

Is the Exclusion from the Legal Profession of the Criminally Convicted Lawyer a Criminal, Civil or an Administrative Sanction?

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Abstract

One of the consequences that the criminal conviction of a lawyer has on the right to exercise the profession of lawyer is that, depending on the nature of the crime committed and the penalty applied, he may be excluded from the profession of lawyer, as a result of the conviction for prison sentence, according to the law. Since it is a case of indignity that derives from the conviction, but which is analysed and ordered by the (non-final) decision of the bar council of which the convicted lawyer is a member, the sanction of exclusion from the legal profession involves assessments not only on the meeting of the legal conditions that attract this sanction with an uncertain legal nature, but also on the application in time of the civil or criminal law that governs it, considering the considerable time interval that (may) elapse from the moment of the commission of the intentional crime that would attract the indignity of the lawyer until the moment of the definitive stay of the decision of the UNBR council that definitively applies the sanction, resolving the appeal filed by the lawyer excluded from the profession against the decision of the bar council. Moreover, the legal nature of this sanction, which derives from the lawyer's criminal conviction to imprisonment, but which is not applied by the criminal court, but by an administrative collegial body, is uncertain, its qualification as a criminal, civil sanction or administrative having different consequences regarding the application of the law over time, all the more so as the institution in question raised issues of unconstitutionality assessed as such by the constitutional court, which identified constitutional two times defects both regarding the conditions for finding indignity the lawyer, as well as on the legal text concerned in its entirety. In this material, we have tried to clarify the legal nature of the sanction of exclusion from the legal profession for indignity and we have identified possible solutions that can be given regarding the applicable law for checking the state of indignity of the lawyer.

Keywords: *the indignity of the lawyer, the sanction complementary to the criminal conviction of the lawyer, the appeal against the decision of the bar council, exclusion from the legal profession.*

JEL Classification: K14, K23

1. The situation-premise for the finding of the lawyer's unfitness

One of the major implications of a criminal conviction is the potential that, depending on the nature of the offense committed and the penalty imposed, a lawyer may be disbarred as a result of the criminal judgment of conviction against him or her.

The production of such a radical effect, although not provided for in the operative part of the judgment of conviction, is possible, following the requirement imposed by Article 12 para. 3 of Law no. 51/1995², as subsequently amended and supplemented, which imposes on any person who wishes to be a lawyer in Romania the

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requirement that he or she must not be in one of the cases of unfitness provided for by law.

The verification of the requirement that a person who wishes to be a lawyer must not be unworthy of being a lawyer is carried out not only when taking the examination for admission to the profession of lawyer, but throughout the exercise of that profession. The occurrence, during the practice of the profession of lawyer, of a state of unfitness entails the verification of that state in accordance with Law No. 51/1995, as subsequently amended and supplemented, and the Statute of the legal profession, as subsequently amended and supplemented³, followed by the possibility of exclusion from the profession of lawyer of a person who, although having the legally acquired quality of lawyer, has become, during the practice of the profession, unfit to continue to be part of the professional body of lawyers in Romania.

2. The legislative evolution of the regulation of the institution of lawyer's unfitness

With regard to the legislative regulation stipulating the cases of lawyer's unfitness, there has been an evolution marked by the unconstitutional declaration of the texts and the subsequent intervention of the legislator.

In its initial form, the legal regulation contained in art. 27 of the Law stipulated that it is unworthy to be a lawyer: "(a) a person who has been sentenced by a final judgment to imprisonment for committing an intentional crime that is likely to damage the prestige of the profession; (b) who has been guilty of misconduct involving a breach of fundamental human rights and freedoms established by a court of law or has been guilty of serious misconduct involving exclusion from the profession as a disciplinary measure; (c) a person who has been disqualified from practising the profession for a period determined by a judicial or disciplinary decision; d) a fraudulent bankrupt, even if rehabilitated."

By Law no. 25/2017⁴ letter d) of Article 27 of the aforementioned law was amended, the legislator stating that "a person who has been found, on the basis of a final judgment or by acts of the bodies of the legal profession, to have exercised or supported, in any form whatsoever, the unlawful exercise by a person of the profession of lawyer is unworthy."

