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The Stakeholders in the Romanian Legal Education and their Influence over the Curricula and Teaching Methods

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Abstract

The aim of this paper is to identify the stakeholders in the legal education system in Romania and to give an indication of the type of relationship between these stakeholders and the system by analysing how the outcome of the legal educations system meets the reasonably anticipated goals of these stakeholders. The conclusion advanced is that the most influential over the curricula and teaching methods are the professors and the academic institutions, despite the fact that the outcomes of the legal education system should not be deemed satisfactory for the other stakeholders. Hypotheses for explaining this state of affairs are proposed, in terms of institutional formal and informal leverage, in terms of legal culture of the Romanian society, as well as in costs-benefits analysis of the stakeholders.

Key words

Legal education; curricula; universities; legal knowledge; legal skills; stakeholders

Resumen

El objetivo de este artículo es identificar a los principales actores del sistema educativo jurídico de Rumanía e indicar el tipo de relación entre ellos y el sistema, por medio de un análisis de cómo el resultado del sistema educativo jurídico cumple con las expectativas razonables de dichos actores. La conclusión que podemos adelantar es que la parte más influyente sobre los currículums y los métodos de enseñanza la forman los profesores y las instituciones académicas, a pesar de que los resultados del sistema educativo jurídico no sean juzgados como satisfactorios por parte de los demás interesados. Se proponen hipótesis para explicar este estado de cosas, en términos de presiones institucionales formales e informales, en términos de la cultura jurídica de la sociedad rumana y, además, en términos de un análisis de coste-beneficio para los interesados.

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Palabras clave

Educación jurídica; currículums; universidades; conocimiento jurídico; destrezas jurídicas; partes interesadas

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1. Aim and approach of the article

The aim of this article is to identify the stakeholders in the legal education system in Romania and to advance a hypothesis concerning their relative influence over the curricula and the teaching methods, based on some characteristics of the latter. To this effect, the problems dealt with in the article are the general issue of stakeholders in the higher education, the institutional tools available to them in order to voice and promote their interests in the education process, the curricula and the teaching methods in the legal education in Romania. In the final part of the article, I am advancing some characterization of the curricula and teaching methods and I am advancing some possible explanations of their current state of affairs from the perspective of how the outcome of the legal education process meets the reasonably anticipated goals of the stakeholders. In order to identify the stakeholders in the legal education system, I am relying on the relatively rich general literature on this topic. For the presentation of the institutional tools and of the curricula, I am relying on the legislative framework applicable in Romania and on the data made publicly available by higher education institutions. For data concerning the number of faculties, maximum number of students allowed to be registered, etc., I use the administrative acts issued by the government. For all of these topics, I am also relying on the few articles on Romanian legal education indicated throughout the paper (some of them relying on some quantitative research),[1] as well as on some studies on Romanian higher education in general (Curaj *et al.* 2015) whose conclusions partially apply to legal education also. Instead, the characterizations of the teaching methods and curricula as well as the attempted explanations, due to the relative scarcity of the literature on the topic, are based mainly on my professional experience of teaching in the Romanian legal education system for over a decade and of practising as a lawyer for almost two decades. Therefore, they are to be understood as being a sort of "informed (educated) guess" and they represent no more than hypotheses that could eventually be tested and verified (or falsified) by future quantitative research, sociological surveys or other works of this kind.

2. A brief presentation of the Romanian legal education system

Currently, a total number of 42 accredited law faculties[2] are functioning in Romania, 18 of which are State or public law schools, while the remaining 24 are attached to private universities.[3] It is worth mentioning that in public law schools, only part of the student places are subsidized by the State (Law no. 1/2011), the remaining ones functioning in the same way they do in a private university (i.e. against paying a tuition fee – see Art. 119 (1), Law no. 1/2011). The total number of places subsidized by the State is approved every year by the Government, but the actual assignment of these places among faculties is decided by every university (Art. 123 (2) of Law no. 1/2011), so there are no official aggregate data concerning the actual number of the student places subsidized by the State in the legal field. The statistical data

[1] There is not much literature in Romania concerning the legal education as a process and as a system. The only material published in Romanian and with a certain degree of public exposure is an article authored by three of the most prestigious legal scholars in Romania, the deans of Law Schools in Bucharest, Cluj-Napoca and Craiova (Baias *et al.* 2007). This paper summarized the conclusions of a research project concerning the adaptation of higher education to the labor market in the legal field (Baias *et al.* 2007, pp. 137-138). Most of the other papers published with respect to this subject are in English, even though the authors are Romanian scholars, which could be an indicator of a relatively low interest in this topic among the domestic legal scholars (Streteanu 2004, Staiculescu and Stan 2011, Gorea 2012, Gorea and Gorea 2013). These works describe quite accurately the problems which have to be coped with by the Romanian legal education system and the perception it has within the legal professions and students' environment. Nevertheless, they did not manage to trigger a large-scale and institutionalized debate over the future and the challenges of legal education in Romania among the legal scholars.

[2] Every year, the list of accredited universities is updated through a Government Decision. The numbers referred here are for the academic year 2016-2017 and result from the Government Decision no. 376 of 18 May 2016.

[3] In terms of maximum number of newly registered students allowed per each faculty, the public law faculties' maximum number of students is 6,490, while private law faculties may register up to a maximum of 6,160 new students.

available for the period 2005-2010 shows that the number of graduates varied between ca 12,000 and 17,000 yearly with a peak in 2009 when 21,418 persons graduated from law faculties (Mirea 2012). It is expected that the number of law graduates will decrease, because of the descendent trend of the number of high school graduates and.

After the transition years in the 90's, the legal education was, as the entire higher education system, object of reforms in the 2000's as a result of the commitment to implement the Bologna process. As a result, all accredited law schools adopted the 4+1 or 4+2 system (i.e. four years of undergraduate studies and one or two years of postgraduate studies, followed by three years for PhD studies) and the system of transferable credits (Efficient Education Management Network for LLL in the Black Sea Basin 2014, pp. 11-13). Beside these formal aspects, substantial reform was aimed by introducing in the legislation on education, among others, the principle of the student centered learning and the instruments of quality assurance through external and internal assessment. Important reforming regulations have been passed to this effect: the new Law on education (Law no. 1/2011), the Law on quality assurance in education (Law no. 87/2006), the Government Decision no. 1418/2006 concerning the Methodology of external assessment of the quality in higher education (hereinafter Methodology 2006). A new agency has been created on the basis of Law no. 87/2006, the Romanian Agency for Quality Assurance in Higher Education (Agenția Română de Asigurare a Calității în Învățământul Superior, in Romanian; hereinafter, ARACIS), whose mandate is to perform the external control of the quality in higher education and, on the basis of its findings, to allow the issuance or maintenance of the accreditation for the higher education institutions. During the same process, the curricula of the law schools was unified (Baias *et al.* 2007, p. 146), with a number of disciplines that are mandatory in all law schools (the "common trunk"),[4] while the others can be chosen by each of the law schools, in the name of universities' autonomy. No doubt these are thorough and ambitious reforms. To what extent they managed to decisively changed the daily practice of the legal education is a different issue. Recent studies made on the Romanian higher education in general demonstrate a certain degree of skepticism concerning the actual implementation in the daily practice of the Bologna principles (Curaj *et al.* 2015).[5]

In what the curricula are concerned, although the final word on them belongs to the law faculties according to Art. 132 (1) of the law on education (therefore quite a high degree of decentralization of the process is formally allowed by the law), there is an undisputed alignment of the curricula of the main law faculties in Romania (Baias *et al.* 2007, p. 146 and *passim*, Vîiu and Miroiu 2015, p. 177). The presentation and assessment in this section is based on the disciplines and credits appearing in the curriculum of the Law Faculty of the West University of Timişoara,[6] but they are similar, in their general lines, to the other law faculties.[7] There are 32 mandatory

[4] The so-called *common trunk* includes civil law, commercial law, labour law, criminal law, constitutional law, administrative law, civil and criminal procedure, public and private international law, EU institutional law, general legal theory.

