases where such compensation is not possible within this time limit, the employee shall be paid for the overtime through the addition of a bonus to their salary which corresponds with the duration of the overtime, and is negotiated, but cannot be lower than 75% of the basic salary (art. 123 par. 2). The weekly rest period is of 48 consecutive hours, usually on Saturdays and Sundays. In the event that public interest or the normal operation of the activity would be harmed should the rest period occur on Saturdays and Sundays, the weekly rest period can be set during other days, which are established in the applicable collective labor agreement or in the internal regulations, in which case, again, the employees shall benefit from a bonus established in the collective labor agreement or, by case, the individual labor agreement. In exceptional situations, the weekly rest periods can be offered cumulatively, after a continuous period of activity that cannot exceed 14 calendar days, with the authorization of the territorial labor inspectorate and the consent of the trade union or, by case, the representatives of the employees, a situation in which the employees are entitled to compensation that cannot be lower than 150% of the basic salary (art. 137 refers to the double compensation established according to art. 122 par. 1). Employees have the right to paid annual leave of at least 20 workdays.

The legislation concerning higher education contains a few specific provisions on setting the quota for the work load. Obviously, creativity and intellectual creation represent an essential requirement among the attributions of a university professor, scientific research being one of the main missions of higher education (Simon Cadez, et al., 2017, pp. 1455-1456), as stated in art. 117 par. (2) of Law no. 1/2011 on national education.³ Intellectual creation is not, however, a product that can be obtained in equal quantities / unit of time, nor within a strict work schedule, as prior advanced documentation, which is an integral part of the time assigned to research, is also necessary. Creative ideas take shape in the most unusual of circumstances, and for a good creative “productivity,” each person has specific requirements when it comes to the environment where they carry out their activity, the schedule, number of hours allocated. The irregularity of the working schedule can vary for a professor of higher education also

² The authors' opinions are personal and do not represent the opinion of the “Dimitrie Cantemir” Christian University of Bucharest.

³ Published in the Official Gazette of Romania, Part I, no. 18 of January 10, 2011.

depending on the activity that they are involved in at a certain moment in time. On the other hand, the educational system's need to adapt to social requirements leads to the necessity of a teaching activity schedule that sometimes runs late into the evening (even until 9 or 10 PM in the case of masters' degree studies) or that take place during the days dedicated to weekly rest (Saturdays and Sundays) in the case of distance learning or part-time courses. Activities with the students are conducted throughout the semesters of the academic year, while other activities supporting the teaching process (for example, faculty department and council meetings, the drawing up of the job title list and the curriculum plans for the new academic year, activities meant to promote the higher education institutions, the drawing up of the course syllabus) can also take place outside these periods. Throughout the academic semesters, the activities are subject to a schedule where the planning of the activities differs from one day to another, with a possibility for the classes to be arranged into modules.

Thus, in order to verify whether the employed university teacher is working the number of hours according to which the basic salary is established, but at the same time, in order for the employee to be protected against tendencies to be assigned tasks whose completion would exceed the maximum amount of weekly labor or tasks that would not be remunerated, it is necessary to establish a system to define the work load quota and to verify whether the compensations established by law are paid in the cases where it is mandatory for them to be paid.

According to the provisions of art. 287 par. 1 of Law no. 1/2011 on national education, in higher education, *the university work load quota* can be the teaching load quota and the research load quota.⁴ Paragraph 22 of the same article correlates setting the work load quota in higher education with the provisions of the Labor Code, showing that "The total amount of work hours in a teaching or research load quota, resulting from the cumulation of the weightings of the activities provided for in par. (1), is of 40 hours per week" („Suma totală a orelor de muncă dintr-o normă didactică sau de cercetare, realizată prin cumularea ponderilor activităților prevăzute la alin. (1), este de 40 ore pe săptămână”).

In accordance with art. 287 par. (4), "The teaching load quota is established according to the curriculum plan and is calculated as a weekly average quota, regardless of the period of the academic semester that it is done in. The weekly average quota is established by dividing the number of conventional hours derived from the individual job description into the number of weeks specified in the curriculum plan for the teaching activity of courses and seminars for the entire academic year" („Norma didactică se stabilește conform planului de învățământ și se calculează ca normă medie săptămânală, indiferent de perioada semestrului universitar în care este efectuată. Norma medie săptămânală se stabilește prin împărțirea numărului de ore convenționale din fișa individuală a postului la numărul de săptămâni înscris în planul de învățământ pentru activitatea didactică de predare și de seminar din întregul an universitar”). The teaching load quota can contain activities related to courses, seminars, practical training and

⁴ The text of art. 287 par. 1 does not make use of any conjunction between the two types of quota, as the conjunction "or" is only utilized in par. 22. One opinion showed that the teaching load quota, pertaining to teachers, also includes the research activity, while the research load quota pertains to researchers (Țiclea, 2014, p. 388)

laboratory projects (we shall hereby refer to these collectively as seminar activities in order not to weigh down the text), guidance for the yearly projects; guidance on writing the bachelor's thesis; guidance on writing the dissertation; guidance on writing the doctoral thesis; other teaching, practical or scientific research-related activities specified in the curriculum plans; leading academic artistic or sports-related activities; assessment activities; tutoring, consultations, guidance for students' scientific groups, for students within the transfer credit system; participation in councils and commissions in the interest of education. Obviously, as we will see from the forthcoming analysis, aside from the teaching activities, there are also research activities contained in the teaching load. It is not clear, however, from how the text is written, whether the enumeration from art. 287 par. (2) is limitative or entails that these activities "can" be subsumed to the teaching load along with other teaching activities. This is because there are other activities connected to the teaching process as well, which are quite closely connected to the curriculum plans, such as drawing up and updating the course syllabus and the calendars of the subjects, self-assessment, drawing up various reports (such as the annual research report), etc., activities meant to promote the higher education institution or leading different extra-curricular activities than those related to arts or sports, such as social activities, traveling for the purposes of becoming familiar with the activities of institutions that complete one's perspective on specialized professional training, activities meant to aid students in what concerns their career choices, etc. Furthermore, there is no mention of which assessment activities shall be considered for the quota, respectively whether it is only those from the end of the semester or those conducted throughout the semester as well (tests, projects, homework, etc.), given that they are associated with the curriculum plan, are time-consuming, and their results, in most cases, are included in the final grade, as well as the assessments made during the bachelor's thesis, dissertation and doctoral thesis examinations.

According to art. 288 par. 1, "Teaching activities that exceed a teaching load quota provided for in art. 287 shall be remunerated cumulatively or paid by the hour" („Activitățile didactice care excedează o normă didactică prevăzută la art. 287 sunt remunerate în regim de cumul sau plată cu ora”).

Obviously, the teaching load quota, which also includes the research activity⁵ should contain all activities carried out by the teacher, and the amount of these activities must not exceed 40 hours per week. In the event that the teacher also carries out additional activities, their total hours of activity cannot exceed a maximum of 48 hours per week, in accordance to the Labor Code.

