

Challenges for the Future of the Legal Profession in Romania

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Abstract – Innovation drives change in many aspects of life, but the particularity of legal services must be considered when making changes, in order to satisfy the need to innovate and maintain professional standards.

The research is focused on observing regulatory requirements, the economic aspects of legal activities and deontological issues that arise from practicing law in Romania. Besides the interdisciplinary analysis (European Union legal framework, national legislation) and multidisciplinary approach of the concept of legal services market (from the perspective of economics, deontology and regulations) the paper addresses national bibliographic deficiencies with numerous references of legal developments in other countries. The aim of this study is to prepare for innovation by discussing global trends and professional challenges that the legal profession is facing in Romania.

Keywords legal professions, lawyers, innovation, European Union, liberal professions, legal service market

I. INTRODUCTION

The article is based on the findings of European Commission in their annual European Innovation Scoreboard 2019 that places Romania in the “modest innovator” performance group, noticing that performance has declined strongly compared to the last years [1]. The research serves as starting point to answer the question how Romanian legal services providers are staying relevant in the face of change.

To start, the first part of this article focuses on characteristics of the legal profession in Europe considering the nature of liberal professions (and the arguments for which professionals are classified as undertakings). Section III provides an overview of the Romanian legal services market and the main players, with an emphasis on the specifics of lawyers. Section IV is devoted to literature study covering recent and forecasted changes of legal services in different countries, considering the common influencing factors that affect the structure of legal services.

In order to understand current development and future trends in the legal market we used a mix of methods, ranging from observation of Romanian legal professionals to literature review of contributions from other countries, as well as reports and opinions of European authorities and national organizations. However, most of the literature comes from English speaking countries and available translated documents as the language barrier was limiting our research.

II. OVERVIEW OF LEGAL SERVICES AS LIBERAL PROFESSIONS IN THE EU AND ROMANIA

This section intends to examine Romanian and European legal frameworks to determine how legal professionals are situated in relation to other liberal professionals.

A. The concept of liberal professions

Current understanding of liberal professions in the EU consists of those occupations that involve intellectual activities whose development requires special training in the field, are characterized by a specific deontology, they have an obligation to the contracting authority and are required to act in the public interest [2][3][4].

Professional activities are organized by the state (through laws) and overseen by officially recognized associations (enforcing statutes and codes of ethics). These services address health, legal or major economic issues and service provider must therefore meet the highest professional and ethical requirements especially because, even *ex-post*, the client can hardly assess the services performed –which is why these professional services are classified as “credence goods” [5].

Based on existing definitions of the liberal professions in State Members, the European Economic

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and Social Committee (EESC) gives an exhaustive definition as follows [6]:

"A liberal profession is characterized by: provision of a valuable intangible service that is distinctly intellectual in nature, based on advanced (academic) training; a service that is in the public interest; substantive and economic independence in executing tasks; provision of services in a personal capacity, on the provider's own responsibility and in a professionally independent manner; a particular relationship of trust between the client and the service provider; a focus on providing the best possible service rather than on maximizing profit; and compliance with precise, strict professional regulations and codes of professional ethics."

A comparative study [7] conducted across five European states observes the common characteristics of the liberal professions consisting in similar principles of professional ethics necessary in order to ensure the quality of services provided.

The Romanian Employers' Association of Private Services also published a paper [8] studying European relevant laws and regulations from a legislative, economic and social point of view in order to identify essential common characteristics of liberal professions that separates them from other occupations. The authors recommended distinct public policies for future national regulation of liberal professions in order to rise to EU ascending standards.

Drawing on this distinction between liberal and freelance professions, Romanian National Trade Register Office (ONRC) lists the following cumulative conditions required in order for ONRC to consider the activity a liberal profession [9]:

- Legislative norm regulating the field;
- A public authority or professional body that checks the conditions for conducting the profession, grants authorization and keeps a record;
- An express provision in the law that professionals conduct themselves under authorization and/or a badge of membership.

In Romania, the liberal profession of lawyers is strictly regulated through special norms [10]. Thus, in order to practice law, one must be a law graduate who earned the title of lawyer in one of the member bars of the National Union of Romanian Bars (UNBR). This can be achieved by either passing the entrance exam or the bar confirmation exam, respectively, for those transferring from other legal professions. There are also EU lawyers who practice in Romania under the professional title of the home Member State (with some limitations of material competence).

