

About Liberal Professions in Romania: Dysfunctions and Disturbances.

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Abstract: *This paper presents the main aspects of the liberal professions in Romania from the legislative point of view. It is a comparative analysis based on European and Romanian legislation. Although there are 23 years of political, economical, social and cultural transition in Romania, this analysis demonstrates that there are many dysfunctions and disturbances in the legislation of liberal professions in Romania. There are some illustrative examples, especially from the public notaries profession.*

Keywords: legislation, liberal professions, regulated professions, public notaries

Introduction

The concepts of *regulated profession* and *liberal profession* are explicitly defined in the European legislation and taken over by assimilation into Romanian legislation. The legal concept of regulated profession is defined in *Directive nr 2005/36/CE of 7 September 2005 on the recognition of professional qualifications*. A regulated profession is defined in article 3 of this Directive: “a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in paragraph 2 shall be treated as a regulated profession.”

The legal concept of liberal profession is defined in the same Directive at article 43: “To the extent that they are regulated, this Directive includes also liberal professions, which are, according to this Directive, those practiced on the basis of

relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual and conceptual services in the interest of the client and the public.”

Exercising a profession may, in the member states, according to the *Treaty*, be the subject of specific legal obligations based on national legislation and settled regulations, autonomously, within this frame, by the representative professional competent body; these regulations guarantee and improve the degree of professionalism, quality of service and confidentiality in relationship with the client. However, concerning the correlation between the degree of regulation and the quality of the services there are different views. For instance, in a research performed by a team from the Institute for Advanced Studies, Vienna, it results that: “*We are unable, from the data, to estimate the impact of the differences between regulatory regimes on the quality of services provided for consumers in detail, but there have been no apparent signs of market breakdown in those member states which we have shown to be less regulated. There is thus no basis for questioning the high quality and essential values of existing professional services, regardless of the presence of high or low levels of regulation*” (Paterson et al., 2003, p.5).

According to the *Constitution of Romania*, the obligations incumbent on the Romanian State, according to the treaties ratified by the Parliament are fulfilled by the Romanian State literally and in good faith (art. 11, par. 1 of the Constitution of Romania). Romania’s status as a member state of the European Union compels our country to prioritize the compulsory European regulations to the contrary disposals of the domestic laws (art. 148 par. 2 of the Constitution of Romania). The Romanian legislation lacks explicit definitions of „regulated profession” and „liberal profession”, respectively, as legal concepts. Under these circumstances, the European definitions of “regulated profession” and “liberal profession, respectively are assimilated into the Romanian legislation.

Domains of regulated professions and liberal professions

Coincident with these two types of definitions, the domain of liberal professions forms into a sub-domain of the wider domain of regulated professions. Liberal professions form into a sub-class of the wide domain of regulated professions. Some of the regulated professions are classified as liberal professions due to the fact that they can be practiced individually and independently of

the State both from the organizational and economic point of view (Corak & Piraino, 2011; Dunn & Holz-Eakin, 2000; Kleiner, 2000).

The democratic states and the rule of law within market economies, in order to safeguard the public interest, have condescended to regulate a series of socially and economically important activities in accordance with the above mentioned definitions of regulated professions and liberal professions. At the same time, through the intercession of the State, a social and economic balance is kept by correlating the rates of taxes with a level that has become medium.

Any research in the field of liberal professions in Europe should be able to make a distinction between two large groups of regulations on market entry and regulations on market conduct. *“Typical market entry regulations are qualification requirements (formal certificates of qualifications – i.e. university degrees, length of practice and/or professional examinations), registration or membership in a professional body, rules on areas of reserved practice (i.e. exclusive rights for one – or sometimes more – professions to offer specific services or goods on the market), and in some cases economic needs tests. Typical conduct regulations are regulation of prices and fees (fixed prices, minimum and/or maximum prices etc.), regulation of advertising and marketing, regulation of location and diversification”* (Paterson et al., 2003, p.2).