By Decision of the Constitutional Court of Romania no. 225/04.04.2017 on the exception of unconstitutionality of the provisions of art. 14 letter a) and art. 27 letter d) of Law no. 51/1995 on the organization and practice of the legal profession, republished, with subsequent amendments and additions⁵, the exception of unconstitutionality raised by the contestant D. R. in Case no. 5.864/2/2015 of the Bucharest Court of Appeal - Section VIII - Administrative and Tax Litigation and found that the phrase "likely to harm the prestige of the legal profession" in Article 14 letter a) of the Law No. 51/1995 on the organization and practice of the legal profession, republished, with subsequent amendments and additions is unconstitutional.

³ Adopted by the Council of the National Union of Romanian Bar Associations and published in the Official Gazette of Romania, Part I, no. 898/19.12.2011.

⁴ Published in the Official Gazette of Romania, Part I, no. 210/28.03.2017.

⁵ Published in the Official Gazette of Romania, Part I, no. 468/22.06.2017.

As such, the intervention of the legislature remained a matter that had more to do with the interest of the professional body of lawyers to have an adequate regulation of this case of unfitness, closer to the original will of the legislator⁶.

Subsequently, by Decision of the Constitutional Court of Romania no. 230/2022/28.04.2022 regarding the exception of unconstitutionality of the provisions of art. 14 letter a) and art. 26 letter d) of Law no. 51/1995 for the organization and practice of the profession of lawyer⁷, the exception of unconstitutionality raised by the contestant F. C. in Case no. 26.407/3/2016 of the Bucharest Court of Appeal - Section VIII - Administrative and Tax Litigation and found that the provisions of Article 14 letter a) of Law no. 51/1995 for the organization and practice of the legal profession are unconstitutional.

As rightly noted in the doctrine⁸, it was thus reached from a legal regime that had become - through the effect of Decision no. 225/2017 of the Constitutional Court - particularly severe, to a legislative vacuum in terms of regulating the case of unfitness under analysis. As a consequence, the reference norm in the matter of the termination of the quality of lawyer - art. 26 lit. d) of the Law correlated with art. 58 para. (1) letter d) of the Statute - was left without a corresponding provision, which in practice made it impossible for the Bar Council, in application of Art. 58 para. (2) of the Statute, to take a decision on the termination of the capacity of advocate in relation to Article 14 letter a) of the Law.

Subsequent to the declaration of unconstitutionality of the provisions of Art. 14 letter a) of Law no. 51/1995, the legislator intervened and, by Law no. 32/2023⁹, adopted a new form of Art. 14 letter a) of Law no. 51/1995, republished, with subsequent amendments and additions, providing that an unworthy person is "a person sentenced by a final judgment to imprisonment for one year or more for the intentional commission of a crime, a crime punishable by imprisonment with a special minimum of at least one year and representing a crime against life, a crime against property an offense against the administration of justice, a corruption offense, a service offense, a forgery, an offense against social relations, an offense against national security, or a crime of genocide, an offense against humanity or a war crime, if, at the date of the verification of the unfitness for prosecution, there has been no rehabilitation, post-conviction amnesty or decriminalization of the act before the date of the verification of the unfitness for prosecution."

3. The application over time of the legal texts regulating the lawyer's unfitness

The pronouncement of the two decisions to admit the aforementioned exceptions

⁶ In the same sense, see Stefan Naubauer, *The Odyssey and the consequences of the adoption of the new case of unfitness regulated by Law no. 32/2023 on the amendment of Article 14 letter a) of Law no. 51/1995 on the organization and practice of the legal profession*, accessible on <https://www.juridice.ro/essentials/6401/odiseea-si-consecintele-adoptarii-noului-caz-de-nedemnitare-reglementat-prin-legea-nr-32-2023-privind-modificarea-art-14-lit-a-din-legea-nr-51-1995-pentru-organizarea-si-exercitarea-profesiei-de>.

