CONSTITUTIONAL REVIEW OF THE REGULATIONS REGARDING THE LAWYERS: AN EFFECTIVE WAY OF MAINTAINING AND STRENGTHENING THE PRESTIGE OF THE PROFESSION OF LAWYER

Valentina BĂRBĂȚEANU[*]

Andrei MURARU[**]

Abstract

The right to defense is fundamental in a democratic society, based on the rule of law. Its exercise requires skill, rigor, attention and an excellent knowledge of the legislation involved in each case. A truly professional defense can only be carried out by a genuine legal professional, by a lawyer who is a member of a bar recognized by law. Over the years, the regulation of the profession of lawyer has required legislative improvements to clarify and strengthen the legal status of lawyers as defenders of fundamental human rights. In this approach, the Constitutional Court played an important role, through its decisions on this issue. This paper aims to present the contribution that the constitutionality review had to the improvement of the regulations regarding lawyers.

Keywords: *lawyers, legal profession, review of constitutionality, right to defense, fair trial.*

1. Introduction

The lawyers' role in what concerns the entire set of actions aimed at achieving justice is definitely undeniable. Especially thanks to lawyers the exercise of the fundamental right to defense of any natural or legal person can be fully done and also with the highest effectiveness. They are recognized professionals of the law, whose contribution in protecting the rights and freedoms of the litigants and in ensuring a fair trial is indisputable. This reality has been repeatedly confirmed by the Constitutional Court of Romania itself, which through its case-law affirmed the need to recognize and maintain the prestige of the profession of lawyer.

This paper intends to present some of the decisions by which the Romanian Constitutional Court emphasized the importance of the activity of lawyers who practice their profession under conditions of full legality, within professional structures organized in accordance with the rigors of the special law. According to this law, the access to this honorable profession is allowed exclusively following a selection of candidates, carried out strictly on the criteria of professional competence proven by the drastic testing of legal knowledge.

The scholars' literature has addressed the diversity of issues that the analysis of the legal regulation regarding the profession of lawyer involves, exposing with a high analytical spirit and a broad integrative vision the complexity of aspects that the exercise of this profession entails[1]. Nevertheless, various aspects of the same issues have also been subject to the constitutional review exerted by the Constitutional Court of Romania due to its powers provided by the art. 146 of the Basic Law, before or after entering into force of the legal regulations (the so-called *a priori* and *a posteriori* review of constitutionality)[2].

We consider that those stated in the case-law of the Constitutional Court deserve to be distinctively presented, as a result of the binding general effect of the decisions it pronounces, expressly enshrined by Article

[*] Assistant professor, PhD, Faculty of Law, „Nicolae Titulescu" University of Bucharest (e-mail: valentina_barbateanu@yahoo.com).

[**] Lecturer, PhD, Faculty of Law, „Nicolae Titulescu" University of Bucharest (e-mail: av_andreimuraru@yahoo.com).

[1] See, in this regard, for example, M. Criste, *Avocatul și profesia de avocat în România*, Universul Juridic Publishing House, Bucharest, 2014, dealing with topics such as the independence and autonomy of the profession of lawyer, the ethical and professional rules applicable to lawyers and the relationship between lawyers and the judiciary, F. Streteanu, *Avocatul, etica și deontologia profesională*, C.H. Beck Publishing House, Bucharest, 2019, which address topics such as the ethics and professional conduct of lawyers, conflicts of interest and the relationship between lawyers and clients or even *Manualul avocatului - drepturile și obligațiile profesionale ale avocaților*, published in 2016 by the National Union of Romanian Bar Associations, in collaboration with the National Council of Romanian Bar Associations, which provides a detailed presentation of the ethical and professional rules of lawyers and their obligations in relation to clients and the judicial system.

[2] For detailed and exhaustive analyzes of the review of constitutionality performed by the CCR, see I. Muraru, N.M. Vlădoiu, *Contencios constituțional. Proceduri și teorie*, 2nd ed., Hamangiu Publishing House, Bucharest, 2019; I. Muraru, N.M. Vlădoiu, A. Muraru, S.G. Barbu, *Contencios constituțional*, Hamangiu Publishing House, Bucharest, 2009; S.G. Barbu, A. Muraru, V. Bărbățeanu, *Elemente de contencios constituțional*, C.H. Beck Publishing House, Bucharest, 2021.

147 paragraph 4 of the Constitution. That is why this paper focuses on the jurisprudential approach of several aspects concerning the profession of lawyer.

2. Content

2.1. Specific professional requirements

The right to defense is a fundamental right[3], closely related to the justice making in accordance with the standards of a fair trial, which characterizes the rule of law itself. That is why the profession of lawyer requires the meeting of special qualities, the analysis of which cannot be done otherwise than in the organized framework of official professional structures.