Social and economic equity

Equity, as a social virtue, is a philosophical concept which includes the principles of equality and proportionality. It is equitable from the social point of view that each individual can have equal chances to rights and resources. It is equitable that redistribution of resources should take into account the needs proportionally with the competences, infusion of added value and application.

Compared to this general principled approach, the economic and social reality in Romania highlights serious disturbances and distortions within the social economic balance as a consequence of the activities performed by practicing liberal professions. To continue, we present some actual examples of cases of practicing services and activities in the domain of liberal professions. The following examples highlight the generated economic imbalances which seriously affect social equity.

Public Notaries

Law nr. 36/1995 on public notaries and notary activities, modified and updated stipulates in art 21:

1. *“Upon the updating of the number of public notaries it will be taken into consideration that within the constituency of a Court at least two notaries shall exercise their functions.*
2. *The number of public notary jobs is updated, usually every year, by the minister of justice. The updating is done on the proposal of the Council of the Union.*
3. *The Minister of Justice will proceed, during the first trimester of each year, based on the proposals of the Council of the Union, to issue the updating orders, distinctively, for each and every category of jobs which are being updated (...)*”

The above mentioned legal procedures engages the minister of justice, by issuing an order to execute a decision made by the private association of notary service providers on the number of public notary jobs. The enforcement of this *numerus clausus* on the market of notary services contravenes the principles of market economy. In other words, an association of private interests compels the public executive authority (the minister of justice) to make a decision on the number of this profession performers, a decision made by the notaries on the market. This means that the market is closed and it only opens when and to the extent allowed by the operators present on the market of notary services.

Moreover, in this case, the government represented by the minister of justice is no longer the supreme executive authority according to the Constitution of Romania (art. 102, par 1), it is just a performer of the interests and will of a private group called public notaries. In practice, the minister of justice becomes “the notary of public notaries” by issuing the order on the number of public notary jobs, this by enforcing the law. The State has become captive of the decision of a group of private interests.

There is an obvious lack of accordance between the prices practiced by notaries and the social economic reality. Notaries do not manage to synchronize with the residential prices. In most of the areas of Bucharest the reference values of notaries are not met on the business market. In the case of flats,

the notary's offices overrate their value by up to 30%. The minimum ceilings established by the chambers of public notaries in the case of tenements may artificially raise the bureaucratic costs of a business (taxes, income taxes, fees, etc.) because of the lack of updating of the guidelines used by the notaries.

Thus, according to an analysis carried on by the newspaper *Financiarul* (Cojocaru, 2010; 2012), after just six months from the last update of the guidelines regarding the indicative values of real estates, the differences between actual prices and notaries' price grid have come to 30% in the case of flats. Moreover, the guidelines in question used as lists of reference prices on the business market bring forth distortions and inequities between different categories of residential properties. To this effect, whereas regarding the evaluation of flats, the ceilings in the notaries' grid sometimes show differences of up to 30%, with respect to the assessment of residential properties like houses and villas, things are totally different. Thus, at present, the minimum values below which no public notary agrees to authenticate an act of conveyance vary between 484 to 907 Euros per available square meter for the houses and villas built after 2001. In this case, the differences from actual prices vary between 50%-300%.

Regarding the associated taxes to closing a conveyance deed and the income tax from the transfer of property right paid by the seller:

- Transactions with houses/flats of up to 200,000 lei have a tax of 6,000 lei irrespective of their value. The amount exceeding 200,000 lei is charged by 1% if it was bought more than 3 years ago or by 2% if it was bought less than 3 years ago.
- The charge for the tabulation of property right over the house/flat which is payable to the Office of Real Estate and real estate Advertising is 0.1% of the declared sum.
- The notary's charge – up to 3% of the total of the sum to which the VAT is added.