⁷ Published in the Official Gazette of Romania, Part I, no. 519/26.05.2022.

⁸ Ștefan Naubauer, *Law on the organization and practice of the legal profession*, Universul Juridic Publishing House, Bucharest, 2021, p. 43.

⁹ Published in the Official Journal of Romania, part I, no. 36/12.01.2023.

of unconstitutionality had a major impact on the careers of those convicted of criminal offenses, given that many of those targeted by the text of art. 14 letter a) of Law no. 51/1995 were at various stages of the procedure of verification of the unfitness status, and the analysis to be carried out by the Bar Councils and the Council of the National Union of Lawyers in Romania had to be related to the provisions of Law no. 47/1992¹⁰ and to the decisions of the Constitutional Court regarding the effects and applicability of decisions on the admissibility of exceptions of unconstitutionality.

Thus, according to Article 31 of Law no. 47/1992 republished and amended, "the decision declaring the unconstitutionality of a law or ordinance or of a provision of a law or ordinance in force is final and binding. The provisions of laws and ordinances in force found to be unconstitutional shall cease to have legal effect 45 days after the publication of the Constitutional Court's decision, if, within this period, the Parliament or the Government, as the case may be, does not bring the unconstitutional provisions into line with the provisions of the Constitution. During this period, the provisions found to be unconstitutional shall be suspended *de jure*."

Article 11 para. 3 second sentence of the same normative act provides that, "the decisions and judgments of the Constitutional Court are generally binding and have force only for the future."

According to Constitutional Court Decision no. 126 of March 3, 2016¹¹: "The Court finds that the aforementioned case law is a reflection of the provisions of Art. 147 para. (4) of the Constitution, according to which 'Decisions of the Constitutional Court shall be published in the Official Gazette of Romania. From the date of publication, the decisions are generally binding and have force only for the future'. These constitutional provisions, reiterated, at the legal level, by Art. 11 para. (3) and Art. (1) of Law no. 47/1992, enshrine the effects of the decisions of the Constitutional Court, namely their application for the future and their generally binding nature." (para. 23); "In these circumstances, the Court holds that a decision upholding an objection of unconstitutionality applies to cases pending before the courts at the time of its publication - pending cases in which the provisions in question are applicable - regardless of whether the objection has been raised before the decision upholding the objection is published, since what is relevant for the application of the Court's decision is that the legal relationship governed by the provisions of the law declared unconstitutional has not been definitively consolidated. In this way, the effects of the Constitutional Court's decision of admission are produced *erga omnes*. With regard to cases which are not pending before the courts at the time of publication of the Court's decision of admission, since the legal relationship is exhausted - *facta praeterita* - the Court holds that the party can no longer seek the application of the decision of admission, since the Court's decision of admission cannot constitute a legal basis for an action in the courts, failing which the effects of the Court's decision would be extended to the past" (paragraph 25).

¹⁰ Law No. 51/1995 was renumbered and republished in the Official Monitor of Romania, Part I, No. 807/03.12.20.

¹¹ Published in the Official Journal of Romania, Part I, No. 185/11.03.2016.

4. Finding of the lawyer's unfitness and decision to disbar him

Thus, according to Article 26 of the Statute of the legal profession, lawyers who find themselves in one of the cases of unfitness provided for in Article 14 letter a), letter b) sentence I, letters c) and d) of the Law are obliged to submit to the Bar Association the judgments by which they have been sentenced to a final prison sentence for the commission of an intentional crime, by which they have been disqualified from practicing the profession, by which they have been declared fraudulently bankrupt or by which they have been sentenced to a final prison sentence for acts committed in connection with the practice of the profession.

The Council of the Bar is obliged to examine, within 15 days, the judgments and the documents relating to the conditions of termination of the profession practiced by the lawyer included in the list of incompatible lawyers and will assess the dignity of the lawyer. The Bar Council shall decide, as the case may be, whether to maintain in the profession or to terminate the status of lawyer, in accordance with the Law.