One particularity of higher education is how the work load quota for activities related to the teaching load is calculated through conventional hours. In the case of class activities, through this establishment of the work load quota, what is recognized is that not all classes require the same effort when it comes to preparation and presentation, as courses entail a greater effort than seminars, while classes for master's or doctoral students require a greater effort than those for bachelor's students. Thus, according to the law, one seminar, practical training or laboratory hour counts as a conventional hour,

⁵ The fact that a teacher also carries out research activities is evident from the text of art. 291 par. 3 of Law no. 1/2011 as well, which shows that the teaching and research personnel is formed of persons carrying out teaching *and/or* research activities.

while a course hour is counted as two conventional hours for bachelor's studies, and as 2.5 conventional hours for master's and doctoral courses, and as 1.5 conventional hours for master's and doctoral seminars, practical training and laboratory projects. For the hours spent teaching in a foreign language, there is also a special quota, as the conventional hour is additionally multiplied by 1.25. The other teaching activities, provided for in par. (2) letters c)-j) of art. 287, are also quantified as conventional hours through a methodology approved by the academic senate depending on the study program, field of study and specialization, such that any physical hour of activity corresponds with a minimum of .5 conventional hours.

The law establishes the minimum teaching load quota for each teacher certification level⁶, mentioning the minimum amount of classes for each case, while highlighting that the academic senate can set even higher quotas, which cannot, however, exceed 16 conventional hours per week. The express mention made regarding activities that the work load quota of assistant professors can include aims to name the activities that they are allowed and obligated to carry out. Thus, for the position of assistant professor, the work load cannot include activities related to teaching, student assessment, guidance for dissertations and doctoral theses, tutoring, consultations, and guidance for students' scientific groups. Some comparative analyses (Teichler, 2014, p. 72) have underlined the fact that, in European states, the upper-level teacher certifications (professors, associate professors) assign fewer hours to teaching activities and more to research, in contrast with assistants, where the situation is reversed, and, as such, our legislation is aligned with this view.

In the situations where a minimum teaching load quota cannot be formed, the teaching load can be supplemented with research activities, under the condition that the reduction of the teaching load be half of said load at most; the research hour is equivalent to .5 conventional hours (art. 287 par. 15). As a result, in exceptional cases, a teaching position in the job title list, pertaining to a teaching role, can be assigned a minimum of half of the value of a teaching load and conventional research hours. The provision concerning the supplementation of the quota with research activities is imperative, and this solution, in our opinion, has to also be adopted in relation to the quota set by the academic senate.

Establishing the teaching load quota through conventional hours and the differing minimum quota (smaller for university professors and progressively larger for associate professors, lecturers and assistants), as well as the obligatory amount of hours devoted to courses and seminars in the quota relative to the teacher certification lead to a smaller load of physical hours for the teachers who have a smaller quota, which contains hours for courses and seminars, and for those who teach only in a foreign language, and the number of hours is even lower when it comes to classes for master's and doctoral studies, and, as such, the differing difficulty levels of the activities are taken into consideration. At the same time, this also results in a differential number of hours assigned to research activity, filling the teaching load quota from which the other activities (teaching activities) have been subtracted.

⁶ For a university professor – 7 hours, of which a minimum of 4 hours are for courses and seminars; for an associate professor – 8 hours, of which a minimum of 4 hours are for courses and seminars; for a lecturer – 10 hours, of which a minimum of 2 hours are for courses and seminars; and for an assistant – 11 hours.

According to the provisions of art. 286 par. (3), the job title list contains, in hierarchical order, the occupied or vacant teaching and research positions, specifying the corresponding teaching and research roles, as well as the weekly number of conventional hours allocated to course activities, seminars, practical training or laboratory courses, project guidance, student and doctoral student guidance, specialized practice, research practice, and other equivalent activities for the subjects outlined in the curriculum plan. In par. (4) of the same art., it is also specified that the job title lists are drawn up at departmental or doctoral school level by consulting its members, as a result of the specification of the teaching and research tasks by the faculty's council.

By analyzing the aforementioned legal provisions of Law no. 1/2011, as well as the related legal provisions, we can see that the regulations are not sufficiently clear and lead to very diverse means of setting the teaching load quota in higher education, which leads to the following conclusions:

1. By analyzing the provisions of art. 386 par. (3) and (4) in relation to those of art. 287 par. (22), it is not clear whether the teaching load quota is different from the description of the position in the job title list. In our opinion, given that the teaching load quota is of 40 hours per week (art. 287 par. 22), it is obvious that it includes the activities related to the teaching position where there is only a maximum of 16 conventional hours per week, the latter mostly consisting in courses and seminars, which, thus, is equal to a smaller number of physical hours.

There is a connection between "the teaching load" and the description of the position in the job title list. The provisions of art. 286 par. 3, which mention "course activities, seminars, practical training or laboratory courses, project guidance, student and doctoral student guidance, specialized practice, research practice, and other equivalent activities" („activități de predare, seminare, lucrări practice sau de laborator, îndrumare de proiecte, îndrumare a studenților și a studenților-doctoranzi, practică de specialitate, de cercetare și activități echivalente acestora"), the reference made to the connection to the curriculum plans and the imperative wording lead to the idea that the activities described in this text are those that *must* be mandatorily included in "the teaching load" and, respectively, the descriptions of the positions in the job title list. There is, thus, a connection made between "the teaching load" and "the description of the position in the job title list" described in art. 286 par. 2. The other activities listed in art. 287 par. (2) can be included in the description from the job title list or not. In case they are included, their quota must be set in conventional hours.

2. By relating the number of hours dedicated to the activities described in art. 286 par. (3), which must be included in the job title list position's specifications, to the number of teachers and the maximum amount of hours allotted to a teaching position (meaning 16 conventional hours), it may become necessary for such activities to be included in vacant positions, in which case they shall be paid by the hour (or cumulatively), without exceeding the legally imposed maximum amount of 48 hours per week for a teacher. Other activities described in art. 287 par. (2) that are not mentioned in art. 286 par. (3) or fall under the category of activities related to the teaching process, but not mentioned in art. 287 par. (2) shall be included in the teaching load where, along with the research activities, they shall complete the weekly 40-hour teaching load quota.

3. The correlation between art. 286 and art. 287 is not very good, given that the activities described in art. 286 par. 3 do not perfectly overlap with those described in art.

287 par. 2. It is not clear, for example, whether the "student guidance" mentioned in art. 286 par. 3 corresponds with the activities related to "guidance on writing the bachelor's thesis; guidance on writing the dissertation; guidance on writing the doctoral thesis" or with those related to "guidance for students' scientific groups, [and] students from within the transfer credit system" mentioned in art. 287 par. 2. The identification is important in order to determine what the activities are that shall be mandatorily included in the job title list position specifications.

