

ETHICS OF THE LEGAL PROFESSIONS – PRESENT AND PERSPECTIVES

Cristinel GHIGHECI¹

Abstract: *The ethics of the legal professions precisely with this human factor, has to do with its importance and results from the need to ensure a unitary way of interpreting and applying the law. Regardless of how good a law would be, this does not guarantee that it will be interpreted and applied equally in all situations in which it would be incidental, if those who depend on this process are not encouraged by the same moral values. However, in order to achieve this goal, those who apply the law must follow common rules of professional ethics. This implies, first of all, a debate on these rules of professional ethics, because at this moment in the Romanian society, this is not sufficiently realized.*

Key words: *ethics, legal professions, prevention, institutional.*

1. Introduction

In the legal professions "the main working instrument" is represented by the law. The term "law" comes from the verb *ligare*, which would translate to "to bind, to indebted, to oblige", which brings us to the obligatory character of those stipulated by law.

A major shortcoming of the law, however, is the impossibility to regulate all the legal relationships in a society, given the general terms in which the laws are expressed. For this reason the concrete way of applying the law depends on a very important aspect, respectively on the interpretation of the law text.

This is where the human factor intervenes with all the subjectivism that it implies, which makes the result of applying the same law sometimes so different from one case to another.

2. Debates on the ethical aspects of the legal professions

Before any action in the field of legal ethics, the question of need for public debates on the ethical aspects of the legal professions should be discussed.

¹ *Transilvania* University of Brasov

Can these issues be subject to public debate or do they relate exclusively to the privacy of the person, his beliefs, his private life? Would not by submitting them to the public debate lead to an "obligation" of all legal professionals to embrace majority views? But these majority views on the different ethical issues of which they are, in fact, and where do we know they are correct? Isn't there just a referendum among professionals to determine what are the widely accepted views on different ethical issues?

Do not these opinions belong to a small group of people who have managed, through different methods of manipulation, to impose them on the majority? These questions may explain the long-standing reluctance in our society regarding the development of a common set of professional ethics rules in the field of legal professions.

Debates like this are not new in the public space, but they have crushed the various categories of people over time, with arguments for and against including the role of public debates in the cultural space.

And here it was considered that there are cultural aspects that cannot be debated, because they are related to an intimacy of the person who must remain inaccessible to others.

It has been said that there is an area of the human soul that cannot be subjected to analysis by others, but only the person concerned must have control over it. These arguments could be accepted if we were in the exclusive presence of aspects that relate only to the privacy of the person, without producing any consequence on the others.

However, in the field of the ethics of the legal professions, as in the field of the other branches of the professional ethics, the way in which the person behaves, his moral values, his conceptions, etc. they make their mark on the decisions it makes and which can affect the lives of others.

This is precisely why it cannot be argued that they should be exclusively concerned with the privacy of the professional.

3. General rules

Moreover, at present, in the professional ethics, regardless of the nature of the profession to which it refers, there are not (only) abstract, purely theoretical, but especially ethical issues that are being discussed and which are applied in the field of legal professions.

As has been said, moral philosophy has been marked in recent years by the singular development of its sub-domain known as "applied ethics", which tends to present itself as a new paradigm in practical philosophy, as a new model of conception of morality, alongside and sometimes in competition with deontological and theological models.

The role provided to the ethics of the legal professions is a very important one in the law enforcement process. It has been said that it has the role of "forming the professional conscience, serving the truth without taking advantage of it, and thus avoiding subjectively any dissonance between professional performances and aspirations and the concrete reality it serves. ”.

Essentially, the ethics of the legal professions contributes to the removal of unethical conduct, rooted in the professional culture of ignorance.

Many mistakes are made out of ignorance, and the legal professions are not exempt from such mistakes.

This is why in the Practical Guide of ethics and judicial deontology for magistrates in Romania it is shown that "very often we are affected by" ethical blindness ".It is possible to come to grips with the ethical issue, but neglect it - often due to the fact that its neglect is so normal.

Then it is difficult to identify the issue as an ethical issue. This is why corruption is sometimes so difficult to eradicate. This is part of the rooted culture.

The challenge is therefore to be aware of such blindness so that we can act in accordance with ethical standards. It is crucial that ethical issues are part of the day-to-day discussions between judges and prosecutors, and that there is a rooted culture to understand and raise awareness of these issues, and these should be discussed by judges and prosecutors.

If there are any doubts about how to act, we must always ask ourselves these crucial questions: Have I fulfilled my duties and obligations as a magistrate? Did I feel in the inner forum as a legal person? How will this be perceived by the public? "

For those who cannot be convinced of the values of the profession, the necessity of codes of ethics was born, which determines them to choose what is good in their profession.

