THE FUNDAMENTAL PRINCIPLES GOVERNING THE PROFESSION OF LAWYER IN ROMANIA

Ştefan NAUBAUER*

Keywords: *profession of Lawyer, Romanian law, principle of legality, principle of freedom and independence, the principle of autonomy and decentralization, the principle of professional secrecy*

1. Introduction

In Art. 1. (2) the Statute of the lawyer profession[1] says the *fundamental principles*[2] governing the *exercice* of the lawyer's profession, the following : legality, freedom, independence, autonomy and decentralization, professional secrecy. Even before adopting the current form of the Statute, the literature[3] was observed, rightly, that legislation has not conducted a systematization of the organizational principles of the legal profession[4] - not be confused with the principles of the lawyer's profession exercice[5] - the absence of such systematization being explained precisely because of the interdependence between the two categories of principles.

In our case, no effort to challenge our doctrine to achieve a broader analysis of the principles related to the organization, namely the profession of lawyer, we will further proceed in discussing the fundamental principles, as they were mentioned in article 1 para. (2) of the Statute.

---

* Lawyer, lecturer Ph.D., Faculty of Law, "Nicolae Titulescu" University, Bucharest (e-mail: stefannaubauer@yahoo.com).

[1] Published in the Official Gazette. no. 45 of January 13, 2005, as amended and supplemented (hereinafter the Statute).

[2] Also listed in the Statute, in art. 214 para. (1), the following essential principles of the legal profession: free exercise of the profession, dignity, conscience, independence, integrity, humanity, honor, loyalty, delicacy, moderation, tact and sense of brotherhood.

[3] See I. Les, Romanian judiciary system organization. New rules, All Beck Edition, Bucharest, 2004, p. 230.

[4] According to the author cited, the basic principles of advocacy organization such as: autonomy bar, the existence of democratic structures advocacy organization, collegiate governing bodies (Ibid).

[5] The literature was considered that the profession of attorney is governed by the following principles: the principle of legality, the principle of independence, the principle of freedom; partiality principle, the principle of collaboration with the judiciary, the principle of educational role, the principle of professional ethics (G. Matthew, Defender, subject to the process criminal, in the light of recent legislative changes (I), in „Law" magazine no. 5 / 1996, p. 83-85). Were analyzed within the legal profession and exercise principles: the principle of dignity and honor of the legal profession, the principle of the lawyer's monopoly on the specific professional activities, principle conforming which the advocate accomplish either a function of private interest but one of a public interest, principle of brotherhood and mutual respect (L. Danila, Organization and exercice of the profession of lawyer, Ed. 2nd, Ed. CH Beck, Bucharest, p. 70-84). Principles of the lawyer's profession exercise were also considered : officiality, subsidiarity, good faith, confidentiality, accountability, fair competition (A. Raducanu, D. Croitoru, General principles of organizing and exercising the legal profession in terms of post-modern theories, the Bulletin of National Institute for Professional Training of Lawyers no. 1 / 2006, p. 118-120). Finally, we have an example in the literature of an author who merely assert that the legal profession is organized and operates under the principle of autonomy (M. Niculeasa, Liberal Professions. Regulator, doctrine, law, Ed. Universul Juridic, Bucharest, 2006 p. 174).

Principle of legality

The lawyer profession is primarily a *legal profession*, as organized and exercise mainly *based on Law no. 51/1995*[6] *and Statute*.

Indeed, according to art. 1 para. (2) of the Act in conjunction with art. 3 para. (2) and (4) of the Statute, may lawfully exercise the profession only people who have *the status of lawyer and are entered on the panel's bar*[7] *they are part of,* being prohibited from carrying any specific activities of the profession by an individual that has not the quality of lawyer entered in a bar and on the table of lawyers or by another juridical person, except the (civil) limited professional attorneys society. Moreover, according to art. 3 para. (3) in conjunction with art. 172 para. (1) of the Statute, a lawyer can be entered in *only one bar* and *can not perform in the same time in two or more forms to practice his profession*[8]*,* the latter prohibition is justified in the light of the need to avoid conflict of interest[9].