Accordingly, the access to the profession of lawyer requires verification of the legal knowledge that a person wishing to practice this profession must possess. Following the examination, there will be admitted only candidates who prove that they have a solid scientific base, in order to be able to efficiently defend people who call on the services of a lawyer. In this sense, art. 17 para. (1) and (2) of Law no. 51/1995 on the organization and exercise of the profession of lawyer provides that admission to the profession of lawyer is carried out only on the basis of an exam organized by the National Union of Bars of Romania at least annually and at national level, according to the forementioned law and the Statute of the lawyer profession. The exam for admission to the profession of lawyer is held within the National Institute for the Training and Improvement of Lawyers and is conducted in a unitary manner, in its territorial centers, based on a methodology developed and approved by the Council of the National Union of Bars of Romania.

In this context, the Court held[4] that, taking into account the provisions of art. 2 para. (3) and of art. 4 of Law no. 303/2004 regarding the status of judges and prosecutors[5], according to which „judges and prosecutors are obliged, through their entire activity, to ensure the supremacy of the law", even the High Court of Cassation and Justice ruled that it is necessary for the judicial bodies to take not only the necessary measures to ensure the right to defense to the accused and to the defendant in the criminal process, when this is, according to the law, mandatory[6], but also to observe that the legal assistance is granted by a person who has acquired the quality of lawyer under the conditions of Law no. 51/1995, as amended and supplemented by Law no. 255/2004, because, otherwise, the legal assistance granted is equivalent to a lack of defense[7]. In justifying this decision, the supreme court held that, by Law no. 51/1995, the conditions for practicing the profession of lawyer are regulated in accordance with the provisions of the Code of Criminal Procedure regarding the right to defense of which the accused or the defendant have to benefit throughout the entire criminal process, as well as the absolute nature of the nullity by which acts performed in the absence of the defender when the presence and legal assistance to be provided by him are mandatory, according to the law. At the same time, the High Court noticed that, since the provisions of Law no. 51/1995 - which has the character of a special law regarding the exercise of the profession of lawyer - contain certain imperative requirements, it goes without saying that it is not possible to fulfill such a profession outside the framework institutionalized by that law.

The Constitutional Court showed that the profession of lawyer is a public service, which is organized and operates on the basis of a special law. It is exercised by a professional body which is selected and which operates according to the rules established by law. This option of the legislator cannot be considered unconstitutional, considering that the purpose of Law no. 51/1995 is to ensure the provision of qualified legal assistance. Also, CCR stated that the rules on the basis of which the profession of lawyer is organized and practiced do not violate the constitutional provisions invoked in support of the criticisms of unconstitutionality formulated by the petitioners.

---

[3] Regarding the importance of the right of defense and its realization, see, for example, M. Enache, Şt. Deaconu, *Drepturile şi libertăţile fundamentale în jurisprudenţa Curţii Constituţionale*, vol. 1, 1st ed., C.H. Beck Publishing House, Bucharest, 2019, sau N. Popa, E. Anghel, C.B.G. Ene-Dinu, L.-C. Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar*, 2nd ed., C.H. Beck Publishing House, Bucharest, 2014.

[4] CCR dec. no. 30/19.01.2021, published in the Official Gazette of Romania, Part I, no. 292/23.03.2021.

[5] Republished in the Official Gazette of Romania, Part I, no. 826/13.09.2005.

[6] For a perspective in a European context on this right, see, for example, R. Popescu, *Directiva 2013/48/UE privind dreptul de acces la un avocat in cadrul procedurilor penale*, in Curierul Judiciar no. 11/2013, C.H. Beck Publishing House, Bucharest.

[7] HCCJ dec. no. XXVII/16.04.2007, published in the Official Gazette of Romania, Part I, no. 772/14.11.2007, pronounced in the resolution of the appeal in the interest of the law declared by the general prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice regarding the effects of assisting or representing the parties in the criminal trial by persons who have not acquired the capacity of a lawyer under the terms of Law no. 51/1995.

The fact that access to the profession of lawyer is conditioned by the fulfilment of certain requirements cannot be seen as a limitation of the right to work or of the right to freely choose one's profession.[8]

Thus, making an analogy with other specific professional fields, the Court held that the criminalization and sanctioning of acts of unlawful exercise of certain professions or activities for which a certain training is required and which, consequently, are subject to authorization, express the need to defend social values of particular importance, including life and the physical and mental integrity of the person, as well as its patrimonial interests. Society cannot allow certain professions, such as that of doctor or pharmacist, to be practiced by unqualified persons and not to assume the necessary liability in case of dangerous or damaging consequences. And this is the case of profession of lawyer as well. The fact that similar requirements, with the same legal consequences, were also imposed on the profession of lawyer is an option of the legislator, which falls within the margin of appreciation of the Parliament during its legislative activity[9].