[5] Among others, opinions of this kind were expressed: "[I]t appears that a limited awareness or partial understanding of the Bologna principles by the academic communities is found in the majority of universities" (Matei *et al.* 2015, p. 121), "the efforts of ARACIS to instill a quality culture in Romanian HEIs seem to have met with limited success" (Vîiu and Miroiu 2015, p. 180) and "universities are generally considered to fail to internalize quality assurance" (Geven *et al.* 2015, p. 44). The Methodology 2006 itself recognized the "gap between institutional requirements and inadequate practice" (p. 6), but according to ARACIS the gap was not narrowed at least as early as 2010 ("Romanian higher education is student-centered at a formal level, through the university mission statements and charters, but this formal claim is not supported by adequate learning outcomes of students and graduates", Matei *et al.* 2015, p. 121).

[6] The curriculum valid for the academic year 2016-2017 of the Law Faculty within the West University of Timişoara (online at West University of Timişoara 2015).

[7] E.g., according to the curriculum of the Bucharest Law Faculty (University of Bucharest 2016), the relative weights of various fields considering the credits assigned to the mandatory disciplines, are the following: private law – 41.58% (out of which, civil law 21%), criminal law – 11.6%, domestic public law – 14.95%, international and EU law – 8.5%. Similar figures are valid also for the Law Faculty in Iaşi (A.I. Cuza University), according to its curriculum valid for the academic year 2016-2017: private law – 35.8% (out

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disciplines during the 4 years of undergraduate studies, which are assigned a total of 210 mandatory credits (European Credit Transfer and Accummulation System, hereinafter ECTS; see European Commission n.d.). Among them, Civil law is represented by 9 mandatory disciplines (28.12%) which are assigned 54 mandatory credits (27.14% of the total mandatory credits). If we add the disciplines connected to civil law or, broadly, private law (Roman law, commercial law, labor law, etc.), the result is that Romanian private law covers 14 mandatory disciplines (43.75%) and 86 mandatory credits (40.9%). Criminal law is represented by four mandatory disciplines (12.5%) to which 26 mandatory credits (12.3%) are assigned. The disciplines concerning the judicial procedures (criminal and civil procedure) are covered by four disciplines to which 26 credits are assigned. The domestic public law (constitutional and administrative) is covered by five disciplines (15.62%) and 31 credits (14.76%), while International and European Union Law are taught in three mandatory disciplines (9,3%) and 17 credits (8%) are assigned to them. Another important observation is that during the 3rd and the 4th year of study, when one could say that the law student is professionally more mature and familiarized with the language of law, only disciplines pertaining to private, criminal and procedural law are taught. While the public law disciplines (both the domestic ones and the international and EU ones) are all taught during the 1st and 2nd year of study, together with subjects whose purpose is to familiarize the student with the legal topics and language.

Interdisciplinary subjects are not to be found between the mandatory disciplines and only two of them (Philosophy of Law and Legal Sociology) are optional disciplines (but in competition with each other and with two other optional disciplines) in the 1st semester of the 1st year of study.

The space reserved in the curriculum to the disciplines concerned with the application of supranational sources of law in the domestic legal order is also insufficient (Staiculescu and Stan 2011, p. 174 and *passim*, Gorea and Gorea 2013, pp. 189-190). The International Protection of Human Rights is an optional discipline in the 2nd year of study, which seems rather strange since this discipline covers mostly the issues related to the European Convention of Human Rights system, which, according to Art. 20 of the Romanian Constitution, takes precedence over national legislation. On the other hand, though, EU Business Law (which covers basically the four liberties) is, indeed a mandatory discipline in the last semester of the 4th year.[8]

Some other interesting mentions concerning the curriculum can be made. Legal theory, under the name *General Theory of Law*, is a mandatory course in the 1st semester of the 1st year, but it represents rather an introduction to law, than a proper theory of law. In what the history of law is concerned, there is an optional course of *Romanian History of Law* in the 1st semester of 1st year, while short histories of the other disciplines are featured in the introductory chapters of the respective textbooks. There is an optional course of Environmental Law in the 2nd year of study,[9] while no course of urban planning and zoning law is taught. *Non-conventional* subjects like Law and Literature and Feminist Jurisprudence are not offered as such, but some of the professors might touch upon such subjects in their own classes.

The internships are a mandatory discipline in the 4th year of study.[10] Students should have stages in courts, law offices and prosecutor's offices in order to see *law-in-*

of which, civil law 19.7%), criminal law – 16%, domestic public law – 11.2%, international and EU law – 8% (the curricula can be consulted online at University of Bucharest 2016 and Alexandru Ioan Cuza University of Iaşi 2016.

[8] All curricula of the Romanian Law Faculties devote at least one course to EU law. Some faculties devote more than one mandatory discipline to the EU law.

[9] Some faculties include Environmental Law as a mandatory discipline (e.g. Law Faculty of the University of Bucharest).

[10] According to art. 150 (4) of the Law on Education, "[d]uring bachelor's degree education, practical training is mandatory. Universities have the duty to provide at least 30% of the required practice places, out of which at least 50% outside universities".

action. Unfortunately, the material basis does not allow full coverage of all students with available internships (Matei *et al.* 2015, p. 114). According to the research made by some authors in 2010 (Gorea *et al.* 2010, p. 2929), over 80% of the interviewed students complained that the professional practice they should have got during the studies was purely formal or missing; things might have improved during the last five years, but not radically. Some partnerships were developed with courts and prosecutor's offices in order for students to be able to "work" in such offices under the "tutorship" of a judge or prosecutor. Other students have internships in law offices, following agreements with the latter.[11] Moot-courts became very popular lately with the students,[12] but they are extra-curricular activities. Legal clinic programs are also extra-curricular, with some exceptions, but they are less popular. Some legal clinic programs were developed by some of the law schools in partnerships with NGO's, but they were not generalized in all universities and were not even continuous in those faculties that experienced them.[13]

The undergraduate legal education period is four years. When they graduate from Law school, the students are ready to enter the job market (the legal professions). The criteria for acceding to the professions differ, but neither of them requires post-graduate studies to be accomplished by the students. Graduates of law school can enter one of the following legal professions: lawyer, judge or prosecutor (whose organization is unified under the umbrella-category of *magistrates*), notary, registrar in court, in-house legal counselor (need not to be member of the bar), civil servant. Besides these, there is a peculiar professional category called *legal advisers* (Law no. 514 of 28 November 2003)[14] organized in a professional order, just like the lawyers, the main difference between legal advisers and lawyers being that only the latter can represent natural persons in court. From a functional point of view, it is quite difficult to distinguish them from lawyers and, for this reason, the two legal professions are better dealt with as a single category.

Admission to professions of judge, prosecutor, notary and lawyer are subject to quite difficult exams, while for the other categories such an exam is not necessary. If the students want to follow a career as magistrates (judges or prosecutors), they have to be admitted to the National Institute of Magistracy (*Institutul superior al magistraturii*, in Romanian; hereinafter, INM), while if they want to become lawyers, they have to pass the Bar admission exam. Those entering the INM follow its courses for 2 years, then they can practice as judges or prosecutors, starting with a three-year period as trainees (*stagiari*) [Law no. 303/2004]. The lawyers must undergo two years of apprenticeship under the supervision of a lawyer and of the National Institute for the Professional Training of Lawyers (*Institutul national pentru pregatirea si perfectionarea avocatilor*, in Romanian; hereinafter, INPPA) and afterwards they have to pass another exam and then they can freely practice the profession of lawyer, either in an independent office or as *de facto* employees of one of the big law firms (Law no. 51/1995). The in-house lawyers or those that work in public administration can do so without passing another exam, only based on the graduation from law faculty.