4. Given the lack of consistency in the lawmaker's wording, some universities also include all of the activities listed in par. 2 of art. 287⁷ in the teaching load and the job title lists of the teachers, while other universities only include the course, seminar and project guidance activities⁸, while a third category of universities include the mandatory ones and only a few of the others, identified as "other activities"⁹ or establish, by senate ruling, various types of possible quotas, some for "teaching and research" (the associated quota for the teaching role being lower than 16 conventional hours), and also "non-research teaching quotas," specifying that such quotas come with an increased number of hours in comparison to the standard ones approved by the academic senate for each teaching role, without the possibility to exceed 16 hours per week.¹⁰ In the case of the second group, student guidance activities are excluded (of course, it is not clear which guidance activities should have been included, as we have shown at point 3), activities which, according to art. 286, par. 3, should be included in the job title list position specifications. In the case of the third group, the flexibility provided by the universities

⁷ In this regard, see *Operational Procedure for the Drawing Up of the Job Descriptions, the Operation and Monitoring of Teaching Activities, UAB Code: SEAQ_PO_PBS_03 (Procedură operațională privind întocmirea fișelor de post, desfășurarea și monitorizarea activităților didactice, cod UAB: SEAQ_PO_PBS_03)* of 2019, by the "1 Decembrie 1918" University of Alba Iulia, Annex no. 2, http://senat.uab.ro/upload/112_2025_07_seaq_bps_03_procedura_fisa_de_post_site.pdf, accessed on 25.02.2020. Also see *Job Description, Annex to the Labor Agreement (Fișa postului, anexă la contractul de muncă)*, the West University of Timișoara, <https://www.uvt.ro/files/25de8cc3cb1537488cd0466905a1ed2b6e38b645/>, accessed on 25.02.2020.

⁸ For example, see *The Procedure on Drawing Up the Job title lists for the Teachers of the Departments of "Dimitrie Cantemir" Christian University*, P0 -04 (Procedura privind elaborarea statelor de funcții ale personalului didactic din departamentele Universității Creștine „Dimitrie Cantemir”, P0 -04), Annex 1b, <https://www.ucdc.ro/ceac/proceduri/PO04--Procedura-privind-elaborarea-stator-de-functii-ale-personalului-didactic-din-cadrul-departamentelor-UCDC.pdf>, accessed on 25.02.2020.

⁹ For example, we shall refer to *Instructions Concerning How to Draw Up the Job title lists of the Teaching and Research Staff (Instrucțiuni privind întocmirea statelor de funcții ale personalului didactic și de cercetare)*, Annex 3, approved by the Administration Council of the "Babeș-Bolyai" University of Cluj-Napoca in 2012, https://www.ubbcluj.ro/ro/infoubb/files/InfoUBB_2012-2/Instrucțiuni%20privind%20intocmirea%20statelor%20de%20functii%20ale%20personalului%20didactic%20si%20de%20cercetare%20nr.%2016.899%20din%2030.05.2012.pdf, accessed on 25.02.2020; also *The Methodology on How to Draw Up the Job title lists for the Teaching Personnel of the Bucharest Academy of Economic Studies for the 2018-2019 Academic Year (Metodologia privind întocmirea statelor de funcții ale personalului didactic din Academia de Studii Economice din București pentru anul universitar 2018-2019)*, adopted through Ruling no. 87/27.06.2018 by the Senate of the Academy of Economic Studies of Bucharest, Annex 1, http://senat.ase.ro/Media/Default/Hotarari%20Senat/2018/20180627/Hot.%20nr.%2087.%20Sed.%20Senat%20din%2027.06.2018_Met.intoc.state%20functii%20pers.did..pdf, accessed on 25.02.2020.

¹⁰ *Instrucțiuni privind evidența cadrelor didactice și a activităților procesului de învățământ 2019-2020 (Instructions Concerning Record-Keeping for Teachers and the Activities of the Educational Process 2019-2020)*, the "Politehnica" University of Bucharest, p. 3, <https://upb.ro/wp-content/uploads/2017/11/Instrucțiuni-privind-evidenta-cadrelor-didactice-1.pdf>, accessed on 22.02.2020.

to the faculties is maximum, as each can include whichever activities they desire both in the “teaching load,” as well as the job title lists. We can conclude, taking into account the second described situation for the third group of universities that we have referred to, that, in their view, in case that, through a senate ruling, a teaching load quota higher than the minimum one provided for by law, but smaller than 16 hours, is set, the research activity shall exist within the structure of the duties of the teacher; in the case that the teaching load is set by the senate at 16 hours, then all activities on the job description shall be teaching activities.

5. The quota that results from the specifications of the position in the job title list differs from the weekly labor quota of 40 hours. The quota resulting from the specifications in the job title list is included in the 40-hour weekly labor quota. In case the university does not attribute all teaching activities that can be included in the teaching load to the position of the teaching role, the activities that were not included in the job title lists shall be included in the job description, accordingly for each teacher, along with those deriving from the position of the teaching role and the supporting activities not mentioned in art. 287 par. 2 or art. 286 par. 3, rounding out the 40 hours per week attached to the labor agreement of a titular teacher. As a result, the teaching load is not identical with the description of the position in the job title list. The provisions of art. 22 show that the number of hours in a teaching load is of 40 hours per week, when the activities comprised in the position’s specifications in the job title list require a lower amount of hours per week.

6. The confusion created by the legal provisions leads to an inequality among the teachers from different universities. In the case of universities that include all activities referenced in art. 287 par. 2 in their teaching load and job title list respectively, the implementation of the provisions of art. 288 par. 1 lead to the possibility of working overtime for an hourly payment by carrying out activities that are closely connected to course and seminar activities by titular teachers, such as student assessment, tutoring, consultations, guidance for students’ scientific groups, for students within the transfer credit system; participation in councils and commissions in the interest of education, and, respectively, the payment for these activities which comes in addition to the basic salary amount for 40 hours per week. In the case of universities that include only course activities, seminars and yearly project guidance in the teaching load, all teaching activities mentioned in art. 287 par. 2 letter c)-j) shall be included in the basic salary, being included in the job description and quantified within the 40 weekly hours of labor specified in the labor agreement of a titular teacher.

In this latter situation, the number of hours for research activity, the component that rounds out the total amount of work hours in the university teaching load (the university quota being of 40 hours per week), shall be reduced, sometimes substantially, in comparison to the number of hours devoted to the research activity of a teacher from a university that includes all activities mentioned in art. 287 par. 2 letters a)-j) in the teaching load. This means that the teacher who wishes to carry out a more intense research activity shall be doing so “out of their own pocket,” which is to say over the 40-hour maximum amount per week and without payment, given that the law only provides supplementary payment for teaching activities. In this situation, it will not be possible for the research to be included by the hiring university in its total amount of obtained scientific results, as long as they have not integrated the research activity of said

employee in the work load quota. At the same time, the number of hours for the research activity of a university professor will be almost equal to that of a university assistant, and maybe even lower, given that the university assistant cannot carry out time-consuming teaching activities such as assessing students or offering them guidance for their bachelor's thesis, dissertation or doctoral thesis. *In extremis*, there might be situations where job descriptions only contain teaching activities, not unlike the abovementioned "non-research quotas."

