

REGULATION AND ORGANIZATION OF THE LAWYER PROFESSION IN ROMANIA IN ACCORDANCE WITH THE PROVISIONS OF LAW NO. 51/1995

Ximena MOLDOVAN*

ABSTRACT: *The legal system in Romania is based on the principle of the rule of law, which ensures equality before the law and the protection of individual rights. Within this system, the lawyer plays an essential role in providing legal services and guaranteeing a fair and just trial for all citizens, representing and defending the rights of his clients before the courts and in other legal proceedings. Through their legal expertise and commitment to justice, lawyers are fundamental pillars of the legal system and help maintain its balance and integrity.*

KEY WORDS: *legal system, lawyer, legal service;*

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1. GENERAL PROVISIONS

The profession of lawyer is free and independent, with autonomous organization and functioning, according to Law no. 51/1995¹ and the statute of the profession.

The profession of lawyer is exercised only by the lawyers registered in the bar to which they belong, the bar component of the National Union of Bars of Romania, hereinafter referred to as UNBR.

The establishment and operation of bars outside the U.N.B.R. are prohibited. The documents of their formation and registration are null and void by law. Nullity can also be found *ex officio*.

In the exercise of the profession the Romanian lawyer is independent and is subject only to the law, the status of the profession and the code of ethics. The lawyer promotes and defends human rights, freedoms and legitimate interests (Ninu, 2023).

In Romania the lawyer has also the right to assist and represent natural and legal entities before the courts of the judicial authority and other judicial bodies, prosecution bodies, public authorities and institutions, as well as before other natural or legal entities, who have the obligation to allow and ensure the lawyer to conduct his activity unhindered, in accordance with the law.

* University of Medicine, Pharmacy, Science, and Technology "G.E. Palade" Târgu-Mureş, Faculty of Economics and Law, Lawyer, Mureş Bar, ROMANIA.

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Everyone has the right to freely choose their lawyer.

In exercising the right of defense, the lawyer has the right and obligation to insist on achieving free access to justice, for a fair trial and within a reasonable time (Traian Cornel Briciu, 2016).

2. THE COMPETENCES OF THE LAWYERS IN ROMANIA

In Romania, the lawyer's activity is carried out by:

- a) legal consultations and requests;
- b) legal assistance and representation before courts, prosecution bodies, judicial authorities, notaries and bailiffs, public administration bodies and institutions, as well as other legal entities, under the law;
- c) drafting legal acts, attesting the identity of the parties, the content and date of the documents submitted for authentication;
- d) assisting and representing the natural or legal entities concerned before other public authorities with the possibility of attesting the identity of the parties, the content and date of the concluded acts;
- e) defending and representing by specific legal means the rights and legitimate interests of natural and legal entities in their relations with public authorities, institutions and any Romanian or foreign person;
- f) mediation activities;
- g) fiduciary activities consisting of receiving in deposit, in the name and on behalf of the client's account, financial funds and assets, resulting from the recovery or execution of enforceable titles, after the end of the succession procedure or liquidation, and their placement and capitalization, on behalf of the client, activities to manage the funds or the amounts in which they have been placed;
- h) the temporary establishment of the company headquarters at the lawyer's professional office and their registration, on behalf of the client, of the interests or shares of the companies thus registered;
- i) any means proper to the exercise of the right of defense, in accordance with the law.

In the exercise of the profession and in connection with it, the lawyer is protected by law (Naubauber, 2021)².

3. FORMS OF PRACTICING THE PROFESSION OF LAWYER

The forms of practicing the profession of lawyer are:

- individual offices;
- associated offices;
- professional civil society or professional limited liability companies.

In the individual office, a permanent lawyer can practice his profession, alone or together with other collaborating lawyers. Individual offices may be associated for the purpose of joint exercise of the profession; the rights and obligations of lawyers holding associated offices retain their personal character and cannot be ceded.

Accordingly, individual offices can also be associated with professional civil societies.

² Art.5 et seq from the Law no.51/1995 concerning the organization and the practice of the lawyer profession.

Individual offices can be grouped to create technical and economic facilities for the exercise of the profession and maintain their individuality in the relations with clients.