Under art. 1 para. (2) of the Act in conjunction with Art. 5 para. (2) and (3) of the Statute, all bar association in Romania, legally constituted, are *legal members of the National Union of Bars of Romania (N.U.B.R.)*[10] - legal person of public interest, established by law and declared a *single successor of the Lawyers Union in Romania*[11]. In the context of a necessary perspective on the

[6] Law no. 51/1995 regarding the organization and profession of lawyer was republished in the Official Gazette no. 113 of March 6, 2001, as subsequently amended and supplemented (hereinafter the Act).

[7] Anticipating the proper regulation of professional organization, art. 5 para. (1) of the Statute provides that in each county and in Bucharest exist and operates under the Law, one single bar, legal entity of public interest, consisting of all lawyers registered with the panel of lawyers, which have their main headquarters in areas of its radius. And according to art. 48 para. (1) first sentence of the Law, the bar consists of all lawyers of the county or from the municipality of Bucharest.

[8] According to art. 23 para. (1) letter c) of the Statute of the profession of lawyer previously been in force (published in the Official Gazette no. 284 of May 31, 2001), the lawyer salaried employee throught profession and the associate could simultaneously activate, with the same quality, in both forms of profession exercice. Note also that, after reforming art. 5[1] of the Act by the Emergency Ordinance no. 159/2008 (published in the Official Gazette No. 792 of November 26, 2008) and declared unconstitutional by the Constitutional Court decision no. 109 (published in the Official Gazette no. 175 of March 18, 2010), was provided, as an exception, that professional limited company - form of lawyers profession exercice - could be formed by the combination of at least two lawyers permanently in the performance of the profession, whether or not they had or if they were belong to a form or another of profession's exercice. [para. (1)], in this situation, the forms of exercising the profession from which, by assumption, the lawyers wich had formed a professional society with limited liability were part of, may not be subject to liquidation, if so the associates were agreed. [para. (5)].

[9] To observe the rules of conflict of interest, see also art. 44 para. (1) of the Act in conjunction with art. 120 of the Statute.

[10] These provisions should be linked with art. 57 para. (4) of Law, conforming with the Bar Association is constituted and operates only within N.U.B.R., under Law and professional Statute.

[11] Correlated with art. 57 para. (5) of the Act, conforming with UNBR is the lawful heirof the Lawyers Union in Romania, the latter being created by art. 71 para. (1) of the Act to organize and unify the body of advocates in 1923 (Decree no. 610/1923 published in the Official Gazette. no. 251 of February 25, 1923), as general body bars lawyers in Romania, with legal personality. Here is how it was interpreted, in a case of the interwar period, the significance of this milestone in regulating the legal profession history (the spelling of the time): „(...) By the enactment of the law to organizing body of lawyers (21 February 1923) bar associations were considered as true public authority, designed by their organization law to help administrate one of public services, the most important, that of justice (...). By Law no. 610 of February 21, 1923, bar associations were removed from the control of justice and put under the control „of the body of lawyers Union in Romania", the general body of the bars in Romania. With this innovation has not changed the bars character of public authorities designed to assist in the administration of justice services, but assumed they did not acquire the meaning of part of the public services in the State administration. That is, they remained on the same characteristic of public establishments, sui generis, that can not make administrative acts, which could be censored by the administrative contentious, their actions remain under

question whether the bars organized under Law no. 51/1995 some formalities are required for the approval and registration by the competent authorities, emphasized that „(...) the bar was, is and will remain a *professional association territorially organized, recognized and established by law*, and not merely an association - a private law legal person - subject to judicial review at the time of its establishment and registration in the register of legal persons.[12]"

Article 1 para. (3) of the Act in conjunction with art. 5 para. (4) of the Statute prohibit the establishment and operation of bars outside the N.U.B.R., instruments of incorporation and registration of such entities are considered *automatically void*. We showed, several years ago[13], that the terminology used in relation to this sanction should not be understood throught the idea of nullity operating under the law (without requiring the adjudication of a court order to verification the produced effects), opinion we considered a dependent criticable distinction between nullity *in law* (or *by operation of law*) and *judicial* nullity (by the recovery mode of the penalty)[14].