Lastly, the prospects in the labor market are not very bright. For magistrates, there is a ratio of 1 to 10 or even bigger between the number of places available in the INM and the candidates for admission on these places.[15] For the Bar admission, the

[11] European Law Students' Association (ELSA) is quite active in this field, facilitating internships in law offices for students. See European Law Students' Association n.d.
[12] See the numerous announces concerning the moot-courts (*procese simulate*) on Juridice n.d., the main Romanian portal of news in the legal field.
[13] See, for example, the legal clinics organized by Centre for Legal Resources (n.d.) or ACTEDO, Equality and Human Rights Action Centre (n.d.).
[14] Law no. 514 of 28 November 2003. This professional category was meant to regroup the quite numerous legal professionals which, during communism and the first decade after its fall, acted as in-house legal counsels without being members of the bar, which limited their possibility of working for more clients.
[15] In the last session (September 2016), there were 2,270 candidates, out of which 193 were admitted (online at National Institute of Magistracy 2016b and 2016a).

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last examination (2016) showed an admission ratio under 20%.[16] For lawyers, there is an additional difficulty. Except for the juniors in the big law firms, whose wages are quite high in comparison with Romanian average wage, the other young lawyers find that it is really difficult to earn their living in their early years: they receive relatively low wages, they need a number of years in order to establish their own clientele, so many of them base their revenues mostly on activities as court appointed public defenders in criminal cases (which has, as side effect, a lowering of the legal services offered by public defenders, since most of them are quite inexperienced).[17]

3. The stakeholders in the legal education system in Romania

It can be said that it is generally accepted that the stakeholders[18] in the legal education system are to be found both within the system itself (students, law professors, higher education institutions, etc.) and outside it (the future employers, the society, the government, etc.), although the paradigm of approach differs. For example, in a systems theory approach (Bess and Dee 2008, pp. 51-54 and 87-199), the legal education system treats the new students as the input and the graduates as output, with the law professors and faculty administrative and management staff as agents within the system.[19] But since systems gather their inputs from the environment and offer their output to the environment, several other agents from the environment are as well important to the system's functioning. Such are the future employers of the graduates or the institutions that provide financial or other types of resources to the legal education system (to the universities). Equally, in a market-for-services paradigm of approach to higher education (Ciolan *et al.* 2015, p. 26, Vîiu and Miroiu 2015, p. 176), the description would be quite similar: the legal education institutions provide teaching and training services to the students in order for them to use such training in the legal profession; and in order for the education institution to function, they raise funds from both the students and other financing institutions (such as the government, the private donors, partners, etc.).

Consequently, identifying the stakeholders in the Romanian legal education system must take into account the Romanian social, institutional and economic facts relevant for the topic. The stakeholders within the education system are the students,[20] the professors, the law faculties (with their management and administrative staff) and the universities to which the faculties belong. Upstream the higher education institution there are the resources providers which, in Romania's case, consist mainly of the government and the parents (or the financial supporters) of the students. Downstream, one can find the employment market on which the graduates enter (the legal professions), the (potential) clients of the employers and, more generally, the society itself. All these stakeholders have some leverage through which they can influence the teaching and learning law process and system. My attempt here is to discover how this distribution of leverage is reflected in the curricula and in the teaching methods employed in the legal education system. I will start by briefly describing each category of stakeholders and the tools they could use, in theory, in order to influence the functioning of the legal education system in Romania.

[16] Approximately 600 candidates admitted out of over 3,400 (Romanian Bar Association 2016).
[17] The situation of trainees (*stagiari*) some fifteen years ago in Romania is quite accurately described in Scott 2000. The situation improved in part, but the main issues signaled there remain.
[18] The Romanian regulations do not use the term *stakeholders* (or some equivalent), but rather *participants* or *beneficiaries* (e.g. Methodology 2006, p. 4). However, the literature on Romanian higher education uses quite currently the term (Staiculescu and Stan 2011, p. 174, Executive Agency for Higher Education, Research, Development and Innovation Funding (UEFISCDI) 2013, p. 8 and *passim*, Curaj *et al.* 2015).
[19] This description is valid for the teaching function of the system, while the research one treats existing knowledge as input and new knowledge as output (Bess and Dee 2008, p. 20).
[20] Parents of the students were not mentioned separately from students, although some authors do make this distinction (Bess and Dee 2008, pp. 135 and 143, Ciolan *et al.* 2015, pp. 26, 30). Even though parents are the principal financial supporters of the students, in the relation with the other stakeholders, they share, in general, the same characteristics as the students themselves, especial the information asymmetry.

The *students* are high school graduates, with no particular previous specialization required.[21] Moreover, there is no general legal education course in the pre-university system,[22] which practically delivers new students deprived of means of informed pre-assessment of legal education services and, even more importantly, of realistic expectations with respect to the law faculty education and to their future legal career. This information asymmetry in their relationship with teaching and administrative staff of the law faculties (Rhode 2000, p. 25, Ciolan *et al.* 2015, p. 27) could probably explain the rather passive position of the students in the legal education system, although, in theory, they would have some tools of influencing certain decision-making outcomes (according to Art. 207 (5) and 208 (1) of the Law on education, a quarter of places in the Senates, the highest decisional bodies in universities, as well as in the faculties' councils are reserved to students, according to the law).

The higher education system is composed by universities (also referred to as *higher education institutions*),[23] with their internal entities, the faculties.[24] It would undoubtedly be an error to treat these components of the system as a unitary agent, acting homogenously. In truth, the interest of the university may, in some points, differ from that of the law faculty belonging to it. Moreover, because of the different nature of their jobs, it is reasonable to assume that the interests of the administrative staff may differ from those of the management, and both may be divergent with those of the teaching staff.[25] Just to give an example, administrative personnel's main interest could lie in the amount of wages or quality of working conditions, while teaching staff might accept lower wages in exchange for more time devoted to personal research or personal academic projects. Top management position holders might be principally interested in public visibility and the attached perceived advantages, rather than in the material remuneration for their jobs.[26] Even within the same category of law professors, certain groups can have different interests or beliefs dictating their conduct.

The *universities* possess almost full authority over the budget of expenses of the faculties,[27] the wages and the promotion of faculty professors, but none over the content of the curricula and, generally, over everything that might be described as purely teaching or research activity. As such, their influence over the teaching content and teaching policies is rather indirect.

[21] See point I.18.1 of the National Report regarding the Bologna Process implementation 2012-2015 Romania online at European Higher Education Area 2015. The way faculties organize admission exams is left to their choice (more precisely the choice of the universities to which they belong). An annual Order of the Ministry of Education sets every year the minimal conditions for admissions to higher education institutions, but, for a long time now, the only condition is the graduation of the high school (see e.g. Order no. 3107/2016 of the Ministry of National Education and Scientific Research). For quite a long period, the only admission criterion was the average of high school graduation marks, but lately the main law schools reoriented towards written exams (e.g. grammar exams or test of language and reasoning skills).

[22] With the exception of the Social Sciences sections in some high schools, where they study a category of optional disciplines that are introductory to the public organization of society (Civic education, Education for Democracy, Human Rights, etc.).

[23] The two terms are used interchangeably in the law (see Art. 114 (2) of the Law on education).

[24] Although faculties are administratively subordinated to universities, they are created by a Decision of the Government, upon proposal from the senates of the universities. Therefore, universities do not enjoy complete discretion in creating and controlling the faculties (Art. 132 (2) of the Law on education).

[25] The administrative staff is not included in the legal definition of the "acadmic community" or „university community" which only include students, professors and researchers (Art. 127 of the Law on education). However, other regulations and the literature refer to them as members of the "university community" (Methodology 2006, p. 4, Staiculescu and Stan 2011, p. 174).

[26] The phenomenon of top managers of higher education institutions entering politics is not rare. For example, in the recent legislative elections in December 2016, 37 persons which held various positions in the management of universities or faculties were running for offices. See the statement of the ANOSR (National Association of the Students in Roman) and the list published by it: ANOSR 2016a and 2016b.

[27] The universities (or the higher education institutions) are defined as the "suppliers" of higher education and the basic entities of the higher education system (Art. 114 of the Law on education). They enjoy legal personality (as opposed to faculties or other internal partitions), according to Art. 114 (5) of the Law. They own assets and manage their financial and material resources, again as opposed to faculties, according to Art. 122 of the Law.