Considering the above-mentioned research, in Table 1 we conducted a comparative analysis of liberal professions as opposed to freelance activities, using custom criteria to measure the relevance of such delimitation for legal services market.

Our analysis suggests that the distinction between the two categories exceeds tax regime and registration procedure and is relevant for all liberal professions including the legal profession, considering the different type of relations that form between lawyers and clients as opposed to relations between freelancers or companies and their customers. The specific relation between a lawyer and his clients is a direct consequence of the main characteristics of the legal profession as described in Fig. 1.

Table 1 Comparative analysis of liberal professions versus freelance activities

Comparison criteria	Liberal professionals	Freelance professionals
1. Personal requirements	They have professional qualification; Have practical experience or exam certified skills.	They can perform an activity without prior certifications.
2. Work requirements	Established by decision of the professional organization/body they belong to; Practicing according to the rules of conduct in the industry; Pay fees as member.	Registration with the Trade Register; Carries out entrepreneurial activity without additional supervision; They can choose to join professional organizations but are not required to.
3. Obligations of conduct	The principle of independence and impartiality, professional secrecy, respect for integrity and professional dignity, etc.	Only follow social norms; They are not bound by deontology.
4. Professional Liability Limits	Professional activity exposed to disciplinary sanctions; Compulsory professional liability insurance for the quality of services provided.	Commercial liability according to organizational legal form; Voluntary liability insurance.
5. Regulation	Special law for each profession.	Law no. 31/1990 on commercial companies; Government Ordinance no. 44/2008 on economic activities by individuals.
6. Tax regime	Real income taxation system mandatory.	Option to pay tax according to income norms.
7. Quality assessment	Consumers cannot verify the value of the service provided ("credence goods").	Consumers may or may not accurately assess after consumption the value of the service provided (either "credence goods" or "experience goods").

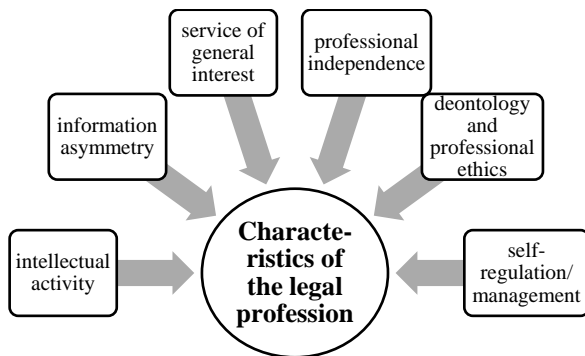


Fig. 1 Characteristics of the legal profession

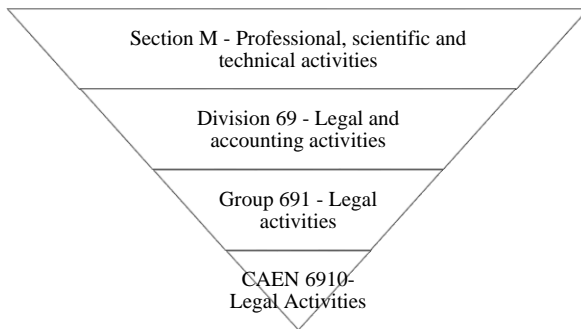


Fig. 2 Placing legal activities according to CAEN Rev. 2

B. The Professional Dichotomy

Over the last decade, there have been global debates whether law is a business, a profession or both; this is known as the paradigm of lawyers as "service providers" where the legal profession is not seen as a separate, single profession, with the right to their own individual regulations, but is included in a wider group of "service providers" who can be treated together. This would represent a "fundamental, even seismic, shift in the approach towards lawyer regulation" [11].

Older generations of professionals consider the practice of law to be a form of art [12] whilst others debate the idea of (also) treating law as a profit-oriented business [13].

The economic understanding of legal services is pioneered by EU and transposed in Romanian Competition Law when defining the term "undertaking" as follows:

"Any economic entity engaged in an activity consisting in providing goods or services on a given market, regardless of its legal status and the way it is financed, as defined in European Union case law".

