

CZU: 340.12

DOI: 10.5281/zenodo.4061196

## STANDARDS OF EFFICIENCY IN RECONCEPTUALIZING THE PROFESSIONALISM IN LAW



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### SUMMARY

In the content of this article, we discuss the issue of trans-systemic legal education, with the purpose to identify the milestones of remodeling the socio-professional profile of the lawyer, employed by the law institutions. Drawing on the rule of law, we point out a two-way relationship, of reciprocity between the state (with all its institutions, in which officials, specialists work) and the person, as a citizen, and a member of civil society.

The analyzes emphasize the need to implement reforms not only of a political, economic, or legal nature that will address the challenges and problems faced by the state, the law, and the citizen but also to some of an educational-systemic nature. We aim to capitalize on a dimension, not at all simple, of the contemporary human being, who not only attends to – normalization\* (which would mean excluding a minimum of normality; outside social norms) and the acculturation of society, but as a participant, actively involved, which promotes or deepens the process, even neglecting oneself, his or her personal security, but also surrounding ones.

**Key-words:** *standards, legal education, democratic system, state law, human rights, institutionalization, continuous professional training.*

### Introduction

For the last centuries, some states have followed the democratization path, and some of them

### STANDARDE DE EFICIENȚĂ ÎN RECONCEPTUALIZAREA PROFESIONALISMULUI ÎN DREPT

#### SUMAR

*Articolul pune în atenție faptul că sistemele democratice contemporane, transformările și fluctuațiile la nivel structural și organizațional reiterează conștientizarea faptului că există elemente indispensabile, generice, dominante, decisive ce determină asimetria sistemului social și a dreptului, în particular. Vorbind despre statul de drept, insistăm pe o relație de reciprocitate dintre stat (cu totalitatea instituțiilor sale) și persoană, în calitate de cetățean, membru al societății civile. Pornind de la prevederi constituționale, vom explica că reciprocitatea relației stat – cetățean se referă nu la autosuficiența cadrului legal, pentru a exista și condițiile reale în care acesta își găsește realizare, dar și interesul cetățeanului pentru a contribui la instituirea și menținerea unui sistem social bazat pe respectul față de lege, coeziune, apartenență, solidaritate și încredere.*

*Prin structurarea internă a conținutului se pune accent pe necesitatea implementării unor instrumente juridice capabile de a rezista provocărilor și de a contribui la soluționarea problemelor cu care se confruntă statul, dreptul și cetățeanul, precum și a onora de natură instituțional-sistemică, prin care se urmărește ca prioritate creșterea standardelor de profesionalism al juriștilor încadrați în activitatea de aplicare a dreptului.*

**Cuvinte-cheie:** *standarde, sistem democratic, stat de drept, drepturile omului, instituționalizare, educație juridică, formare continuă.*

are considered effective models of social organization practices' implementation. Following the contemporary meaning of democracy, the term means a form of organization and political leadership of society through citizens' regular consultation, taking into account the will of people and the vital inter-

ests of the state. The framework of three historical models from the sec. XVII-XVIII (English, American, French) consider the essence of modern democracy impossible to separate from the respect of human and citizen rights, and also from another correlative concept – the rule of law. Considered as one of the most substantial achievements of the modern civilization, the rule of law as a philosophical-legal view, would refer to the constructive practice of organizing the political power and guaranteeing the citizens' rights and freedoms.

The experience of the democratic social-state organization is more recent for the Republic of Moldova, as well as for many other states in the ex-Soviet Union area and continues to be a challenge as well as a test of the maturity of Moldovan society, which main objective announced is the modernization. Although, the art. 1. (3) of the Constitution, argues that „the Republic of Moldova is guided by the rule of law, democratic, where the human dignity, rights and freedoms, the freedom of development of the human personality, justice and political pluralism are supreme values and are guaranteed” [9], remains illusory, given the fact that the Republic of Moldova's citizens continue to face many problems, of economic and social character as well as political and legal, due to institutional dysfunctions, due to the existence of some deviations from the standards of democratization of the society, etc. Or, „the first democratic strategy was to unify the values and behaviors. Today, a culture of differences is required, and the key issue at stake is to harmonize them” [3, p.120].

