

# THE LAWYER'S PLEA

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## Abstract

*The science and art of speaking are essential in the practice of the profession of lawyer, and the persuasion of the plea depends on concise and precise expression, but also on the spontaneity and momentum of improvisation.*

*The plea is the judicial discourse used by lawyers, consisting of oral exposure to the courts for the defence of one of the litigants in general, and should include the exordium (the beginning of the plea), the, exposing the cause, discussion and conclusion (peroration).*

**Keywords:** lawyer, plea, trial, parties to proceedings, rights, law, justice.

## 1. Introduction

*Ab initio*, we emphasize that the legal profession represents „perhaps the most eloquent professional category within the liberal professions, being eminently characterized by the notion of freedom in all aspects of professional life.”<sup>1</sup>

As for the lawyer, they „must possess a set of essential skills, including communication, reasoning, analytical ability, research proficiency, interpersonal aptitude, perseverance, and creativity.

Therefore, a competent lawyer must articulate their arguments with clarity, both in writing and orally, while also demonstrating active listening skills. They must possess the ability to prove to the judge, apply sound legal statements to ensure that conclusions are both reasonable and logical, exercise critical thinking to anticipate weaknesses in arguments, and employ analytical skills to determine the most appropriate legal solution based on the available information. Additionally, they must conduct legal research efficiently to comprehend client needs and develop legal strategies, exhibit strong interpersonal skills to effectively engage with clients, assess the reactions of witnesses, judges, and opposing parties, demonstrate perseverance in completing tasks irrespective of workload, and employ creativity in safeguarding clients’ interests by identifying optimal solutions.”<sup>2</sup>

We concur with the view that „the traditional image of the lawyer is that of a learned individual, an eloquent orator who, by dedicating their intellect, logic, reasoning, and specialized legal knowledge, plays a crucial role in the pursuit and realization of legal and social justice.”<sup>3</sup>

In contemporary practice, „the work of a lawyer is predominantly written and has become highly technical and specialized. The era of grand courtroom oratory, where impassioned speeches delivered before packed audiences could sway the course of a trial and culminate in resounding applause, has long since faded.”<sup>4</sup>

## 2. Content

In specialized doctrine, it has been noted that „oratory is the art of speaking, but not just any kind of speaking, by anyone, anywhere, but by an orator in front of an audience, adhering to certain requirements and having a specific purpose.”<sup>5</sup>

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<sup>1</sup> Șt. Vlad, *The Consequences of Regulatory Trends Regarding the Notion of 'Liberal Profession' in the European Union on the Legal Profession*, in Lawyer Journal no. 1/2023, published by the National Union of Romanian Bar Associations (Public Communication Department) and the „Constantin Naumescu” Foundation, Bucharest, 2023, p. 58.

<sup>2</sup> G. Popescu, *The Lawyer in the World of Predictive Justice. The Human Lawyer versus the Robot Lawyer*, in Lawyer Journal no. 1/2022, published by the National Union of Romanian Bar Associations and the „Constantin Naumescu” Foundation, Bucharest, 2022, p. 108.

<sup>3</sup> L. Dănilă, *Organization and Practice of the Legal Profession*, 2<sup>nd</sup> ed., C.H. Beck Publishing House, Bucharest, 2008, p. 14.

<sup>4</sup> A.-S. Murariu, *Artificial Intelligence (ChatGPT) in Support of the Legal Profession*, in Lawyer Journal no. 1/2023, published by the National Union of Romanian Bar Associations (Public Communication Department) and the „Constantin Naumescu” Foundation, Bucharest, 2023, p. 44.

<sup>5</sup> A. Țiclea, *Oratory and Famous Trials*, 2<sup>nd</sup> ed., revised and enlarged, Universul Juridic Publishing House, Bucharest, 2023, p. 10.

Regarding judicial oratory in antiquity, it can be said that it stood out, not only due to, but including, the plea by Lysias against grain merchants, the speech by Demosthenes against Midias, Cicero's speech in defense of poet A. Licinius Archias, etc.