Intellectual activities are therefore undertakings, which assimilate any activity consisting in offering goods or services on a given market as an economic one. Activities within law firms fall into this category because lawyers provide legal services in a permanent way and they receive remuneration when the customer pays legal fees, thus exercising an economic activity.

A recent study at EU level reveals many proofs for this argument in case law and official documents [14]. Furthermore, EESC's above-mentioned opinion recognizes liberal practitioners as entrepreneurs and

intends to support this sector by integrating it into programs that promote the development and competitiveness of SMEs.

Therefore, according to the competition rules, legal service providers are undertakings because:

- There is demand for legal services (from individuals and legal entities) and an offer (legal services provided by lawyers);
- There is competition in the market in which lawyers operate, in the sense that individuals and / or legal entities could choose between lawyers, according to the services they provide;
- Lawyers provide legal services on the market;
- Lawyers charge a fee for legal services rendered.

Regarding this economic approach, Romanian Union of Liberal Professions expressed concern that, in the legal profession, competition should focus on quality, not on profit and that a competition of a commercial or industrial nature has no place in the liberal professions [26].

III. THE LEGAL SERVICES MARKET IN ROMANIA

Legal activities are economically defined according to Nomenclature of the Classification of Activities in the National Economy Rev. 2 (CAEN) under class 6910 consisting in activities of lawyers, legal counsels, notaries and bailiffs (Fig. 2).

Out of these legal activities only lawyers can provide consultancy, representation and legal assistance activities to the public.

A. Lawyers

Control on the establishment, organization and functioning of lawyers, regardless of organizational form, is exercised by National Union of Bars in Romania (UNBR).

According to art. 5 of Law 51/1995 for the organization and exercise of the legal profession in conjunction with the provisions of the Statute of legal profession, lawyers can practice on their own or group together to form civil associations and even hire auxiliary staff (other than legal counsels).

Table 2 Differences between organizational forms of the legal profession

Type of organization	Differentiating features
Individual cabinet (C.I.)	Consisting of a permanent lawyer, alone or with other collaborating lawyers
Grouped cabinets (C.G.)	Lawyers share common economic resources and facilities, but retain their individuality in dealing with clients
Associated cabinets (C.A.)	Lawyers practice the profession together and cannot hire clients with contrary interests
Professional civil societies (S.C.P.A.)	Consisting of two or more permanent lawyers who are associations, to which can be added collaborating or salaried lawyers
Professional limited liability companies (S.C.P.A.R.L.)	The company has legal personality and own patrimony that constitutes the shared capital and the liability of the associates is limited to the social contribution of each one.

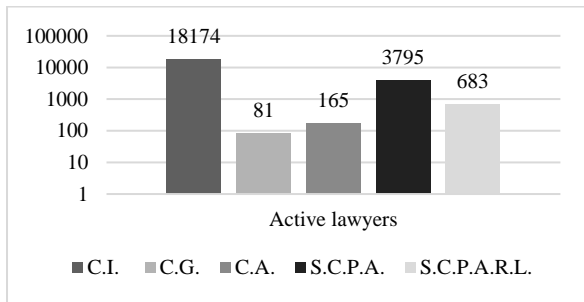


Fig. 3 Distribution of active lawyers by organizational form (logarithmic scale). Source: UNBR