Democracy, for many of us, embodies the political regime that brings stability, prosperity to the nation-state, and accomplishment to its citizens. From the beginning, democracy was looking to identify its main tools, that over time improved, and its guiding principles, considering that they have already reached maturity. At the same time, some states did not manage to pave the way to democratization, have failed to capitalize on its tools and to implement its principles, and did not achieve the unity between values and behaviors, as mentioned by Grugel J. [16]. At the same time, the major changes felt worldwide require some improvements and re-evaluations of the way in which the standards of today's democratic societies are approached. Looking at the comparison between the democracy of 1900 and 2000 L. Boia argues that „By 1900, there were some values, and consequently „countervalues”. It might be not correct to say that the new democratic model ignores the values. In fact, there are, and even too many; and this is where the problem lies: the values multiplied and fragmented (...) even the most ingrained values go through a process of de-restructuring. It is enough to look at religion (...) and the issue of sex, both of which, in a way or another, are practiced by human beings with a clear

conscience (...). Once the religion fell, the sex fell as well, and the two great pillars of morality from 1900 collapse. From the pieces apart, everyone is free to build his own temple (...). Eventually (...) the whole society decomposes and reassembles into a mosaic of minorities (...). Nothing is obvious today: because there are no more obvious rules (...). Now, with minimal variations, the „TONY Blair” model is practiced everywhere, where dogmatism was buried for the benefit of pragmatism” [3, p.119, 120, 130].

Referring to the way of democratic practices, P. Manent states that: „Since the end of the XVIII century, this political organization seems to be truly rational and in accordance with human rights. Representability is the basic principle of contemporaneity. Almost all European and American nations and a number of states in Asia live under representative governments. We are aware that such a way encounters some difficulties, and sometimes or often we feel a poor representation, but it exists not only in the most satisfactory political formula, but, so to say, the only possible imaginary formula” [18, p. 225].

Being the antipode of voluntarism and totalitarianism, democracy and the rule of law is an alternative to dictatorship. A de facto rule of law is made up of public institutions and must be the result of fundamental changes in the nature of the relationship between the state, society and personality. A human state rejects rigid and oppressive practices, as long as the members of the society respect the country's legislation and ethical standards developed over the years by human beings in general and by Moldovan people in particular. Human rights and freedoms in such a state are truly recognized and strengthened by law.

Analyzing the advantages and disadvantages of the democratic system, L. Boia [3] highlights several problems that contemporary societies, in general, and nation-states, in particular, have. Among them are:

- *globalization*, which is undemocratic in its very essence, which „is a universal roller coaster, which aims to political and economic unification, influencing the countries and regimes”;
- *mondialization*, as a system of almost complete domination (economic, military power, cutting-edge technology);
- *use of a universal language* – English;
- *migration*, due to migration waves of different cultures and religions, it gives ground to the right to difference;
- *demographic issues*, which have two sources: one being migration and another, gender equality in a democratic society, so women with the same rights no longer have the one single concern, to procreate, but the study, follow a career etc. – which leads to a decrease in the number of children born.



### Practical controversies in relations between state, person and law

Consequently, the nation-states act, trying to preserve their cultural authenticity, identity etc. Therefore, we are witnessing a state of legal duality: one of being in *trend*, on the same line with the other states, orienting towards political-legal and social practices from abroad; another one, it is to preserve what can be preserved by conserving resources, heritage, national identity etc. – orientated towards the interior side of the system and increasing its efficiency. It's a reaction similar to the one that scientists have, especially when it comes to endangered species (plants, animals), under the risk of disappearance, looking for legal tools to preserve them, help them to survive, including them in the *Red Book*. At the state level, policies are developed, legislation is revised, government programs are created to promote, preserve the natural and cultural-spiritual heritage. Thus, the states must simultaneously face the two great challenges: one to be a main part of the world, while another being themselves and preserving their authenticity. Moreover, the states, as L. Boia argues, have internal problems identified at all levels: – at the individual level, the nation-state has a difficult situation because its citizens give preference to human rights and not civil duties, therefore we witness a „displacement from the social body to the individual body”; – at the local level, regional level, minorities (religious, sexual etc.), the legal framework for autonomy, rights and freedoms, etc. is established; – at state-institutional level, through proximity policies, the efforts are made to identify the pathways for a true democracy. „Democracy is a political, social, ideological principle” [3, p.130] placed on the past-present-future vector. From these, only the present remains current, because people are less and less interested in the public, focusing on private life, but also on the overlap of the private sphere with the public ones. The proof of this statement could be the decreasing participation during the election pools, participation in popular assemblies, etc. Thus, as L. Boia [3, p.137] argues, „apart from its own shortages, the democracy suffers from a kind of lack of occupation. Increasingly, key decisions are taken elsewhere, outside the democratic sphere”.