In fact, the legislator's intention was to designate[15] as „ null and void" the sanction of *absolute nullity*[16], to be judicially established[17]. Indeed, the committee drafting the Statute noted, at art. 5 para. (4), third sentence, the legal regime applicable to such penalty, setting that the nullity can *always* be found invalid by the N.U.B.R. request, by the bar parties, by the the Public Prosecutor and also by the court may be established *automatically*[18]. Regarding the means to invoke the penalty, being a nullity of *public policy*, under art. 108 para. (1) Civil Procedure Code,

---

the control of ordinary courts. (s.n. St. Naubauer)" (Appeal Court of Chisinau, Section I, Decision no. 77 of December 9, 1927 in General Jurisprudence, 1928, p. 1064, apud al. Lascarov Moldovanu, Law for organizing the lawyers body annotated with doctrine, jurisprudence, Parliament debates, explanatory statement, opinion and the Legislative Council reports, Ed. Curierul Judiciar SA, Bucharest, 1937, p. 457-458).

[12] T. Savu, Some considerations concerning the legal status of the organization and operation of the bar, the Lawyer magazine no. 1 / 2006, p. 29.

[13] See St. Naubauer, in T. Savu, St. Naubauer, Reviews the new legal framework for the legal profession, Universul Juridic Publishing, Bucharest, 2004, p. 12-13.

[14] This distinction is reflected, for example, in the oldest French doctrine, where it is considered that sometimes the nullity operates by right (nullite de plein droit), and sometimes by the power of a court (see J. Rene, Traité élémentaire de procedure civile et commerciale ed. 2, Paris, 1929, p. 33, apud M. Popa, General Theory of invalid acts of civil procedure, Ed. All Beck, Bucharest, 2003, p. 151, note 1). In our professional literature of the interwar period, trenchantly stated: „The procedure does not know the legal nullity and should be discussed, whether they are of public order or that are only relative. To give but one required by law void, we need someone to ask." (V.G .Cadere, Treaty of Civil Procedure, National Culture Publishing House, Bucharest, 1928, p. 29). This legal view was maintained in the communist era: „In reality, whenever the parties cannot agree, there is not a valid nullity without a court order. In this sense, all nullities are therefore legal nullities. (...) it is inappropriate to talk about „legal nullities" or „nullities of right". Without distinction as absolute or relative (or as explicit or virtual) is not appropriate to talk, as we think, than about invalidity. In both cases, the legal document (or part of it) will be zero. And invalidity (assuming the parties have not agreed) can not operate until after delivery of a court (or arbitration)". (Tr. Ionascu and E.A. Barasch, in Tr. Ionascu, E.A. Barasch, A. Ionascu S. Brădeanu, M. Eliescu, V. Economu, Y. Eminescu, M.I. Eremia, E. Roman, I. Rucăreanu, V.D. Zlatescu, Civil Law Treaty, vol. I, General part, R.S.R. Academy Publishing House, Bucharest, 1967, p. 343 and p. 345). After 1990, they stressed that„(...) basically, the nullities are involving the entry of a court decision (being therefore judicial and not legal) (...)" (Gh. Beleiu, Civil Romanian Law. Introduction to civil law. Subjects of civil law, ed. Eighth revised and enlarged by M. Nicolae and P. Trusca, Ed Legal Universe, Bucharest, 2003, p. 221).

[15] See G. Beleiu, the mentioned work, ibid.

[16] See St. Naubauer in T. Savu, St. Naubauer, the mentioned work, p. 13.

[17] Otherwise, „As long, therefore, did not intervene the judicial abolition, the act remains valid, ie able to produce any effects arising from his private nature and mission". (E. Herovanu Theoretical and practical Treaty of civil procedure, judicial organization and proficiency, vol. 1, Graphic Arts Institute of Romanian life, Iasi, 1926, p. 157).