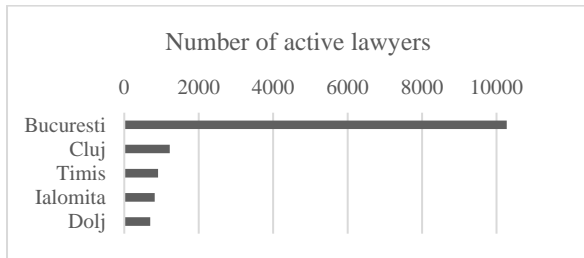


Fig. 4 Top five counties by active lawyers. Source: UNBR

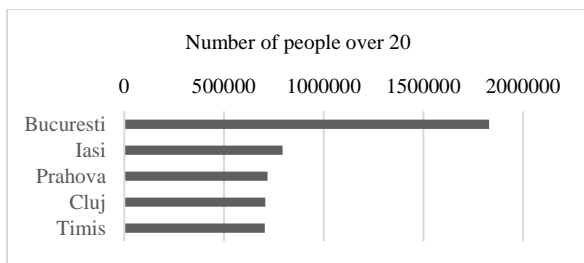


Fig. 5 Top five counties by adult population. Source: INSSE

At national level, there are over 35,000 lawyers registered in county bars, of which 23,000 are active and have the right to practice law, as shown in Fig. 3. A look at the UNBR website reveals that most lawyers practice as individuals rather than grouped. This statistic will have a major role as we discuss the impact of globalization and technology further along this study.

Geographically, the legal services market is strongly centralized and located mainly in Bucharest, where 10277 active lawyers are registered. The Cluj Bar is the second largest with 1222 registered lawyers, and the Timiș Bar has 907 lawyers (Fig. 4). When cross-referencing this geographic distribution to the current demographic situation (Fig. 5) we notice that Bucharest has 1 lawyer per 178 adults compared to Prahova having 1 lawyer for every 1345 adults and 9018 in Iasi.

These findings could support the concern that young lawyers leave their smaller counties and practice law in the capital [15].

B. Other players

It is beyond the scope of this article to go deeper into the history of parallel structures of the legal profession. Nevertheless, it's important to mention that the legal monopoly of lawyers has been the subject of

many debates in the last two decades, as captured by professor C.L. Popescu in his paper "Legality, Continuity And Uniqueness Of The Professional Order Of Lawyers In Romania" [16]. Amongst his many arguments, he emphasized that:

- According to the Law no. 514/2003 for the organization of the profession of legal counsel, the legal counsel profession can be exercised only as an employee or civil servant, and never as a freelancer;
- According to art. 25 of Law no. 51/1995, the exercise of any activity of legal assistance specific to the profession of lawyer and provided in art. 3 of the law by a natural or legal person who does not have the quality of lawyer registered in a Bar constitutes a crime and is punished according to the criminal law.

More recently, the former President of UNBR expressed his concern in an interview about the emergence of "false lawyers" [17].

Indeed, during the last decade and following the examples of other countries that, non-lawyers are delivering legal services under different names and as part of integrated consulting services, in which the lawyer's name no longer appears, being absorbed or dissolved in the final service offered by a commercial company (as is the case of debt collectors).

The increasing number of corporate advisers has also led to a "substitution effect". Multidisciplinary companies offer legal services solutions alongside other type of professional service that the client needs. This is the case of The Big 4 consulting firms that have taken over part of the lawyers' global market, offering consulting services, especially in the field of labor law and intellectual property (The Big 4 is the nickname used to refer collectively to the four largest professional services networks in the world, consisting of Deloitte, Ernst & Young, KPMG, and PricewaterhouseCoopers). However, current news reports show that this does not pose a threat for the Romanian legal market as over the last years these companies renounced or renamed the affiliated Romanian law firms [18].

In a broader sense, there are also various companies or non-profit organizations in the market that aim to inform and disseminate legal information to the population, without providing legal advice or assistance. Such organizations are mainly focused on lobbying ("Centrul de Resurse juridice") or delivering legal products like compliance kits (e.g. "GDPRO", "START GDPR", "KIT GDPR") rather than legal advice. When selling legal information to a customer, no attorney/ client relationship exists. The buyer is not a "client"; he is a customer that has chosen not to hire a lawyer and, instead, to buy legal information, for whatever the reason [19].

However, the same author mentions situations in which such a distinction is debatable when the legal information sold includes an intrinsic interactivity component. Further on, the idea of cross-disciplinary teams working collaboratively to design and develop

new products and bring them to market caught root in the legal profession. These cross-disciplinary products are called "LawTech" or "LegalTech" and bring together applications that use technology to deliver a legal service or the technological applications that are used by lawyers in carrying out their work. Both are utilizing technology to build products solving problems faced both by the legal industry and the consumers of legal services [20][21].