Therefore, the developed analyzes emphasize the need to implement reforms not only of a political, economic or legal nature that will address the state challenges and problems, as well as the ones of the law and the citizen, but also some of educational-systemic nature, which and – would have as a priority the growth, the education of the citizen in the direction of the values promoted by the democratic model. And it could be implemented if we agree that democracy is an ideal model, rather than an effective system, which currently has no alternative.

Why? Because once we talk about contemporary democratic systems, the transformations and fluctuations at the structural and organizational level, we are aware that some indispensable, generic, dominant, and decisive elements foster the social system asymmetry and the law's in particular. Or, maybe we need to change the focus. Speaking of the rule of law, let us insist on a two-way relationship, of reciprocity between the state (with all its institutions, in which officials, specialists work) and the human being, as a citizen, and a member of civil society. The Constitution of the Republic of Moldova [9] states that (Article 23):

(1) Every person has the right to have his or her legal personality recognized.

(2) The state ensures the right of every person to have his or her rights and duties recognized. To this end, the state publishes and makes accessible all laws and other normative acts.

Starting from this constitutional provision, we will explain that the two-way relationship between the citizen and state, that refers not only to the self-sufficiency of the legal framework, to have the real conditions in which it is achieved, but also to the citizen's interest to contribute to the establishment and maintenance of the social system, framed by respect for the law, cohesion, belonging, solidarity and trust. Following the survey's conclusions, conducted in the recent years, we notice the existence of a double problem: the citizens' lack of trust towards state institutions (justice, prosecution, police, local public administration etc.), as well as the lack of trust in other citizens. We will bring some examples that prove this statement.

The Association of Sociologists and Demographers of the Republic of Moldova (ASDM), in November 2018, surveyed *Cohesion, solidarity and trust in the society of the Republic of Moldova* [8]. The results of the survey show that Moldovan citizens perceive a weak cohesion of the society, the feeling of trust among Moldovans is very low (73% of respondents believe that our society is little, very little or not at all united). At the same time, one of the conclusions formulated by the authors of the survey is that the state and civil society organizations need to be more involved in strengthening the cohesion and raise awareness of social cohesion in Moldovan society by forming a *civic identification framework*.

The study implemented by the *Center Partnership for Development* and the *Eastern European Foundation* on April 17, 2019, with the generic *Social Cohesion Index* [17] shows that in countries where the level of corruption is considered high, the level of trust in governments is low and vice versa. Referring to the research results, the program director of the *Eastern European Foundation*, A. Brighidin mentioned that: „There is a causal link between the level of trust and the level of well-being in a society. Consequently, the more the population trusts the au-

thorities, this reflects the fact that the authorities respond better to the needs and problems faced by people and ensure a better redistribution of the resources that exist in a community, in a state. Significant efforts are needed to promote genuine public policies that will fight corruption and ensure trust in public institutions". The expert from the *Partnership Center for Development*, R. Ivașcu specified that the level of trust in the democratic system in the Republic of Moldova is almost 13%, and in justice – 14%: „A society in which most of its members do not consider legitimate the decisions of the authorities and do not believe in the rule of law it is a society in which the majority will not believe in the value of law enforcement (...) such a society will not trust its ability to change things through civic involvement”.

At the same time, another survey conducted and published by the *International Republican Institute* [24] argues that the church and priests enjoy the highest trust from the citizens of the Republic of Moldova, and on the opposite pole are the Parliament, the Government and the Prosecutor's Office.

The survey conducted under the leadership of the *Superior Council of Magistracy by Magenta Consulting* [23] shows that only 16% of citizens trust the Moldovan judiciary system. Even if the authors of the research separately interviewed people who had to deal personally with the activity of the courts, and those who never dwelt with them, the difference in perception is minimal, practically non-existent. In reaction to the results of the research, V. Micu (at the time of the survey, was the President of the Superior Council of Magistracy) said that: „In a trial, in any case, one remains dissatisfied, so to speak. Trust in the judiciary does not depend exclusively on the judge, it depends on all the actors involved in a trial. I am talking about prosecutors, if it is a criminal case, and lawyers, especially in civil cases. Let's talk as it is, although there are many lawyers in the Republic of Moldova, the legal culture, the legal culture leaves much to be desired and it is very easy to manipulate a person when he or she does not know the field. But we accept the reality as it is”.