[18] According to art. 1247 para. (3) of the new Civil Code (published in the Official Gazette no. 511 of July 24, 2009), „The court is required to automatically invoke the absolute invalidity (s.n. – St. Naubauer)".

this may be raised by the party or by a judge in any state of the case, indicating that, under art. 162 of the above mentioned Code, before the appeal court the public policy exceptions may be raised only when there is no need for an examination of facts outside the case[19].

In connection with the requirement of the lawyer's profession exercice only throught N.U.B.R., in the literature has been raised ,, the question whether the text is wrong, as it is not allowing the creation of alternative bars, breaching of the two other constitutional principles namely the right to association and the one of equal opportunities"[20]. However, as shown on another occasion[21], conditioning the establishment and functioning legality of the bars to the membership of N.U.B.R.[22] represents legislation a settlement springing from *the need to avoid the appearance and proliferation the paralell lawyers structures*[23], the lawyer profession practice outside the framework established by Law no. 51/1995 being even a *crime*[24].

2. Principles of freedom and independence

Given the close link between these two principles, we will analyze them together. Law uses the term *free* profession, which means the profession *pursued by a person on their own, without*

[19] According to art. 1249 para. (1) of the new Civil Code, ,,If the law does not provide otherwise, the absolute nullity may be invoked at any time, either by action or by way of exception. (s.n. – St. Naubauer)".

[20] A. Răducanu D. Croitoru, the mentioned work, p 116-117.

[21] See St. Naubauer in T. Savu, St. Naubauer the mentioned work, p. 12.

[22] Rejecting the unconstitutionality exception of art. 48 para. (1) first sentence and art. 57 para. (1)and (4) of Law no. 51/1995, the Constitutional Court held, by Decision no. 321/2004 (published in the Official Gazette no. 1144 of December 3, 2004) that ,,(...) organization of lawyers in bars and of the bars in the National Union of Bars of Romania does not contravene any of the constitutional provisions relied in support of the exception. Organization of legally exercise of the the lawyer profession, for that matter of any other activity of interest to society is natural and necessary, for jurisdictional purposes, means and how it can pursue this profession, and the limits beyond that would violate rights of other persons or profession cathegories. The statutory provisions contested do not violate in any way the right to work and right of association, as the author claims without referral basis, a law university graduate not being obliged to practice law nor being unable to associate or to choose work under the law conditions. As in the case of specific regulations of other professions, such as the notary ones, medical or experts, the mentioned law, as a whole and, in particular, the law provisions which are the exceptions subject, are designed to protect the free exercise of the legal profession against illegitimate competition from persons or structures outside the legal framework and, secondly, to ensure the right of defense of those who resort to legal services throught the organization and exercice guarantees of this profession, within the limits set by law (s.n. - St. Naubauer)" (see, in the same sense, for example, the Decisions of the Constitutional Court no. no. 234/2004 published in the Official Gazette no. 532 of June 14, 2004 and no. 233/2004 published in the Official Gazette no. 603 of July 5, 2004).

[23] Dangerous precedents are well known particularly by the creation of so-called Romanian Constitutional Bar (founded in 2002 by the Association of Charity ,,Bonis Potra" from Deva) namely the establishment of 42 ,,bars" and of ,,Lawyers Union in Romania"/,,National Union of Bars of Romania" (decided in 2004 by members of Băleşti Gorj Branch of Association ,,Potra Figaro" of Alba Iulia). According to art. 62 para. (2) of the Statute, ,,No ownership, or use usurping the name of ,,the bar" by any natural or legal person whatever the nature of work performed by it, under penalty provided by law for the use without right of the designation of a legal person of public interest, established by law".