The reasoned decision shall be communicated within 15 days to the lawyer in question, as well as to the President of the National Union of Romanian Bar Associations (U.N.B.R.), together with the court judgment and the documents on the basis of which the unfitness was verified. The decision of the Bar Council may be appealed against by the President of the U.N.B.R. and/or by the lawyer concerned within 15 days of the date of communication. The U.N.B.R. Council will analyse the appeal and will decide in accordance with the Law.

The decision of the Bar Council to terminate the status of lawyer shall be enforceable. The bar association shall make appropriate entries in the roll of lawyers.

Pursuant to Article 263 of the Statute of the legal profession, the Bar Council shall, after carrying out the verifications, decide, by means of a decision, as the case may be, whether to maintain the status of lawyer or to terminate the status of lawyer, in accordance with the Law. The decision shall be drawn up in writing, shall state the reasons in fact and in law and shall be signed by the Dean of the Bar.

The decision shall be communicated within 15 days at the latest after the decision referred to in paragraph (3), by registered letter with acknowledgment of receipt or by direct delivery, with signature, to the lawyer under review, at his main professional domicile, to the person who lodged the complaint, at the domicile declared by the latter, and, by a communication address, to the President of the U.N.B.R.

If, as a result of the verifications, it is decided to exclude the lawyer from the profession, the Bar Council shall issue a decision of exclusion.

The decision of the Bar Council may be appealed against by the President of the U.N.B.R. and/or the lawyer concerned within 15 days of the date of communication. The U.N.B.R. Council will analyse the appeal and will decide in accordance with the Law.

The appeal against the decision of the Bar Council shall be settled by the U.N.B.R. Council. The appeal may be based on any grounds of fact or law regarding the unlawfulness or unreasonableness of the contested decision.

The U.N.B.R. Council will immediately set a deadline for the resolution of the appeal, summoning the lawyer, the council of the bar association that issued the exclusion decision and the other persons indicated in the application who could provide information about the lawyer's case of unfitness.

The lawyer shall appear in person before the U.N.B.R. Council. During the hearings the lawyer may be assisted by another lawyer. The meeting of the U.N.B.R. Council shall not be public, both at the stage of the investigation of the case and at the stage of the hearing of the merits, and the proceedings of the meeting shall be recorded in a closing report.

The absence of the legally summoned parties does not prevent the judgment, the U.N.B.R. Council may rule on the basis of the documents and evidence submitted in the case, and any means of proof provided for by the Code of Civil Procedure is admissible. The U.N.B.R. Council decides by majority vote.

5. Situations arising in practice with regard to the application in time of unconstitutionality decisions on the unfitness of lawyers

The conduct of the procedure for the verification of the effects generated by criminal convictions and the ascertainment of the possible unfitness of the lawyer, in conditions where the deadlines imposed for the conduct of the procedures by the collegial governing bodies of the profession are recommendation deadlines, not subject to sanctions in case of non-compliance, has generated in practice the emergence of different situations generated by the pronouncement between the date of the commission of the act and the date of the final judgment of the conviction of the first decision of admission of the exception of unconstitutionality or the two decisions mentioned above.

Following the publication in the Official Gazette of the first decision upholding the plea of unconstitutionality, the scope of the offenses attracting disqualification from the legal profession for unfitness became extremely broad, any prison sentence - regardless of the amount or the form of execution - for an intentional crime having this radical and undeniable effect.

The failure of the legislature to amend Article 14 letter a) of Law no. 51/1995 in accordance with the decision of the Constitutional Court for more than 5 years, has led to some lawyers convicted of criminal offenses being excluded from the legal profession for committing offenses that had no connection whatsoever with the legal profession or that were detrimental to social values whose violation could not lead to the conclusion that they had damaged the prestige and dignity of the legal profession.

The situation was also "rectified" by the Constitutional Court which, by Decision no. 230/28.04.2022, declared art. 14 letter a) of Law no. 51/1995 as unconstitutional in its entirety, with the opposite effect, and thus eliminating the possibility of exclusion from the profession of a lawyer for unfitness, regardless of the nature of the offense committed or the sentence imposed on the convicted lawyer by the criminal court.