The research *Confidence in Justice in the Republic of Moldova during 2001-2018. Evolutions and determinants* implemented by V. Cantarji [5, p.3] argues that „the level of trust of the Moldovan population in justice during 2001–2018 shows a strong correlation between the perception of the population towards the central state institutions (Parliament, Government, President) and the perception of justice (...). The measurements of the public opinion on the level of trust in the judiciary system by the citizens of the Republic of Moldova demonstrate with small periodic fluctuations the permanent decreasing trend. The minimum level of trust in history was registered during the period of political crises, between 2015-2016, and the rubbery of the banking system”. The author of the research consid-

ers that the level of trust in justice is influenced by a very complex set of factors, which can be generally systematized in several groups. The first group of factors is related to the interdependence of trust in the judiciary system and trust in other state institutions. Another group of factors has to do with the mass media information about justice. The third set of factors is related to the person's personal experience or the experience of the close social network that comes into contact with justice. Thus, it is considered necessary that data on the persisting low public confidence in justice should lead the judiciary system and other relevant decision-makers to take urgent actions to increase the quality and fairness of justice. Similar evidence can continue, the situation being similar in all areas, but what we can certainly state refers to the need to identify urgent measures to improve the situation, and another one, refers to the level of legal culture, which is a consequence of the educational process in all levels.

One might say that there is: *Nothing new*, someone else that: *The old and new data are probably right*. Therefore, we understand that we live in times when common sense, education, responsibility, and moral conduct are no longer in place. The public sphere, especially the mass media one, abounds with criminal cases, presents horrifying statistics, being made public heinous crimes, indecent and amoral behavior of people from various professional backgrounds (politicians, doctors, teachers, judges, prosecutors, lawyers, business people, but also simple workers), young and old, double and triple standards used in assessing the facts, state betrayal, contradictory judgments, etc.: all contributing to a general state of distrust of citizens in the efficiency of law, lack of professionalism and lack of integrity of public officials, as well as the feeling of insecurity and injustice. It seems that an educated, responsible, honest person is rarer and rarer. Maybe this kind of person becomes worthy of being included in the *red book*? This state of affairs reminds us of N. N. Taleb's theory of the *Black Swan* [20] which originated from the capitalization of the Latin expression, written by the poet Juvenal, who says that *a good man is as rare as a black swan*. For N.N. Taleb the *Black Swan* is an event that has three attributes: – it is extreme, which is outside the normal expectations because nothing from the past can convincingly indicate the possibility of its appearance; – produces an extreme „impact”; – despite the status of an extreme event, the human nature makes us produce the necessary explanations to justify its situation only after its occurrence, making the event seem predictable and explainable.

Thinking from a personal perspective, in terms of rarity, extreme „impact” and retrospective predictability, we understand that the existence of a small number of *Black Swans* almost completely explains the world we live in now. We will have the



illusion that we are better than others, or that if we were wrong – we find excuses, which we consider objective motivations of our actions and deeds. Concerning the social environment, to others, we will develop critical thinking, having our standards of normality, we will disagree with some actions, behaviors, facts, decisions, etc., we will accuse, but we will not try to change, to externalize, to be objective, will try to correct. We will experience a permanent dissatisfaction for the state of things around us, we will identify who is „guilty” of the moral degradation of the society, periodically changing the focus, the trends under the influence of different circumstances, interests, sources of information and so on.

We would probably enjoy enormously if we could have professionals of excellence in all spheres of activity, educated fellow citizens, just as a teacher would like to have in the classroom many students (preferring disciples), involved, interested in the less pragmatic issues, endowed with critical thinking, bearers of spiritual values of the nation, with a high moral standard, etc. We would, even more, enjoy if in the society in which we live now we would see an increase of interest for knowledge, for wisdom, for morality, and if we perceive the change for the better. Often, however, we will have a different approach, a different reality, the one we have, and live. Following the thoughts of F. Nietzsche, the question is whether this reality offers us the possibility to overcome the problem of „unjust law, saving the reference to the man as such” [19, p.119 et seq.]. Analyzing, the implications of vitalist philosophy in law Gh. Mihai argues that the conceptions of Marx, Nietzsche, Foucault and Deleuze seem social analyzes, in terms of power relations, that influence the right, reduced to one of the forms in which relations of power crystalize. Thus, the following situations take place: 1. A circumscription of the legal sphere in the space of euphemized violence; 2. Refusal to analyze the power framed by the law; 3. The devaluation of the rule of law.