[24] According to art. 25 para. (1) of the Act, carrying on specific activities of the legal profession by natural or legal person that is not a lawyer entered in a bar - N.U.B.R. component - and on the table of lawyers of that bar is considered a crime and is punishable under criminal law. And noting that by the Government Emergency Ordinance no. 159/2008, was introduced an additional paragraph - paragraph. (6) - at the art. 57 of the Law, according to which the use without right of the names ,,Bar", "National Union of the Bars of Romania", ,,N.U.B.R.", or ,,Lawyers Union of Romania" or the names of specific forms of exercise of the legal profession by any natural or legal person, whatever the work of it and use the profession specific signs or wearing the lawyer's robe in other conditions than those under Law no. 51/1995 were reported as crime, punishable by imprisonment from six months to three years.

being permanently employed in an institution or organization[25]. But it is instead to emphasize that an essential feature of the lawyer profession is that it is a *liberal*[26] profession, in a sense that it *depends on an order, by a professional body, his remuneration in nature not having a commercial character*[27]. Moreover, the Constitutional Court itself considered *fundamental* principle that „the lawyer profession is a *liberal* and independent profession (s.n. - Stefan Naubauer)"[28]. The Statute declares on the art. 6 para. (1) that the freedom and *independence* of the legal profession are principles upon which Advocate promotes and protects the rights, freedoms and legitimate interests to customers, these principles defining and ensuring professional status of lawyer for his business. Independence of the legal profession, which involves *the organization and its operation without any interference from the state*[29], but not to be confused with independence of the lawyer[30], the latter arising from the first, being considered[31] as a consequence of the autonomy[32] of the advocacy institution.

3. The principle of autonomy and decentralization

According to art. 4 para. (1) of the Statute, the legal profession is organized and operates under the principle of autonomy and decentralization, as provided by Law[33] and Statute[34].

Organizing the advocacy is covered in a self management structure within the N.U.B.R.[35], distinct both from the device state and other legal professions or positions[36] (judges, public notaries, legal advisors, bailiffs, insolvency practitioners).

---

[25] See Explanatory Dictionary of Romanian language, Romanian Academy, „Iorgu Iordan" Linguistics Institute, Ed. Encyclopedic Universe, Bucharest, 1998, p. 855.

[26] See Fl.A. Baias, Principles of legal profession in the light of the provisions of Law no. 51/1995, the Law magazine no. 10-11/1995, p. 36.

[27] See Le Petit Larousse, Paris, 1994, p. 599.

[28] See Decision no. 45/1995 regarding the constitutionality of some provisions from the Law for organization and the profession of lawyer practice(published in the Official Gazette no. 90 of May 12, 1995).

[29] See Fl.A. Baias mentioned work, p. 29 and 32. Not be forgotten that, during the communist era, the legal profession has been „under the direction and control" of the Ministry of Justice [see: Law no. 3 / 1948 on the abolition of the Bar Assosiacions and establishment of the Colleges of Lawyers of Romania (published in the Gazette no. 15 of January 17, 1948, as amended by Law no. 16/1948, published in the Gazette no. 33 of 10 February 1948), Decree no. 39 / 1950 regarding the profession of lawyer (published in Official Gazette no. 11 of February 14, 1950), Decree no. 281/1954 on advocacy organization and exercice in Romanian People's Republic (published in Official Gazette no. 34 of July 21, 1954, as amended by Decree no. 681/1969, published in Official Gazette no. 106 of 7 October 1969 approved by Law no. 60/1969 in its turn published in Official Gazette no. 148 of December 19, 1969)].

[30] Fl.A. Baias, the above mentioned work, p. 32. In doctrine, the independence of lawyers - professional and material - has been discussed as a manifestation of the principle of freedom and independence of the legal profession (L. Danila, mentioned work, p 55-64).

[31] See I. Les, mentioned work, p. 237.

[32] See immediately infra, section 4.

[33] According to art. 47 para. (1) of the Act, „the lawyer profession is organized and operates on the basis of autonomy, within the powers provided in this Law", and according to art. 48 para. (2) of the Act, „Bar Association has legal personality, heritage and its own budget. (s.n. – St. Naubauer)".

[34] Under art. 62 para. (1) of the Statute, „The independence of the profession, bar association authonomy and free exercise of the legal profession may not be restricted or limited by the acts of public administration authorities, the Public Ministry or other authorities, than in the cases and conditions expressly provided under the present law. (s.n. – St. Naubauer)". According to art. 63 para. (1) of the Statute, „the Bar is a legal person of public interest, consisting of all lawyers registered with the Table of lawyers, with their own heritage and independent organization (s.n. – St. Naubauer)", and according to art. 64 para. (1) of the Statute „Each bar has its own budget. Advocates contribution to achieving the budget is determined by the Bar Council (s.n. – St. Naubauer)".