There is a "Guideline of Quoted Prices of real estates" (on paper and e-printed) by means of which, arbitrarily and without offering any alternative to the notary services consumer, charges and commissions are applied at a minimum value according to the Grid included in the Guidelines, irrespective of the actual value of the real estate transaction.

Based on untransparent contracts, in each county, the branches of the UNPR (Union of the Romanian Public Notaries, www.unnpr.ro) require experts of

various professions (technical experts, topographers, engineers, assessors) to update the Prices Grids annually. Curiously, the prices are by tens of percents *higher* than the market values at a certain moment, and very close to the values applied before the crisis (the peak being in 2008).

Proceeding with our analysis, we may ask: What is the use of these Grids?

1. Based on them, any real estate transaction is charged by the Ministry of Finance as stipulated by the Fiscal Code, with 2% or 3% of the transaction value: 2% for real estate that have not been traded during the last 3 years, and 3% for those of a circulating value less than 3 years. The notary holds these sums at source and deposits them into the State's account monthly.
2. Separately, by their own grid of charges, any notary takes his/her own commission on the sum of the transaction.
Other taxes are also charged (for the Real Estate Register, for example).
3. Nevertheless, the charges are based on a market-price list according to the grid in the Guidelines without taking into consideration the real estate market at the time being.

One simple example:

- if some land is traded freely on the market with 100 euros/sqm and the grid shows 200euros/sqm for the respective area (as it used to be sold by in 2008), and the land has never been transferred to another owner, then we have: $1,000 \text{ euros/sqms} \times 2\% \times 100 \text{ euros/sqm} = 2,000 \text{ euros}$ normal taxes to be paid. Nevertheless, the notary applies 2% to the number in the Grid, meaning: $1,000 \text{ euros/sqms} \times 2\% \times 200 \text{ euros/sqm} = 4,000 \text{ euros}$! To this the commissions of the UNPR are added, which are close in value.

Considering that notaries use as a reference price in calculating the notary taxes related to the prices, the price during the real estate booming in 2008, there comes as necessary and compulsory the updating of the notary charges according to the present prices on the real estate market. Thus, once more the social principle of equity is seriously infringed. This practice of prices imposed by the County Chamber of Public Notaries financially abuses the clients who are held within the system of taxes imposed by the notaries and not controlled by the State.

This situation is in the sole interest of public notaries, those who impose the taxes and charges on the market. We may consider in the following some significant examples:

1. Translation and authentication of 6 graduation diplomas of one page each cost over 3,000 lei, the equivalent of 4 net salaries of a resident medical doctor.
2. Given the circumstances that in Romania the net salary of an IT teacher, II didactic grade, with 27 years of service is 1,200 lei, the charge practiced by notaries for authenticating an A levels diploma in 6 copies is 180 lei.
The notary's time taken for the service of copying and authenticating a diploma is 5 minutes.
The pay for a 5 minutes' work of a notary equals the pay of a teacher for 5 working days.
3. The Notaries' Professional Body named the National Union of the Romanian Public Notaries (UNPR) establishes and imposes the taxes and, especially, charges for different types of services offered to clients.

Compared to the net medium salary, taking into account the effort and time taken for accomplishing a notary service, we can notice that the notary taxes and charges are exorbitant compared with the actual payment possibilities of the clients, citizens, natural persons with medium incomes.

The causes of this phenomenon are: monopoly on the market of professional bodies in setting taxes and charges for the services they offer and total absence of control and mediation of the State for safeguarding the public interest of maintaining the social economic equity. Modern society, having developed and diversified the social division of labour, has created the framework for the emergence of higher and more varied specializations. The citizens, clients of the services offered by the practice of liberal professions are objectively within an asymmetry of knowledge when facing the experts offering services practiced by liberal professions. Under these circumstances, the ability of clients to identify, select and choose the most appropriate service and service performer to the needs of the client from the perspective of quality-price proportion is nothing less than haphazard. In order to reduce hazard, clients go by advertising criteria, reputation or minimal price.