7. According to art. 117 of Law no. 1/2011, "The mission of higher education is to generate and transfer knowledge to society through: a) initial and continuous training at university level, for the purpose of personal development, professional integration of the individual, and satisfaction of the need for competence throughout the socio-economic environment; b) scientific research, development, innovation and technology transfer, through individual and collective creations, in the domain of science, engineering, arts, letters, through great physical and sports-related performance and development, as well as capitalizing on and disseminating their results" („Misiunea învățământului superior este de a genera și de a transfera cunoaștere către societate prin: a) formare inițială și continuă la nivel universitar, în scopul dezvoltării personale, al inserției profesionale a individului și a satisfacerii nevoii de competență a mediului socioeconomic; b) cercetare științifică, dezvoltare, inovare și transfer tehnologic, prin creație individuală și colectivă, în domeniul științelor, al științelor inginerești, al artelor, al literelor, prin asigurarea performanțelor și dezvoltării fizice și sportive, precum și valorificarea și diseminarea rezultatelor acestora.”), and, according to art. 193 par. 4, universities are classified, according to a hierarchy model that the law makes reference to, but has yet to materialize in practice, into a) universities focusing on education; b) universities focused on scientific education and research, or universities of artistic education and creation; c) universities of advanced research and education.

It is obvious that, upon putting the hierarchy model proposed by the law of education in practice, one of the classification criteria could also be the number of hours devoted to research in the university teaching load quota, which will probably reflect onto the global results of the university relative to the results of the research carried out according to the quotas of the teachers. Universities that include, in the teaching load from the job title list, fewer teaching activities and, correspondingly, fewer hours of research for the completion of the 40 weekly hours covered by the basic salary of the teachers will be more akin to the class of universities centered on education.

8. The provisions of art. 288 par. (2), concerning payment by the hour or by cumulating the hours that exceed a teaching load quota, respectively the basic teaching load quota, are imperative (Băncilă, 2011, pp. 5-6). There is an opinion we can extract from the specialized literature according to which it is possible for teaching personnel to conduct unpaid teaching activities (under the conditions of the existence, at the time, in Law no. 1/2011, of the forbiddance to complete more than one minimum teaching load quota beyond the basic one, a provision that is now abrogated).¹¹ Such an opinion can run counter to both the provisions of Labor Code art. 39 par. 1 letter a), which enshrines the right to a salary for the labor provided, as well as to the provisions of art. 42 par. 1 of

¹¹ The opinions are mentioned and critiqued in (Băncilă, 2011, p. 5).

the Constitution, which forbid forced labor in accordance with art. 4 of the European Convention on Human Rights.

Some of the teaching activities not contained in the description attached to the job title list position, as we have highlighted before, are present in the job description, being covered by the basic salary of the teacher. It is, however, evident that the annual work hour total must be respected. In the job description, all activities of the teacher shall need to be contained and have their quotas set, from course and seminar preparation to writing the course syllabus and the calendar for the subject, participation in department and council meetings, participation in bachelor's thesis, dissertation and admission committees, participation in the promotion of the faculty, coordination of artistic and sports-related activities, consultation hours, etc. Art. 287 par. 2 letter h) mentions the assessment activities without distinction between periodical tests as a form of evaluation throughout the semester and examinations, so the time allotted to these assessments will have to be subject to a quota and included in the job description. According to the general work load quotas regulating labor relations and in accordance with art. 287 par. 22 and art. 288 par. 1, in the case where all of these activities exceed 40 hours per week, they will need to be remunerated separately. On the other hand, the assessment of the activity of each teacher will have to take into account the concrete number of hours set for each type of activity, for each teacher. It shall not be admissible to establish a uniform scoring model for all situations, given that, for example, some teachers can have teaching load quotas of 600 hours devoted to research, while others have only 300 hours or even less.

When it comes to overtime, the provisions of the Labor Code on compensating it with paid time off cannot be implemented in higher education, as Law no. 1/2011 represents a special law in this field. This normative act regulates the activity of teachers in university education in such a way that, aside from the periods of annual leave, which can only be granted during school holidays (art. 304 par. 13 letter a)), weekends and public holidays, the days left are counted as workdays. A possible clause in labor agreements according to which overtime is compensated with paid time off is, thus, abusive and shall be considered null. We must underline that the employee cannot waive the rights that the Labor Code offers as protection. On this basis, granting the minimum 75% bonus in addition to the salary for said overtime provided for by art. 122 of the Labor Code is mandatory. If no compensation through paid time off is given, the overtime must be paid in a non-discriminatory manner towards other employees for whom the compensation for overtime with paid time off is not possible. At the same time, the basic value of one hour of overtime cannot be smaller than that of an hour of work that is covered by the basic salary.

As for the maximum amount of hours of teaching activity, comprising the number of hours in the teaching load along with overtime, there has been discussion in the practice over whether there is a possibility to apply a restriction. Through Decision no. 30/1998[25], the Constitutional Court of Romania resolved the exception of unconstitutionality of art. 93 par. (4) from Law no. 128/1997, a legal document that limited teaching activity to 2 teaching loads, showing that "The right to work cannot be restricted. Choice over profession and workplace is free" („Dreptul la muncă nu poate fi îngrădit. Alegerea profesiei și alegerea locului de muncă sunt libere"), and the provisions of art. 6 point 1 of the International Pact on Economic, Social and Cultural Rights,

ratified in Romania through Decree no. 212/1974 state the same, and according to them, “the right to work [...] includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts,” and states are obligated to guarantee this right. As a result, the provisions of art. 93 par. (4) of Law no. 128/1997, limiting the activity of teachers to a maximum of two teaching loads, run counter to the cited constitutional provisions.” (Băncilă, 2011, p. 13) In the standards of the Romanian Quality Assurance Agency for Higher Education (ARACIS – Agenția Română de Asigurare a Calității în Învățământul Superior), it is stated that “in order to ensure the quality of the teaching and scientific research provided, it is recommendable for the number of teaching loads covered by a teacher with a basic work load quota, from all job title lists (FTL and DL) to be 3 at most (the work load being minimum for the 2 work loads paid by the hour, depending on the teaching position)” („în vederea asigurării calității prestației didactice și de cercetare științifică, se recomandă ca numărul de norme didactice acoperite de un cadru didactic cu norma de bază, din toate statele de funcțiuni (IF și ID), să fie de maximum 3 (la cele 2 norme în regim plata cu ora încărcarea fiind minimă, conform postului didactic)”¹²). This recommendation would entail that the maximum amount of conventional hours that can be covered by a teacher within their basic work load quota and with hourly payment is 38 (16 hours of their basic work load quota and two minimum work load quotas of 11 hours each), for an assistant, the teacher qualification with the highest teaching load. For the other certifications, the calculation is done according to the basic work load quota set by the academic senate and the minimum legal work load quota for said teacher. Relative to the conclusions of the Constitutional Court’s decision, it is evident that this is a mere recommendation, as the standard that we have referred to also explicitly states.

The university teaching load quota, also including research activities, must respect the maximum 40 hours per week calculated through an average applied over a period of 12 months. If additional activities are also conducted (with cumulative or hourly payment), there can be no more than 48 hours per week calculated through an average that is also applied over a period of 12 months. The calculation will have to take into account the annual leave and the other holidays according to the law.

