

# **THE ROLE OF THE STATE IN REGULATING THE LEGAL PROFESSION AIMING TO IMPROVE THE JUSTICE PUBLIC SERVICE IN THE CONTEXT OF GLOBALISATION**

**Elena-Mihaela FODOR**

## *Abstract*

Lawyers are integrated in the justice system. Their professional qualification is definitely influencing the quality of the public service of justice. Following the acts of European Union on long life learning, the Council of Bars and Law Societies of Europe issued regulation stimulating its members to promote measures for professional upgrading of lawyers and sanctions for those who do not follow long life learning programmes. The quality of judicial assistance is also improved by high standard requirements for entering the bar. The article presents the evolution of continuous training for lawyers in Europe highlighting at the same time the importance of the concept in relation to the characteristics of the lawyer's activity as a liberal profession and the development of such characteristics. It also emphasises the role of all state powers in sustaining the efforts of the Romanian Bar Association for high professional qualification of its members. Some court decisions that are contrary to such efforts are also discussed.

**Key words:** lawyer, justice, continuous professional training, public service

The legal profession is part of the group of liberal professions that stretches furthest back in time, alongside that of doctors and pharmacists, to which new ones, such as those of accountants, architects, engineers, were later added. Through the characteristics traditionally attached to liberal professions, like professional confidentiality, promoting the interest of the client or patient, integrity and independence in the practice of the profession and the necessity of a high professional qualification, the difference between these professions and commercial activity was highlighted. Economic progress, a wider access to education and nowadays globalisation, are factors that have made liberal professions, including that

of lawyer, to unfold in pronounced climate of competition, the person having a liberal profession being faced with the need to ensure the necessary capital for the development of one's practice, alongside one's own income, by exercising it in a services market.

The economic aspects of exercising the profession have evolved with its forms of organisation, following the model of commercial enterprises. This led to the development of local, and then national, law firms with a large number of lawyers specialised in different aspects of law, mostly following the American model, leading to international and transnational societies of this sort.

At the level of the European Union, the directives regarding freedom of movement for people and services, the possibility to acknowledge diplomas and the freedom to establish an office have created a legal base which fully facilitates the mobility of lawyers within the entire territory of the European Union.

In view of the expansion of potential markets an interest was shown in evaluating the balance between the possibilities of using the methods specific to competition in exercising the legal profession of lawyer and the traditional limitations of liberal professions, as a comparison between the states of the union. The results of these studies show that, at present, the main liberal professions are generally regulated through both state regulations, and self-regulation issued by the professional bodies of each member state. The main restrictions of free competition were identified as being: fixed or recommended prices, advertising prohibitions, entry requirements and reserved rights, regulations governing business structure and multidisciplinary practices. Although there have been and still are strong pressures to minimize all restrictions, other studies have highlighted the fact that an increased level of regulations is not associated with a limitation to low earnings for the ones exercising this profession<sup>1</sup>. If such a conclusion may seem obvious for professions like notary public or pharmacist, especially in member states where there is a limited number of professionals in proportion to the number of people in the region, limitation associated with the possibility of fixing minimum rates, the same conclusion

---

<sup>1</sup> I. Paterson, *Regulation of legal services*, presented at the Staff Training Course on Elements of Judicial Reform, World Bank, Washington DC, [www.worldbank.org/publicsector/legal](http://www.worldbank.org/publicsector/legal), last consulted 30.03.2010.

appears as surprising for other professions, like that of the lawyer. However, such a conclusion backs up the opinions of those who claim that restrictions serve the general interest and are justified through this. The main reasons for implementing such restrictions were identified as being<sup>2</sup>:

*Asymmetry of information regarding advertising in liberal professions.* Due to the fact that the profession is characterised by very specific, technical knowledge, the consumers are not fully capable to judge if the advertisement is a true reflection of the quality of the service. This aspect is combined with the fact that there are areas where the practitioners requires to know intimate details of his client's personal life (as often happens for lawyers, doctors, pharmacists or even accountants), generating a special connection between the two, comprising factors like similarity of character, the approach on different aspects of life, aesthetic tastes, all elements that contribute to the process of choosing a certain practitioner by the client. Success in liberal professions may also be owed, in some cases, to factors independent of the quality of the service. As far as the legal profession is concerned, a person may win a trial simply because he is obviously in the right, despite a faulty assistance provided by his lawyer. This appears to justify the restrictions meant to protect consumers from the harming effect of advertisements that are far from being a true depiction of reality.