The immediate applicability of the decisions of the Constitutional Court has led to different solutions for the situations of some of the lawyers who have been convicted of criminal offenses, depending on the time of the analysis of the unfitness and the procedures for the examination of the appeals lodged under the law.

The disappearance from the law of any criterion of individualization of the crimes and convictions that give rise to unfitness has resulted in some lawyers being excluded from the legal profession for any type of crime, which, before the admission of the exception of unconstitutionality, was not among those crimes that gave rise to such a radical consequence.

For those convicted lawyers in respect of whom the procedures for ascertaining their unfitness and any appeals had been resolved by the date of adoption of the aforementioned Decision no. 230/2022 of the Constitutional Court, the consequence was their exclusion from the legal profession, following the unfitness arising from their conviction.

Those in respect of whom verification procedures or administrative or judicial appeals were pending at the date of the aforementioned Constitutional Court Decision no. 230/2022 benefited from the effect of a real amnesty, with the lawyer being kept in the profession or the appeals and legal actions being admitted and the decisions of exclusion for unfitness being annulled, even if the convictions were for serious offenses that directly damaged the prestige and dignity of the legal profession.

6. The legal nature of the sanction of exclusion from the legal profession following a criminal conviction:

The application of extreme, diametrically opposed solutions for the same type of conviction in terms of its consequences for the lawyer concerned has rightly generated litigation brought before the administrative courts and is not immune from criticism, not only for legal considerations, but also for moral and equitable reasons, it not being natural and desirable, in our opinion of its nature, that identical situations should generate different extreme solutions.

We believe that the problem under consideration can find a legal and equitable solution by clarifying the legal nature of exclusion from the legal profession for unfitness to practice as a lawyer following a criminal conviction.

What kind of liability is such legal liability, which, although it is not pronounced by a criminal court, has its basis exclusively in the judgment of conviction?

Although, at first sight, the sanction of disbarment appears to have the legal nature of an additional penalty, being the mandatory consequence of a criminal sanction, namely a prison sentence, we believe that it cannot be attributed such a criminal nature, since it is not imposed on the basis of a criminal rule¹², nor is it ordered by a criminal court.

On the other hand, we do not consider that this penalty cannot be regarded as a disciplinary penalty either, since it is not the consequence of a disciplinary misconduct; nor have we found any argument to support the idea that it should be regarded as a civil penalty, as a form of tort, since it derives from a criminal offense.

The only possible answer is, in our opinion, that we are in the presence of a *sui generis* form of administrative liability¹³, a statement reinforced by the argument that the finding of unworthiness and the order of exclusion from the legal profession is carried out through an administrative procedure by the collegiate governing bodies of the legal profession, i.e. administrative authorities, and their decisions may be appealed by the

¹² For details on the legal nature of complementary punishments see Valentin Mirisan, Carmen Adriana Domocoș, *Criminal Law. General Part*. 6th edition, revised and added, Universul Juridic Publishing House, Bucharest, 2019, p. 302.

¹³ For details on the conditions of administrative liability, see Verginia Vedinaș, *Administrative Law*, Universul Juridic Publishing House, Bucharest 2023, p. 320.

dissatisfied party to the administrative contentious court¹⁴, under the conditions of art. 1 and art. 8 of the Law on Administrative Contentious Proceedings No. 554/2004, as amended.

7. Possible solutions identified with regard to the law applicable to situations of lawyer's disqualification:

The passage of a shorter or longer time interval between the date of the crime and the date of the final conviction that triggers the initiation of the procedure for checking the state of indignity by the bodies of the lawyer profession, during which it is possible for legislative changes to the content of the rule to appear legal regulations that regulate indignity as an effect of criminal conviction, respectively of art. 14 letter a) from Law no. 51/1995, generated, at the level of the administrative decision-making factors of the lawyer profession, the outline of different opinions regarding the form of the legal rule that must be taken into account, considering the change in its content over time, respectively the law applicable to situations of indignity of the lawyer.