We should mention here that, according to art. 287 par. 4, the teaching load is only related to the number of weeks of teaching activity specified in the curriculum plan. In reality, the number of hours specified under the job title list position is the one related to the number of weeks of teaching activity contained in the curriculum plan. The teaching load quota of 40 weekly hours, which also includes research activity, is related to the 12-month period.

Some statistical analyses carried out in several European states have highlighted that, in general, in higher education, the weekly work load quota exceeds 40 hours per week (Teichler, 2014, p. 71). Naturally, the statistics were related to a full academic year average, respectively 12 months. This kind of calculation satisfies the requirements of

¹² For example, in *Specific Standards Concerning the External Assessment of the Academic Quality of the Study Programs for Bachelor’s and Masters Studies Related to Specialized Commission no. 3 Judicial Science (Standarde specifice privind evaluarea externă a calității academice a programelor de studii din domeniile de licență și master aferente Comisiei de specialitate nr. 3 Științe Juridice)*, p. 5, available at https://www.aracis.ro/wp-content/uploads/2019/07/29012018_Standarde_C3_-_Stiinte_Juridice_-_Varianta_finala.pdf, accessed on 01.03.2020.

the Labor Code, given the matters specific to labor organization in higher education, where, throughout the 12 months, there are periods of time where the schedule is very different, respectively during weeks where courses and seminars are conducted, weeks where students carry out their practical training, weeks dedicated to examination, holidays.

Another particularity concerning how the work load quota is established is related to the DL/PTL educational programs (distance learning / part-time learning). We can find provisions concerning how the work load quota is set for activities carried out within these programs in the Framework-Regulation Concerning the Organization, Conduct and Quota for Teaching Activities Related to the Distance and Part-Time Learning Forms of Higher Education, Approved By Order no. 6251/2012 of the Ministry of Education, Research, Youth and Sports.¹³ According to this normative act, the teaching activities specific for DL and PTL have their quotas set in job title lists that are distinct from those for FTL, according to the legislation in force. The legislation does not specify whether the activities carried out in these forms of education can be included in the number of hours for which, according to the labor agreement, the basic salary is set or not. The ARACIS Specific Standards Concerning the External Evaluation of the Quality of University Bachelor's and Masters Study Programs for the Distance Learning (DL) and Part-Time Learning (PTL) Forms of Education which are in force¹⁴ do not specify anything on the matter either. However, in the internal norms of higher education institutions, it is specified that the job title list for these forms of education is formed of vacant positions, usually for lecturers and assistants, given that, for these forms of education, it is seminar activities, conducted "face-to-face," that are predominantly carried out. Another explanation can be tied to the planning of these activities which mainly occur on Saturdays and Sundays, which are usually devoted to the 48 compact hours of weekly rest.¹⁵ In these situations, given that, as we have pointed out, according to the manner in which Law no. 1/2011 sets the work load quota, the compact 48-hour weekly rest period cannot be given in the following 14 days, the provisions in the Labor Code that must be applicable here are those regarding financial compensation, for the same reasons as in the case of overtime. In the case of the hours of work paid by the hour on Saturdays and Sundays, the minimum 150% bonus for overtime applied to the salary provided for in art. 137 par. (5) in relation to art. 123 par. (2) should be applicable here. Some university regulations stipulate that, in order to cover the hours of work provided for DL and PTL forms of education, the titular teachers of the higher education institution shall be priority choices. However, their consent shall be necessary, according to the Labor Code.¹⁶

¹³ Published in the Official Gazette of Romania, Part I, no. 831 of December 11, 2011.

¹⁴ The standards are available on the Agency's website at https://www.aracis.ro/wp-content/uploads/2019/07/13._Standarde_ARACIS_Comisia_13_ID-IFR_-_2017.pdf, accessed on 27.02.2020.

¹⁵ See, for example, the schedule for the "Modern Languages in Business" program of Babeş-Bolyai University in Cluj-Napoca, for the 2019-2020 academic year, 2nd semester, available at <https://econ.ubbcluj.ro/documente/2020/orareid/DLMCA%20orar.%20limbi%20moderne%20idfr%20sem%20II%20-2019-2020.pdf>, accessed on 18.02.2020. Also see the schedule for "The Motor Vehicle and the Environment" program of Transylvania University in Braşov, available at <https://mecanica.unitbv.ro/studenti/consult%C4%83-orarul.html>, accessed on 18.02.2020.

¹⁶ See, for example, *The Regulation for the Operation of the Continuous Training, Distance and Part-Time Learning Center (ROCTDPTLC) (Regulamentul de funcționare al centrului de formare continuă, învățământ la*

In accordance with the provisions of the Regulation approved by Order no. 6251/2012, setting the work load quota for the teaching activities specific for the PTL form – seminar activities, practical training, laboratory projects, project guidance, etc. – shall be done in the same way as with the FTL form, based on the number of hours provided for in the curriculum plans (art. 19). As a result, setting the work load quota shall be done based on the job title list, which is itself drawn up based on the curriculum plan, and while taking into consideration the number of student groups resulting in accordance with the legal provisions (a maximum of 30 students / course attendants in one group, according to art. 11).¹⁷

Designing and creating educational resources specific for DL, whether printed or digital, shall have a quota of 120-140 hours per course (art. 20) for a rate established through a decision by the academic senate upon the proposal of the DL/PTL department/center (probably depending on the number of weeks / semester, corresponding with the number of learning units in the resource, respectively 12 weeks for senior years and 14 weeks for the other years of study). In order to update the learning resources in existence, the number of work hours set in the quota is proportional to the update weighting (art. 20). Establishing the number of hours devoted to updating must be carried out in a flat-rate or concrete system, depending on the objective update proportion for each individual resource. As a result, the quotas for course activities must also be set for DL/PTL forms of education. However, given the particularities of these forms of education and the obligation to draw up the specific educational resources, setting the quota for these activities is done relative to these resources.

For some of the teaching activities, Order no. 6251/2012 contains express quota-setting provisions. For the DL form of education: a) the quota for face-to-face TA¹⁸ is set identically to how it is set for the FTL form (full-time learning) based on the number of hours provided for in the DL curriculum plans; b) the quota for distance TA, TA for student / course attendant support, and TA for MTA¹⁹ for each discipline shall be of 1-3 hours / group / week; c) the quota for configuring and administering data on the eLearning platform shall be of 2-4 hours / group / semester (art. 18). Setting the quota for the teaching activities specific for PTL education – seminar activities, practical training,

distanță și cu frecvență redusă (CFCIDFR) of Babeș-Bolyai University in Cluj-Napoca, art. 17, supplemented by Senate Ruling no. 218/SEN/06.07.2012, available at https://senat.ubbcluj.ro/wp-content/uploads/2013/07/Hot%C4%83r%C3%A2re_218_Regulament_CFCIDFR_2_iulie_2012-+-anex%C4%83.pdf, accessed on 01.03.2020.