Professional civil society consists of 2 or more permanent lawyers. In the professional civil society, collaborators or salaried lawyers can also practice their profession. Professional civil society and lawyers practicing in it, cannot provide legal assistance to persons with contrary interests.

Grouped offices, associated offices, professional civil societies and professional limited liability companies can also have common property.

In Romania, the lawyer can change the form of practicing the profession at any time, with the notification of the bar to which he belongs.

The lawyer cannot practice his profession at the same time in several forms of its exercise. The forms of practicing the profession may be alienated by juridical documents only between permanent lawyers and in the exercise of the profession or may be liquidated at the end of the activity, in compliance with the investment regime, regulated by the lawyer's law.

The professional limited liability company is a civil company with legal entity, established under the conditions provided by the law no.51/1995 and by the Statute of the legal profession, by the association of at least 2 permanent lawyers, who are in the exercise of the profession, whether they own or not, whether or not they belong to another form of profession.

The professional limited liability company has a patrimony of affection. The obligations and liability of the professional company with limited liability are guaranteed with the patrimony of affectation.

The members are personally liable, only within the limit of the social contribution of each one. The local bars and U.N.B.R. will ensure the qualified exercise of the rights of defense, professional competence and discipline, the protection of the dignity and honor of the lawyers.

In each county there is and operates a single bar member of UNBR, with its headquarters in the county's residence. Each bar will organize and ensure a judicial assistance service in addition to each court. The Bar Council is responsible for the organization and functioning of this service.

The Romanian lawyer is obliged to keep professional secrecy regarding any aspect of the case entrusted to him, except in cases expressly provided by law.

4. THE WAY YOU CAN ACQUIRE THE QUALITY OF LAWYER IN ROMANIA

Conditions for enrollment in the advocacy³:

Can be a member of a Romanian bar the one who fulfills the following conditions:

- a) has the exercise of civil and political rights;
- b) has a law degree with the duration established by law;
- c) is not found in any of the cases of indignity provided by law no. 51/1995;
- d) is medically fit for the exercise of the profession.

³ Art.12 et seq from the Law no.51/1995 concerning the organization and the practice of the lawyer profession.

The fulfillment of the last condition must be proved with a medical certificate of health, issued on the basis of the findings made by a medical Commission established under the conditions stipulated in the profession's statute.

A member of a bar from another country can practice the profession of lawyer in Romania, if the conditions laid down by the above-mentioned law are fulfilled. In order to provide legal advice on Romanian law, the foreign lawyer has the obligation to take an examination organized by U.N.B.R. which verifies the knowledge of Romanian law and Romanian language.

The foreign lawyer can practice the lawyer profession in Romania, at his choice, within either one of the forms of organization provided by law.

The foreign lawyer cannot draw oral or written conclusions before the courts and other judicial bodies, except for international arbitration.

It is unworthy to be a lawyer⁴:

a) The one who was finally convicted to prison by judicial decision, for committing an intentional crime, which prejudices the prestige of the profession;

b) The one who committed abuses by which the rights and fundamental freedoms were violated, established by judicial decision, or committed serious disciplinary offenses, sanctioned with the measure of exclusion from the profession;

(c) The person who has been punished with the prohibition to practice the profession, for the period established by a judicial or disciplinary decision;

d) The person who is a fraudulent bankrupt, even rehabilitated.

The practice of the profession of lawyer in Romania is incompatible with⁵:

a) Paid activity in professions other than lawyer;

b) Occupations that infringe the dignity and independence of the lawyer or good morals;

c) Direct exercise of material facts of trade.

The practice of the profession of lawyer is compatible with:

a) The quality of deputy or senator, counselor in local or county councils;

b) Activities and teaching positions in higher legal education;

c) Literary and publishing activity;

d) The status of arbitrator, mediator, conciliator or negotiator, tax advisor, intellectual property advisor, industrial property adviser, authorized translator, administrator or liquidator in the reorganization and judicial liquidation procedures, according to the law (Ghigeci, 2017).

The admission into the profession is carried out only on the basis of an examination organized by the UNBR, at least annually and at national level, according to the law no.51/1995 and the Statute of the profession of lawyer.