In the same context of emphasizing the importance of the activity of lawyers, CCR ruled on the provisions of art. 83 CPC regarding the conventional representation of natural persons, which establish the rule according to which in the courts, at all jurisdictional levels, natural persons may be represented by a lawyer or other representative, but if the mandate is given to a person other than a lawyer, the trustee cannot draw conclusions on the procedural exceptions and on the merits except through the lawyer.

Thus, for example, by dec. no. 860/17.12.2019[10], CCR noticed that the provisions of art. 83 CPC, as a whole, are aimed to ensure the fullness of the right of free access to justice, regulating conventional representation as a mechanism to facilitate the exercise of this fundamental right. At the same time, the way of regulating the conventional representation also ensures the full exercise of the right to defense, since the limitation of the possibility of the representative to formulate oral conclusions in the court of justice is nothing more than a guarantee for the realization of the right enshrined in art. 24 of the Basic Law. Considering the importance of this type of defense in the process, the legislator considered that it is necessary to impose it in a professional manner, through a lawyer, thus ensuring that the litigant will benefit from a defense that meets the qualitative requirements sufficient for to serve his procedural interests and to respect the standards of a fair trial.

2.2. The lawyers' requires a legal, officially organized framework

The Constitutional Court had to analyze the constitutionality of some provisions of Law no. 51/1995 regarding the organization of the profession, which stipulate that the profession of lawyer is exercised only by lawyers registered in the bar of which they belong, a component bar of the National Union of Bars of Romania, and the establishment and operation of bar associations outside the N.U.B.R. are forbidden. Their incorporation and registration documents are null and void. Nullity can also be established *ex officio*[11]. At the same time, Law no. 51/1995 stipulates that, on the date of its entry into force, natural or legal persons who have been authorized on the basis of other normative acts or have been approved by court decisions to carry out consulting, representation or legal assistance activities, in any fields, cease *de jure* their activity. Continuation of such activities constitutes a criminal offence and is punished according to the criminal law. Also, at the same moment, cease the effects of any regulatory, administrative or jurisdictional act by which consulting, representation and legal assistance activities contrary to the provisions of this law were recognized or approved.[12]

Under this aspect, another decision issued by the High Court of Cassation and Justice is also relevant[13], through which it analyzed the way the organization and exercise of the profession of lawyer in Romania were regulated, decision regarding the appeal in the interest of the law on the interpretation and uniform application of the provisions of art. 348 CP, in the case of the exercise of activities specific to the profession of lawyer by

---

[8] CCR dec. no. 514/30.06.2020, published in the Official Gazette of Romania, Part I, no. 770/24.08.2020, CCR dec. no. 379/24.09.2013, published in the Official Gazette of Romania, Part I, no. 731/27.11.2013, CCR dec. no. 155/17.03.2015, published in the Official Gazette of Romania, Part I, no. 259/17.04.2015, para. 14, and CCR dec. no. 158/14.03.2017, published in the Official Gazette of Romania, Part I, no. 394/25.05.2017, para. 19 and 20.

[9] CRR dec. no. 339/10.04.2012, published in the Official Gazette of Romania, Part I, no. 374/01.06.2012, CCR dec. no. 514/30.06.2020, previously cited, CCR dec. no. 379/24.09.2013, published in the Official Gazette of Romania, Part I, no. 731/27.11.2013, CCR dec. no. 412/08.10.2013, published in the Official Gazette of Romania, Part I, no. 712/20.11.2013, CCR dec. no. 129/13.03.2014, published in the Official Gazette of Romania, Part I, no. 291/22.04.2014, CCR dec. no. 155/17.03.2015, published in the Official Gazette of Romania, Part I, no. 259/17.04.2015, or CCR dec. no. 509/30.06.2015, published in the Official Gazette of Romania, Part I, no. 580/03.08.2015.

[10] Published in the Official Gazette of Romania, Part I, no. 301/10.04.2020, para. 17 and 18.

[11] Art. 1 para. (2) and (3) of Law no. 51/1995.

[12] Art. 107 para. (1) and (2) of Law no. 51/1995.