Does it worth criticism, or blame? I do not believe so. Rather it is a fertile ground for interrogations, many questions to find an answer to: WHAT? To be aware of the reality; WHY? To find the causes; WHERE? To be able to locate the context, space, the gap, and the problem; HOW? To see which is the most suitable solution? FOR WHAT? To understand the purpose of today’s effort, thinking on tomorrow.

The intention is to capitalize on a dimension, not at all simple, of the contemporary human being, who does not only attend to – *norming*\* (which would mean placing outside the minimum of normality; outside social norms) and the *acculturation* of the society, but is a participant, actively involved, who promotes or deepens the process, showing negligence towards one’s person, one’s security, but also those around him. And this is because we must try to do what A. Comte and Nietzsche do (no matter

how different they may be, as P. Manent says) to analyze and describe „the moment when humanity becomes aware of itself as a developing whole (...). The human being does not depend only on himself, insofar as everything that happens to him necessarily takes its place in the „fundamental series of various human events (...). Being HUMAN is a fact that must be ascertained, and even celebrated, rather than a task to be performed” [18, p.208, 210].

### Theoretical reconceptualization of the need for professional change

Following the logic of the questions posed above (*what, why, where, how, for what?*) we go through a rhetoric of modeling the legal education’s dimensions, through a combined perspective of general and particular, induction and deduction, institutional and individual. To achieve this objective, we analyze the sources that have managed over time to remain a solid foundation for the theoretical constructions (research, studies, analyzes etc.), and for practical normative prescriptions. Perhaps, dominated by a dose of subjectivity, we still consider that there are many similarities between the not at all simple realities of the current complexity and the problematic, critical, turning situations in the history of humanity. And finally, the complex and profound approach model, altogether with the encyclopedic spirit of some prominent figures could be the most plausible consideration of the return to the past, of the research for the tools to maintain the social order. „The order that people look for in life is not a model or a regularity in the relationships of individuals or human groups, but a model that leads to a special result, an arrangement of social life that promotes certain goals and values. When we talk about the order as opposed to disorder, in social life, we have in mind not any model or methodical arrangement on social phenomena, but a model of a special kind. A model can be observed in the behavior of individuals or groups during violent conflict, although this is a situation that we should characterize as one of disorder” [4, p.1-2]. According to H. Bull’s opinion, there are three basic *ideas-goals-values* of any social life: 1. All societies seek to ensure that life will, to some extent, stay safe from the violence that generates death or injury; 2. All societies seek to ensure that the promises made, once made, will be realized and the established agreements implemented; 3. All societies aim to ensure that the ownership of things will remain stable. Only securing a minimum of certainty that these goals will be implemented, it will be possible to ensure stable social relations. „Order in social life is very closely related to the compliance of human behavior to the rules of conduct, and the rules of law” [4, p.6]. In each of the three cases mentioned by H. Bull, we can identify regulations that refer to the recognition of the subject of law, to the recognition of the legal personality, both at the lev-

el of national and international legislation. The right to recognition of legal personality, specified in the *Universal Declaration of Human Rights* (art. 6) [13], and in the *Covenant on Civil and Political Rights* (art. 16) [21] means the recognition of the existence of the individual. In addition to spiritual and physical existence, the person needs to be recognized before the law. Without this right, the individual does not exist as a legal subject and can no longer enjoy all rights, including the right to life. The recognition of the person before the law is a necessary consequence and is supported by the person's ability to have rights and obligations before the law. „The recognition of the person before the law strengthens the principle of equality enunciated in art. 16 (2) of the Constitution, according to which „all citizens [...] are equal before the law” [10], but also in the provisions of the Civil Code of the Republic of Moldova.