IV. CURRENT DEVELOPMENT OF LEGAL SERVICES IN DIFFERENT COUNTRIES

In a study about globalization and deregulation trend of legal services, reveals a segmentation of the legal services market caused by globalization, between corporate and personal services; the corporate market is a product of globalization, but personal markets are not affected by this [22]. The author claims that in the personal markets we see a tendency for "re-regulation" (meaning stricter regulation of the profession) as local law firms adapt, as *"a sophisticated strategy to undermine those kinds of innovation (i.e. caused by globalization) or to avoid blurring the line between segments."* This section will further the distinction and observe the difference in regime between corporate legal market – offered to companies and organizations versus personal legal market – addressed to individuals. The analysis was based on data found in literature and market reports available in English language.

A. Corporate legal market

A global study conducted by Deloitte in 2016 [23] shows how the increase in demand for legal services has given rise to the need for a new, broader type of counseling in business-to-business (B2B) market, illustrated in Fig. 6. Buyers of legal services are especially looking for providers who understand their business and industry, who provide advice in areas beyond the legal sphere, who provide multidisciplinary services in multiple jurisdictions and use technology more efficiently.

There is also need for a new type of service that combines legal with strategic advice from other disciplines. Responding to the demand, well-established law firms with strong client relationships, mainly international corporations, have been able to rapidly expand their reach but have also recruited local lawyers who can understand the specific requirements of a client's activity [24].

Based on these insights we developed a diagram using a 2x 2 matrix to show the evolution of the demand for legal corporate services in relation to the lawyer's knowledge of other professional fields (other than law) and the level of his specialization in a specific legal field of activity related to the clients business (Fig. 6).

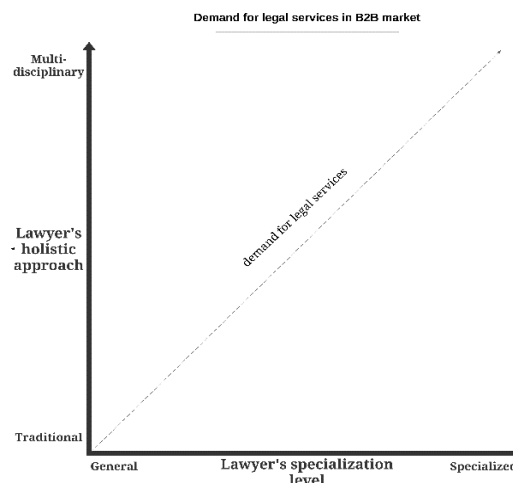


Fig. 6 Demand for legal services in B2B legal markets

We notice that lawyers that have a legal-exclusive approach to business and a broad expertise in all fields of law are no longer required to serve the corporate legal market.

The ideal lawyers are multidisciplinary and/or specialized, meaning that lawyers are forced to diversify their skill set and narrow their legal field of interest to a specific industry in order to continue to be relevant in the corporate legal market.

B. Personal legal market

Regarding business-to-consumer (B2C) market, professionals and academics from the US have proposed, since the beginning of the last decade, the democratization of legal services by delivering the service to consumers through corporations in partnership with law firms, in order to facilitate access to affordable representation for the population [25]. This phenomenon is already manifesting in Europe (especially in UK) but meets resistance in "modest innovator" countries like Romania. [26]

A study in the UK [27] revealed that consumers of legal services assume that *i)* all lawyers have an acceptable level of knowledge and have passed all sufficient qualifications, and *ii)* the quality of legal advice offered that does not vary significantly as long as all lawyers work within the same legal framework.

We appreciate that a similar survey is highly needed for Romanian legal services market in order to better understand how consumers choose and use legal services.

C. Factors influencing the legal services in different countries

Financial Times has been publishing a Special Report on Innovative Lawyers in Europe and for the last decade found that the change in the legal profession has been incremental, until 2016 when has become exponential with the help of digital specialists with experience in other industries, especially IT [28].