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The *faculties' management* has the authority to decide over most of the issues pertaining to curricula and teaching methods,[28] but within what is prescribed by the regulations issued by government authorities.[29] It might be of interest to note that it appears to be an evident trend of alignment between faculties' main options over the curricula contents, partly due to the uniformising effect of the regulation concerning the quality assurance and accreditation, and partly due to formal and informal agreements between faculties, expressing a certain corporate identity of the members of the legal academia (Baias *et al.* 2007, p. 146).[30]

In the abovementioned context, the *professors*[31] themselves are likely to have the biggest influence in practice over the teaching methods (Gorea 2012, p. 3127, Gorea and Gorea 2013, p. 174). The professors are those which choose their teaching methods, under the supervision of the faculties' departments. It is true that such choices are not without legal consequences, at least in theory. The Romanian relevant legislation declares the principle of the student centered learning process (in Art. 3, point p) and Chapter X of the Law on education), which should impact seriously on the teaching methods. The regulations concerning the quality assurance and the accreditation of the faculties require, among other, following the principle of the student centered learning (Methodology 2006, p. 29). However, as previously mentioned, recent studies concerning the Romanian higher education system seem to indicate that the legislative and institutional reforms meant to implement the Bologna process had a limited effect until now on the way the education process functions in practice. In such circumstances, it appears that, at least until now, the influence the professors have on deciding upon the teaching methods and their use has not been adequately balanced in practice by the new mechanism of quality assurance.

The *government* performs two most important functions for the legal education system: on one hand, it is the most important financial resource provider;[32] on the other, by means of accreditation of education institutions and regulation of education activity, it is the main provider of quality assessment tools in the education system.[33] In the latter function, the government acts in the interest of the society in general by assuring a certain threshold of quality of the legal education of the graduates (Rhode 2000, p. 26).

Once they graduate, the former students enter the world of *the legal professions*. The legal professions are the first professional groups that use the knowledge and

[28] According to Art. 132 (1) of the Law on education, the "faculty is the functional entity that creates and manages the curricula". According to Art. 133 (1) the department of the faculty is "the functional entity that ensures the production, the transfer and the use of knowledge in one or more specialized fields".

[29] Most importantly, the correlation between curricula and the field covered by the degree issued by the faculty is a mandatory criterion in the process of quality assurance and accreditation, according to Art. 137 (3) of the Law on education and according to the Methodology 2006, p. 26.

[30] The most important informal consortium of law faculties is the so-called *Hexagon*, composed by the public law faculties in Bucharest (University of Bucharest), Cluj-Napoca (Babes-Bolyai University), Iasi (A.I. Cuza University), Craiova, Sibiu (Lucian Blaga University) and Timisoara (West University). These faculties perceive themselves as being the elite of the law schools. For more details, see University of Bucharest n.d. This informal hierarchy proved to correspond to the only official ranking published in 2011 by the Ministry of Education conferring to each law school grades from A to E (Government of Romania 2011, p.33). These six law faculties were ranked as A and B, while all the others were C, D and E.

[31] By *professor* I mean here every person that is engaged in a teaching activity in a law faculty, irrespective of the academic degree. The Law on education does not provide a definition for *professor* and not even for *didactic personnel*, which represents the general category defined for the pre-higher education system as "the persons in the education system which are responsible for the instruction and education" (Art. 233 of the Law on education). In what the higher education system is concerned, the law merely mentions the category "didactic personnel" which performs "didactic activities" (Art. 291 of the Law on education).

[32] The best ranked law faculties are the public ones (see fn 30), therefore the public financial contribution is essential to the legal education.

[33] As previously mentioned (Section 2), the accreditation function is assured by ARACIS (Agentia Romana de Asigurare a Calitatii in Invatamantul Superior, in Romanian – Romanian Agency for Ensuring the Quality in the Higher Education), a government agency, with some degree of authority, but in reality under the institutional control of the Ministry of Education.

skills acquired by the students during their legal studies. As opposed to the students, they are not in an asymmetrical information relationship with the academia. One would expect, then, that they try to exercise a certain influence over the output of the education legal systems, through different instruments. But one problem with the legal professions is that they are quite diverse (in terms of skills and knowledge requirements for the graduates) and they are also under different institutional structures,[34] so they cannot and would not articulate a unified response to the legal education system. Some feedback is certainly given, but more in terms of favoring certain law faculties, (especially those grouped into the *Hexagon*) than in terms of vocalizing their expected outputs from the legal education system. Within the family of legal professions, there are certain divisions between categories sufficiently different in terms of requirements for the graduates. As it has been mentioned previously (section 2), the *professions of judge and prosecutor* came to enjoy a higher degree of autonomy from the others, during the last decade. They are now organized within an own profession under the name of *magistrates* and have their own governing body (the Superior Council of Magistracy) and their own education institution (the National Institute of Magistracy) whose courses must be followed by every law graduate who wants to pursue such a career.[35] The magistrates' career evolution is also relatively rigid, meaning that those embracing the profession of judge or prosecutor are relatively unlikely to leave it and enter the bar, at least until retirement from the public office of magistracy. Also in the last decade, the *lawyer profession* has diversified a lot due to market pressures. There are at least four categories of legal services providers on the market: the big law firms, the medium sized law firms, the independent lawyers and the in-house lawyers. Each of them serves different types of clients and work quite differently. Also, with the exception of independent lawyers, all the other three categories value very much the specialization of the lawyers (at least partial specialization). Such diversity of the legal services type is reflected also in the Bar Association, which appears not being able to articulate a single voice of the profession in relation to the education system (since no specific requirements for the legal education system have been formulated and supported by the Bar Association).[36] In addition, demand for legal education services comes from two more different categories that are not strictly speaking jurists: the *public servants* (the large majority of those who entered into this career field in the last decade are law graduates) and young entrepreneurs that do not intend to pursue a legal career but want to have an insight in the legal field in order to better understand legal pressures on their affairs. With such a diversified picture, it is not surprising that the legal professions, although probably the most directly affected by the quality of the legal education, do not articulate a common position towards the legal education system output.

Last, but certainly not least, *the society as a whole* is an important stakeholder in legal education. It is a commonplace that quality legal services are a public good (Farrington 2005 p. 14, Twinning 2013, p. 2), very important for the functioning of a system based on the rule of law and, as such, legal education itself is a public good. The government action in this field, through regulation, accreditation and financing processes is motivated by this very reality. Unfortunately, at least until now, the society has no other clearly audible voice in relation to the legal education system. While some NGOs advocated some reform of the higher education in general and

[34] The lawyers are organized into the Bar Association (Uniunea Națională a Barourilor din Romania, in Romanian), regulated by Law no. 51/1995. The so-called *legal advisers* (see section 2) are organized into their own professional association, according to Law no. 514/2003.

[35] The judges and prosecutors career is regulated by Law no. 303/2004 concerning the statute of the magistrates. Their rights are defended by the Superior Council of Magistracy, according to arts. 133 and 134 of the Romanian Constitution. See also section 2 concerning the access to the profession of magistrate.

[36] One might note, however, that the Bar is not formally entitled to any kind of voice in relation with the education system, as opposed, for example, with the United States case.

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others make surveys on certain characteristics of the higher education system,[37] none of these initiatives specifically concerned the field of the legal education.

4. A sketch picture of the legal education in Romania:[38] Curricula, teaching methods and outcomes: knowledge, skills, values and identity of the graduates

The curricula in the law faculties in Romania is dominated by the traditional courses of civil law, criminal law and judicial procedures (civil and criminal).[39] Out of the total of mandatory credits (ECTS) and mandatory disciplines, just the civil law courses cover more than a quarter, while private law in general (including, besides civil law, also roman law, commercial law, labor law and private international law)[40] amounts to nearly half of the total of mandatory disciplines. The courses of private law, criminal law and procedures, i.e. the traditional ones, amount to 70% of the whole mandatory curricula. More importantly, in the 3rd and 4th years of study (that is, the years when the student is considered to be more mature from the legal education point of view) only disciplines of civil law, criminal law and procedures are studied as mandatory, and such a circumstance is probably the most illustrative for the epistemic domination of these disciplines in the Romanian legal academia. Domestic public law (constitutional and administrative law) covers only around 15% of the mandatory curricula, while international and EU law together account for less than 10% of the curricula. No interdisciplinary course is mandatory and very few are optional. Moreover, the legal specializations that are quite required by the legal services market (such as taxation or urbanism) do not usually number among the mandatory disciplines. Such distribution of the courses in the curricula shows a strong focus on the traditional (somewhat in the sense of *parochial*) national legal culture, with low levels of attention for European Union law (which is not proportionate to its important presence in the practical legal life)[41] and a secondary importance assigned to the fundamental institutions of public law (Constitution and human rights).