[35] See I. Les mentioned work, p. 230, L. Danila, mentioned work, p. 70.

[36] See Fl.A. Baias mentioned work p.,30.

From the perspective of internal organization of the legal profession on the principle of autonomy, we have seen on another occasion[37] that the fundamental reform brought by the Law no. 255/2004[38] was to enhance organizational autonomy and decision of the bar and creating an institutional structure at national level (N.U.B.R.), in which interests are protected and covered more efficiently. The existence of a union of bars should be considered also in terms of decentralization of their work, to ensure uniform settlement of the problems of the profession, aspect that could not be achieved in the absence of such a structure at national level[39].

4. The principle of professional secrecy

According to art. 215 para. (2) of the Statute, professional secrecy aimed at *all information and data of any kind, in any form and on any medium*, provided to the lawyer by the client in order to provide legal assistance - *lato sensu* - and for which the client requested confidentiality, and also *any documents prepared by lawyers*, which contain or are based on information or data supplied by the client in order to provide legal assistance and whose privacy has been requested by the client.

In literature, professional secrecy was considered both a right and a primary, fundamental duty of the lawyer and also an essential condition of the profession exercice[40].

In art. 8 para. (1) Statute declares professional secrecy as *public policy*, the lawyer can not be compelled to disclose it under any circumstance and by any person[41]. However, according to art. 8 point. f) of Law no. 656/2002 on preventing and sanctioning money laundering, and to establish measures to prevent and combat terrorist financing[42], lawyers are *subject to reporting* when preparing or assisting in drawing operations for their clients regarding : purchase or sale of immovable property, shares or elements of goodwill, management of financial instruments or other property of guests, formation or management of bank accounts, savings or financial instruments, organizing the contributions required to provide underwriting , operation or management of a company, establishment, administration or management of companies, undertakings for collective investment in transferable securities or other similar structures or conduct, by law, of other fiduciary activities, as well in the case where they represent their customers in a financial nature operation or targeting real estates.

A lawyer may not be released from professional secrecy by any authority or person or *even by customer*[43]. In the presence of this mandatory provisions, the doctrine was argued that „The right to professional secrecy (...) remain as long as the lawyer does not receive absolution from his client to talk about what information is held as a lawyer" and that „the extent that the client believes that the information (...) may be useful in his defense, he can absolve the lawyer from the obligation of professional secrecy"[44].

To these allegations, we note that they are *exempt*[45] - for the exclusive requirements related strictly to the *lawyer defense*- when it is *prosecuted, disciplinary* or when there is a dispute

[37] T. Savu in T. Savu, St. Naubauer, mentioned work, p. 148.

[38] Law 255/2004 amending and supplementing Law 51/1995 regarding the organization and profession of lawyer exercice was published in the Official Gazette no. 559 of June 23, 2004.

[39] St. Naubauer, in T. Savu, St. Naubauer mentioned work, p. 11.

[40] A. Cobuz Băgnaru, The fundamental obligations of the lawyer: professional secrecy and avoidance of conflict of interest, the magazine Lawyer no. 1 / 2007, p. 14.

[41] Article 8. (para. (3) first sentence of the Statute.

[42] Published in the Official Gazette no. 904 of December 12, 2002, with subsequent amendments.

[43] Article 8. para.(3) the second sentence of the Statute.

[44] L. Danila, mentioned work, p. 66 and p. 67.

[45] Article 8 para. (3) the third sentence of the Statute.

regarding the agreed *fees.* It is true that the Law - art. 44 para. (2) - refers to the possibility that the lawyer to receive prior express and written absolution from all his customers concerned stakeholders, to be heard as witnesses and provide links to an authority or person, on the case which was entrusted[46].

But, according to para. (3) and (4) of art. 44 of Law, on the one hand, the witness quality prevails over the legal capacity about the facts and circumstances that he knew *before* becoming a guardian or representative of any party and, furthermore, if he has been heard as a witness, the lawyer can not engage in *any professional occupation* in the case[47].