Table 3 Global influencing factors of the legal services

Category	Description and analysis
Technology factors	<ul style="list-style-type: none"> • Routine tasks will be increasingly automated, and more and more jobs will involve managing legal processes, breaking them down into smaller tasks and applying technological solutions to achieve maximum profitability. The provision of legal services will move online and computer-based web services will replace lawyers, unless advice is really needed [28]; • Considering the stage of technological development, including the introduction of Artificial Intelligence (A.I.) technologies, most consumers still prefer to interact with humans as legal services provider [32]; • Consumers in the legal services market are increasingly looking for value and expect lawyers to be competent users of the technology [33]; • Numerous market opportunities in the field of virtual business models will be created. Standardized consulting services will give way to online providers, and the Internet will facilitate the process of recommending a lawyer. Expanding IT processes and increasing data security will gradually increase the need for non-lawyer staff in law firms, thus leading to changes in their staff structure [34].
Globalization factors	<ul style="list-style-type: none"> • The model of the virtual law firm appears, which hires lawyers with a well-established client base, reduces the bills of large traditional law firms by half and the lawyer ends up keeping almost the entire fee. While lawyers operate remotely, they coordinate the firm through software solutions and centralized billing, IT support, marketing and recruitment efforts [35]; • Customers will purchase the services they need as and when they need them [34]; • Fixed costs, correlation of financial offer with added value and greater transparency [20]; • Greater automation and transformation at the level of consulting law firms - to stimulate profitability and to meet customer expectations [24]; • Increased demand for alternative or non-traditional legal service providers [20].
Career factors	<ul style="list-style-type: none"> • Future generations of lawyers will be increasingly composed of women and so-called digital natives (those who grew up with the Internet), as well as people for whom their privacy has an increased value [34]; • Five emerging areas that in-house lawyers should explore: data analysis; intranet use; social networks; project management and collaboration [36]; • Individual law firms are facing additional competitive pressure from the growing number of non-lawyer providers who have gained limited access to the field of extra-judicial legal services [34]; • Many companies will focus on a few areas becoming boutique style, which then rely on other alternative suppliers to provide a full service [37].

Similar conclusions confirmed that a pre-configuration of a new business model for lawyers must be supported by technology and firms need to stand out for continuous economic prosperity. [29] A 2006 study found that *"professionals are caught between the pressure of change and the need to respect and maintain professional legitimacy,"* with the consequences of losing organizational efficiency[30]. The conclusions of this study indicate that change within the professional organization only takes place if it is under urgent pressure and is generally slowed down due to institutional barriers.

In Table 3 we identified, grouped and summarized the influencing factors of the legal services across the world, as presented in literature, including opinions and market reports. It can be observed that these factors, although they affect different aspects of the legal services market, they point to significant shifts in the way the legal profession is practiced, organized and how the service is provided and, most probably, how they are regulated. These global factors can be expected to also have an influence on national legal markets.

VII. CONCLUSION

Firstly, we noticed the inherent difference between selling legal information and practicing law. We find it also important to distinguish between the simple

provision of standardized legal forms and templates through freely available software and consulting as an intellectual syllogistic service consisting of a case analysis. Main reason for this distinction is that anyone might deliver the first but only a lawyer can perform the second.

Secondly, after analyzing the characteristics of the legal profession we noticed a pronounced social aspect meaning that those who practice liberal professions should always give priority to the quality of the services offered in accordance with the ethical principles and not for the scope of profit maximization. We are convinced of the economic aspect of practicing the law, however the economic nature of law firms as undertakings must be congruent with the main role of lawyers within society, in order to maintain the high standards the legal profession requires and, at the same time, allow lawyers to benefit from all the opportunities that other organizations enjoy on the market.

Thirdly, more liberal legal markets like the US and UK are the main influencers globally, partially because of media coverage and having the advantage of being written in English. For the Romanian legal market, there is a pronounced concern that democratization of legal services leads to "deregulation" of the legal profession; this would mean that people who are not professionally qualified will be able to conduct activity in the area of legal professions even though they are not under the control of a statute, a deontological control,

disciplinary sanctions and they will not be required to have professional insurance. Globalization is changing the archetype of corporate lawyer as “old-school” lawyers with legal-exclusive approach to business and a broad expertise in all fields of law are no longer required to serve the corporate legal market. We see the need for a national survey of the legal services market in order to better understand how consumers choose and use legal services.

Lastly, we conclude that change through technology could be a slow process considering most Romanian lawyers operate at a small scale in individual law firms.

Nonetheless, we expect that in the coming decades, advances in technology and new business practices will further challenge the conservative and traditionalist nature of the legal profession in Romania.

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