

The Exertion of The Legal Profession in Romania by The Lawyers From The European Union Member States and The European Economic Area

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Abstract: - The article deals with the exertion in Romania of this profession by the lawyers which have obtained their professional qualification in one of the European Union member states and the European Economic Area. The articles also analyses the matter of exerting the legal profession from the perspective of the compared law.

Key-Words: - Lawyer, exertion of the profession, European Economic Area, European Union, qualification, law, profession, degree.

1 Exerting the legal profession by the foreign lawyers in Romania

The exertion in Romania of the legal profession by the lawyers who have obtained their professional qualification in one of the European Union member states and the European Economic Area is regulated by the Law related to the organization and exertion of the legal profession, in Chapter VII inserted through Law no. 201/2004 *regarding the acknowledgement of the degrees and professional qualifications for the professions regulated in Romania*, whose stipulations have found their applicability related to the legal profession on the date Romania has acceded to the European Union.

For a more exact understanding of the stipulations of this chapter, [1] the key-terms used by the legislator in this article are defined in article 80².

According to the provisions of article 80⁵, align. 1 of Law 51/1995 modified and completed, “irrespective of the form of exerting the activity on the Romanian territory, the lawyers working under the professional title from the their member state of origin, can anytime request the acknowledgement of their degrees, in order to be admitted for the profession of lawyer and its practice under the professional title in Romania.”

The legislator has provided two ways of acknowledging the degrees, while the applicant can choose between an exam testing their knowledge and the performance of a time of probation in the field of the Romanian law, which would take place for a term of three years. The structure of the evaluation commission, content and way the exam or probation would take place, are aspects related to the structure of the National Union of the Romanian Bars, which has the task of previously check whether the professional experience of the

applicant can partly or entirely replace the existing differences between the Romanian law and the law of the member state of origin, in which the degree has been obtained.

As for the lawyers working under their professional title from their member state of origin, who “effectively and regularly” perform their activity for a period of at least 3 years in Romania, as the legislator states, in the field of the Romanian or community law, shall be admitted in the legal profession in Romania, while the compliance with the conditions imposed by article 80⁵ to which we referred above is not mandatory in this respect.

In exchange, the requirements regulated by the Law related to the organization and exertion of the legal profession regarding the practice of the civil and political rights must be complied with also in the case of this category of lawyers. The legal stipulations related to non-dignity and incompatibility shall equally be applicable to them.

In order to test the regularity of the development on the territory of our country, during the three years of performing their activity in the above-mentioned fields, i.e. the Romanian law, and the community law, the lawyers have the task to submit information accompanied by justificatory documents related to the number and nature of the causes in which they offered legal counseling. For the same purpose, the Romanian competent authority is entitled to ask the lawyer for explanations in writing or verbally related to the information and documents to which we have referred, when this is imposed by the analysis of the actual situation.

This is practically a way of checking the effectiveness and regularity of the activity performed by the lawyer, made available to the Romanian authority by

the legislator, and which can be used whenever necessary.

The law providing the organization and exertion of the legal profession also refers to the lawyers working under the professional title from the member state of origin who have regularly and effectively performed a professional activity on the territory of our country for a term of 3 years, but for a shorter term in the field of the Romanian law; they can be admitted for the lawyer profession in Romania, provided that they observe the procedure established by the law. [2]

The legal stipulations aiming at the conditions of exerting the civil and political rights, as well as those related to the non-dignity and incompatibility cases, shall also be applicable in their case.

Provided that the compliance with the conditions that we have referred to above has not been proved, the authority competent in pronouncing their opinion on the automatic enlisting of the lawyers working under the professional title from their member state of origin, shall issue a decision of rejecting the automatic enlisting. This decision is motivated and is to be communicated both to the applicant, and to the Bar; it can also be subject to legal ways of attack provided by the professional rules. The Romanian competent authority shall proceed in the same way of rejecting the granting of the legal professional title in Romania, when they consider that this way the public order is damaged, in the light of the availability of certain professional violations committed by the applicant lawyer, of complaints or other similar incidents referring to him.