According to a first point of view, the reference norm that must be analysed to assess the state of indignity is the form of article 14 letter a) from Law no. 51/1995 in force on the date of the conviction. The main argument in favor of this vision is given by the wording of the rule: "it is unworthy to be a lawyer who is convicted by a final court decision [...]".

According to the supporters of this point of view, the indignity is born as an effect of the pronouncement of the final judgment of conviction and at the time of the pronouncement of the final judgment of conviction, so the analysis of the state of indignity must be done by reference to the norm from the time of the pronouncement of the conviction. Moreover, the effect of the presumption of innocence means that only from the date of the final conviction is the state of indignity born, this being the only time and basis for the verification of the state of indignity.

Another argument brought in support of this point of view is based on the provisions of art. 6 para. (6) of the Civil Code¹⁵, which provides that "the provisions of the new law are also applicable to the future effects of legal situations born before its entry into force, derived from the state and capacity of persons, from marriage, parentage, adoption and the legal maintenance obligation, from property relations, including the general property regime, and from neighbourhood relations, if these legal situations exist after the entry into force of the new law," the problem the dignity/indignity of a lawyer being one that is related to the state and legal capacity of the lawyer, so that the form of the legal rule that must be taken into account is the one from the date of the final conviction, even to the extent that it is modified compared to its form of on the date of the crime.

We do not subscribe to this point of view, which, in our opinion, leads to a genuine retroactivity of the (non-criminal) norm that regulates indignity - art. 14 letter a) from Law no. 51/1995 - legal situation generated by the conviction.

¹⁴ For details on the administrative acts that can be challenged before the administrative courts, see Verginia Vedinaş, *Theoretical and practical treatise on administrative law*. Volume II, Universul Juridic Publishing House, Bucharest, 2018, p. 115.

¹⁵ Adopted by Law no. 297/2009 published in the Official Gazette of Romania, part I, no. 287/17.07.2009.

On the contrary, we believe that, in the situation where between the content of art. 14 letter a) from Law no. 51/1995 from the date of the crime and the form of this legal rule from the changes appear in the pronouncement of the judgment of conviction, the form of art. 14 letter a) from Law no. 51/1995 to which reporting is required in the procedure for checking the state of dignity/indignity is the one in force on the date of the commission of the crime.

In support of this point of view, we show that the basis of the conviction is the crime committed, the conviction representing the method of incurring criminal legal responsibility for the committed antisocial act/s.

The social value protected by the criminal law is achieved by the crime committed, and the reason for the exclusion from the legal profession for indignity is the harm brought to the honor and reputation of the lawyer profession precisely by the crime committed, the conviction representing the confirmation of the existence of the crime committed and the overturning of the presumption of innocence. Moreover, civil society does not express its indignation against a criminal conviction, but against the crime/crimes committed by the lawyer.

According to art. 14 letter a) from Law no. 14/1995, the indignity is only attracted by the convictions applied for certain categories of crimes committed with intent, not for those committed through negligence. Intention, in both its forms, direct and indirect, implies a design by the author of the crime of the consequences of his actions and an acceptance and assumption of them, which implies knowledge at the time of committing the intentional act of all the consequences of its commission.

8. Final considerations and *de lege ferenda* proposals

The stake of this legal debate is the legal treatment applicable to the situation in which from the date of the commission of the crime until the date of the final conviction, the content of art. 14 letter a) is modified to the disadvantage of the convicted lawyer, so that by reference to the reference form of art. 14 letter a) of Law no. 51/1995 from the date of the sentencing decision, the act committed would attract indignity and implicitly, exclusion from the legal profession, while compared to the form from the date the crime was committed, no such negative consequence operated.

Since it is not a criminal law, for the reasons stated above, there can be no question of applying the principle of the more favorable criminal law, it being accepted, in principle, that art. 14 letter a) from Law no. 51/1995 is not a rule of criminal law.

The possible (future) indignity is born, we believe, as a result of the commission of the crime and on the date of its commission, so it is natural that the analysis of the birth of the state of indignity should be done by reference to the form of the law, in this case to the form of art. 14 letter c) from Law no. 51/1995 in force at the time the crime was committed.