Article 9 para. (1) of the Statute declares that the obligation to professional secrecy is *absolute and unlimited in time.* The effects of this obligation extends to all activities both lawyers and the members, and salaried employees within the profession that operates within the same type of exercising the profession, including the relationships with other lawyers[48]. Moreover, the obligation of professional secrecy is also for the people with whom the lawyer works together in practice[49] as well for its employees, the lawyer being obliged to let them know this requirement. This obligation incumbent upon all organs of the legal profession and their employees regarding the information known within the exercice of their functions and duties[50].

In the context of secrecy rules, art. 10 para. (1) of the Statute declares *confidential* any communication or professional correspondence between lawyers, between lawyer and client, between lawyer and professional bodies, in whatever form that it was made. Regarding relations of the Romanian lawyer with *foreign lawyers*, the Statute[51] operates the following distinction:

- towards lawyers registered to a bar in a *European Union member state*, Romanian lawyer is bound by special provisions of Code of Conduct for lawyers in the European Union[52]. Thus, under art. 5.3. („Correspondence sent between lawyers") of the Code of Conduct, the lawyer who addresses a fellow lawyer from another member state a communication

[46] According to art. 79 para. (1) Crim. pr. Code „Person required to maintain professional secrecy can not be heard as a witness on the facts and circumstances of which he became aware in their professional capacity without the consent of the person or unit to which is bound to secrecy". Under art. 191 section 1 Civil pr. Code., some people, which included lawyers, „that the law compels them to secrecy about the facts entrusted in their practice", are exempt from being witnesses. To rules of civil procedure, the doctrine has found that people held by professional secrecy may testify if they were released from this obligation by those interested in secrecy, moreover, it has been considered that these people can testify even without the agreement of the one interested in secrecy, disclosure giving witness to sanctions, but not constituting grounds for cancellation of testimony (M. Tabarca, G. Buta, Commented Code of Civil Procedure and annotated with legislation, jurisprudence and doctrine, Ed. Legal Universe, Bucharest, 2007, p. 574).

[47] According to art. 79 para. (2) Crim. pr. Code, „Witness quality takes precedence over the defender quality, on facts and circumstances which he knew before he became guardian or representative of any party. (s.n. - Şt. Naubauer)".

[48] Article 9. (1) second sentence of the Statute. Regarding relations with other lawyers, remember that, according to art. 173 of the Statute, between the forms of exercising the profession can be established professional relationships and collaboration, the business collaboration agreement will be registered at the bar.

[49] Article 9 para. (2) of the Statute. Regarding the persons with whom the lawyer is working in the occupation, remember that, according to art. 6 of the Act, any lawyer, regardless of the form of practice, may conclude agreements of cooperation with experts or other specialists, indicating that the civil societies of lawyers may conclude such an agreement only with the consent of all members.

[50] Article 9 para. (3) of the Statute.

[51] Article 10 para. (2) and (3) of the Statute.

[52] Code of Conduct for lawyers in the European Union was adopted in plenary session on 28 October 1998 and subsequently amended in plenary sessions of the Bars Council of European Union (CCBE) of 28 November 1998, December 6, 2002 and May 19, 2006. Implementing the Advocates Congress Judgment in 19 to 20 June 1999, by Decision no. 1486 of October 27, 2007, of the N.U.B.R. Permanent Commission, the European Union Lawyers Code of Conduct applies in Romania as the Romanian lawyer Code of Conduct, with effect from January 1, 2007.

that seeks to confer confidential or *without prejudice* must clearly state this even before sending the first communication, and in case where the communication recipient is unable giving a confidential character, he should notify the sender immediately.

- towards lawyers registered to a bar outside the European Union, the Romanian lawyer must ensure, prior to exchanging confidential information, that in the country where practicing his foreign fellow exist rules to ensure the confidentiality of correspondence and, otherwise, to sign a confidentiality agreement and ask if his client agrees, in writing, the risk of non-confidential information exchange.