The teaching methods generally used are the traditional lectures for big classrooms (usually more than 100 students) and seminars with smaller groups of students (between 20 and 30).[42] These methods have remained almost unchanged[43] during at least the last half century, and this not only the field of legal education, but in the higher education in general (Matei *et al.* 2015, p. 112). Some alternative methods,

[37] For example, the Romanian Academic Society (SAR) published various reports on topics such as transparency, discrimination or integrity in higher education institutions. See the last report on integrity at Mungiu-Pippidi *et al*. 2016.

[38] In this section, as throughout the paper, I treat the legal education system in general, disregarding the differences between different law faculties (that do exist, but not to an extent that would make the generalizations in this article not corresponding to reality). I am also referring only to the undergraduate legal education, since the postgraduate studies are less relevant in the lawyers' training, since their graduation is non mandatory in order to access any one of the legal professions.

[39] For more detailed information, see section 2. The percentages assigned to various courses represent the percentage of the credits assigned to each course from the total of mandatory credits.

[40] Following the new Romanian Civil Code (Law no. 287/2009), the so-called *monistic* conception of the private law was established officially, meaning that all the former branches of the private law are to be conceived as mere variations of the civil law trunk and not autonomous disciplines within the private law. Through this lens, the civil law covers half of the mandatory disciplines in the whole undergraduate legal education.

[41] Even though the rules with EU-pedigree permeate almost every field of the practical legal life. This relatively low weight assigned to EU law is also not in line with the principles of the Bologna process, which require emphasizing "the European dimension" in higher education. For legal education this means, primarily, the European Union law (Farrington 2005, pp. 12 and 34).

[42] In what the so-called *seminars* are concerned, they are meant to familiarize the students with the topics of the previous lectures by solving the so-called *school cases* which are specific for each discipline, so that a law student has never an image of a real case, with issues of both substantive and procedural law, and possibly issues from different fields of law (not to speak about the difficulties of fact finding encountered in practice).

[43] Of course, technology-driven changes like electronic presentations or the form of distribution of the study materials (see Methodology 2006, p. 29) did change, but without altering the substance of the teaching method.

especially internships, have appeared, but without exercising a real influence over the teaching process.

What kind of outcome do these curricula and teaching methods assure in terms of knowledge, skills and values of the graduates? Unfortunately we lack empirical data to provide a thorough and empirically tested answer to this question. Nevertheless, an attempt to answer it can be made based on the structure of the teaching process and taking into account what can be reasonably assumed as being the expectations of the legal professions market of jobs for graduates, in terms of required knowledge or skills.

But, before doing so, I would like to briefly cover a list of knowledge, skills and values needed in order to practice as a lawyer and only afterwards to see to what extent such requirements are met by the output of the legal education system. The Romanian literature lacks a research instrument comparable to the MacCrate Report (American Bar Association 1992, pp. 138-141)[44] which established a list of skills and values that are necessary for the good practice of lawyering (the "blueprint" of the legal profession, according to American Bar Association 2013, p. 2).[45] It is also true that the context of the Romanian legal system (and probably that of continental Europe in general) is quite different from the North-American one, in the sense that the *default image* of the graduate of a law school is not the lawyer. As it has been argued (Maxeiner 2008, pp 40 and 43), in Germany, for example, such default image is that of judge (even though less than 20% of the graduates become judges afterwards, they are trained having in mind the skills and qualities needed for a judge). In Romania, to my knowledge, such examination of the *default image* of the graduate has never been done. I would be tempted to say that here too, at least the *background* of the default image is that of a judge, but the judge as *the mouth of the law.* A good example in this sense are the *school-cases* that are used on large scale to exemplify the legal issues in a certain field (and that are usually solved in the so-called *seminars* or even in exams); they offer problems with "only one correct answer" (to be reached through analysis of the texts of law) rather than "hard cases" (where multiple legitimate options must be balanced). On the other hand, it seems too farfetched to say that the goal of the Romanian legal education would be that of training judges since, as mentioned before, the judge profession system requires a post-graduate specific training, quite intensive and taken very seriously, while the other legal professions do not require it (the lawyer trainees are already members of the Bar).

At this point, a terminological clarification might be useful. Although the Bologna process vocabulary uses the triad of educational objectives composed by knowledge, skills and competencies,[46] I will use a slightly different tripartite classification of the outcomes of the legal education, the one mentioned in literature (Rhode 2000, p. 38, Noble-Allgire 2002, p. 35) which distinguishes between knowledge, skills and values (sometimes used interchangeably with "identity"). There is an evident overlapping

[44] According to the American Bar Association 1992 (hereinafter: MacCrate Report 1992), the fundamental ten skills for lawyering are: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, recognizing and resolving ethical dilemmas; while the four fundamental values are: provision of competent representation, striving to promote justice, fairness and morality, striving to improve the profession and professional self-development.

[45] In the process of implementation of the Bologna process, strategic documents concerning the higher education in general have been issued (see section 2), but no comprehensive research on the legal education has been undertaken.

[46] Following the implementation the Bologna process in Romania, "competencies" are defined in the relevant national legislation as the "multifunctional and transferable set of knowledge, skills and attitudes" necessary for a series of purposes, among which professional development, social integration and civic participation, etc. (Art. 4 of the Law on education). According to the Bologna process conception as implemented in Romania, the first type of competencies are the so-called "professional competencies", while the latter type are the "transversal competencies" (pts. 14 and 15 of the Annex to the Law on education). The component of values/identity of the triad I use would correspond to the transversal competencies.

between the two classifications concerning the first two elements (knowledge and skills) and a partial overlapping concerning the third element, the value component being more or less corresponding to what is covered by "competencies" under the Bologna process terminology. However, I prefer to use the triad knowledge-skills-values instead the one used under the Bologna vocabulary, because, as I will argue infra, the most sensitive issue of the legal education in Romania concerns precisely the role and the position of values learning in this process, more specifically the role of values in forging the professional and civic identity of the future law graduates. Of course, a reader that is more inclined to use the terminology of the Bologna process can comfortably replace "values" with "social competencies" without altering the reception of the message in the paper.

These being said, a minimal list of knowledge and skills for practicing a legal profession in Romania would include, in my view, at least the following:

- Knowledge: theoretical legal knowledge (general but also specialized theoretical legal knowledge), practical expertise and some general knowledge (outside the legal field, but it could be also trans-disciplinary or interdisciplinary).
- Skills: legal analysis and reasoning (which includes assessing the legal effects of specific facts and assessing legal relations between rules), legal research, factual investigation, preparing and pleading a case (making the written memorials and the oral pleading), delivering a judgment. These skills I believe are necessary for every category of law practitioners, although some of them seem specific only to one category (pleading a case for lawyers, delivering a judgment for judges) but in reality each category needs to understand at least (and be able to simulate in mind) also some basic skills specific to the other categories (the lawyers need to be somewhat familiar to what means delivering a judgment in order to make a good pleading, and judges need to be familiar up to a point with making a case in order to usefully follow the pleadings in order to render the judgment). Additional skills for lawyers should be not only communication, negotiation, counseling, but also foreseeing practical potential consequences of one legal norm (a kind of legal "imagination" necessary for good consultancy services, as mentioned by Friedland 1996, p. 25), assessing non legal (social, economic effects) of a legal situation(also a skill necessary for consulting activities lawyers). Some of these skills are really necessary, while others are helpful (good communication skills are not technically necessary, but are very helpful in building a good lawyer career).