Moreover, indignity is the negative consequence of committing one of the crimes enunciated exhaustively by art. 14 letter a) from Law no. 51/1995, the presumption of innocence only temporizing the moment when the state of indignity is verified, i.e. the moment when the commission of the crime is a legal certainty, the moment that coincides with that of the final conviction.

The undeniable principle of the foreseeability of the law requires that the

commission of a crime must entail all the negative consequences provided for in the law at the time of its commission, including from the perspective of disrespect for the legal profession. A person can be held legally responsible exclusively for the negative implications provided by the law at the time of committing the act, implications foreseen and assumed by the commission of the crime, and not for potential more serious consequences regulated in the future by the legislator, anytime until the date of the judgment of conviction or even later this moment.

Admitting the first point of view would mean accepting that the new non-criminal legal norm would be retroactive, producing legal effects regarding a crime that was already committed at the time of its entry into force, which is in flagrant violation of the constitutional principle of the law's non-retroactivity, except for the more favorable criminal and contravention law, which is not the case in this case¹⁶.

On the other hand, being consistent with this reasoning, we claim that, precisely because art. 14 letter a) from Law no. 51/1995 is not a criminal law and because the state of indignity is born at the time of committing the act, the analysis of its birth and finding being only temporary, the text that must be taken into account after the pronouncement of the final judgment of conviction on the occasion of the verification of the state of dignity/indignity it is the one from the date of the commission of the crime, even if the form of the incriminating text changes in favor of the convicted person's legal situation by the time the sentencing decision is pronounced, and by hypothesis the new form of the text no longer attracts exclusion from the legal profession.

This is because art. 14 letter a) from Law no. 51/1995 is not a criminal norm, and it is not possible to invoke the more favorable (criminal) law nor the effects of decriminalization, the professional bodies only ascertaining the birth of the state of indignity and not pronouncing it, so that the timing of the analysis determined by the presumption of innocence it cannot remove, we believe, the effect of giving birth to the state of indignity which is the exclusion from the legal profession.

As noted in the specialized literature¹⁷, seen as an "auxiliary"¹⁸ of justice, the lawyer, "in a society based on respect for justice, fulfills an eminent role. Its mission is not limited to the faithful execution of a mandate within the law. In a state of law, the lawyer is indispensable to justice and litigants and has the task of defending their rights and freedoms: he is both the advisor and the defender of his client"¹⁹. This is because two of the fundamental principles that govern the legal profession are those of legality (of its submission only to the law) and that of the fulfillment by the lawyer of both a

¹⁶ For details on the non-retroactivity of the law, see G. Antoniu, C. Bulai, C. Duvac, I. Griga, G. Ivan, C. Mitache, I. Molnar, I. Pascu, V. Pașca, O. Predescu (collectively), *Preliminary explanations of the new Penal Code*, Universul Juridic Publishing House, Bucharest, 2010, vol. I, p. 42 and Valentin Mirișan, *Penal Law. The general part*, Universul Juridic Publishing House, Bucharest, 2017, 5th edition, revised and added, p. 38 et seq.

¹⁷ Florin Radu, *The meaning of the phrase "convictions that affect the prestige of the lawyer profession"*, accessible at <https://www.juridice.ro/195057/intelesul-sintagmei-condamnari-care-aduc-atingere-prestigiului-profesiei-de-avocat.html>.

¹⁸ For details on the categories of persons who assist in the administration of justice, see V. M. Ciobanu, *Theoretical and practical treatise on civil procedure, vol. I, General theory*, National Publishing House, Bucharest, 1999, p. 80.

¹⁹ *The ethical code of lawyers in the European Union*, adopted in the Plenary Session of the European Union Bar Council on October 28, 1998 and amended in the Plenary Sessions of November 28, 1998 and December 6, 2002.

function of private interest and one of public interest, by any member of a bar²⁰. These principles are expressly provided in several legal texts, respectively art. 1 para. 2 letter a) and art. 3 para. 1 of the Statute of the lawyer profession and art. 2 para. 1 and 2 of Law no. 51/1995 for the organization and exercise of the lawyer profession.