*The impact of the provided service on third parties,* stressing the need for regulations that obliges both the practitioner and the consumer to limit these effects.

*The general interest served by professional services.* Regarding lawyers, a good administration of the judicial public system may be ensured only if there is an examination of the quality of the service.

In 2003, at the request of the European Commission, a study<sup>3</sup> was made comparing, in a number of member states of the European Community, the degree of regulation regarding entry requirements on the one hand, and competition on the other hand, for several professional services (lawyers,

---

<sup>2</sup> Report on Competition in Professional Services, document of the European Commission [COM (2004)83 final], not published, [http://europa.eu/legislation\\_summaries/internal\\_market/single\\_market\\_services/123015\\_en.htm](http://europa.eu/legislation_summaries/internal_market/single_market_services/123015_en.htm), last consulted 30.03.2010.

<sup>3</sup> Iain Paterson, Marcel Fink, Anthony Ogus, Economic impact of regulation in the field of liberal professions in different Member States, [http://www.ihs.ac.at/publications/lib/eb1-executive\\_summary.pdf](http://www.ihs.ac.at/publications/lib/eb1-executive_summary.pdf), last consulted 30.03.2010.

notaries, pharmacists, accountants, technical services), indices being given from 0 to 6 for the highest degree in a regulation index. Viewing the entry requirements, what was sought was the degree of regulation for obtaining a licence to practice, qualification requirements, length of studies and of practice, number of professional examinations, number of rules regarding access to a profession. Viewing competition, or conduct regulations, it enquired after the regulations regarding fees, advertising, location, diversification, forms of business and interprofessional co-operation.

Analyzing the outcome of this study by comprising an average on the criteria used between the respondent states, regarding educational requirements there can be observed the importance attributed to university diplomas or equivalents (an average of 4.15); the number of professional examinations required for entry obtained an average of 3.37, while regulations regarding lengths of practice have an average score of 2.25. Regarding conduct regulations, in decreasing order are regulated interprofessional co-operation (average of 3.84), forms of business (average of 3.18) and advertising (average of 3.12).

In the context of these analyses, it may be observed that the study didn't put into question the degree of regulation for continuous professional training. This may be owed to the fact that this aspect wasn't a focus point for the professional bodies or the states, their interest being limited to the examination of the level of knowledge for entering the profession, without viewing to maintain the quality standard of this aspect in time.

Continuous professional training of lawyers has drawn the attention of international law associations since the second half of the 20th century, even if not from the beginning in the form of well outlined principles. On 28<sup>th</sup> October 1988 The Council of Bars and Law Societies of Europe (CCBE) adopted the Code of Conduct for Lawyers in the European Union which applies to the international activities of lawyers throughout the Union. The Code seeks to regulate, besides problems regarding reserved rights, the special qualification of lawyers and advertising, information about fees, judicial professional service consumers and professional education of young lawyers. At that time there was already talk about the possibility of creating a global code of conduct, based on the models of American Bar Association's (ABA) Rules of Professional Conduct, the Code of Conduct of Lawyers from Japan and the Code of Conduct for

Lawyers in the European Union. An International Code of Ethics was passed in 1956 by the International Bar Association (IBA), containing rules that applies to lawyers that practiced in another state than that where he is registered at a professional association and which is completed with rules that the lawyer is subject to in his country of origin. All these documents also refer to aspects of professional training quality. The UN General Assembly adopted on 17<sup>th</sup> December 1979 a Code of Conduct for Law Enforcement Officials, which states that these persons shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, in performance of their duty, these officials also respecting and protecting human dignity and maintaining and upholding the human rights of all persons. In the process of law enforcement more factors are involved, which should be regarded as an integrated system for the optimization of the public service for administering justice. Alongside adopting regulations which are clear, coherent, with foreseeable application and of efficient procedure rules, the activity of magistrates, judges and prosecutors, and that of auxiliary personnel in judicial proceedings, the activity of appealing to power of coercion for the fulfilment of an enforceable title, the activities of legal assistance and representation and legal counselling have their importance for the well functioning of the whole system. It is evident that globalisation and, at a European level, freedom of movement have focused discussions regarding the quality of services towards a common goal.

