

## **The Continuous professional training program of lawyers during January the 1st, 2008 – January the 1st, 2011**

### **I. OBJECTIVES. PURPOSE. INVOLVED INSTITUTIONAL AUTHORITIES.**

**a.** The lawyer has the obligation to ensure the highest level of professional level training and to maintain the level of his professional competencies, to promote the ideals and the deontological norms related to the lawyer profession with the purpose of complying with the liabilities implied by this profession.

In this respect, the lawyer has to accomplish his/her professional studies by updating his/her knowledge related to the fields in which the lawyer practices the profession, following a continuous training in the professional fields of interest.

The initial training and the continuous formation of the lawyer is founded on the use of the knowledge acquired during university, and during the activity related to studying the files, drawing up legal deeds, so that the following general objectives be complied with:

1. acquiring a judicial culture of a general nature derived from a thorough training;
2. acquiring and improving the professional aptitudes necessary to the practice of the lawyer's profession, in relation with the European legal requirements;
3. acquiring the skills for drawing up the materials used by a lawyer in the criminal trial;
4. to use, within the legal actions related activities, the logical-legal arguments based on the interpretation of the norms of material and procedural law;
5. providing a specialized technical defence throughout the knowledge of the jurisprudence of the High Court of Cassation and Justice, of The Constitutional Court and the European Court of Human Rights;
6. knowing the criminal juridical doctrine within the European Community space, by creating a European, international opening;
7. knowing the European judicial institutions from the perspective of EUROJUST and of the European mandate;
8. knowing the specific jurisdictional procedures applicable in the European Union, the norms incident in front of the European Court of Human Rights, the European Court of Justice, and the Court of First Instance;
9. knowing the forms of the legal advice specific to the procedures in front of the European Court of Human Rights, the European Court of Justice, and the Court of First Instance.

**b.** The continuous training of lawyers is necessary given the current law inflation context, the occurrence or development of new law domains, of a rather non-unitary jurisprudence practice, as well as of the trend of the groups of lawyers to specialize in certain fields of activity.

The training program (Continuous training) addresses to the qualified (definitive) lawyers and mainly aims at the growing need for communicating about theoretical and practical issues rising from the activities carried on by this professional group.

**c.** the continuous education of the lawyers is following two directions: the professional training of the groups of lawyers and the training of the lecturers of the National Institute for the Training and the Improvement of Lawyers and also the training of the lecturers from the Course Conference organized by the bars in order to increase the number of the specialized lecturers in initial and continuing training at central and decentralized level.

**d.** The lawyers' improvement program shall be applied based on the co-operation between the National Association of the Romanian Bars, the university education

institutions, the training institutions from other professions in the legal field (the National Institute of Magistracy).

All forms of improvement shall be organized on fields of interest depending on the lawyers' specialization tendency.

e. The coordination of the infrastructure necessary to achieve the continuous professional education program shall be accomplished through the National Institute for Training and the Improvement of Lawyers (*hereinafter called INPPA*).

The immediate purpose of INPPA is to achieve the project and the lawyers' professional continuous education by organizing the forms of professional continuous education in several centres all over the country, thus facilitating the lawyers' access to the improvement program.

The co-operation actions shall be deemed as priority by all bars within the same appeal court jurisdiction. Therefore in the county capital city of the appeal courts attached to the bars having their offices within their jurisdiction, should function Regional Centres of continuous training and improvement of the lawyers' training, centres that are to be coordinated by the councils of the bars in co-operation with INPPA and the Professional Continuous Training Department of the National Association of the Romanian Bars.

Depending on the degree of achievement of a program of co-operation regarding the improvement of the professional education of lawyers together with the judges, depending on the compatibility of the themes accomplished throughout the form of continuous education, the lawyer will be able to participate to the continuous training activities organized by the Superior Council of Magistracy through the National Institute of Magistracy, while the judges can participate at continuous training activities organized by the bars throughout the Regional Centres of continuous training and improvement of the lawyers' training, coordinated by the bars' councils in co-operation with INPPA.