The examination for admission to the profession of lawyer is held within the Romanian National Institute for the Training and improvement of lawyers activity and is conducted in a unitary manner, in its territorial centers, based on a methodology developed and approved by the UNBR Council.

The subject of the exam is unique at UNBR level, and the selection of the subjects is done by the National examination commission.

⁴ Art.14 et seq from the Law no.51/1995 concerning the organization and the practice of the lawyer profession.

⁵ Art.15 et seq from the Law no.51/1995 concerning the organization and the practice of the lawyer profession.

The National Examination Commission consists mainly of lawyers – university professors, who have at least 10 years of experience in the profession of lawyer. Its designation is made by the UNBR Standing Committee, at the proposal of the bars.

According to the Romanian legislation, at the beginning of the profession, the lawyer must perform a professional training period of 2 years, during which time he is a trainee lawyer.

The conditions for the traineeship, the rights and obligations of the trainee lawyer, the guiding lawyer and the bar obligations toward them are regulated by the profession's statute.

After the internship, the trainee lawyer will take the final exam. The trainee lawyer rejected three times at the final examination will be excluded from the profession. The activity of a trainee lawyer can be guided only by permanent lawyers with at least 6 years of experience in this capacity and who enjoy a perfect professional reputation.

The status of permanent lawyer is acquired on the basis of an examination organized by UNBR, annually and at national level, according to the law 51/1995 and the Statute of the lawyer profession or by passing the graduation exam of the Romanian National Institute for the Training and improvement of lawyers activity, under the conditions provided by the Statute of the lawyer profession.

The final exam is held within the Romanian National Institute for the Training and improvement of Lawyers activity and is conducted in a unitary way, on territorial centers, based on a methodology developed and approved by the UNBR Council.

The person who has passed the entrance examination in the profession of lawyer and who, until the date of taking the entrance examination in the profession of lawyer, has served as judge, prosecutor, public notary, legal advisor or legal counselor for 5 years, acquires the status of permanent lawyer, without taking the final examination, if he passed the final exam in the profession from he comes.

Lawyers - former judges cannot draw conclusions at the courts where they activated, and former prosecutors and police officers cannot provide legal assistance at the criminal prosecution unit where they carried out their activity, for 5 years after the termination of the respective office function.

Upon enrolling in the bar, the Romanian lawyer takes the following oath before the bar council: "I swear to respect and defend the Constitution and the laws of the country, human rights and freedoms and to exercise the profession of lawyer with honor and dignity. May God help me."

The oath can be taken without the religious formula, in this case the oath will begin with the formula: "I swear by honor and conscience!". The trainee lawyer can only draw conclusions at the first instance court and can assist or represent the party before the prosecution bodies, public authorities and institutions, as well as before other natural or legal entities.

Trainee lawyers, after enrolling in the bar, have the obligation to attend the courses of the National Institute for the Training and improvement of lawyers activity, during the internship period.

In Romania, the permanent lawyer has the right to draw conclusions at all courts except the High Court Courts of Cassation and Justice and the Constitutional Court, where it will be able to draw conclusions if it has an uninterrupted seniority in the profession of at least 5 years since he overpassed the final exam (Oprea, 2020).

The permanent lawyer is obliged to attend the forms of continuous professional training organized by the bar, the Romanian National Institute for the Training and improvement of lawyers` activity, or the forms of practicing the profession, under the conditions provided by the Statute of the lawyer profession.

The Bar has the obligation to draw up annually the list of permanent lawyers and trainees in alphabetical order, with the mention of the name, surname, scientific title, date of registration in the bar, the professional headquarter, the form of practice of the profession and the courts where they have the right to draw conclusions. The second part of the list will cover associated offices, professional civil companies and professional companies with limited liability, with an indication of their headquarters and their lawyers.

With the help of the local bar, the annual list of lawyers and the amendments made to this list, are communicated at the beginning of each year to the courts, the criminal prosecution bodies and the administrative authorities of the county or municipality of Bucharest, as well as the U.N.B.R.

The exercise of any legal assistance activity specific to the profession of lawyer by natural or legal entities, who does not have the status of lawyer registered in a bar, and on the list of lawyers of that bar, constitutes a criminal offense and is punishable under the criminal law.