Inside the CCBE, the concept of continuous professional training had begun to be outlined from the year 2000<sup>4</sup>, having been observed a necessity of continuous professional training due to the European directives regarding freedom of movement for persons and services inside the union. In a more general context, at the level of the European Community a number of actions were started by the Commission, which issued in the year 2006 a communication regarding lifelong learning, followed in 2007 by an action programme regarding the issues in the communication. These steps were based on the objective “to make the European Union the most competitive and dynamic knowledge-based economy (and society) in the

---

<sup>4</sup> Julian Lonbay, The Educational Work of the CCBE and FBE, <http://elfa-afde.eu/Documents/THEEDUCATIONALWORKOFTHECCBE.pdf>, last consulted 30.03.2010.

world”<sup>5</sup>. The 2000 Lisbon European Council set out the strategic objective to enable the European Union to become the most competitive and dynamic knowledge economy in the world by 2010. In 2001, the Commission communication entitled *“Making a European area of lifelong learning a reality”*<sup>6</sup> outlined once again the importance of lifelong learning for all European citizens in order to achieve this purpose. The 2006 joint interim report regarding the progress of the action program “Education and Training 2010” emphasizes the necessity that all citizens gain and bring up to date their skills during their lifetime. Such a process does not include only those that should go through requalification programs for entering the job market, being also relevant for the development of skills for persons with medium and high qualifications<sup>7</sup>.

In accordance with these community acts, on 25<sup>th</sup> November 2006 CCBE adopted the Charter of Core Principles of the European Legal Profession<sup>8</sup>. In the preamble of this document it is shown that the principles set in the Charter are essential for the proper administration of justice, access to justice and the right to a fair trial, as required under the European Convention of Human Rights, which lawyers should be the first to uphold. Among these principles, at point 9 letter g) is mentioned that of the lawyer’s professional competence, the importance of which has grown. In paragraph 5.8 of chapter 5 is shown that a lawyer’s professional development should be continuous taking into account European dimension of their profession.

The Resolution adopted in Valencia in 2001 underlines the necessity of harmonization as far as the level of professional quality is

---

<sup>5</sup> Communication from the commission of the European Communities. *„Investing efficiently in education and training: An imperative for europe”*, Brussels, 10.01.2003 COM(2002) 779 final, [http://www.esib.org/documents/external\\_documents/0301\\_EC\\_investing-efficiently.pdf](http://www.esib.org/documents/external_documents/0301_EC_investing-efficiently.pdf) last consulted 20.04.2010.

<sup>6</sup> The European Commission communication *“Making a European area of lifelong learning a reality”*, [http://europa.eu/legislation\\_summaries/education\\_training\\_youth/lifelong\\_learning/c11054\\_en.htm](http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/c11054_en.htm), last consulted 20.04.2010.

<sup>7</sup> Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: *Towards Common Principles of Flexicurity: More and better jobs through flexibility and security*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:211:0048:0053:EN:PDF>, last consulted 20.04.2010.

<sup>8</sup> [http://www.ccbe.org/fileadmin/user\\_upload/NTCdocument/EN\\_Code\\_of\\_conductp1\\_1249308118.pdf](http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1249308118.pdf), last consulted 20.04.2010.

concerned so that lawyers are aware of the European dimension of their activity. Among the precise measures established through this resolution is a compulsory period of two years of being a trainee, which includes practice and professional training alongside a master and also a minimum of 100 hours of courses and practical applications finalized in exams (this number slowly building up in time to 200), part of them dedicate dot professional ethics. Ensuring instructors for these courses must be organized at national level and coordinated at European level. A continuous professional training of at least 10 hours annually must be mandatory for European professional organisations. At the Plenary Session of 28-29 November 2003 held in Bruges the CCBE approved a recommendation which encourages the policies for continuous training for European lawyers, affirming that lawyers, in their role of defenders of rights and liberties, have the duty to ensure the highest degree of professional training. This recommendation established that continuous training of lawyers should be assessed regularly, following an even distribution of hours/units of time allotted for different methods and the duration of professional training. The control for respecting the obligations of continuous training (including the consequence for not respecting them) could include a declarative system realised by the lawyers, system which could be checked, and this control could be part of the competence of the Bar or of a Law Society, within a legal framework or set by any other form of national regulation. A model of regulations for continuous professional training for the legal profession was adopted at the CCBE Plenary Session of 24/25 November 2006. According to it, each professional body must establish, in conformity with its specific regulations, the disciplinary sanctions for lawyers that do not fulfil their obligation of continuous professional training.