The client has limited options and the minimum charges are imposed by the professional body itself of the service of those practicing liberal professions. The principles of market economy are contravened, and its mechanisms are distorted in all those professions where professional bodies themselves impose taxes and charges for the services performed. Under these circumstances, the social economic equity is entirely missing.

According to a study of the Council of Competence, notary charges in Romania for the same types of services are 14 times higher than in Germany, where the medium net salary is 10 times higher than in Romania. Compared to Germany, notary charges in Romania are 140 times higher for the same notary services applied. The German State as opposed to the Romanian one intervenes in order to correlate the practiced notary charges with the net medium salary. The German State has in view to put into practice the principle of social equity. In Romania, the State is absent in socially and economically controlling and adjusting things from the perspective of equity.

Vulnerability of the client facing the cooperation between banks and assessors

The citizens, clients of the services offered by the practice of liberal professions are vulnerable, and sometimes trapped, when facing monopolies and/or cartels of service offerors. One suggestive example is the one when a client applies for a credit within the government program “First House” to one of the banks. The bank imposes a certain assessor to the client (usually a natural person agreed by the bank). Lacking in expert knowledge, the client is the victim of the agreement between the bank and its agreed assessor. It is just a formality for the bank to verify and approve the assessment report as long as the bank has imposed its assessor and there was no agreement between the client and the bank in selecting the assessor. Just to illustrate this situation, we shall consider as an example the Client-Bank relationship and assessor imposed by the bank.

A client, Small and Medium Enterprise asks the State through the bank for a credit to develop a project with a partially subsidized interest. In order to access the credit, the client, SME has to draw up a 360 pages report. The assessor imposed by the bank applies the charge of an authorized natural person, three times higher than the market price. After having insured the pledged goods, the bank imposes to the SME commissions and taxes unnegotiable and un-notified before the drawing up of the project for supporting the SME to obtain the credit with a partially subsidized interest. The added costs from the bank have covered the government facility of partially subsidizing the interest to the credit therefore the project has become unprofitable.

After having paid off the credit, the emergence of a higher government support creates to the SME the illusion that an even more advantageous interest subsidized by the state would however generate the chance to get profit from

carrying on the project, and the client lives the illusion of restarting the creditation under more advantageous circumstances, the track client-crediting bank having already been covered. However, the bank imposes the rerun of the procedure. Now, the file for creditation is 400 pages, assessing is rerun for the very same goods and, although the client is applied by repetition the same assessment as in the previous year, the prices imposed by the bank for the assessor and new commissions have raised accordingly. Again, the only ones who have gained are the bank and assessor. The debtor, SME has worked and spent precious time having gained nothing compared to the time spent with running the project. On the other hand, the debtor has gained some stinging experience that it will not repeat.

Conclusions

The examples above prove that the access of citizens to the services offered by the practice of liberal professions is limited by the service performers who have settled discriminating stipulations such as *numerus clausus*, age or domicile. The access of young people on the market of liberal professions is limited by obliging them to “invest” large amounts of money in order to be accepted as apprentices of a “master” notary, barrister, and receiver.

The clients of services offered by liberal professions performers are trapped within a poor offer of service performers (in the case of certain professions), and the prices (taxes and charges) are imposed on the market by the professional bodies of the service performers who practice liberal professions. The general interest of the clients is not guarded by any expert authority. In all the above mentioned cases, the citizen, client of the services offered by the practice of liberal professions is a captive client of the taxes and charges imposed by the professional body. In Romania, the State does not safeguard the public interest for the social economic equity.

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*** *Constitution of Romania*

*** *Directive nr 2005/36/CE of 7 September 2005 on the recognition of professional qualifications.*

*** *Legea nr.77/2012 pentru modificarea Legii notarilor publici nr.36/1995.*

www.unnpr.ro – Uniunea Notarilor Publici din Romania

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