The courts are obliged to verify and rule on the status of representative of a person who presents himself as a lawyer, exercising acts specific to this profession and using the insignia of the profession of lawyer (Spinei, 2010).

5. TERMINATION AND SUSPENSION OF THE LAWYER STATUS

The status of the lawyer will end⁶:

- a) by giving up to the exercise of the profession in writing;
- b) by death;
- c) if against the lawyer was taken the measure of exclusion from the profession as a disciplinary sanction;
- d) if the lawyer has been finally convicted for an act stipulated by the criminal law and which makes him unworthy to be a lawyer, according to the law.

The legal status is suspended:

- a) in case of incompatibility, during the persistence of the situation;
- b) during the period of prohibition to practice, ordered by final judicial or disciplinary decision;
- c) in case of total or partial non-payment of the fees and professional contributions to the bar, to the UNBR and to its own social security system, for 3 months from their due date and until the full liquidation of the debts;
- d) at the written request of the lawyer.

6. RIGHTS AND DUTIES OF THE LAWYER IN ROMANIA

6.1. The rights of the lawyer in Romania⁷

⁶ Art.26 et seq from the Law no.51/1995 concerning the organization and the practice of the lawyer profession.

⁷ Art.28 et seq from the Law no.51/1995 concerning the organization and the practice of the lawyer profession.

The lawyer registered in the bar's register has the right to assist and represent any natural or legal entity, under a contract concluded in written, which acquires certain date by registering in the official register.

The lawyer, as well as the client, have the right to give up the legal assistance contract or to modify it by mutual agreement, under the conditions provided by the profession's statute. The fact that the client gave up unilateral to the contract does not constitute a cause of exemption for the payment of the due fee for the legal services rendered, as well as for the expenses incurred by the lawyer in the procedural interest of the client.

For his professional activity the lawyer is entitled to take a fee and to cover all expenses made in the procedural interest of his client.

For this purpose, the lawyer can open a bank account for the payment of the fees and another for the submission of the amounts received from the client for procedural expenses in his interest. The method of administration of the amounts handed over by the client to the lawyer, for procedural expenses in his interest, will be established by the agreement between the lawyer and the client, under the conditions provided by the profession's statute.

The legal assistance contract, legally concluded, is an enforceable title.

His enforcement will be done, according to the law, by the first instance court, in whose jurisdiction is the professional headquarter of the lawyer. Arrears from fees and other expenses incurred by the lawyer in the procedural interest of his client will be recovered according to the provisions of the profession's statute.

Any complaints against the lawyer, including the complaints regarding fees will be settled by the dean of the bar. The decision of the Dean can be appealed to the Bar council, whose decision is final.

Lawyers have their own social security system.

The social insurance system of lawyers is regulated by law and it is based on their contribution and other sources provided by law or by the Statute of the Lawyers Insurance House. The time worked as a lawyer is considered to be seniority in work.

Professional acts and works of the lawyer or in his office are inviolable, in order to ensure professional secrecy. The search of the lawyer, his domicile or his office or the collection of documents and goods, can be done only by the prosecutor, based on a mandate issued under the law.

According to the Romanian Law, the lawyer's telephone conversations cannot be heard and recorded, with any technical means, nor can his professional correspondence be intercepted and recorded, except under the conditions and with the procedure provided by law.

The contact between the lawyer and his client cannot be hindered or controlled, directly or indirectly, by any state body.

At the same time, in Romania the lawyer is obliged to respect the solemnity of the hearing, not to use words or expressions that would prejudice the authority, dignity and honor of the panel, the prosecutor, the other lawyers and the parties or their representatives in the trial.

The lawyer is not criminally liable for oral or written claims made before the courts, before the prosecutor's office or other administrative bodies of jurisdiction, but only if such claims are related to the defense in that case and are necessary to establish the truth.

6.2. The Lawyers` duties⁸

The lawyer is obliged to thoroughly study the cases entrusted to him, employed or ex officio, to appear at each trial date to the courts or to the criminal prosecution bodies or to other institutions, according to the mandate entrusted, to manifest conscientiousness and professional probity, to plead with dignity toward judges and parties to the trial, to submit written conclusions or notes of hearing whenever the nature or difficulty of the case requires so or the court panel orders in this regard.