Note that under art. 10 para. (4) of the Statute, correspondence and information exchanged between lawyers or between advocate and client, regardless of media type, in any case *can not be introduced as evidence in court* and can not be deprived of confidentiality. However, in a *per a contrario* interpretation of the provisions of art. . 91^1 para. (6) in conjunction with para. (1) Crim. pr. Code, *recording conversations between the lawyer and the represented or assisted party in the process can be used as evidence,* if the resulting data or information therein conclusive and helpful regarding the preparation or perpetration by a lawyer of a crime for which the criminal investigation is automatically, and interception and recording are required to establish facts or because to identify or locate the participants can not be done by other means or the research would be delayed. Also, according to art. 91^1 para. (6) in conjunction with para. (2) Crim. pr. Code *intercepts and telephone recording conversations or communications made by phone or through any electronic means of communication between lawyer and client may be authorized* in case of offenses against national security under the Penal Code and other special laws, also for narcotics traffic offenses, arms trafficking, human trafficking, terrorism, money laundering, money counterfeiting or other values, for offenses under Law no. 78/2000 on preventing, discovering and sanctioning corruption[53] in case of other serious crimes or of the crimes commited by means of electronic communication.

Under art. 215 para. (3) of the Statute, in order to ensure professional secrecy, the lawyer keeps his work only at his headquarters[54] or in areas approved by the Bar Council in this regard. The professional office and other spaces in which the lawyer is working needs to be able to preserve secrecy[55]. Also for reasons related to ensure secrecy, the Law itself, in art. 33, declares *inviolable* the acts and work of professional nature held by the lawyer or in his cabinet, the frisking of the avocate, home or his cabinet or the lifting of documents and goods can not be done but by the prosecutor, under a warrant issued under the law conditions[56]. According to art. 215 para. (4) of the Statute, to ensure professional secrecy, the lawyer *has a duty to object* to searches of home, primary, secondary headquarters and of his office work, also to body search, or acts or work of professional nature in places mentionated above, or on him. Although the Statute does not impose, this obligation incumbent to lawyer, obviously, if *the search is not made by the prosecutor based on order,* explanation found in para. (5) of art. 215, which states that the lawyer is obliged to oppose *the lifting of documents and goods* consisting of acts and work of professional nature *in case there are not complied with terms of art. 33 of the Act*. In that case, the lawyer bears the obligation to immediatelly warn about what happened the Dean Bar[57].

[53] Published in the Official Gazette no. 219 of May 18, 2000, as amended and supplemented.

[54] Professional office may be also located at the *lawyer residence.*

[55] Article 215 para. (1) of the Statute.

[56] To observe the legal regime applicable to the lifting of objects and documents, and in the conduct searches, see art. 96-110 Crim. pr. Code.

[57] E.C.H.R. case law, the presence of the Dean Bar during the search made at the place of business of law firms was considered a „special warranty procedure" (see E.C.H.R., Section V, Decision of 24 July 2008 regarding

Finally, remember that the lawyer is obliged to preserve professional secrecy regarding any aspect of the case entrusted[58], being liable for committing a *serious disciplinary offense*[59], but he may use information about a former client, if they became *public*[60].

Conclusions

From the foregoing, therefore result that the lawyer profession in Romania is a *legal* profession, *free* and *independent*, being organized and operating under the principle of *autonomy* and *decentralization.* Though declared as public policy, the principle of *professional secrecy* currently meets a number of limitations, especially in terms of preventing and sanctioning money laundering[61].

no. 18603/03 complaint, Marc Andre and SCP Andre, Andre et Associés versus France, unofficial translation from French by Monica Savu, published in extract of Pandectele Romane no. 8 / 2008, p. 233-243).

[58] Article 8 para. (2) of the Statute.

[59] Article 8 para. (5) of the Statute.

[60] Article 8 para. (4) of the Statute.

[61] See also the Council Directive 91/308/EEC to prevent use of the financial system for money laundering purpose (OJ L 166, p. 77), as amended by Directive 2001/97/EC of the European Parliament and Council of December 4, 2001 (OJ L 344, p. 76).