[13] HCCJ dec. no. 15/21.09.2015, published in the Official Gazette of Romania, Part I, no. 816/03.11.2015.

persons who are not members professional organization recognized by Law no. 51/1995. On that occasion, the supreme court held that from the succession of normative acts in time, it follows that the forms of organization at the territorial level of the profession of lawyer, regardless of their name („bars", „colleges"), have never been abolished in Romania, not even during the communist regime. The legal mechanism used by the legislator consisted in the transformation of the legal person, in the sense that the same normative act provided for the dissolution of existing legal persons, simultaneously with the establishment of other legal persons in their place, as successors in rights and obligations of the former. The situation is the same with regard to the forms of organization at national level („Union of Romanian Lawyers", „Union of Romanian Bar Associations", „Union of Romanian Bar Associations", „Central Council of Bar Associations", „National Union of Bar Associations from Romania"), with the only mention that for a short period of time (between February 14, 1950 and July 21, 1954) the profession of lawyer was left without an organizational structure at the national level. From this perspective, in Romania there was a continuity of the organization and exercise of the profession of lawyer, and the establishment of successor legal entities was done directly under the law, without any further formality. It was also emphasized that Law no. 51/1995, republished, with subsequent amendments, regulates unique and exclusive forms of professional organization of lawyers in Romania, in the sense that this profession can only be exercised by lawyers enrolled in the bars (there being only one bar in each Romanian county), which is part of the National Union of Romanian Bar Associations, as the only national structure of the professional order of lawyers in Romania.

Thus, by dec. no. 15/21.09.2015, cited above, the supreme court ruled that the persons who exercise activities specific to the profession of lawyer within bars parallel to those existing under the law, regardless of whether they were/would be established after the entry into force of Law no. 255/2004 or existed before, but continued their activity after this date, have the subjective representation of the fact that they act beyond the legal framework in force, because it has sufficient precision and clarity to allow its recipients to understand it and to conform their conduct to its provisions, thus excluding the possibility of invoking the error as a cause of non-imputability provided by art. 30 CP. In other words, the subjective side of the analyzed criminal offence (respectively the crime of unlawful exercise of a profession or activity) is closely related to its objective side, more precisely with the essential requirement of „unlawful" exercise of activities specific to the profession of lawyer, the fulfillment of which leads to the conclusion that a person in such a situation acts with the intention of harming the social values protected by the incriminating legal norm, following which the judicial bodies will concretely analyze the guilt of each person investigated for this criminal offence.

The problem related to the way of exercising the profession of lawyer in Romania was also the object of the analysis of the ECtHR, which, by the Decision of October 12, 2004 regarding the admissibility of app. no. 24.057/03, formulated by Pompiliu Bota against Romania, declared inadmissible the request regarding the violation of freedom of association, enshrined in the provisions of art. 11 ECHR. Thus, the Strasbourg Court held that, among the statutory objectives of the association whose president was the plaintiff, there was the creation of bar associations, which contravened the provisions of Law no. 51/1995 that prohibits the creation of bar associations and the exercise of the lawyer profession outside the Romanian Bar Association. Thus, due to the fact that the latter cannot be analyzed as an association within the meaning of the provisions of art. 11 ECHR, since the orders of liberal professions are institutions of public law, regulated by law and pursuing goals of general interest.

Also, the Court found that the rules under which the National Union of Bars of Romania operates (N.U.B.R.) do not contravene the invoked constitutional principles and those who wish to practice the profession of lawyer are obliged to respect the law and accept the rules imposed by it[14]. The Constitutional Court clarified this issue, emphasizing the importance of strict legal regulation regarding the access into this profession, denying the existence of parallel, illegitimate and parasitic structures. Under this aspect, the Court analyzed the constitutionality of the provisions of art. 59 para. (6) of Law no. 51/1995 on the organization and exercise of the profession of lawyer, according to which the unauthorized use of the names „Bar", „The National Union of Bars of Romania", „N.U.B.R.", „The Union of Lawyers from Romania" or the names specific to the forms of exercising the profession of lawyer, as well as the use of the insignia specific to the profession or the wearing of the lawyer's

[14] CCR dec. no. 806/09.11.2006, published in the Official Gazette of Romania, Part I, no. 29/17.01.2007; see also CCR dec. no. 182/29.03.2018, published in the Official Gazette of Romania, Part I, no. 531/27.06.2018.

robes in conditions other than those provided for by the said law constitute criminal offence and is punishable by imprisonment of 6 months to 3 years or with a fine.

At the same time, the Court found that, although the profession of lawyer is a liberal and independent one, its exercise must take place in an organized framework, in accordance with pre-established rules. Furthermore, the observance of these rules must be ensured even through the application of coercive measures. These are the reasons that imposed the establishment of unitary organizational structures and the prohibition of the parallel establishment of other structures intended to practice the same activity, without any legal support[15].

Also, the Court found that the organization and the exercise of the profession of lawyer by law, like any other activity that is of interest to society, is natural and necessary, in order to establish the competence, the means and the way in which this profession can be exercised, as well as the limits beyond which it would violate the rights of other persons or professional categories. The Court held[16] that it is at the legislator's latitude to regulate the conditions under which different types and forms of association can be established, organized and function, including ordering the mandatory establishment of some associations for the exercise of some professions or the fulfillment of some public interest attributions/powers, considering the provisions of art. 9 first sentence of the Constitution, according to which „Trade unions, employers and professional associations are established and carry out their activity according to their statutes, under the conditions of the law". The Bar Associations and the National Union of Bar Associations in Romania are professional associations with a special specificity, since their activity is one of public interest, which requires a more comprehensive legal regulation, even with regard to the qualities of the members, the conditions of organization and functioning, indignities, incompatibilities, disciplinary liability[17] and others.