¹⁷ See, for example, *The Regulation Concerning the Organization, Conduct and Quota for Teaching Activities Related to the Distance and Part-Time Forms of Education at the Level of the West University of Timișoara (Regulamentul privind organizarea, desfășurarea și normarea activităților didactice la formele de învățământ la distanță și cu frecvență redusă la nivelul Universității de Vest din Timișoara)*, approved by Senate Ruling no. HS 100 of 28.11.2019, in which „In the case of the part-time learning form of education (PTL), the quota for face-to-face seminar activities (FS) is decided based on the number of hours provided for in the curriculum plans of the study programs (CP), for every discipline, according to the formula: Number of FS conventional hours / semester = number of CP hours x number of groups” („La forma de învățământ cu frecvență redusă (IFR), activitățile de seminar față în față (SF) realizate se normează pe baza numărului de ore prevăzute în planurile de învățământ ale programelor de studii (PÎ), pentru fiecare disciplină, conform formulei: Număr de ore convenționale SF/semestru = număr de ore din PÎ x număr de grupe”) (art. 34), available at <https://www.uvt.ro/files/5bcab633c125b882e3cdf307bdfd0fe2eb52bbde/>, accessed on 20.02.2020.

¹⁸ Tutoring activities.

¹⁹ Mid-term assessment activities.

laboratory projects, project guidance, etc. – shall be done in the same way as it is done in the FTL form, based on the number of hours provided for in the curriculum plans (art. 19). Given that all activities mentioned in art. 18, art. 19 and art. 20 are mandatory, and their quotas are represented through conventional hours, corresponding with the curriculum plans of the DL/PTL forms of education (art. 8), it is obvious that they must be included in the structure of the DL/PTL specifications of the job title list positions. For the DL/PTL resources, the quotas in the teachers' job title lists shall be set according to art. 20 (a maximum of 140-120 hours per semester, respectively a maximum of 10 hours per week). The hours covered by the quota for the drawing up of resources that are DL-specific shall be allocated to lecturer positions, as the assistant positions can only comprise the other types of teaching activities specific for DL/PRL education forms. The mandatory inclusion of these activities under the teaching positions is in accordance with the provisions of art. 286 par. 3 and art. 287 par. 2, as they substitute course activities.

In the case of university assistants fully conducting the seminar activity attached to a subject in the curriculum plan for an entire year, the job title lists must contain the hours dedicated to drawing up or updating the DL resources for a lecturer position, which shall be assigned to the titular FTL teacher of said subject.²⁰ The same titular teacher shall also be obligated to assess the students, which constitutes overtime, given that this activity is attached to a vacant position in the job title list.

For other activities, which are also mandatory, the academic senate can set the rules related to the work load quota, as these activities can be found among the duties specific for teaching positions present on the DL/PTL job title lists, being among those associated to activities from the curriculum plans. For example, in some internal work load quotas²¹, the following quotas are set:

²⁰ For example, in *The Quality Manual, Distance Learning / Part-Time Learning Department (Manualul Calitatii, Departamentul ID/IFR)*, vol. III of the "Dimitrie Cantemir" Christian University of Bucharest, available at <https://www.ucdc.ro/calitate/manualul-calitatii-IFR.pdf>, it is shown that a "Coordinator / Main Professor" is the teacher (university professor, university associate professor or university lecturer, PhD) who draws up the course syllabus and coordinates the drawing up of the teaching materials specific for PTL, being obligated to provide them (p. 19). Then, in the *Regulation Concerning the Organization and Operation of the Distance Learning and Part-Time Learning Department (DL/PTL) RS – 05 (Regulamentul privind organizarea și funcționarea departamentului pentru învățământ la distanță și învățământ cu frecvență redusă (ID/IFR) RS – 05)*, available at <https://www.ucdc.ro/ceac/regulamente/regulamente-structuri-de-conducere-si-administrative/rs05%20regulament%20privind%20organizarea%20si%20functionarea%20didifr.pdf>, accessed on 01.03.2020, it is shown that "The assessment of the studies carried out within the DL/PTL Department of the University shall be done via the procedures used for FTL forms (examinations, tests, mid-term assessments)" (Evaluarea studiilor efectuate în cadrul Departamentului ID/IFR la Universitate se face prin procedeele utilizate la formele de IF (examen, test, probă de verificare, evaluare pe parcursul semestrului)" (art. 12) and that "The teaching personnel involved in the PTL and DL activities of UCDC is formed of study program coordinators, subject coordinators and teaching personnel tasked with seminars, practical training, laboratory projects, project guidance, specialized practice, and other assisted applicative activities, as well as tutors" („Personalul didactic implicat în activitățile IFR și ID din UCDC este format din coordonatori ai programelor de studii, coordonatori de disciplină și personal didactic aferent activităților didactice de seminar, lucrări practice sau de laborator, îndrumare de proiect, practică de specialitate, alte activități aplicative asistate și tutori") (art. 63). By corroborating these normative texts, it becomes obvious that the university assistant is the one conducting the seminars, practical training, laboratory assessments, and projects, while the coordinator / main teacher is the one drawing up the DL resources and carrying out the assessment of the students, as is usual in the full-time form of learning.

²¹ See, for example, *The Regulation Concerning the Organization, Conduct and Quota for Teaching Activities Related to the Distance and Part-Time Forms of Education at the Level of the West University of Timișoara*

- "drawing up the course syllabus and subject calendar before the start of every academic year, in accordance with the specific DL/PTL requirements: *Number of conventional hours / semester: 2*";

- drawing up / updating the course page for the subject on the e-Learning platform before the start of each semester, in accordance with the specific DL/PTL requirements: *Number of conventional hours / semester = 30 x (IS (Individual Study) / subject) / (SI max. / semester)*;²²

- counseling students throughout the learning process. The quota is set by estimating the fact that students will interact with the teachers according to the following degree of interaction: • 40% for freshman year students; 70% for first-semester sophomore year students; 80% for second-semester sophomore year students; • 90% for junior and senior year students: *Number of conventional hours / semester = number of students x students' degree of interaction / 3*;²³

- assessing mid-term tests and offering feedback to students concerning the manner in which said tests are carried out (3 students / hour). The quota is set by estimating that students will interact with the teachers in the following manner: • 60% for freshman year students; • 80% for first-semester sophomore year students; • 85% for second-semester sophomore year students; • 90% for junior and senior year students: *Number of conventional hours/semester = number of students x students' degree of interaction / 3*;²⁴

- assessing students at the end of the semester during the exam sessions (3 students per hour). *Number of conventional hours / semester = number of assessed students / 3*.²⁵

The regulation that we have extracted these examples of best practices from also mentions that the number of hours for counseling activities, mid-term test checking, and the assessment carried out at the end of the semester cannot cumulatively exceed the equivalent of 2 hours / group / week for a one-semester interval, which, for a number of 3 groups, for example, represents 84 hours, a figure that, of course, will fluctuate depending on the number of groups resulting in accordance to the job title list, while minding the maximum number of students in a group. We opine that this limitation proves the fact that we are dealing with a flat-rate assessment, which assumes that not all students will be present for the mid-term tests or the final examination (as was the process for the quantification of the counseling hours presented in the same normative act), so that the number of conventional hours can be determined from the very start in the structure of the job title lists. We should note the fact that student assessment, mid-term or final, is quantified in time relative to the number of students, meaning no. of

(*Regulamentul privind organizarea, desfășurarea și normarea activităților didactice la formele de învățământ la distanță și cu frecvență redusă la nivelul Universității de Vest din Timișoara*), approved by Senate Ruling no. HS 100 of 28.11.2009, which we have mentioned previously.