2 Exerting the legal profession in other countries by the lawyers from the European Union Member States and the European Economic Area. Comparative analysis

By comparison to the Romanian legal system, in **France**, for instance, “a foreign lawyer, irrespective of whether he comes from the European Union or someplace else, is not entitled to appear in court, except for the rights of the lawyers from the European Union according to the Services Directive, in which case he would work with a local lawyer and be presented to the court. The language spoken before the court is French, and the judge can allow the use of another language or can impose a condition for the use of an interpreter.” [3]

In **Spain**, a foreign lawyer can represent his client before the Spanish court according to the same rules as the Spanish lawyers, and would comply with the same rules established through Decrees 667/1096 and 1062/1988. In this respect, the foreign lawyer is obliged

to present to the president of the Bar Association, and also to come to an agreement with a competent jurisdiction lawyer regarding his being accompanied in court, in case the attendance of a lawyer is mandatory. If the lawyer wishes to use a different language than Spanish, the judge presiding the meeting must express his approval in this respect.

In **Greece**, “the European Union lawyers are entitled to appear in court, a right offered by the Service Directive, and can be established, while their qualifications are acknowledged as equivalent with the local ones, all in accordance with the community law, but there are no rights for the citizens of other states having different professions from those of the foreign legal advisers.” [3]

In **Holland**, the European Union lawyers benefit from all the rights being offered to them by this status, but the foreign lawyers are not entitled to appear alone before any court in this country. However, there is an exception to this rule, i.e. when the foreign lawyer works together with a lawyer from Holland, and if he is represented by him. Dutch is used before the Court, and only the president of the jury can admit the use of another language.

In **Italy**, “the usual rights acknowledged by the European Union are available, but the lawyers who are not part of the Union are not entitled to appear before the superior courts from Italy, although they can appear before the inferior courts, where the lawyers are not obliged to represent several parties. The language spoken before the court is Italian, but the president of the jury can allow the use of another language.” [3]

In **Slovenia**, a foreign lawyer who has obtained the right to practice the legal profession in his country of origin can exert the following activities in the Republic of Slovenia, according to the legal provisions: legal services, the legal profession with the professional title acquired in his original country, the legal profession with the “lawyer” title.

The country of origin is considered to be the country in which the lawyer is entitled to practice the legal profession with the professional title obtained according to the regulations of the respective country. In the context of the law in question, those who are entitled to practice the legal profession in any member state with the professional title obtained in accordance with the regulations of the respective country are lawyers from other member states of the European Union. by the applicant lawyer, of complaints or other similar incidents referring to him.

3 Conclusion

The article contains a short view over the conditions requested according to the Romanian legal system for

exerting the legal profession by the foreign lawyers in our country. When speaking about foreign lawyers we refer to the lawyers from the European Union Member States and the European Economic Area. We discussed about their possibility to request the acknowledgement of their degrees in our country and the two ways of acknowledging their degrees according to the Romanian legislation.

References:

[1] The used terms represent:

- a) *lawyer* represents any person coming from a member state of the European Union or the European Economic Area, who is authorized to conduct their professional activities under the related professional title obtained in a member state;
- b) *Member state of origin* is the member state of the European Union or European Economic Area, in which a lawyer has obtained one of the professional titles provided at letter a) before practicing the legal profession in Romania;
- c) *Professional title from the member state of origin* is the professional title used in the member state where a lawyer has obtained the right to use this title, before practicing the legal profession in Romania;

d) *Group* is any entity with or without a legal personality, organized according to the legislation of a member state, within which lawyers perform their professional activities together, under a common name;

e) *The professional title from Romania* is the professional title under which a lawyer is enlisted in the Panel of Lawyers in Romania;

f) *The Romanian competent authority* is the organization within the National Union of the Romanian Bars, designated according to the status. “

[2] According to article 80¹⁴, align. (4), letters a) and b):

- “a) the Romanian competent authority takes into account the effective and regular activity performed for a term of at least 3 years, the knowledge and professional experience acquired in Romania, as well as any participation in lectures and seminars on the Romanian law or deontology of the legal profession;
- b) the applicant makes available for the Romanian Bar any relevant information and documentation, especially on causes in which he has provided legal counseling”.

[3] Emil Poenaru, Cristinel Murzea, *Reprezentarea în dreptul privat*, Editura C. H. Beck, București, 2007, pp. 132-133.