The pleading is considered to be the essence of the legal profession since the time of Cicero, who believed that „the orator is not the lawyer who spends his life in the courts, nor the researcher specialized in a specific field, one of those who discuss such matters in corners, practicing a kind of subdued and weak speech; what is characteristic of the orator is deep and adorned speech, adapted to the thoughts and feelings of man, of man as man, taking into account his nature and culture, his moral and civic interests, tradition, laws and customs, and his emotional reactions, which must be mastered, for the orator is a fighter, and his goal is not to speak, but to prevail. But for this... the purpose of his speech is to persuade, to please, and to move at the same time (*docere, delectare, permovere*). This can only be done by the orator who is particularly gifted, who has risen from a complex formation, and not only through rhetoric, to the level of an exceptional personality, first through innate qualities (*natura et ingenium*), through culture, and finally, through zeal and passion (*studiu et ardor*).”<sup>6</sup>

Judicial oratory in France distinguished itself through Antoine Le Maistre's plea in a seduction trial, Olivier Patru's plea in the appeal of widow Séguin, Denis Talon's plea in the Calvière affair (16<sup>th</sup>-17<sup>th</sup> centuries), Henrion de Pansey's plea for the release of a black man, Linguet's plea for himself, Bellart's plea for Joseph Gras (18<sup>th</sup> century), Chaix d'Est Ange's plea for Lieutenant La Roncière, Gambetta's plea for Delescluze, Barboux's plea for Sarah Bernhardt, Cartier's plea for lawyer Viviani, Labori's rebuttal in the Zola trial, Henri-Robert's plea for Marie Daouze, Pierre-Antoine Berryer, Charles Alexandre Lachaud, Charles Chenu, etc.<sup>7</sup>

Regarding judicial oratory in Romania, we distinguish: Delavrancea's plea in the Caragiale – Caion case, Barbu Ștefănescu Delavrancea's plea in the Socolescu architect case, Nicolae Titulescu's conclusions in the case with the Nitzeanu couple, Margareta Ghelmegeanu's plea in the Petropol-Maior Orezeanu case, Eugen Herovanu's conclusions in a marriage annulment case and a will annulment case, Vintilă Dongoroz's plea in the Găetan case, etc.<sup>8</sup>

In Romania, the first rhetoric textbooks were: *Retorica, adică învățătura și întocmirea frumoasei cuvântări* by Ioan Molnar Piuaru, *Curs de retorică* by Simeon Marcovici, *Ritorică pentru tinerimea studioasă* by Dimitrie Gusti.

Among the great Romanian orators, we can mention, by way of example and not exhaustively, the following: Antim Ivireanul, Gheorghe Lazăr, Petrache Poenaru, Ion Maiorescu, Ion Heliade Rădulescu, Simion Bărnuțiu, Mihail Kogălniceanu, I.C. Brătianu, C.A. Rosetti, Vasile Boerescu, Barbu Catargiu, Vasile Goldiș, Iuliu Maniu, Ion I.C. Brătianu, Take Ionescu, Nicolae Iorga, Istrate Micescu, Grigore Trancu-Iași, Constantin Gr. Dissescu, Mihai Vasilescu Vijan, Hurmuz Aznavorian, Aurelian Bentoiu, Anibal Teodorescu, Vasile Toncescu, Dem I. Dobrescu, Mircea I. Manolescu, Titu Maiorescu, Toma Stelian, D. Alexandrescu, Mihail Seulescu, G. Danielopol, Ionel Teodoreanu, etc.

The science and art of speaking are essential in the practice of the legal profession, and the persuasive power of a plea depends on clear and precise expression, as well as on the spontaneity and enthusiasm of improvisation.

A plea is the judicial speech used by lawyers, consisting of the oral presentation in front of the courts for the defense of one of the litigating parties, in general, and it should include the exordium (the beginning of the plea), the presentation of the case, the discussion, and the conclusion (peroration).

Regarding pleas, it has been stated that they are „an act of significance, a moment of artistic expression of thought and feeling. A plea is, for all these reasons, something alive, organically structured, harmonious, or rather something that is born and lives in the presence of those who listen to it and to whom it is addressed. Therefore, a plea, no matter how well-prepared, involves not only inspiration but also improvisation. It must be, at the same time, a scientific work and an artistic one.”<sup>9</sup>

Furthermore, a plea represents „a complete manifestation of the lawyer's emotional, intellectual, and cognitive personality, so it cannot be confined to a separate formula. It is important to note that a plea must

<sup>6</sup> *Idem*, pp. 127-128.