When listing what type of knowledge and what skills a law graduate must have, we implicitly have in mind some idea over what kind of lawyer or what kind of judge we want our institution to produce. And this brings us to the most evanescent element of the legal education, at least in Romania, the values and the identity. They are manifested in everything we do in legal education; still, they are usually not dealt with directly.[47] Later on, I will advance also a possible explanation for this.

If we are to assess the outcome of the legal education process in terms of knowledge, skills and values of the graduates, some remarks can be made, even without the support of empirical data. In terms of *knowledge* of the graduates, it can be said that they have a fairly good level of general theoretical knowledge, but a rather low one of specific theoretic knowledge and practical expertise. Here the problem lies with

[47] This is not due to the lack of legislative or regulatory provisions. The Law on education already received the concept of social competences of the Bologna process (art. 2 and 4 of the Law on education, which emphasise, among others, the need for the education process to provide the basis for "active citizenship", i.e. the social dimension of the learning outcomes). Equally, some of the criteria to assess the quality of the education process include this dimension (Ciolan *et al.* 2015, p. 27). Nonetheless, as mentioned before (section 2) it appears that the objectives of such legislative and administrative reforms have not been properly "internalized" by the higher education institutions.

what the system intends by general theoretic knowledge, which is basically conceived as the traditionally dominant disciplines of substantial civil law and criminal law. In terms of *skills*, the only skill which is well developed during the law school years is the legal analysis (with the abovementioned limitations of what is meant by that). Legal research is also a fairly developed skill during the legal education years. Some attention is paid to skills like making a case and delivering a judgment, but such efforts are not coordinated, they are somewhat developed indirectly in some of the substance knowledge disciplines classes, as it can happen (Noble-Allgire 2002, p. 36 and *passim*). This is why the development of such skills, when it exists, is rather a side-product of the legal education process. Some other skills, like factual investigation, counseling, communication, negotiation, interdisciplinary approach, etc. are not even thought to be necessary to be developed by the legal education. The qualities of some lawyers with regard to these skills are completely dependent upon pre-law school or post-law school experiences or upon personal experiences not related to the law school. As for the *values* of the graduates, or their *identity*, they are not dealt with directly by the legal educators. Some values and a certain identity are indirectly shaped during the law school years, but no reflection over these is made in academia. The ethics of the different legal professions is dealt with directly by their respective corporate bodies (Superior Council of Magistracy for judges and prosecutors, the Bar Association for lawyers).[48] The Romanian law school refrains from entering too deep into this field. What is probably the background conviction sustaining such attitude is the belief that values and identities are shaped in time by the practice of the professions themselves and, in such a case, the law school cannot have a role to play in this process, if not only incidentally, by teaching some basics of these professions, as it does.

5. Whose stakeholders goals (expectations) are most matched by the outcomes. And an attempted explanation

I will first briefly look at what are the expectations that we can legitimately assign to the stakeholders in the legal education.[49] The goals assigned take into account rather some general characteristics of the categories, then individual preferences of each member of that category. This is why such goals will be necessarily more schematic and less rich than those in real life.

Students' goals in pursuing the legal education are obtaining a diploma (short-term goal) and acquiring what is necessary in terms of knowledge, skills, etc. in order to be good legal professionals. As it has been pointed out (Rhode 2000, p. 25), the two goals are not necessarily (or always) convergent, and that is one of the reasons why a free market of legal education would be inefficient for the society. Students' satisfaction[50] is hard to evaluate with respect to their expectations prior to attending law school because, in the absence of pre-university classes on law and legal world, it is reasonable to infer that new students either have no expectations, or their expectations are not necessarily realistic. After entering the legal professions, it appears that graduates are rather unsatisfied with the education they received in university in general (Deloitte 2013), this applying also to law schools. This graduates' attitude seems to be in line with tendencies throughout the world (American Bar Association 1992).

The academic institutions have also two types of goals. One is the short-termed goal of attracting more students in order to ensure the financing (Vîiu and Miroiu 2015,

[48] E.g. the Deontological Code of judges and prosecutors approved by the Decision no. 328/2005 of the Supreme Council of Magistracy while the lawyers adopted the Code of Conduct for lawyers in the European Union.

[49] An empirical research for the field of legal education is lacking here too, which would provide empirically tested data.

[50] Although a minimum degree of satisfaction is probably expressed because one of the criteria for assessing the quality of education is that at least 50% of the students positively appreciate the learning environment provided by the higher education institution (Methodology 2006, p. 29).

pp. 173 and 181), needed to maintain current institutional structure. The second is the improvement of the quality of the students and graduates in order to acquire and maintain prestige (medium and long-term goal). Also in this case, the two main goals are not convergent. The professors' goal, in what the administrative side is concerned, can be reasonably assumed to be that of maintaining their jobs and building an academic career. Of course, many of them will also have beliefs and preferences that would determine goals that cannot be subsumed under the ones mentioned but, due to lack of empirical studies, I must ignore this important element of professors' expectations. The legal professions' goal should be the most evident: being in presence of graduates that are ready to be employed and perform the work required (meaning they should need as little extra training from the employer as possible). This goal is a short-termed one, because the legal profession will assure the further (continuous) legal training for the law graduates. In what society is concerned, given the importance of the legal services in a society based on the rule of law, it is quite obvious that it is in the society's interest to have well trained lawyers, acting according to the most important general values of the society. This goal is the most far reaching and on the longest term than all the others mentioned above.

To what extent are these goals met by the outcomes of the legal education process in terms of knowledge, skills and values of the graduates? In what the knowledge of graduates is concerned, the good general theoretical knowledge is probably satisfactory for all the stakeholders.[51] The graduates feel probably confident that such stock of knowledge is sufficient for them in the future legal practice (although, as it could be seen, probably such confidence disappears early after beginning the practice). The academic institutions and the professors, due to tradition, are quite experienced in delivering this kind of knowledge and, because of that, they are probably satisfied with the way they are doing this job. The legal professions must be relatively satisfied with having a basis over which building the future capabilities of the newly employed graduates. The only possible problem here would be with the society's needs for lawyers devoted to the rule of law and constitutional democracy values and the fact that the general theoretical knowledge does not satisfactorily incorporate them. But since society's only well audible voice is that of the governmental institutions, their inertia is probably stronger than possible pressures towards changing what is thought to be the minimum content of the general legal theoretical knowledge.[52]

The relatively low level of specific knowledge and practical expertise is likely to constitute a problem for some of the graduates that are more concerned with their future practical career (but they are able to overcome this difficulty by individual practice during law school), while the great majority is probably not sufficiently informed in order to have strong concerns about it. The academic institutions and the professors are probably satisfied with that, both because this is the traditional way in which legal education was made and because of higher costs in terms of financial, time and human resources that would be needed to reform the system in order to better integrate the specific legal knowledge and the practical expertise. The only stakeholder that should be neatly dissatisfied with this state of affairs is the category of the legal professions. However, even here, things are not uniform. For the judges and prosecutors, it is likely that a good specialization is not necessarily conceived to be needed, because they start their careers as *generalists* and specialization follows only after some years of practice. In the realm of lawyers practice, the independent lawyers often act as generalists, so they would not value much a specialization in a

[51] This is also consistent with the idea that a general legal education has the advantage of maximizing the chances that what is learned will be useful (because of the "dilemma of practical training" – the more practical it becomes, the less general application it has - Maxeiner 2008, p. 41).

[52] To be fair, the activity of the quality assurance body (ARACIS) is visible but, for the reasons mentioned *supra*, it seems not to have influenced decisively the real process of teaching and learning, at least until now.

field where they will probably not work. Only the medium-sized and the big law firms would probably appreciate much more specialization, as well as the big companies that usually work with in-house lawyers. The practical expertise of the graduates would be, instead, welcomed, by every category of the legal professions.