All these measures emphasise the fact that professional training is no longer regarded like a method for overtaking competition, assumed freely by every lawyer in a larger or smaller degree, but as an obligation necessary for obtaining a major general interest, that of ensuring a higher quality for the judicial public system.

In accordance with the recommendations of the CCBE, the National Union of the Bars of Romania adopted in 2001, in the 17-18 March<sup>9</sup> session

---

<sup>9</sup> Statute published in the Romanian Official Journal no. 284/31 May 2001.

of the Romanian Lawyer's Union, a now form of the Statue of the Legal Profession, through which was established the creation of the National Institute for the Training and Perfecting of Lawyers (INPPA). Among the objectives of this institute is the structure for the selection and professional training of trainee lawyers to the professional competence standards in a non-discriminatory system of equal and uniform opportunities, at a national level; the settlement of permanent cooperation relations with institutions and organisations with prerogatives in carrying out and perfecting professional training within the system of professions that require legal training; the making of studies and professional policy programmes on problems compatible with the development of the legal profession both internally and internationally for the strengthening of the judicial system and its harmonization with the European Union legislation. The Statue of the Legal Profession explicitly states that all the professional bodies have the obligation to ensure that the right of defence is exercised in a qualified way, that the training of trainee lawyers is organized adequately, that the professional level of all lawyers is upheld and that professional discipline and ethics are strictly respected. It stipulates the duty of all lawyers to take part in the activities organized by the National Institute for the Training and Perfecting of Lawyers, according to its regulations and through subsequent statutes this professional obligation was correlated with the activities of the professional bodies regarding the selection and training of the Body of Lawyers. Territorial centres of the INPPA were organized locally, a regulation for their establishing and functioning being adopted at a national level, basically under the pressure of the want of organizing initial and continuous professional development locally<sup>10</sup>.

Regulations which have appeared at European level through the CCBE and the national concerns prove the desire of the professional body of lawyers to ensure a high standard of professional training. The compulsory nature of the measures regarding initial, but mainly continuous, professional training attest the fact that within the profession it was realised

---

<sup>10</sup> The Territorial centre in Craiova was organized through a Decision passed at 08.07.2008 by the representatives of the Bars from Argeş, Dolj, Gorj, Mehedinţi, Olt, Vâlcea; the Territorial centre in Cluj was established through the Decision no. 117/2008 of the Cluj Bar and the Framework-regulation for the Organization and Functioning of Territorial Centres of the INPPA was adopted through the Decison no. 19 of 28 August 2009 of the INPPA



that, because of the asymmetry of information, misleading, false advertising, as far as the legal profession is concerned, there is a danger that can seriously affect the general interest, as long as the lawyer is an important component of the integrated public system of justice.

In this context, it appears necessary that the state support the efforts of the professional body in order to raise the standards of quality regarding professional training. In a case against Romania, the European Court of Human Rights stated<sup>11</sup> that by dissolving an association whose objective was that of establishing Bar Associations, in opposition to the Law no. 51/1995, the court correctly based its decision on the importance of maintaining the quality of legal assistance. It was considered, and obviously so, that this quality can only be ensured within the context of internal regulations of the professional body of lawyers who exercise their profession according to legal provisions.

Unfortunately, it seems that judicial authorities did not understand the importance of the conclusions of this decision, in the context of growing European concern regarding the quality of legal assistance.

A large number of criminal complaints were brought against persons that practice law illegally. Although it was obvious that it was a case of exercising a profession without right, prescribed and punished by art 281 of the Criminal Code, an extremely small number of convictions were pronounced, despite the relatively large number of persons which practice law without legal right. Decision no. 27 of 16.04.2007, ruled by the High Court of Cassation and Justice in appeal on point of law, which stated that legal assistance given in a criminal trial with a defendant or accused by a person which did not obtain the status of lawyer, under the conditions of Law 51/1995, equals a lack of defence, was not able to persuade on the importance of adopting decisive measures to ensure the quality of the act of justice.