## II. MEANS FOR ACHIEVING THE CONTINUOUS PROFESSIONAL TRAINING

a. Lawyers' improvement shall be accomplished by organizing **conferences, workshops and discussions** over the issues included in the improvement program.

Separately, specific forms of educations shall be initiated in order to apply **the improvement programs** for the lecturers of the conference courses and the training of the INPPA lecturers.

The objective of conferences and thematic debates is represented by the deepening of theoretical and practical knowledge concerning the law institutions and their correct application, by fixing the general framework of institutions, in comparison with the juridical doctrine and the case law of the High Court of Cassation and Justice, the Constitutional Court and the European Court of Human Rights.

In order to set the general work frame of such institutions, a comparative analysis of such new institutions may be accomplished.

The debates at the seminars carried on as workshops imply studying files, simulating cases, drawing up several reports on the evolution of the related judicial practice, in relation with certain legal issues settled in practice in a different manner, drawing up case related documentation.

The training shall be of a specialized nature, with a preponderantly practical application, by using the theoretical knowledge in order to stimulate and form the professional competencies, the capacity of interpreting the legal norms, the development of the analysis and synthesis capacity, the acquirement of the technical-judicial terminology in order to correctly using them.

The discussions lay on interactive work methods, excluding the theoretical teaching method, by commitment and involvement of the lawyer into the profession related debates.

b. Each lawyer can choose within a 2-year period to participate to at least 3 seminars, conferences, debates, organized at the Regional Centre of the bar he/she is registered with, in the fields of he/she majored in or intends to acquire additional information.

The records of the lawyer' participation to the continuous professional training activities and the organization of the participation shall be accomplished by the bars.

The regional centres shall certify the participation of the lawyers to the continuous professional training activities.

The evidence of the lawyers' participation to the continuous professional training activities organized by the bars shall constitute the basis for issuing the Certification of attesting the professional title of lawyer, to be drawn regularly, (once every 2 years) by each bar.

d. Beside the above-mentioned traditional means of improvement, INPPA shall use non-conventional means as notifying on INPPA's website about the judicial issues of interest for the lawyers' activities or editing the INPPA magazine.

### **III. GUIDING PROGRAMME ON THE CONTINUOUS PROFESSIONAL TRAINING BETWEEN 2008 – 2009 (THEMES).**

#### **A. CIVIL LAW / CIVIL PROCEDURAL LAW.**

##### **1. Real rights.**

Acquiring the property right and the by means of usucapion.

Acquiring the property right and the by means of accession. Artificial real estate accession;

Superficies right;

Acquiring the property right over the land afferent to the housing acquired according to article 9 of Law no. 112/1995;

The public and private property right of the state and of the administrative-territorial units.

Retrocession of the buildings and lands in public and private ownership of the state and of the administrative-territorial units;

##### **2. Means of defending the ownership rights with special application for the buildings abusively taken into possession.**

The judicial regime of the legal claiming actions in terms of the relation established between the common law – reparatory special laws (Law no. 112/1995, Law no. 10/2001);

The legal regime of extending the rent agreements (faculty of the lessee or obligation of the lender) on the grounds of article 10, 11 and 14 of GEO no. 40/1999;

The legal regime of the disposition on restitution in kind, according to the Law no. 10/2001 (action for the disposition annulment);

Compensation by equivalent. The legal regime of the compensations offered by equivalent. The legal regime of compensations granted on the ground of Law no. 10/2001, as amended by Law no. 247/2005. The limits of the judicial control. The judicial law capacity of the Central Commission for Setting the Compensations;

The evidence of the ownership right in the context of the Law no. 10/2001 (for instance, the strength of the rules of evidence of the witnesses' declarations, in the absence of a proving written document);

The legal nature of the terms regulated under Law no. 10/2001;

The incidence of the Decision ICCJ – SU no. IX/2006 on the competence for settlement, in first instance, of the requests having as object to compel the notified legal entity, owner of the building, to issue a decision or a grounded disposition for restitution in kind or granting compensations in accordance with Law no. 10/2001;

Practical aspects regarding the delivery and reception of the restituted buildings in kind based on decision/grounded disposition issued based on Law 10/2001; necessary formalities.