Without claiming that the legal issue under consideration has been fully clarified or has been exhausted by the considerations presented by us, following that the administrative litigation courts invested with the resolution of disputes generated by the conflict of laws in the analyzed time²¹, we believe that a legislative intervention that would clarify the legal nature of this sanction, as well as the law applicable by the administrative bodies of the legal profession regarding the analysis of the state of indignity would not only be welcome, but also necessary, our *de lege ferenda* proposal being in the sense of what was previously shown, for the reasons set forth.

Bibliography

1. Antoniu, G., C. Bulai, C. Duvac, I. Griga, G. Ivan, C. Mitrache, I. Molnar, I. Pascu, V. Pașca & O. Predescu (collectively), *Preliminary explanations of the new Penal Code*, Universul Juridic Publishing House, Bucharest, 2010, vol. I.
2. Baias, Flavius, „Principles of the lawyer profession in the light of the provisions of Law no. 51/1995”, in *Law no. 10-11/1995*, p. 28 – 36.
3. Ciobanu, V. M., *Theoretical and practical treatise on civil procedure, vol. I, General theory*, National Publishing House, Bucharest, 1999.
4. Domocoș, Carmen Adriana, *Control of the administrative litigation court over the solutions pronounced by the bodies of the lawyer profession in the situations covered by the decision of the Constitutional Court no. 225 of April 4, 2017* accessible on https://revista.universuljuridic.ro/wp-content/uploads/2017/10/05_Revista_Universul_Juridic_nr_09-2017_PAGINAT_BT_C_A_Domocos.pdf.
5. Mirisan, Ștefan & Carmen Adriana Domocoș, *Criminal Law. General Part*. 6th edition, revised and added, Universul Juridic Publishing House, Bucharest, 2019.
6. Mirișan, Valentin, *Penal Law. The general part*, Universul Juridic Publishing House, Bucharest, 2017, 5th edition, revised and added.
7. Naubauer, Ștefan, *Law on the organization and practice of the legal profession*, Universul Juridic Publishing House, Bucharest, 2021.
8. Naubauer, Ștefan, *The Odyssey and the consequences of the adoption of the new case of unfitness regulated by Law no. 32/2023 on the amendment of Article 14 letter a) of Law no. 51/1995 on the organization and practice of the legal profession*, accessible on <https://www.juridice.ro/essentials/6401/odiseea-si-consecintele-adoptarii-noului-caz-de-nedemnitate-reglementat-prin-legea-nr-32-2023-privind-modificarea-art-14-lit-a-din-legea-nr-51-1995-pentru-organizarea-si-exercitarea-profesiei-de>.
9. Radu, Florin, *The meaning of the phrase "convictions that affect the prestige of the lawyer profession"*, accessible at <https://www.juridice.ro/195057/intelesul-sintagmei-condamnari-care-aduc-atingere-prestigiului-lui-profesiei-de-avocat.html>.
10. *The ethical code of lawyers in the European Union*, adopted in the Plenary Session of

²⁰ For details on the principles of the lawyer profession, see Flavius Baias, „Principles of the lawyer profession in the light of the provisions of Law no. 51/1995”, in *Law no. 10-11/1995*, p. 28 – 36.

²¹ For details, see Carmen Adriana Domocoș, *Control of the administrative litigation court over the solutions pronounced by the bodies of the lawyer profession in the situations covered by the decision of the Constitutional Court no. 225 of April 4, 2017*, accessible on https://revista.universuljuridic.ro/wp-content/uploads/2017/10/05_Revista_Universul_Juridic_nr_09-2017_PAGINAT_BT_C_A_Domocos.pdf.

the European Union Bar Council on October 28, 1998 and amended in the Plenary Sessions of November 28, 1998 and December 6, 2002.

11. Vedinaş, Verginia, *Administrative Law*, Universul Juridic Publishing House, Bucharest 2023.
12. Vedinaş, Verginia, *Theoretical and practical treatise on administrative law*. Volume II, Universul Juridic Publishing House, Bucharest, 2018.