The imputable non-compliance with these professional duties constitutes disciplinary misconduct. The lawyer is obliged to provide legal assistance in cases where he was appointed ex officio or free of charge by the bar.

He is also obliged to apply for professional liability insurance, under the conditions established by the profession's statute. Also, he is obliged to participate in all meetings convened by the Bar council, professional activities and meetings of the governing bodies to which he is a member.

Repeated and unjustified absences constitute disciplinary misconduct. The lawyer is obliged to keep the records required by the law and the statute regarding the cases in which he is committed, and to pay regularly, and on time the fees and contributions established for the formation of the bar budget and the funds of the lawyers Insurance House in Romania.

The U.N.B.R. budget consists of the contributions of the bars, established according to the law and the statute of the profession. The lawyer is obliged to return the documents entrusted to him the person from whom he received them.

In Romania, the lawyer cannot assist or represent parties with contrary interests in the same or related cases and may not plead against the party who consulted him before in relation to the concrete contentious issues of the case.

The lawyer cannot be heard as a witness and cannot provide information to any authority or person concerning the case he concluded the assistance contract, unless he had the prior, express, and written release of the share of all its interested clients concerned.

The lawyer is obliged to wear a robe before the courts.

7. THE LEGAL ASSISTANCE⁹

In Romania, in cases provided by the law, the bars shall provide legal assistance in the following forms:

- a) in criminal cases, where the defense is mandatory according to the provisions of the Criminal Procedure Code;
- b) in any cases other than criminal cases, as a mean of granting judicial public aid, under the law conditions;
- c) legal assistance through a lawyer, provided at the request of the local public administration bodies.

In exceptional cases, if the rights of the person deprived of material means would be prejudiced by delay, the Dean of the Bar can approve the granting of legal expert assistance

⁸ Art.39 et seq from the Law no.51/1995 concerning the organization and the practice of the lawyer profession.

⁹ Art.70 et seq from the Law no.51/1995 concerning the organization and the practice of the lawyer profession.

free of charge. The lawyer appointed by the Dean of the Bar to grant judicial public aid or assistance can refuse this professional task only in the event of a conflict of interest or for other justified reasons. Unjustified refusal to take over the case or to continue the execution, constitutes a disciplinary offense, according to the law.

The unjustified refusal of the beneficiary or the unilateral and unjustified renunciation to the assistance provided by the appointed lawyer leads to the cessation of public aid in the form of assistance through the lawyer.

The lawyer who provides legal aid- legal assistance free of charge, according to the above-mentioned legal provisions, is not entitled to receive from the client or the defended any remuneration or other means of reward, even as payment of court costs.

8. THE DISCIPLINARY RESPONSIBILITY OF THE LAWYERS¹⁰

Concerning the disciplinary responsibility of the lawyers in Romania, you have to know that the lawyer will be liable disciplinary for non-compliance with the provisions of the law of lawyers or their statute, for non-compliance with mandatory decisions adopted by the governing bodies of the bar or of the union, as well as for any acts committed in connection with or outside the profession, which are likely to prejudice the honor and prestige of the profession.

The lawyer who leads the legal aid office from each court is obliged to notify the Bar council in writing of the acts committed by any lawyer, under the terms of the legal provisions.

The courts and public prosecution offices of the public Ministry are obliged to submit to the Bar council any complaint made against a lawyer and to let him know about any criminal prosecution or trial proceedings against a lawyer.

The investigation of the misconduct and the exercise of disciplinary action are the competence of the Bar council.

Disciplinary sanctions are:

- (a) the reprimand;
- (b) the warning;
- (c) the fine from 50 lei to 500 lei, which becomes income to the budget of the bar.

Payment of the fine will be made within 30 days from the moment the disciplinary decision remains final. Failure to pay within this period entails the legal suspension from the exercise of the profession, until the payment of the amount.

The limits of the disciplinary fine will be regularly updated by the UNBR Council, depending on the inflation rate.

- (d) prohibition to practice the profession for a period from one month to one year;
- (e) exclusion from the profession.

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¹⁰ Art.85 et seq from the Law no.51/1995 concerning the organization and the practice of the lawyer profession.

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