<sup>7</sup> See Y. Eminescu, *Famous Pleas (Anthology of Judicial Oratory)*, Academy of the Socialist Republic of Romania Publishing, Bucharest, 1973.

<sup>8</sup> *Ibidem*.

<sup>9</sup> A. Țiclea, *op. cit.*, p. 401.

have logical and legal coherence, be synthetic and comprehensive, reflect a good theoretical and factual knowledge of the case and file, be eloquent, and delivered with the eloquence required of any good orator.”<sup>10</sup>

In Cartier's plea for lawyer Viviani, it was affirmed that „if you oblige the lawyer to measure his words, like a man who carefully watches where he steps, if you compel him to weigh his words and fear the interpretation that may be given to his thoughts, you risk stifling the generous impetus of improvisation, draining the spring of eloquence.”<sup>11</sup>

Nevertheless, a plea cannot be reduced to mere improvisation. It constitutes a rigorous oral presentation, constructed on the foundation of factual and legal arguments, through which the lawyer advocates for the cause of the client they represent.

Although legal literature refers to what is commonly known as the „art of pleading”, we are of the view that it is, first and foremost, a complex form of expression of the lawyer's personality – emotional, intellectual, and cognitive – which renders it unsuited to be confined within a predetermined framework.

A plea must be logically structured and legally coherent, concise yet comprehensive. It should demonstrate a thorough knowledge of both the substance of the case and the procedural file, and must be articulated with clarity, eloquence, and persuasive strength – qualities essential to any truly accomplished legal practitioner.

The identity of the lawyer with the client is realized by using the first person, bringing authenticity and empathy into the plea.

It should not be overlooked that „the lawyer has as tools not only speech but also writing. More precisely, first, he writes, formulates claims, actions, replies, counterclaims, third-party claims, evidence requests, etc., and only then speaks. He must write well so that the judge can easily understand what is being discussed.”<sup>12</sup>

A good use of techniques to incite emotions and resentments requires solid professional preparation and a profound knowledge of doctrine and case-law.

Thus, the opinion is noted that „the lawyer is also an artist, because he effectively carries out a practical activity with emotional experiences, with affective and intuitive tones, in which imagination plays an important role.”<sup>13</sup>

Attitude, collegiality, professional demeanor, legal culture, and human qualities are essential for a lawyer.

Knowledge of the rules for constructing a plea and the study of basic oratorical techniques, along with a solid general culture and a deep legal culture, are indispensable for excellence in this profession.

In practice, it has been acknowledged that the lawyer can wear multiple hats, namely: the orator lawyer, the writer lawyer, the actor lawyer, the psychologist lawyer, and the deceptive lawyer.<sup>14</sup>

*Digitalization must be „perceived and integrated into legal practice as an innovation aimed at enhancing efficiency. However, advocating for the outright 'replacement' of legal practice through full digitalization and the promotion of artificial intelligence as a hypothetical solution reflects a fundamental misunderstanding of the social role played by the legal profession and liberal professions in general.”*<sup>15</sup>

**We must not fail to mention the opinion according to which „the Romanian Bar is among the few European strongholds that have managed to preserve their identity and keep the traditional values of the profession alive. Although globalization, technology, and repeated global crises have marked the evolution of the profession in our country as well, we have managed to preserve our professional identity without compromise, meaning that we have not commercialized ourselves and have survived without becoming dependent.”**<sup>16</sup>

In contemporary legal practice, the integration of artificial intelligence into the legal profession raises compelling questions. One such question is whether ChatGPT can assume the role of a practicing attorney. The response, however, is relatively unequivocal: „ChatGPT cannot replace a lawyer who retains the essential

<sup>10</sup> L. Dănilă, *op. cit.*, p. 37.

<sup>11</sup> Y. Eminescu, *op. cit.*, p. 177.

<sup>12</sup> A. Țiclea, *op. cit.*, p. 439.

<sup>13</sup> *Idem*, p. 436.

<sup>14</sup> See D. Pomian, *Does the Legal Profession Still Represent the Staging of Virtues?*, article published on September 22, 2022, available at <https://www.juridice.ro/681988/mai-reprezinta-avocatura-punerea-in-scena-a-virtutilor.html>, last accessed on 30.03.2025.