### **3. Regulating the real estate advertising.**

The action by means of rectification and the actions for amending the land book. Distinctions;

The legal regime of registration with the land book. Remedy at law. The judicial law capacity of the Cadastre Real Estate Advertising Office. The state of the ownership rights as evidenced in the titles issued on the ground of the ownership law.

### **4. Issues Raised by the application of the real estate law.**

The juridical regime of the request of the former owner of reinstating the ownership on the former emplacement;

Settling the litigations appeared consequent to the application of the Law no. 18/1991, amended by the Title V of Law no. 247/2005. The material competence of the courts (especially regarding the remedy at law). The limits of the judicial control. Compelling the commission of reinstating the possession;

The juridical regime of the action requesting the amendment, annulment or assessing the ownership titles as void;

The juridical regime of the compensations granted in case the restitution in kind is not possible;

### **5. Issues regarding the procedure in front of the courts of first instance.**

The consequences of failure to pass a decision regarding the incidental request;

Conditions of admissibility of the finding action;

The judicial regime of relating the request with other civil cases (for instance, partition with action for annulment of the ownership title);

Procedural exceptions and exception of the settled case power;

Mending, clarifying and amending the decision;

### **6. The issues regarding the judicial law quality and the capacity.**

The judicial law capacity in case of different types of actions.

The judicial law quality and capacity in different matters (for instance: administrative court).

The legal regime of the requests for voluntary and forced intervention in the civil litigations.

### **7. Analysis of the procedure deeds of the court in order to promote and support the remedy at law.**

Study of the flaw that may occur in case of legal decisions and the means of invoking such.

The aspect of correctly opting for the right procedural way for invoking the procedural flaws of a legal decision.

### **8. The procedure in case of administrating the evidences by the lawyers.**

### **9. Enforcement of judgment.**

Enforceable titles others than the legal decision.

The appeal to the enforcement (material competence, field of application).  
Suspension of the enforcement of judgment;  
Legal causes of temporization of the enforcement of judgment.  
Invoking the right of retention, legal aspects.

## **10. Particularities of the procedure in front of the administrative courts.**

### **B. Criminal Law / Criminal Judicial Law**

#### **Criminal Law.**

##### *A. General Part*

1. The cases eliminating the criminal nature of a deed: general aspects, lack of the social danger, self defence, state of necessity, physical constraint, fortuitous case, irresponsibility, drunk state, underage defendant, moral constraint, and mistrial;
2. Criminal responsibility of the legal entity: recur in case of legal entities, complex of the offences made by the legal entity and the punishment applicable to that legal entity;
3. Customization of the punishment: circumstances, contingent suspension of executing the punishment, suspension of execution of the punishment under surveillance and executing the punishment at the work place;
4. Legal responsibility of the underage: the punishments applicable to the underage and the education actions;
5. the causes eliminating the criminal responsibility or the consequences of the conviction: amnesty, prescription, lack of prior complaint, amiably settling the case and rehabilitation;

##### *B. Special Part*

1. Offences against individual (murder, first-degree murder, involuntary manslaughter, violence, injuries or bodily injuries causing death, involuntary bodily injuries, unlawful deprivation of freedom, house violation and blackmail);
2. Offences against the patrimony (burglary, aggravated burglary, burglary as provided under article 210 Criminal Law, robbery, breach of trust, deception, dilapidation, unlawful administration, damage, interventions against ownership and conceal);
3. Work related offences (abuse of office against personal interests, abuse of office by limiting the rights, abuse of office against public interests, negligence, abusive behaviour, bribery and taking bribe, accepting undue benefits, traffic of influence);
4. Forgery related offence (falsification of coins or other values, falsification of stamps, marks or other transportation tickets, possession of instruments in order to falsify values, forged material for forgery in official deeds, fraudulently signing documents, use of forgery, document forgery, statement forgery and identity forgery);
5. Offences provided under Law no. 241/2005 for preventing and fighting against the fiscal tax dodging;
6. Offences provided under Law no. 78/2000 for preventing, finding and sanctioning the corruption actions;
7. Offences provided under the Law on organization and exercising the lawyer profession.