2.3. Requirements of an individual nature for the exercise of the profession of lawyer

There are certain indispensable requirements for the profession of lawyer to be exercised with full probity and dignity, reflecting the special normative regime, dedicated to the defense of fundamental human rights by lawyers during the judicial trials and in their related activity. These conditions must be met both at the time of entry into the profession of lawyer and throughout its exercise, otherwise the sanction may reach the exclusion from the profession. As such, Law no. 51/1995 regulates, in art. 14, the cases when a person is unworthy to be a lawyer.

CCR examined the provisions of art. 14 letter a) which established that it was unworthy to be a lawyer the one who was definitively sentenced by a court decision to prison for committing an intentional crime, likely to harm the prestige of the profession. The consequence of the occurrence of such a case can be found in art. 27 of Law no. 51/1995, which states that the capacity of a lawyer ceases when he „was definitively convicted for an act provided by the criminal law and which makes him unworthy to be a lawyer, according to the law".

Moreover, under this aspect, the Court held that the disciplinary sanction of exclusion from the profession of lawyer reflects the principle of the dignity and honor of this legal profession, representing a guarantee of professional morality and probity for members of the bar. From this perspective, the legislation related to the organization of the profession of lawyer is governed by certain principles and rules that ensure a good and lawful development of the lawyer's activity, who are obliged to refrain from committing antisocial acts that would cast over the whole profession a negative light.

The Court held[18] that the regulation regarding the indignity of the lawyer is a normal one, guaranteeing that the people who exercise this honorable profession have an impeccable moral profile, it being inconceivable that people with (serious) criminal convictions would participate at the making of justice. The legislator understood to subject to this maximum sanction - exclusion from the profession - only the commission of intentional criminal offences, excluding those committed by fault, considering the fact that, if there is no intention on the part of the lawyer, it cannot be said that his probity and fairness are affected. According to the

[15] CCR dec. no. 379/24.09.2013, cited above, CCR dec. no. 129/13.03.2014, published in the Official Gazette of Romania, Part I, no. 291/22.04.2014.

[16] CCR dec. no. 70/24.02.2022, published in the Official Gazette of Romania, Part I, no. 683/08.07.2022, CCR dec. no. 509/30.06.2015, published in the Official Gazette of Romania, Part I, no. 580/03.08.2015, CCR dec. no. 321/14.09.2004, published in the Official Gazette of Romania, Part I, no. 1144/03.12.2004.

[17] For an image of the disciplinary liability of another professional category, namely that of civil servants, see, for example, E.E. Ștefan, *Brief considerations regarding the public servants administrative - disciplinary liability*, in CKS e-Book 2021, pp. 659-664, *http://cks.univnt.ro/articles/15.html*.

[18] CCR dec. no. 629/27.10.2016, published in the Official Gazette of Romania, Part I, no. 36/12.01.2017.

law, the cases of indignity are expressly and limitedly provided for by the law and are checked both on the occasion of admission to the profession, on the occasion of re-enrollment in the list of lawyers with the right to exercise the profession, as well as during the entire duration of its exercise.

Taking into consideration this serious consequence on the professional career of the lawyer, the Court found[19] that through its normative content, art. 14 letter a) of Law no. 51/1995 is not drafted with sufficient clarity and precision, so that its addressees could conform their social conduct to its provisions, more precisely to know exactly which are those criminal offences likely to affect the prestige of the lawyers' profession. Due to the imprecise wording, the determination of this kind of criminal offences is a matter left to the discretion of the competent professional structures to determine the case of indignity, as provided by Law no. 51/1995, republished. That being the case, the Court noticed that the law has not established the scope of the crimes that affect/do not affect the prestige of the lawyer profession, the finding of the state of indignity in which the lawyer is and, implicitly, the termination of his professional quality being carried out, from case to case, by the competent professional structure. Moreover, the adopted decision is not based on objective, reasonable and concrete criteria, but on subjective assessments, which may vary from one territorial professional structure to another. Also, this circumstance is likely to give rise to abuses and arbitrariness, considering the wide spectrum of intentional crimes provided by the Criminal Code and special laws.

In this context, the Court noticed[20] that the fact that the criticized legal provisions do not stipulate which are those intentional criminal offences that lead to the unworthiness of the lawyer to exercise the profession in question means that an essential aspect, which could influence the severity of the imposed disciplinary sanctions, is not explicitly provided by law, but left to the subjective assessment of the competent professional structures. Nevertheless, the rules regarding the disciplinary investigation must comply with certain requirements of predictability. Otherwise, as the person concerned is not able to adapt his/her conduct appropriately nor to have the correct representation of the course of the disciplinary procedure, art. 1 para. (5) of the Constitution would be violated.