²² For example, in case there are 28 hours of individual study provided for in the curriculum plan of a certain subject, and the total maximum amount of hours devoted to individual study per semester in the curriculum plan is 168, the quota for this activity shall be 5 hours per semester. The example is calculated based on the Curriculum Plan for the PTL Class of 2019-2023 of the Cluj-Napoca Faculty of Law of the "Dimitrie Cantemir" Christian University of Bucharest, available at http://www.dimitriecantemir.ro/wp-content/uploads/plan_IFR.pdf, accessed on 15.10.2020. It is a flat-rate manner of establishing the hours covered by the quota for updating the DL resources.

²³ For example, for 150 freshman year students, the quota for this activity shall be 20 hours.

²⁴ For example, for 150 freshman year students, the quota for this activity shall be 30 hours / semester.

²⁵ For example, for the examination of 120 students, the quota for this activity shall be 40 hours / semester.

students / hour, a fair quota, we believe, given the necessary average time to correct a test in the case of a written examination or to assess a student during an oral examination. Furthermore, this quota system also leads to fair remuneration, as the remuneration given for assessing a student must be related to the time consumed. Other teaching activities subject to internal university quotas for DL/PTL forms of education are guidance for bachelor's theses / dissertations, assessment of admission examinations, assessment of examinations for the finalization of studies, drawing up the subject matter and bibliography for these latter examinations, supervision during written examinations, reviewing tests within an appeal commission, guidance for students' scientific groups, activities meant to promote the faculty.²⁶ We believe that any extra-curricular support activity carried out with the students is subject to what Law no. 1/2011 calls "leading academic artistic or sports-related activities."

Of course, all hours covered by a quota which pertain to a position in the job title list will have to be paid, according to the rules we have commented on previously. Although Law no. 1/2011 provides for the possibility of paying for the overtime cumulatively or by the hour, in the case of state universities, for budget reasons, the only method of payment is by the hour. In the case of private universities, the regulations also provide for cumulative payment in certain situations.²⁷ For the titular teachers, an addendum shall be concluded in the labor agreement, according to the annual configuration of the job title lists, wherein the number of hours subject to a quota shall include all teaching activities included in the structure of the job title list positions, as we have shown previously. Given that this is a stand-alone activity carried out pursuant to an individual labor agreement, bearing a character of continuity throughout the entire academic year (we will highlight again that the quota is set in relation to the total number of weeks in the curriculum plan), and not a bonus, the introduction of all obligatory elements requested by the law into the Revisal system is necessary, according to the provisions of art. 3 letters f) and h) of GD (HG – Hotărâre Guvernamentală, Government Decision) no. 905/2017. A labor agreement shall be concluded for associate teachers, which strengthens the character of continuity of the activities conducted for an hourly payment by any teacher and supports the conclusion of the addendum attached to the labor agreement of titular teachers. In the case of pre-university education, the Ministry of National Education issued the Methodological Norms of August 30, 2018 on Payment by the Hour for Teaching Staff in Charge of Classes, Management, Guidance and Control, in Addition to Methodology Teachers from Pre-University State Educational Units and Other Related Units (Normele metodologice din 30 august 2018 privind salarizarea prin plata cu ora pentru personalul didactic de predare, de conducere, de îndrumare și control,

²⁶ See, for example, *The Methodology for Establishing Teaching and Scientific Research Duties in the "Henri Coandă" Air Force Academy for the Year 2019 (Metodologia pentru stabilirea sarcinilor didactice și de cercetare științifică în Academia forțelor aeriene „Henri Coandă” din anul 2019)*, <http://www.afahc.ro/ro/facultate/documente/ Metodologia %20 de%20stabilire% 20a%20 sarcinilor%20didactice%20si%20de%20cercetare%20 stiintifica.pdf>, accessed on 01.03.2020.

²⁷ For example, in the *Internal Regulation* of the "Dimitrie Cantemir" Christian University of Bucharest, art. 7 par. 2 provides that "The Provisions of this Regulation shall also apply equally to persons outside "Dimitrie Cantemir" Christian University, who conduct their activity as its employees, for a limited period of time (associate teachers being paid cumulatively and by the hour)," available at <https://www.ucdc.ro/ceac/regulamente/regulamente-activitati-interne/ra%2001%20regulament%20intern.pdf>, accessed on 01.03.2020.

precum și pentru cadrele didactice metodiste din unitățile de învățământ preuniversitar de stat și unitățile conexe),²⁸ wherein art. 3 states that "Teaching positions / Chairs left vacant after the hiring of teachers can be occupied on the basis of an hourly payment system, with the conclusion of an individual labor agreement for a determined period of time, separately from the one concluded for the main position" („Posturile didactice de predare/Catedrele vacante rămase după încadrarea cadrelor didactice pot fi ocupate în sistem de plată cu ora, încheindu-se contract individual de muncă pe durată determinată, separat de cel încheiat pentru funcția de bază”), while par. 2 states that "All individual labor agreements subject to hourly payment must be registered with the General Register of Employees before the first day of work" („Toate contractele individuale de muncă în regim de plată cu ora trebuie înregistrate în Registrul general de evidență a salariaților înainte de prima zi de activitate”). The statements supporting the need to conclude the addendum for the labor agreement are, thus, validated by the provisions of the norms for pre-university education. In our opinion, hourly payment cannot bear a different meaning in the context of Law no. 1/2011 as it refers to pre-university or university education. In this way, the protection of employed teachers is also in place. The addenda shall be concluded according to the hours specified in the job title lists and job descriptions which will contain all teaching activities not found in the job title lists. The judicial practice has shown that, under Law no. 263/2010, gross income received via hourly payment cannot be assimilated to a salary, in the absence of an individual labor agreement (it is readily understood from the deduced context that the reference is to an addendum), as the sole principle of contributivity is not a sufficient argument for the income thus obtained to be taken into consideration when establishing one's pension amount.²⁹ Thus, the conclusion of the addendum is a measure meant to protect the employee. Taking on the overtime throughout the entire year is a contractual agreement, and the labor agreement must be written, according to art. 16 par. 1 of the Labor Code.³⁰

In regards to the verification of the conduct of *the number of research hours*, this can be seen in various ways, which shall be weighed against results such as published books, book chapters, studies and articles, reviews of scientific materials, coordination of students for students' scientific events, activities within scientific journal editorial

²⁸ Published in the Official Gazette of Romania, Part I, no. 770 of September 6, 2018.

²⁹ Appeals Court of Cluj, third section for contentious administrative and tax-related matters, civil sentence no. 51/2016, www.idrept.ro. On the opposite end of the spectrum, under law no. 19/2000, see Appeals Court of Pitești, civil section, for cases involving minors and families, as well as those concerning labor- and social insurance-related conflicts, ruling no. 1649/R-CA/2010. www.idrept.ro.