The lack of support offered to the National Union of the Bars of Romania is highlighted by a relatively recent ruling<sup>12</sup> in which a resolution of release from criminal prosecution against a person who exercised activities specific to the legal profession without right is maintained, against the complaint issued by the Bacău Bar. In justification of this ruling there is

---

<sup>11</sup> Decision *Pompiliu Bota v. Romania*, 2004

<sup>12</sup> Court of first instance Bacău, Criminal Section, Criminal sentence no. 2015/10.11.2009, inedited.

noted the existence of Decision no.27 of 16.04.2007 of the High Court of Cassation and Justice in appeal on a point of law, but also the existence of the Criminal decision no.1561/07.05.2008, through which the High Court of Cassation and Justice ordered the acquittal of a member of the Pompiliu Bota structure, based on fact that the subjective element of the offence is missing, the defendant believing that he is legally practising the legal profession, alongside a large number of resolutions of prosecutors of all ranks, maintained through similar final court rulings. The court concludes that the legal status of the parallel Bar offices remains ambiguous and as such, taking into consideration the ECHR opinions regarding the precision and clarity of written law or of case law, faced with unitary court practice of non-preferment of charges of persons prosecuted in similar cases, it is considered that the law incriminating the act of exercising the legal profession without right is not predictable and accessible, it being impossible for the accused to foresee the criminal consequences of their actions. It is to be remarked that the first rulings of release from criminal prosecution took into consideration the fact that there existed in several situations court decisions through which were approved the establishment of commercial companies having as object of activity the exercising of activities specific to the legal profession. Law no.255/2004 modified the content of Art.25 of Law no.51/1995 regarding the organising and exercising of the legal profession, by way of mentioning explicitly that *“Exercising any activity of legal assistance specific to the legal profession and stipulated in art.3 by a natural or legal person that does not have the quality of lawyer registered in a Bar and on the table of lawyers of that Bar is considered an offence and is punishable according to criminal law”*. Also, Art.82 of the same law was modified to read *“(1) At the date the present law comes into effect the natural and legal persons which were authorised through other statutes or were approved through court decisions to carry out activities of legal consultancy, representation and assistance, in any field, will cease activity by rule-of-law. Continuing such activities is considered an offence and is punishable according to criminal law. (2) Also, at the date the present law comes into effect will cease all effects of any normative, administrative or jurisdictional act through which were recognised or approved activities of legal consultancy, representation and assistance opposing the purviews of the present law.”*. If until the coming

into effect of Law no.255/2004 it could be said that it was debateable whether a person could foresee the consequences of carrying out activities characteristic to the legal profession without being member of the professional body regulated by Law no.51/1995, after the law came into effect no such thing can be claimed. However, through the resolution given by the public prosecutors of the Bucharest County Court (Tribunal), in the criminal file no.606/P/2007, it is shown that the solution of release from criminal prosecution is based on the fact that there is a final and irrevocable court ruling in file no.79/PJ/2003 of Târgu-Jiu Cort of First Instance which orders the registration of the Băilești-Gorj branche of the “Figaro Potra” association in the registry of Associations and Foundations, thus gaining legal personality. Under these conditions, The General Assembly of this association established a number of 42 Bars “under the form of organisation of the National Union of the Bars of Romania” of which are part the persons against whom were issued criminal complaint for exercising the legal profession without right. In the opinion of the prosecutor, it is evident that the offenders were authorised to exercise the legal profession according to Law no.51/1995. What is surprising is the fact that the magistrate did not notice that the National Union of the Bars of Romania organised according to Law no.51/1995 obtained legal personality by effect of this law (being one of the legal ways of obtaining legal personality), while the structure to which the charged offenders belonged was established by an association whose object of “establishing Bars” could no longer have legal force since the coming into effect of Law no.255/2004.

In our opinion, we are confronted with a refusal to apply and give effect to the dispositions of art.82 of Law no.51/1995 as modified through Law no.255/2004, despite the fact that the legislator’s intention was clearly stated by the coming into effect of Law no.255/2004, in the context of the situation described and the decision of the ECHR in the case *Pompiliu Bota against Romania*, 2004.

The Romanian Constitutional Court recently admitted the unconstitutionality exception of the Governmentment’s Emergency Decree (OUG) nr. 159/2008 regarding the modification and completion of Law no.51/1995 regarding the organising and exercising of the legal profession.