That being the case, the Court found[21] that the phrase „likely to harm the prestige of the profession" of lawyer from the content of art. 14 letter a) of Law no. 51/1995 is unconstitutional and contravenes the provisions of art. 1 para. (5) of the Basic Law, due to its wording's lack in clarity and precision, considering that it does not clearly specify those intentional crimes that affect the prestige of the profession of lawyer. Therefore, it would leave room for arbitrariness, making possible the differentiated application of the sanction of exclusion from the profession, depending on the subjective assessment of the legal profession's structures that are competent to assess the case of indignity.

Therefore, the Court stated[22] that it is the legislator's task to give the criticized legal norm an unequivocal normative content and to establish a coherent and unambiguous legislative framework regarding the concrete conditions in which the termination of the lawyer's qualification occurs, by exclusion from the profession, as a result of the incidence of the case of indignity provided by art. 14 letter a) of Law no. 51/1995.

Despite this Constitutional Court's assertion, five years later the legislator still had not fixed the flaw of unconstitutionality. After the publication in the Official Gazette of Romania, Part I, of dec. no. 225/2017, the legal provision whose unconstitutionality was found thereby ceased to have legal effects, as a result of the provisions of art. 147 para. (4) of the Constitution, because the legislator did not intervene to put in in accordance with the constitutional provisions, in the sense of those established by Decision no. 225 of April 4, 2017. Consecutively, an unexpected and undesirable situation arose, consisting in the fact that the loss of the qualification of a lawyer intervened for any intentional crime by which the guilt of the defendant was found by a final court decision, and for which the prison sentence was ordered, regardless if the court has judged that it is necessary to suspend its execution.

Therefore, later on, the Court had to emphasize[23] that this was not the meaning of the admission decision pronounced, which sanctioned the lack of precision of the phrase that determined the intervention of indignity depending on the influence that the crime had on the prestige of the profession. Although, in the spirit of the specific principles of the rule of law, the Court stressed the fact that the lawyer is obliged to refrain from

[19] CCR dec. no. 225/04.04.2017, published in the Official Gazette of Romania, Part I, no. 468/22.06.2017.
[20] *Idem*, para. 21.
[21] *Idem*, para. 25.
[22] *Idem*, para. 26.
[23] Through CCR dec. no. 230/28.04.2022, published in the Official Gazette of Romania, Part I, no. 519/26.05.2022.

committing antisocial acts that would cast a negative light on him[24]. However, the sanction must be applied in a clear and predictable legal framework that ensures the person likely to fall under the scope of the criticized rule the necessary benchmarks in order to adapt his/her behavior in such a way as to comply with its requirements. That prevents the risk that the exclusion from the profession would be arbitrarily decided by the bodies of the profession, who are, in turn, unable to objectively assess to the aptitude of a certain criminal act to be likely to bring harm to the prestige of the profession of lawyer. The absence of any legal indication regarding the elements that would give a crime the characteristic of being „likely to harm the prestige of the profession" led the Court to find the unconstitutionality of this phrase.

The Court noticed, by dec. no. 230/2022, para. 18, that, in the absence of the active intervention of the legislator, which would clarify the norm through the prism of those ruled by the Constitutional Court, an excessive situation was reached, contrary to the aim took into consideration by the Constitutional Court by pronouncing the mentioned decision: all lawyers who have been definitively sentenced by a judicial court's decision to prison for committing any intentional criminal offence would be excluded from the profession, in an undifferentiated manner. The Court found that, thus, the exclusion from the profession for this reason could become a sanction disproportionate to the gravity of the act, especially in the conditions where the provisions of art. 14 letter a) of Law no. 51/1995 do not make any kind of distinction according to whether the court ordered the execution of the prison sentence or assessed that it could achieve its punitive, educational, dissuasive and preventive purpose even by suspending the execution. However, such a consequence, consisting in the exclusion from the profession of lawyer for any intentional crime for which the prison sentence was applied by a final court decision, represented a distortion of the meaning of Decision no. 225 of April 4, 2017 and the aim behind its pronouncement. Although the purpose of this decision was to increase the legal guarantees provided by law to lawyers regarding the loss of this quality, by eliminating the risk of arbitrarily applying this measure, the consequence was – in the absence of the legislator's intervention – the occurrence of a situation excessively severe for lawyers, especially compared to other legal professions.