However, "it is difficult for someone from a young age to receive proper moral guidance, if not educated under appropriate laws.

For the abstinent living is not to the taste of the multitude, and at least to the taste of youth. Therefore, the education and occupation of the youth must be regulated by law. Because what has become ordinary for people becomes easier to do in time.

Another very important role of ethics for the legal professions is that it leads to the diminution of corruption factors in the judicial system. A very effective way of removing these possibilities to reach the corruption acts regulated by the criminal law is the creation of internal mechanisms to control the magistrates and the auxiliary personnel based on respecting professional ethics.

As it has been shown, although corruption is the subject of passionate exchanges of opinion and carries a particular ethical burden, its prevention requires a coldly calculated strategy, as for any major change in the policy or methods of municipal administration.

The strategy must go beyond the moralizing dispute, the legislative squabbles or the platitudes that claim that, if we all did our duty, corruption would not exist anymore "

Many possible criminal acts of a criminal nature within the judicial system could have been avoided if it had been made aware in advance of violations of professional ethics rules that had not yet become so malignant.

A bribe-taking act is not committed until after the establishment of links between the actors involved, and these links often have as a starting point the violation of simple rules of professional ethics.

In our society, quite recently, the problem of developing an ethical or deontological code for judges and prosecutors was raised.

Until the adoption of the Code of Ethics for Judges and Prosecutors in 2005, a standard of professional behavior was described only in general, but not explicitly enough to call the judge to a deeper reflection on the moral conduct appropriate to each moment of professional exercise; the judge more easily approached a reflection on the application of the legal norms and the rigors that they set, considering that it is sufficient to obtain only the intimate conviction that he is impartial when solving a case, arguing that it is necessary to elaborate a new system of evaluation of the judge that must reflect the fulfillment of the criteria described in his professional profile, in which are explicitly incorporated the moral contents of this profession.

Following a study by the ProEtica team within the Department of Philosophy of Babes-Bolyai University in Cluj-Napoca, it was concluded that, "despite a growing general interest for ethical-moral issues, especially among young judges, moral reflection is insufficiently mobilized, especially in the actual activity of the court, this being most often (incorrectly) associated with a routine activity of law enforcement, in which the responsibility of its own decisions and gestures does not belong essentially to the individual, but to an supra-individual institutional complex.

Correlatively, the capacity for change, both at the individual and collective (institutional) levels, remains low in relation to the challenges facing the legal profession during the post-accession period of Romania to the European Union".

The code of ethics for the magistrate was criticized for the fact that "those who drafted and approved this code adhered to the vision - very widespread and strongly rooted in the legal doctrine of our country - which says that morality and law are mutually exclusive, that issues ethically, questions of a moral character must remain within the private sphere of the individual's consciousness, therefore, a confusion between the legal judgment and the moral judgment, the deontological code being associated with a legal regulation and treated as such (in fact, the confusion is also maintained by the references to legal regulations and their overlaps with them).

This situation has as a consequence the tendency of judges to interpret the code as a positive law and not to consider the possibility of changing it according to their personal reflection, their professional experience and according to the vision that is formed in the profession or in society at a moment regarding the values to be followed in the professional activity and in the private life".

The ethical code should not be seen as a criminal code, because its role is not to regulate prohibitions or obligations for members of the legal professions, but to guide them in the social activity that interferes with the profession, to guide them, through the multitude of practical problems that the daily activity raises.

This is also apparent from Opinion no. 3 of the Consultative Council of the European Judges (CCJE) on the principles and rules regarding the professional imperatives applicable to the judges and especially the deontology, incompatible behaviors and impartiality, in which it is shown that judges must guide themselves in their activity on professional conduct principles that to offer them solutions to overcome the difficulties they face in this field; the principles must be drafted by the judges themselves and be completely separate from the disciplinary system of judges; it is desirable to establish in each country one or more bodies or persons within the legal system to advise judges facing problems related to professional ethics or the compatibility of non-legal activities with their status.

Similar problems have also arisen in relation to the other legal professions, especially in relation to the profession of lawyer. By its nature this profession is a liberal one, not subject to the control of any state authority, but this does not mean that in its case it could not speak of an ethics specific to the profession of lawyer.

All the more so in this case, the aforementioned principle is confirmed that the rules of professional ethics must spring from within the profession, its members being the ones who should establish these norms and the way of finding their violation.

Confidence in the profession of lawyer depends very much on how the members of this profession will succeed in imposing their own rules of professional conduct and ensuring their compliance. Otherwise, all members of the profession will suffer from the mistrust generated by the possible violations of the rules of professional ethics.

4. Conclusion

As a conclusion of the above, we consider that the ethics of the legal professions is a field in full development, which will surely find the due importance among those who want to have the respect of society

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