Renaut A. is interested in the relationship of individuality and subjectivity from the legal perspective of freedom and the horizon in which the individual acts in the society, for the first time the human being is valued and reconsidered with the establishment of the democracy. „The era of the individual represents an opening to the creative rediscovery of individuality (...), rethinking the place and role that individuality must-have in a democratic society. The goal of A. Renaut is to impose a new set of social values by rediscovering the essential mechanisms of democracy. Starting with the second half of the XX century, the law developed and was rethought under the umbrella of human rights, becoming a universal value around which spirits rushed” [22, p.XX]. Gh. Mihai in this sense argues that: „The person of human rights is the generic human being fully conscious and responsible, author of his/her thoughts and actions, having a **theoretical and practical reason** (will)” [19, p. 138]. In this formula, which Gh. Mihai argues, some key moments of the approach in question can be found: conscience, responsibility, theoretical reason, practical reason. It would mean that a priori the human rights person has high moral standing, knowledge, and respect for the normative prescriptions (be they moral or legal)? Human subjectivity, the person who appeared in law in a rather abstract formula, through the formula of human rights, over time, was taken over and capitalized in concrete social practices (becoming a subject of law, legal person). Consequently, there is a return to the subject and subjectivity, but also towards the reconstruction of the subject of law, achieving the legitimation of individualism in the ethical and legal sense, through a perspective of the rationality of reality.

However, the states continue to face several challenges, it is forced to think and implement reforms in the vast majority of areas (economy, justice, public policy, education, science, etc.). At the same time, globalization requires the implementation of reforms capable of facilitating the integration of

the individual, as a citizen in global trends, adaptation to international standards, which could bring closer not only the economy, politics, etc. but also people. Thus, modern rationalism takes other forms in late modernity, or postmodernity, or contemporaneity. „It seems that we are on the way to reinvent a complex system, moving towards a unified and fragmented world at the same time” [3, p.128]. In the society that has become „liquid” – in the words of Z. Bauman, there is a „process of self-dissolution, the individual being forced to be flexible, mobile, in a permanent *acting-out*, which does not any longer allows him the luxury of build the interior, easily. Under the novelties and changes, in a permanent remodeling, even a professional reconversion, the target of entire advertising campaigns, skilled in inducing compulsive needs and consumer behaviors, under the siege of a continuous flow of images and „news” that invades the persons' inner space, today's human being systematically misses the attempt to limit external aggression and to build barriers where he/she could shelter and maintain the contour of his own identity. The general confusion increases due to the erasure of the border between private and public, as well as the deformalization of a wide range of attitudes that once set limits in social interactions, protecting privacy” [26, p. 14].

In these conditions, the rapidity of the reforms carried out at the national level (in research, innovation, education etc.) dictated by the globalization process of the economy and the tendency to consolidate a common educational environment in the European space, the tendency to follow the road to democratization had imposed the need to research some models to reform the science and education, which will take into account not only global processes but also national particularities, as well as the interest in the development of the state, society and the individual through the convergence of the general with the particular, spiritual and material, ethical and legal, of the theoretical and practical through an institutionalized and systematic educational effort. However, to solve the system's problems, it is necessary to increase the quality of education in all fields. „The difference is very small, sometimes non-existent, between the murderer, the man of the human being without education and the savage man, says C. Lombroso, in *The Criminal Man*” [3, p.61].

Education is considered at least declarative, a national priority. „For the Republic of Moldova, education is a national priority or the basic factor in the transmission and creation of new cultural and general human values, in the development of human capital, in the formation of national consciousness and identity, it has a key role in creating the premises for sustainable human development and building a knowledge-based society”. The quality of education largely determines the quality of life and creates op-



portunities for the full realization of the capabilities of each citizen. Thus, Article 4. of the Education Code [7] states that: (1) Education is a national priority and a key factor in the sustainable development of a knowledge-based society. In the same article par. (2) it is stated that the state ensures:

- a) the fundamental right to education, indispensable for the exercise of other human rights;
- b) implementation of the basic mechanism for the formation and development of human capital;
- c) the realization of the ideal and educational objectives, the formation of the national consciousness and identity, the promotion of the general-human values and the aspirations of European integration of the society.