In the preamble of OUG no.159/2008, among others, it is shown that it was adopted taking into consideration that the efficient organisation

of the legal profession represents a starting point or ensuring the quality of legal assistance and, implicitly, an optimum level for legal assistance, alongside the fact that ensuring assistance through lawyers, as a form of public judicial aid, calls for a necessity of enhancing professional competence of lawyers and ensuring the institutional frame capable of permitting their performance. Based on these, OUG no.159/2008 regulated at Art.1 pt. 6 the modification of Art.16, (1) of Law no.51/1995 to its stating that “Admittance in the profession is obtained only by a national examination organised by N.U.B.R, according to the present law and the Statute of the Legal Profession”. Art.1 pt.15 modified Art.25 of Law no.51/1995 by introducing three new paragraphs, (2), (3) and (4), with the following content: “(2)The acts characteristic to the legal profession, practiced publicly by a person who did not obtain the status of lawyer under the conditions of the present law, are null if they produced an injury which cannot be remedied any other way, excepting the situation in which the way they were fulfilled was of such a nature as to produce a common error regarding the status of the one performing them. (3) In the cases regulate in the present article the Bar has the right to introduce an action in claim of compensations against the natural or legal persons exercising the legal profession without right. (4) The sums obtained as compensation according to par.(3) will be included in the budget of the Bars and will be used exclusively for the organisation of the professional training of lawyers, under legal conditions”. Art.1 pt.16 modifies Art.27 lt. d), stating that the status of lawyer is suspended “if the lawyer does not prove that he frequented the forms of continuous professional training, within the period of 3 years previous the renewal of his professional licence, under the conditions stated by the professional status”. OUG 159/2008 also modified Chapter V of Law no.51/1995, “Legal Assistance”, in order to fulfil the requirements stated in the preamble.

Through Decision n.109/09.02.2010, the Romanian Constitutional Court declared OUG no.159/2008 entirely unconstitutional, conspiring that in the preamble of this act the character of “emergency” is determined by the opportunity, reason and utility of the regulation, without there being evident the existence of an extraordinary situation whose regulation cannot be postponed. It is not the object of this study to analyze the urgency for regulating he right to defence through legal assistance in accordance with

the Council of the European Union Directive 2003/8/EC to improve access to justice in cross-border disputes, such cases being pending.

On the other hand, we observe that the large number of suits pending regarding practising the legal career without right, some of them having a duration which will soon lead to the expiration of the limitation period for the situation of committing an offence, along with the rulings given, were not considered sufficient y the Constitutional Court to justify the urgency. As such, the incertitude regarding the right to practice activities specific to the legal profession by persons who do not have that status according to Law no.51/1995 was prolonged, with predictable consequences on the quality of the services offered to those who seek legal assistance from these persons.

Also, the sanction stated in art.27 lt. d) as modified through art.1 pt.16 of OUG 159/2008, for not fulfilling the criteria regarding continuous professional training for lawyers, was removed. Under these conditions, Decision no.14/2008 of the Congress of lawyers regarding continuous professional training will remain in effect, instituting the obligation of continuous formation of lawyers by having 60 hours of professional training within a period of 3 years, the first stage being 01.01.2008-01.01.2011. According to Art.252 par.(2) of the Statute of the profession of lawyer the act committed against the law, the professional statute or the mandatory decisions of the professional body and which is apt to bring damage to the honour or prestige of the profession or the professional body, is considered a disciplinary offence and is sanctioned according to art. 73 of the law. One of the sanctions stated by Art.73 of Law no.51/1995 is the ban on practising the profession for a period from one month to one year.

To conclude, there are dispositions which permit the Bar of lawyers to apply sanctions to members that do not honour their obligation of continuous professional training. In our opinion, it is preferable, in general, that the obligations of professional training and the sanctions for not carrying out these obligations to be established through norms of the professional body and not through a law. In this way the organisation and functioning autonomy of a private body would be respected. In the particular case of our state however, the solutions of national court highlight the need that the legislative power intervene through statutes to ensure a better quality of legal assistance with the purpose of obtaining a higher

quality of the judicial public service, in unison with the conclusion seen in the ECHR decision in the case *Pompiliu Bota against Romania*. Although in question is the activity of a liberal profession, the aspects mentioned emphasise the importance of the contribution of all the powers in the state, which must act in unison to ensure as an outcome the higher quality of the judicial public service meant to guarantee the respect of all rights and freedoms. This quality cannot be achieved except in an integrated system which includes the legal profession. The outcome which the legislator is trying to achieve is unfortunately illusory without the participation of the judiciary. The state, in its whole, must take into consideration that by fulfilling positive obligations regarding an efficient administering of justice can be realised only by supporting the efforts of the National Union of the Bars of Romania for aligning to the requests of the European Commission and the European professional body (CCBE). For this it is required that all mechanism available be put into motion and an refrain from acts that might discourage the enforcement of the law.