³⁰ The High Court of Cassation and Justice decided through Ruling no. 37/2016, preliminary ruling, that: "In interpreting and implementing the provisions of art. 16 par. (1) and art. 57 par. (5) and (6) of the Labor Code, in conjunction with art. 211 letter b) of Law no. 62/2011, art. 35 of the Civil Procedure Code, and art. 6 of the European Convention for the Protection of Human Rights, in the hypothesis of the failure by the parties to fulfill their obligation to conclude an individual labor agreement in written form, the natural person who has provided labor for and under the authority of the other party is free to litigate upon the ascertainment of the working relation and its effects and in the event that said working relation ceased prior to the case being brought before the court" ("În interpretarea și aplicarea dispozițiilor art. 16 alin. (1) și art. 57 alin. (5) și (6) din Codul muncii, combinat cu art. 211 lit. b) din Legea nr. 62/2011, art. 35 din Codul de procedură civilă și art. 6 din Convenția europeană pentru apărarea drepturilor omului, în ipoteza neîndeplinirii de către părți a obligației de încheiere a contractului individual de muncă în formă scrisă, persoana fizică care a prestat muncă pentru și sub autoritatea celeilalte părți are deschisă calea acțiunii în constatarea raportului de muncă și a efectelor acestuia și în situația în care respectivul raport de muncă a încetat anterior sesizării instanței").

groups. Given that, as we have previously shown, scientific research activity cannot be carried out with the same intensity every day, and that the path to the completion of research and the actual publishing of the results of the research can be long, we believe in the fairness of those systems which assess research activity yearly, through a system that takes into consideration a period of several consecutive years, establishing a score for each type of result or editorial activity depending on the importance of the publishing house, of the periodical, of the scientific publication in whose editorial committee the teacher is a member, and a minimum score set for each teacher.³¹ The score will need to be harmonized with the number of research hours included in the teaching load quota that results from the job description of every teacher. When establishing the scores, the particularities of the domain of study should also be taken into account, mainly if it is an especially important domain on a national level or if there is a significant number of publications that are ISI or whose impact factor has been calculated in said domain.³² Research assessment shall be done yearly with the implementation of this system. A quantification that does not take into account the objective number of results is not justified, for example 10 points for 3 *or more* articles published in IDB-indexed journals or 5 points for being part of the editorial group of a scientific publication *or several*. In our opinion, the correct manner of assessment must award points per unit for every type of result, as there can be no equality between persons who have a different number of results. In the cases where the resulting score is lower than the minimum set for said teacher, and, respectively, relative to their job description, the number of hours meant for teaching activities for said teacher can be increased in the following year.³³

The quantification of research can also be carried out by attributing a number of hours for each type of result of research activity, estimating, on average, what the necessary time would be to produce one page for a book, one page for a scientific article, etc. This system features a more visible connection with the university teaching load quota which can be expressed in units of time, respectively the difference between the number of hours in the teaching load and the number of hours allotted to other activities than research for each teaching position. However, it is harder to establish a realistic quota with respect to the actual time necessary to achieve the research result expressed in

³¹ See, for example, *The Regulation for Drawing Up the Job title lists of the Teachers for the 2019-2020 Academic Year (Regulamentul pentru întocmirea statelor de funcții ale personalului didactic în anul universitar 2019-2020)* approved by Ruling no. 90/10.07.2019, available at [https://www.upet.ro/documente/hotararise/2019/Hotararea%20nr.090%20din%2010.07.2019%20%20Regulament%20pentru%20intocmirea%20statelor%20de%20functii%20ale%20personalului%20didactic%20\(anexa\).pdf](https://www.upet.ro/documente/hotararise/2019/Hotararea%20nr.090%20din%2010.07.2019%20%20Regulament%20pentru%20intocmirea%20statelor%20de%20functii%20ale%20personalului%20didactic%20(anexa).pdf), accessed on 01.03.2020.

³² There is a notable distinction that can be seen in the annexes of Order 6129/2016 of the Ministry of National Education and Scientific Research as well, concerning the approval of the minimum necessary and obligatory standards for granting academic titles pertaining to higher education, professional ranks for research and development, the capacity of PhD supervisor, and the habilitation certificate, published in the Official Gazette of Romania, no. 123 bis of February 15, 2017.

³³ In *the Regulation for Drawing Up the Job title lists of the Teachers for the 2019-2020 Academic Year*, approved by Ruling no. 90/10.07.2019 of the Senate of Petroșani University, mentioned above, it is provided that the weekly average teaching load increased by a certain number of hours (NDSM_e – norma didactică săptămânală medie majorată săptămânal) is calculated relative to the difference between the quota for minimal research activities (DAC_{min}) and the work load quota of research activities that have been actually conducted, divided by 28 (the number of weeks of teaching activity). Here, "the research quota," in fact, represents the number of hours allocated to research in a teaching load.

a page, time that does include more than just the writing process in itself. Then, there are prestigious publications that limit the number of pages an article can have, and, as such, a very valuable result (which is consequently accepted for publication) arising from lengthy research must be presented in as concise a manner as possible.

5. CONCLUSIONS

This article does not aim to comprehensively cover all subjects of discussion regarding how quotas are set for the activity of higher education teachers in our internal legislation, as it only addresses a few matters of principle.

Correctly setting quotas and correctly paying for provided labor, while taking into account all rules derived from enshrined human rights, guarantees respect for human dignity and ensures a state of satisfaction for each person, which is a premise for a higher and higher amount of moments of happiness. In higher education, the labor provided by the teachers comprises activities of a remarkably wide variety, each one of them being of a special complexity. The activities are not uniformly distributed in an effective way, which makes it difficult to establish their quotas, track them and pay for them. The specific structure of an academic year makes it so that the standards for the work time and rest periods of teachers are governed by specific rules. Law no. 1/2011 invites various interpretations regarding the constitution of teaching load quotas and job title list positions from the academic senates, which can lead to various interpretations and inequalities among the teachers of various universities. The rules for setting quotas for DL/PTL teaching activities are subject to special quotas.

In order to ensure that human rights are protected, rendering all guarantees instituted by international and national norms effective, our internal legislation has formulated specific norms concerning how quotas are set for labor and concerning certain rights related to payment (especially in relation to the remuneration of overtime), mainly by Law no. 1/2011 and Order no. 6251/2012 by the Ministry of Education, Research, Youth and Sports. These normative acts, however, give free rein to higher education institutions when it comes to structuring the teachers' quotas, quantifying the hours spent conducting the various activities necessary for the process of education and scientific research for the benefit of the university. In order to avoid any violation of the internationally and nationally enshrined guarantees which cannot be deviated from, especially when it comes to respecting work time and rest periods, and the remuneration of all activities conducted for one's employer, it is important for the provisions of these normative acts to be interpreted and implemented with a view towards these guarantees, the Labor Code being itself a general norm in this domain, and thus supplementing the special provisions. It is only such an interpretation and implementation that can ensure respect for the dignity of the university teachers, a category of persons who conduct an activity of great importance to society, contributing to progress via the teaching and scientific activity specific for higher education.

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