In the *Commentary on the Constitution of the Republic of Moldova*, we reference art. 35 that states: „One of the most important human rights is the right to education, whose main elements consist in the right to be trained, to learn. Every person has a vocation for training and education, and the right that configures this vocation cannot be missing from the category of fundamental rights mentioned by international acts and expressly pointed out in the Constitution of the Republic of Moldova”. Concerning the right to training, the ECHR has a rich practice, that triggered several interpretations and opinions (...). The right to education, one of the most important social rights of human beings, creates the necessary premises for the full affirmation of personality and human dignity. On intellectual potential depends not only on the advancement on a social hierarchy and its social status but also on the progress of the society as a whole, the evolution of the economic, social, and cultural life” [10].

Thus, considering education a national priority offers advantages of different levels: at the individual level, at the group/professional field, and at the social level, which requires that education in general and legal education in particular, should become a priority for institutionalized education systems. Why is it timely, relevant and important this issue?

The term „education” (from *educō, education*) means *to grow, to instruct, to form, to take out, to lead*, etc. So, we could say that education involves taking the individual „out of the state of nature” and introducing him „into the state of culture”. From the etymological definition of education, we deduce its socializing connotation. The importance of education in the life of society becomes obvious due to the functions it performs. I. Nicola (1996), realizes a synthesis of the most important functions of education, among which he mentions: „the function of selecting and transmitting values from society to the individual, the function of conscious development of human biopsychic potential and the function of human preparation for active

integration in social life” [11, p. 41]. When we talk about a particular form of education, as is the case of legal education, we refer to a minimum of knowledge of the legislative framework at the normative and action level, but also a training-development of personality based on the value of moral and legal good, designed in terms of justice, justice, fairness, objectivity, impartiality, representativeness, integrity etc. through a systemic, organized and structured process. From this context, the subjects of legal education emerge, which represent two distinct categories of individuals: – citizens of a state, with a certain legal order, with a specific form of social, political and legal organization; – current or future employees of the legal system, specialists trained with proper documents, who are to be the bearers of the image of the lawyer in the professional and social environment.

Now, once again, returning to the serious criticisms towards the employees of various legal institutions, considering it imperative to reshape the persons in the legal professional field through trans-systemic legal education, to overcome the state of legal nihilism. Referring to the need to change the tools used in remodeling the person, M. Duțu talks about the fact that in an open perspective, „the generic confrontation between natural law and positive law (...) prolonged in multiple variants in modernity and postmodernity (...) it is reflected almost symbolically in the crisis of the study of the law and the need for trans-systemic education” [14, p. 1, 10].

Postmodern education, which is intended to be trans-systemic, must meet such characteristics as [25, p. 37]: 1. *Self-reflexivity* a skeptical attitude towards the power-knowledge interaction. Regardless of the structure of power, it is consolidated through strict control over the sources of knowledge; 2. *Deconstructivism, because of the fact that in postmodernity the idea of absolute truth was abandoned*; 3. *Decentralization*; denial of a dominant authority and presumptions that lead to obedience by the recipients of education; 4. *It is non-totalitarian and non-universalist*. Otherness and individuality are the hallmarks of these characteristics of postmodern education [2].

The need to change the educational model is influenced by one of the greatest illusions of people in contemporary societies according to which „the law must be, and will increasingly be, the only regulator of social life” [18, p 276]. This illusion, fueled by at least two reasons, inevitably leads to the understanding of social life, practically exclusively from a legal perspective, by wanting societies to be governed entirely by law: 1. One of them is still placed at the origins of the modern democratic regime when the rights were declared. „Human being is the being who has rights”, even if the road from the proclamation of these rights to their implementation and guarantee by the institutions is quite dif-

ficult. Thus, by placing law at the center of action and conscience, societies want to be governed entirely by law; 2. The second, with more recent roots, is found in concepts such as globalization and mondialization. „It seems that our lives take place in a global civil society composed by individuals, businesses, non-governmental organizations of all kinds (...) designed to ensure respect for (...) human rights in general, in short, rights' order” [18, p. 277].

It would seem that there is nothing bad in this situation, but why then the statistics show that at the country level we are witnessing a total lack of trust of citizens in the quality of justice, in the professionalism of employees of various state institutions that would be called to represent a model of fairness and professional integrity, the guarantor of respect for the law? It is an awkward question and with many answers. The required clarification refers to the fact that educational processes often go beyond the boundaries of educational institutions, comprising to a lesser or greater extent, almost all organizational environments in social life. Moreover, at least two categories of standards will be followed (*personal* – a consequence of the educational process started during childhood and the behavioral models of authority for the individual; and *professional*, formed in university studies, stipulated in regulations, codes of professional ethics etc.) that will dominate the professional conduct of the lawyer. And if these two go on different paths what do we do? If theoretical knowledge is implemented differently at a practical level if theoretical rationality pursues purposes other than practical? This is a crucial moment, which requires evidence of trans-systemic legal education.