At the same time, the Constitutional Court found that the situation created by the legislator's passivity, following the publication of the aforementioned admission decision, amounts to disregarding the provisions of art. 1 para. (3) from the Basic Law, which enshrines the rule of law character of the Romanian state. This, because the prevalence of the Constitution over the entire normative system represents the crucial principle of the rule of law[25]. Or, the guarantor of the supremacy of the Fundamental Law is the Constitutional Court itself, through the decisions it pronounces, so neglecting the findings and provisions contained in its decisions causes the weakening of the constitutional structure that must characterize the rule of law[26].

In this context, the Court found[27] that the legislative solution resulting from the passivity of the legislator leads to more drastic results than those produced according to the rule initially in force, which, although it generates the risk of subjective and discretionary assessments on the part of the decision-making body of the profession of lawyer, called to appreciate the intervention of indignity and, consequently, the loss of the quality of lawyer, still allowed such decision-making body of the legal profession to carry out a selection of crimes that would determine the exclusion from the profession, depending on the seriousness of the act and the damage to the image brought to the profession, even if there was a lack of certainty regarding the objectivity and correctness of such assessments. In addition, the arbitrariness of the assessment of the bar council in the aspect of classifying crimes in the phrase „which could affect the prestige of the profession" was determined precisely by the absence of legal regulation of some criteria whose fulfillment should be followed under this aspect.

Eventually, the legislator clarified and detailed the provisions in discussion, specifying, by Law no. 32/2023 regarding the amendment of art. 14 letter a) from Law no. 51/1995 for the organization and exercise of the profession of lawyer, a series of criminal offences that attract indignity, if by the date of verification of the state of indignity the following has not taken place: rehabilitation, post-conviction amnesty or decriminalization of the act and if the punishment consists in a prison sentence of one year or more. At stake are those crimes punishable

[24] See, in this regard, CCR dec. no. 629/27.10.2016, published in the Official Gazette of Romania, Part I, no. 36/12.01.2017, para. 22, CCR dec. no. 225/04.04.2017, cited above, para. 29, or CRR dec. no. 592/08.10.2019, published in the Official Gazette of Romania, Part I, no. 310/14.04.2020, para. 26.

[25] For more details, see E. Anghel, *General principles of law*, in LESIJ.JS XXIII nr. 2/2016, Lex ET Scientia International Journal - Juridical Series, pp. 120-130.

[26] CCR dec. no. 230/28.04.2022, cited above, para. 20.

[27] *Idem*, para. 21.

by a prison sentence with a special minimum of at least one year, like crimes against life, against patrimony, against the administration of justice, crimes of corruption, of forgery, crimes that affect relationships regarding social coexistence, crimes against national security or crimes of genocide, against humanity and war.

Prior to promulgation, the aforementioned law was subject to the *a priori* constitutionality review in accordance with art. 146 letter a) first sentence of the Constitution, the objection being rejected as unfounded. The Court validated the constitutionality of the new normative content, appreciating, by dec. no. 582/23.11.2022 (para. 31) [28], that the provisions contained in art. I of the criticized law, which modifies art. 14 letter a) from Law no. 51/1995, regulates a series of elements/conditions which, together, unequivocally configure those situations that fall under the first normative hypothesis of indignity in the lawyer profession from the four normative hypothesis of indignity regulated in art. 14 of the law, in accordance with those established by the CCR dec. no. 225/04.04.2017 and CCR dec. no. 230/28.04.2022. The precise indications of the newly drafted provisions contain sufficient and clearly expressed criteria to remove the risk of arbitrariness and abuse in the evaluation of a case of professional indignity, as well as to explicitly prefigure the conduct to be followed by the addressee of these legal norms.

By the same decision, para. 44, the Court held that the selection of those offenses likely to affect the integrity and prestige of the legal profession is the result of the legislator's option, manifested within its margin of appreciation regarding the state's criminal policy, in accordance with its constitutional role of the country's sole legislative authority. The Court emphasized that, in the process of determining the crimes that, by the degree of social danger and the social value protected, present the risk of infringing the principles of dignity and honor of the profession of lawyer, the legislator must take into account the intended purpose, that of increasing the guarantees and the degree of trust of the litigants in the lawyer's moral probity, given that the lawyer is obliged to refrain from committing antisocial acts that would cast a negative light on him [29]. The Court noticed that, in relation to his mission to promote and defend the human rights, freedoms and legitimate interests of the litigants, the lawyer, through his entire conduct, must correspond to a high standard of integrity. However, despite this goal, the legislator could not refer, in establishing those crimes, to all the criminal offences provided for in the Criminal Code or in other criminal laws. In this sense, CCR noted the excessively severe consequences that followed the elimination of the phrase „which may affect the prestige of the profession" from the content of art. 14 letter a) of Law no. 51/1995 and the application of this text without any kind of distinction. Thus it was opened up the possibility of exclusion from the profession following the evaluation as unworthy of any lawyer definitively sentenced to prison by a judicial court's decision for the intentional commission of any crime, but that was not the reason and purpose of the solution of unconstitutionality pronounced by dec. no. 225/04.04.2017.