In what skills are concerned, it is difficult to say if at least one stakeholder should be satisfied with the present state of affairs. Graduates do probably feel that they are not enough trained on skills, but they possibly didn't expect this from the very beginning. Academic institutions and professors do realize that graduates' skills are not trained enough but, again, this is the way things were always done. Again, the legal professions should be the ones to voice their dissatisfaction with the fact that the graduates enter the legal jobs market without an appropriate skills training. According to the studies made (Deloitte 2013), such dissatisfaction can be deemed to exist. Still, if one would expect a stronger involvement of the legal professions in the legal education process, they would be disappointed, because such a thing did not occur (at least not on a scale that would make it relevant for the whole system – some partnerships between law firms and law faculties are made, but mainly in the field of research, or some specialized post-graduate studies or opportunities for recruiting the best students).

There are no indications that any of the stakeholders are seriously worried by what I have labeled as the insufficient concern for values in legal education. The students seem to take this for granted. Academic institutions and professors, for the reasons explained above, feel they should not enter too deeply into this field. Legal professions tend to have a narrow understanding of the values as referring only to the professional ethics, which are covered by their own field of competence, so they don't think they need some support from the legal education system. Here again, the society is almost voiceless. The concern for the absence of values in the curricula should come exactly from this direction, but until now strong signals do not seem to have been sent to the legal education system.

When comparing the above made presentation with the reasonably assumed expectations of the stakeholders, one can say that the present state of affairs seems to meet mostly the goals of the academic institutions and of the professors, while it seems to fall short of expectations of the students,[53] legal professions and society as a whole, at least with regard to some aspects of it. Such a situation is not necessarily surprising, since the inertia of the legal education process and system seems to be a rather universal phenomenon (American Bar Association 2013, p. 7). Moreover, it seems (Richardson 2011, pp. 84-85) that it is a normal tendency of every bureaucracy to maintain the *status quo*, which in this case is the focus on general theoretical knowledge (curricula tends to maintain the disciplines where the institution have trained professors, and professors tend to keep the disciplines and styles of teaching in order to maintain their jobs with minimum effort).

What is rather surprising is the lack of reaction from the other stakeholders (the students, those external to the system and the society itself).[54] I will attempt an explanation of this passivity. Concerning the outcome of legal education in terms of knowledge (i.e. good general theoretic knowledge, but low level of specialized theoretic knowledge and practical expertise) it seems to be a consensus between all the stakeholders that undergraduate legal education's function is to equip law graduates with the *general theoretic knowledge that is perceived as a kind of common language of the profession*. This corpus of general theoretic knowledge is mainly

[53] One of the few empirical research made (for the field of higher education in general, not specifically for the legal education) seems to confirm the hypothesis advanced here (Matei *et al.* 2015, p. 120, according to which "in only 15 % of universities the student organisations consider that the academic staff have adapted to the needs of students").

[54] Despite the reception in the domestic regulations of the criterion of regular assessments of student's perception about the education environment (Methodology 2006, p. 29), articulated requests have not been expressed.

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composed of the traditional civil and criminal law disciplines. While legal professions might be favored by a deeper familiarization of students with specific legal knowledge, the costs of intervening into the legal education systems through private initiatives (such as partnerships with education institutions) or of aggregating for a common pressure over the system are probably perceived as too high. Consequently, as it was mentioned before, the professional stakeholders seem to prefer to develop the other types of knowledge (and skills) within different structures, *after graduation*. In the magistracy system, this result is proved to be attained through the National Institute of Magistracy (which is both easier to control and easier to reform that the independent universities). In the legal practice field, the law firms and the independent lawyers prefer to train graduates within their own structures, with some training also provided by the Bar Association.

In the field of skills, although studies (Deloitte 2013, Gorea *et al.* 2010, p. 2927) indicate a general perception that graduates are not well enough equipped with the skills necessary for practicing a legal profession, several factors maintain the present *status quo*. On one hand, in order to provide better skills training, the legal education institutions would require a thorough reform that is probably still perceived as very costly (change of curricula, change of teaching methods, additional training or even replacement of teachers, more financial resources for different space and tools requirements). Absent external pressures, there is no incentive to proceed to such a reform.[55] The other stakeholders, for the reasons shown above, prefer to substitute the training of skills that might be provided by the law schools with their own, easier to control and with more contained costs and more secure benefits. In addition, the fact that there is a general perception that different skills are needed for different legal professions[56] (certain skills for lawyers, others for judges, others for prosecutors and others for public servants) impedes a general aggregation of all the agents in the legal professions field into a common front meant to pressure the government and the law schools to change the *status quo*.

In the fields of values, the situation seems the most problematic, since here almost no need for change was openly expressed by any of the stakeholders. As mentioned before, there is a general feeling shared, not only by the academia, but by the whole world of the legal practice, that there is no special need for this kind of education. Of course, the ethics of the different legal professions is perceived as relatively important, but only in a sequential way (i.e. only within the specific professional body – Bar, magistrates, etc.). There is no comprehensive set of values deemed as specific to everyone that works in the field of law, besides maybe a certain identity given by the unique and quite homogenous way of *thinking like a lawyer* or *working with law*. This, I believe, is closely linked to the fact that the general language of all jurists is believed to be the traditional civil law (that functions in reality also as a kind of general legal theory). It is my perception that the view generally shared in the law schools is that the essence of legal education is learning the specific legal language which, in Romania, is equated to the language of the civil (private) law. The construction of the *legal way of thinking* is made around the concepts of rights, duties, legal acts, legal relations, etc., *as they function within the field of the private law*. The complex relations, the organization of human activity through institutions or otherwise, the social and political power, all elements that permeate the field rather dealt with by the public law, can hardly be coped with the instruments of the private law. But understanding how individuals and the society should deal with such elements is part of what makes a good citizen. Therefore, it has be said (Gorea *et al.* 2010, pp. 2929-2931) that the law graduates are not specifically educated by the law

[55] The legislative pressure in the process of implementing the Bologna principles was solved by formally introducing the procedures for quality assessment, but, as previously emphasized in section 2, studies made for the higher education in general show that such objectives were not *internalized*.

[56] In contrast with the US system, where the lawyer is seen as the typical product of the law school (Maxeiner 2008, p. 38) and, for this reason, the American Bar Association is deeply involved in the legal education system.

school to become also good citizens (or, better, good lawyer-citizens). And this despite the fact that the Law on education sets among the purposes of the education process that of internalizing "the system of values that allow (…) the active citizenship participation in the society" (art. 2, par. 3 of the Law on education). Although the importance of the rule of law in a liberal democratic society is well accepted, lawyers themselves will hardly be able to play an important and benefic social role if their general formation (their communication language and their professional *weltanschauung*) is built around the private law and the simple and schematic social relations for which private law was developed.

I think that the explanation for both phenomena (i.e. the insufficient accent on the values law graduates should share and the perception that *thinking like a (private) lawyer* is enough to create a professional identity) is to be found in a combination between the tradition of the 19th Century legal positivism and the particular status of the civil law in Romania during the communist regime.

Modern Romanian civil law (at least in the provinces of Wallachia and Moldavia, which became the base for the national Romanian State) was basically born with the adoption of the Civil Code of 1865, a pastiche of the French Code Napoleon of 1804. The adoption of the Code was made possible by the existence at the time of an entire generation of jurists educated in France and very fond of the prestigious French legal positivism of the 19th Century. Both the application of the Code during the following decades and the legal education in the same period was made by the same generation of lawyers. Thus, as I had the opportunity to argue elsewhere (Bojin 2013, p. 378), a tradition was born and was then perpetuated until the 2nd World War. In a way, the legal positivist doctrine of the 19th Century was already value-free, without having, of course, the theoretical foundation of the positivist social sciences provided some decades later by Max Weber (1949). But this axiological neutrality was only apparent, because the values protected by the Civil code were generally accepted and not subject to discussion or challenge (the values of the bourgeois liberalism of the beginning of the 19th Century). With these values unchallenged, the enterprise of legal practice might have seemed a purely technical job. Thus, it seems likely that the pride and identity of the category of legal professionals was based on the good mastering of the techniques and instruments for the application and interpretation of the law. Romanian legal culture (as the European one) didn't experience before the 2nd World War a current of thought similar to the American legal realism, that would have challenged the dominant positivism.