In this sense, at the national level the Education Code (art. 75) stipulates the noble task of the education process in the higher education system:

(1) Higher education is a key factor for the cultural, economic, and social development of an increasingly knowledge-based society and a promoter of human rights, sustainable development, democracy, peace, and justice.

(2) The mission of higher education is:

- a) creating, preserving and disseminating knowledge at the highest level of excellence;
- b) training of highly qualified specialists, competitive on the national and international labor market;
- c) creating lifelong training opportunities;
- d) preserving, developing, and promoting national cultural-historical values in the context of cultural diversity.

As an integral part of the national education system, legal education aims to achieve this not at all easy task in the field of legal professions, which more than any other profession is exposed to the attention of common sense, due to the vulnerability

of problems facing citizens and expects justice, to have a fair trial, to have justice at home. Moreover, any functioning democratic society is based on the involvement of its citizens, on the exercise of their rights and obligations, which implies knowledge and education.

Article 1 of the *Code of Conduct for Law Enforcement Persons* [6] (adopted by the UN General Assembly in December 1979) provides that: „The persons that are responsible for the law enforcement must serve the community law and protecting any person against illegal acts, according to the high degree of responsibility required by their profession”. Art. 2 of the same code states that: „In fulfilling the tasks they have, those responsible for law enforcement must respect and protect human dignity, to defend the fundamental rights of any person”. Through its content, the *Code of Conduct for law enforcement* officers simultaneously imposes moral, legal and socio-ethical requirements, which makes us agree with the belief expressed by R. Hare, according to whom the purpose of moral discourse is to guide action and that we reveal our moral commitments through our actions. „Moral statements are not failed factual statements, but precepts that guide our action. Logically speaking, they are not in the indicative mode, but in a modified form of the imperative mode. Morality belongs to the realm of reason” [15, p.5].

### Generalization

Thus, legal education, achievable in the context of the educational system and process, is designed to achieve the formation and development of theoretical and practical legal awareness. Referring to these dimensions of legal education, S. Cristea [12, p.55] mentions that: „*Theoretical legal consciousness* includes all notions, judgments, legal reasoning, which ensure the cognitive, but also non-cognitive, ideological (affective, motivational, volitional) reporting of the human personality to the legal norms integrated into a determined social-historical legislative framework. *Practical legal consciousness* represents the set of human behaviors, expressed through different habits, customs, mentalities, legal attitudes, engaged at all levels of human existence (community, cultural, economic, political etc.). Its quality is normatively proven at the level of optimizing the relations between theoretical legal consciousness (norms, notions, reasoning etc. – legal) and practical legal consciousness (mentalities, behaviors etc. – legal). The content of legal education aims at knowing and understanding the legislative framework at the normative level (constitutional laws, organic laws etc.) and action level (amendments, repeal, regulated power etc.)”.

In a more general formula, legal education can be defined as an action that seeks the formation and development of the human being, his physical



and intellectual skills, as well as social feelings, legal, moral etc., to integrate the individual socially and his effective participation in socio-political and legal life.

Therefore, the requirements imposed on legal practitioners, persons called to apply the law under the rule of law, are related not only to the deep and nuanced knowledge of the provisions of material and procedural law, fundamental human rights, etc. but also to permanent, sincere and real reporting, to perennial human values (fairness, integrity, truth, justice, good faith). The moral norms unanimously accepted by the society are taken into account, norms that meet the letter and the spirit of the law. It requires, therefore, an interdisciplinary training, but also moral qualities, in the absence of which a legal professional would not successfully fulfill his duties. In the current conditions, „**The rule of law is morally desirable, therefore morally necessary (...)**, but we must recognize now” the need for a moral conversion (...) of a humanitarian consciousness, an inner change for external transformations (...) by law [18, p.295, 297]. And this is because the social system is not divided into jurists and non-jurists, norms and legal values distinct from norms and moral values, but constitutes a common body that includes common ideas and values, rooted in societies. Therefore, perhaps we should follow what Pythagoras said: **Educate your children and there will be no need to punish people.**

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