Furthermore, the Court ruled [30] that lawyers assume not only the role of promoting and defending individual rights and interests, but also the social role of trainers and role models in society, so that any final judicial court's decision sentencing to a prison sentence of at least one year, regardless of the individualized way of executing the punishment, is able to constitute an objective and reasonable criterion in assessing the standard of moral and professional integrity.

3. Conclusions

The selection of constitutional case-law presented above reflects the crucial role lawyers play in protecting human rights and freedoms and also their contribution to justice making through a fair trial, as a defining feature of the rule of law. At the same time, it is important to note that CCR emphasized that lawyers must benefit of adequate protection in the exercise of their profession, which is why the legislation regulating this profession must provide legal mechanisms for lawyers to be protected from usurpation and undermining of their status through fraudulent actions from outside the profession.

In addition, CCR underlined the fact that the defense of citizens' rights and freedoms is a priority and that lawyers are essential partners in ensuring justice and protecting these rights and freedoms. These Constitutional Court's decisions have contributed to strengthening the prestige of the profession of lawyer in Romania and to

[28] Published in the Official Gazette of Romania, Part I, no. 13/05.01.2023.

[29] See, in this regard, CCR dec. no. 629/27.10.2016, published in the Official Gazette of Romania, Part I, no. 36/12.01.2017, para. 22, CCR dec. no. 225/04.04.2017, cited above, para. 29, or CCR dec. no. 592/08.10.2019, published in the Official Gazette of Romania, Part I, no. 310/14.04.2020, para. 26.

[30] CCR dec. no. 582/2022, para. 48.

increasing citizens' trust in lawyers and in the justice system in general. In this context, it should be mentioned that CCR addressed the issue of parallel bars throughout several decisions that reaffirmed the importance of the independence and autonomy of the legal profession and emphasized the need to respect democratic principles and the rule of law. In essence, it found that, in accordance with the Romanian Constitution, access to the legal profession must be regulated by a single representative professional body and considered that the existence of parallel bars, which operate illegally and without authorization, constitutes a violation of democratic principles and the rule of law, as well as civil rights and freedoms. Furthermore, the Court highlighted the importance of respecting the rule of law's values in the justice system, including professional rules and standards in protecting the rights and interests of litigants and the respect of ethical and professional norms.

The issue of perfecting the legal framework that regulates the status of the profession of lawyer, so that it is no longer subject to the risk of absurd encroachments, remains relevant. In order to strengthen and clarify this issue to the highest extent, comparative studies of the legislation of other states would be beneficial, especially integrated in the context of the EU, which would once again demonstrate the uniqueness and specificity of this profession, which in each state has its own individuality and its special regulation, considering its importance in the overall fulfilment of the jurisdictional act.

References

- E. Anghel, *General principles of law*, în LESIJ.JS XXIII nr. 2/2016, Lex ET Scientia International Journal - Juridical Series;
- S.G. Barbu, A. Muraru, V. Bărbățeanu, *Elemente de contencios constituțional*, C.H. Beck Publishing House, Bucharest, 2021;
- M. Criste, *Avocatul și profesia de avocat în România*, Editura Universul Juridic, București, 2014;
- M. Enache, Şt. Deaconu, *Drepturile şi libertăţile fundamentale în jurisprudenţa Curţii Constituţionale*, vol. 1, 1st ed., C.H. Beck Publishing House, Bucharest, 2019;
- I. Muraru, N.M. Vlădoiu, A. Muraru, S.G. Barbu, *Contencios constituțional*, Hamangiu Publishing House, Bucharest, 2009;
- I. Muraru, N.M. Vlădoiu, *Contencios constituțional. Proceduri și teorie*, 2nd ed., Hamangiu Publishing House, Bucharest, 2019;
- N. Popa, E. Anghel, C.B.G. Ene-Dinu, L.-C. Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar*, 2nd ed., C.H. Beck Publishing House, Bucharest, 2014;
- R. Popescu, Directiva 2013/48/UE privind dreptul de acces la un avocat in cadrul procedurilor penale, in Curierul Judiciar no. 11/2013, C.H. Beck Publishing House, Bucharest;
- F. Streteanu, *Avocatul, etica și deontologia profesională*, C.H. Beck Publishing House, Bucharest, 2019;
- E.E. Ștefan, Brief considerations regarding the public servants administrative - disciplinary liability, in CKS e-Book 2021, *http://cks.univnt.ro/articles/15.html*;
- *Manualul avocatului - drepturile și obligațiile profesionale ale avocaților*, published in 2016 by the National Union of Romanian Bar Associations, in collaboration with the National Council of Romanian Bar Associations.