<sup>15</sup> A.-G. Alecu, *The First 'Postponement Without Discussion' by the Robot Lawyer*, article published on 02.02.2023, available at <https://www.juridice.ro/679932/prima-amanare-fara-discutii-a-robotului-avocat.html>, last accessed on 30.03.2025.

<sup>16</sup> T. Briciu, *The Professional Identity of the Romanian Lawyer Between Tradition and Trends*, article published on June 26, 2023, available at <https://www.juridice.ro/essentials/6930/identitatea-profesionala-a-avocatului-roman-intre-traditie-si-tendinte>, last accessed on 30.03.2025.

*faculties of spontaneity and presence of mind.* Unlike ChatGPT, a legal practitioner possesses the discernment to remain silent during a witness examination, fully aware of how such silence—and the absence of a response—may subsequently be used to the client's advantage. Presence of mind is not merely a skill, but a defining attribute that elevates a competent lawyer to an exceptional one. *The capacity to remain silent at critical junctures and to pose questions with strategic precision are tools that, at least at present, remain beyond the reach of artificial intelligence.* These are inherently human tools, unlikely to be replicated through algorithmic means. Consequently, ChatGPT should not be viewed as a substitute for legal counsel, but rather as a supplementary instrument – one that may assist legal professionals by rapidly generating responses to complex legal queries requiring timely resolution.”<sup>17</sup>

In relation to the legal consultancy services provided by attorneys, „as artificial intelligence-based systems become increasingly sophisticated and accessible, as previously demonstrated in the cases outlined above, these systems will not only serve as tools for lawyers and legal professionals but also for ordinary individuals. It is likely that non-lawyers will, to some extent, use these systems to better understand their legal situations and to obtain guidance. They may still require a lawyer, particularly in situations where legal representation is mandatory in a court case. However, in the preliminary stages, they may turn to legal software, which will almost certainly be more affordable, and its performance remains to be seen. Nevertheless, legal assistance before the courts is expected to remain largely unchanged, continuing in the same form it has for thousands of years, since the inception of legal systems. It is difficult to imagine that the administration of justice will rely on artificial intelligence in the foreseeable future. Therefore, I believe that the roles of lawyers, judges, and prosecutors within the justice system are, and will continue to be, firmly entrenched.”<sup>18</sup>

Finally, in the doctrine, it has been noted that „to speak well means, in reality, to speak in such a way that the audience constructs that mental framework of action which corresponds to the content of the theses presented to them and accepted through convincing argumentation. Therefore, while not dismissing the importance of sensitivity, imagination, and the stylistic composition of the message, the architecture of the argumentation remains, however, at the forefront.”<sup>19</sup>

### 3. Conclusions

The essential and traditional role of the lawyer is to assume the responsibility of defending the rights and interests of an individual, advocating on their behalf.

This involves primarily developing, through oral argumentation, the reasoning that forms the foundation of the legal framework upon which the defense is built.

The fundamental difference between lawyers and actors lies in the purpose of their performative skills: while actors are applauded for merely executing their craft, lawyers employ similar abilities not for praise, but to achieve a specific objective. Their mission is to persuade the court – often not to achieve a complete victory, but rather, at times, with the more modest aim of securing a more favorable verdict, even when an ideal outcome is not attainable.

In order for this objective to be realized on the „stage” of the courtroom, beyond oratory, it is essential for the lawyer to capture and maintain the attention of the audience throughout the entirety of the plea. It is necessary to silence any distractions within the courtroom and allow the audience's memory to retain the presented arguments, through a carefully crafted play on words, whose effects should impress and ultimately persuade.

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<sup>17</sup> A.-S. Murariu, *op. cit.*, p. 46.

<sup>18</sup> R. Obârșie, *Artificial Intelligence and Blockchain: Trends and Opportunities for the European Lawyer*, in Lawyer Journal no. 1/2023, published by the National Union of Romanian Bars (Department of Public Communication) and the „Constantin Naumescu” Foundation, Bucharest, 2023, pp. 49-50.

<sup>19</sup> Gh. Mihai, *Constructive Elements of Legal Argumentation*, Academy Publishing House of the Socialist Republic of Romania, Bucharest, 1982, p. 37.

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