On the other hand, during the period of the communist regime (1946-1989), while the public law was completely subdued and invaded by the only ideology accepted by the State, the civil law was somewhat autonomous and had kept its own pre-communist logic and structure. One could say it was non-politicised.[57] In the jurists' milieu, this became the reason for a different specific sense of pride and identity for the civil lawyers (or, at least, the civil law professors): they saw themselves as the true keepers of the pre-communist legal spirit, while the public lawyers were merely tools of the political regime. The *value-free*-ness of the civil law made it, paradoxically, a kind of depository of the liberal values that were repressed by the regime. These, I believe, are the historical explanations of both the intellectual supremacy of the civil law in the realm of Romanian legal culture and of the relatively generalized lack of need for debate over the values of the legal practice and legal environment and whether these values should include or should be dominated by concepts that are dealt with by public law, such as the human rights, the rule of law, the checks and balances, etc..

But things have changed after 1990. While civil law appeared to have qualities that made it appropriate for *resistance*, the same qualities cannot be used to promote

[57] This view is consistent with the so-called *doctrinal approach to law*, according to which because is value-free, law is more resistant to ideologies than other subjects (Cownie 2004, p. 49).

social and political change. During the contemporary period, it is for the public lawyers to promote the change in Romanian society. Not only the birth of the constitutional democracy made the Constitution the most important legal instrument, but Romania is now a member of the European Union and much of the rules applying in different fields are of EU origin, which means that their adequate application requires solid knowledge of international and supranational law.[58] To put it more simply, if you use civil law as a general legal theory (as it still happens in Romania) it is very difficult to have good public lawyers and especially lawyers that operate at ease with applicable norms which come from different legal systems (domestic system, international system, EU system). Moreover, the essence of a constitutional democracy is the protection of some values and the debate over other values. The legal realm cannot stay apart from both these phenomena, it cannot pretend that values do not exist for it. This is why the current state of affairs is not satisfactory for the Romanian society.

And, finally, independently from the previous discussion on the historical roots of the current state of affairs, a question raises anyway: "Should the Romanian society ask itself: 'What kind of lawyers do we want to have?'". If the answer to this question is "Yes", then it appears evident that shaping the *kind of lawyer* cannot be left to legal practices alone and that the legal education system must be involved in shaping this "kind of lawyer" by transmitting values to the students during the legal education process.

6. Alternative methods and their challenges

What can be done in order to change the current focus of the legal education on general theoretic knowledge (understood as good mastering of the traditional civil and criminal law) and on classic teaching methods (shaped, in a way, by the dominance of traditional law fields in curricula)? In order to better train skills, alternative methods already exist and they, timidly, appeared also in Romania. Moot-courts became very popular lately with the students, but they are still extra-curricular activities. Internships are part of the curricula, but, as previously mentioned, in practice, students are not really sufficiently introduced in the work area in order to fairly understand the processes to which they assist. Some legal clinic programs were developed by some of the law schools in partnerships with NGO's, but they are not generalized in all universities and are not continuous in those faculties that experienced it. Also legal clinic programs are in most cases extra-curricular.

Each of these alternative methods can promote better skills training, some specialization of knowledge and also made aware the students on the importance of values in their future activity as legal professionals. It is quite clear that moot-courts develop good litigation skills, but also fact finding and communication skills. Since they are organized in rather specialized fields, such as international law, EU law, investment law, human rights, etc., they also promote fairly greater specialization than the curricula does. As it has been pointed out (Coper 2008, p. 234, Maxeiner 2008, p. 38), internships are essential to the development of professional skills (replacing, up to a point, the old apprenticeship type of legal education), but it was also emphasized (Rhode 2000, pp. 37-38) that they are important, as well, for fostering the responsibility and the values of practicing a legal profession (by putting students in contact with real problems, and their consequences on real human individuals). The legal clinic activities gather the advantages of moot-courts and internships: they develop skills, special knowledge and responsibility.

Each of these three methods put important challenges for the Romanian law schools. No alternative method comes without costs (Thompson 2009, p. 29, Katz 2013, p.

[58] According to a survey made in 2013, "90% of Romanian law students consider EU legal training utmost important or very important for their future careers. However, 72% of them admit not to be prepared to invoke EU law provisions in a legal case, indicating that Romanian law schools fail to provide enough EU legal practical knowledge" (Gorea and Gorea 2013, p. 190).

47). They put pressure on the curricula since all three of them require a large amount of time from the part of the students. They raise human resources problems, because they require either additional personnel (which is already difficult in the actual crisis situation), or increasing the current workload of the professors (which is also non tenable, in general). Moot-courts and legal clinic require extra financial resources, both for paying the persons involved in such activities as trainers or supervisors and for ensuring the proper spaces for such activities to take place. Internships require more availability from the part of the partners (courts, law offices, etc.) which means actually externalizing costs to these institutions without an obvious benefit for them. For these reasons, among others, it is not very likely that the current situation will radically change in the near future.

7. Conclusions

As it has been seen, the law schools' curricula in Romania is focused on the traditional disciplines (and on the traditional teaching methods), with a particular accent put on civil law, conceived as a kind of general theory of law and functioning as the common language of the whole legal community. It appears that insufficient importance is attached to skills training and even less attention to values (and identity) to be transmitted to students during the legal education process. This situation may be said to be a continuation of how the system worked during the communist regime period, despite the post 1989 reforms (which encountered serious difficulties, according to Curaj *et al.* 2015, pp. 2-7) and despite the process of implementation of the Bologna system.

This picture shows us that, in some parts of the world, the dichotomy of *Pericles and the plumber*[59] does not exhaust the options concerning the ways legal education can take. The opposition between professional and liberal legal education (that is so much discussed in some countries, as it has been pointed out by authors, such as Cownie 2004, pp. 30 and following and 75 and following, Boon and Webb 2008, p. 116, Coper 2008, p. 237, Tamanaha 2012, pp. 54-55) seems inadequate to describe the Romanian legal education system, which is not enough concerned with the skills training in order to be able to produce *a plumber* but, equally, not concerned with the values that a jurist must defend, in order to produce some *Pericles*. The product of the Romanian legal system is rather something like *the lowest common denominator* between the plumber and Pericles: the graduate possesses the common language of the profession (based on the civil law vocabulary) and it's up to him, to his future, his career, his fortune, etc. to become a good or a bad plumber, a Pericles or even to not practice law, in any of its forms.

If a comprehensive legal education would, in abstract, include knowledge, skills and values (*K+S+V*), real legal education system may vary in terms of complexity from the most comprehensive (*K+S+V)* to those focusing only on two elements of the triad (either *K+S*, or *K+V*, accepting that knowledge is necessary in any case, as underlined by Cownie 2004, pp. 55-56) down to those focusing only on knowledge (K legal education systems).

It is not realistic to expect a revolution that would quickly transform the Romanian legal education system from a *K* type into a *K+S+V* type. But since some stakeholders are inclined to ask either more skills training or more value instill, some integrative approach could be adopted. As it has been shown (Noble-Allgir 2002, p. 36, Coper 2008, p. 237), there is no irreducible opposition between *K*-based education, *S*-based education and *V*-based education. Skills can be trained together with substance knowledge, by using role-playing techniques (as suggested by Friedland 1996, p. 30) when teaching substance disciplines. Moreover, confronting the students with real

[59] The dichotomy between the lawyer as master of specialized knowledge (the plumber) and the lawyer as a person with a breadth perspective and capable of critical thought (Pericles) was made famous by the article of William Twinning (1967), *Pericles and the plumber: prolegomena to a working theory for lawyer education.*

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life cases during legal clinic and internships would raise their awareness over the responsibilities of the profession and, as such, teach them some values related to the practice of law.

Finally, a shift of the legal education concerning its current main focus on civil law as the smallest common denominator of jurists (and, as such, as common language of the legal community and as depository of its values) towards some conception of the basic identity of jurists including values as human rights, constitutional democracy and rule of law must be preceded by a shift of conception of the whole world of Romanian legal practitioners. Such change should be asked for and advocated by the civil society and should be supported by the State. Time will show us if and when this change will occur.

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