#### **Criminal Procedural Law.**

1. The litigant parties of a criminal case. The rights and obligations of the defense in the criminal case in relation with the part assisting it:

- 1.1. knowing the way the judicial authorities are organized and work under the Judicial Court Organization and Function Regulations, The Regulations for internal order of the packaged, organization and way of functioning of the criminal investigation authorities;
- 1.2. the rights of the defence of the defendant in the stage consequent to the legal investigation;
- 1.3. inconsistencies between the legal assistance and the legal representation in the criminal case;
- 1.4. exercising the right of the defence in front of the legal authorities; the obligations of the defence in relation with the legal authorities.

2. Means of evidence in the criminal case. The rights and the obligations of the defence to administration of the evidence in the criminal case:

- 2.1. documents – rules of evidence, substantive and formal issues;
- 2.2. statements of the litigant parties and the witnesses in the criminal case; knowing the issues related to the criminal judicial law and the judicial tactics incident to the hearings;
- 2.3. action limitations for the investigator under cover; admissibility of the statements of the investigators under cover as evidence in the criminal case;
- 2.4. convicting the accused only based on secret evidence;
- 2.5. the possibility of the court to know the real identity of the investigator under cover, administration of the statement of the investigator under cover in the criminal case;
- 2.6. rights and obligations of the defence at the hearings of the party legally assisting;
- 2.7. the rights and the obligations of the defence in the reconstitution of the procedure and the investigation on spot.

3. Criminal expertise. The expertise of the audio/video records, the expertise of the communication means, the expertise of technical calculation, expertise of the genetic profile – from Romanian and European perspective:

- 3.1. deciding, the objectives, drawing up the report of criminal expertise;
  - 3.2. assessment of the expertise report by formal and subject checking;
  - 3.3. the addition to the expertise report; the clarifications of the experts having drawn up the expertise; conceiving new expertise;
4. The tactics for madding the records, interceptions and search:
- 4.1. limits of the competences of the legal authorities for decision and their achievement;
  - 4.2. the judicial case deeds deciding such activities;
  - 4.3. the judicial case deeds based on which the results of such activities are registered;
  - 4.4 particularities related to the search at the professional office of the lawyer;
5. Judicial case actions decided when settling the criminal case:
- 5.1. limits of the competencies of the legal authorities in order to take, replace, revoke, and lawfully cease the judicial case actions with special notification of the preventive actions;
  - 5.2. submitting the documents for criminal prosecution; the rights and the obligation of the defence at this stage of the judicial case; formulating requests for defending the defendant or the convicted;
  - 5.3. the insuring actions in the criminal legal procedures – the competencies of the judicial authorities in decreeing the insuring actions, challenging such actions.

6. The complaint against the solutions for non-commencing legal actions – article 278<sup>1</sup> Criminal Procedural Code:
  - 6.1. the persons able to submit a complaint;
  - 6.2. procedure for judging the complaint, solutions;
  - 6.3. rules of evidence under this procedure;
  - 6.4. the complaint formulated as a notification of the court of law;
  
7. Judgment of first instance:
  - 7.1. checking the legal nature of the court notification
  - 7.2. clarifications, exceptions, requests submitted by the litigant parties , prosecutor or the court ex officio – methods to request and settle them;
  - 7.3. judicial investigation – defendant hearings, of the litigant parties , the witness, expert, interpreter – the psychology of the testimony and the tactical regulations applicable to the hearings;
  - 7.4. setting the offence as belonging to another category in the legal classification of the criminal offence;
  
8. Aspects of technique, tactics and strategy related to the defence during the criminal prosecution and the judicial investigations:
  - 8.1. the technique, the tactics, the strategy of defending the defendant or the convicted;
  - 8.2. the technique, the tactics, the strategy of defending the injured party or the civil party;
  - 8.3. the technique, the tactics, the strategy of defence civilly responsible;
  - 8.4. judicial activities carried on during the criminal prosecutions in terms of rights and obligations of the legally advised litigant parties (commencing the criminal prosecution, the criminal action, preventive actions identification and initiation);
  - 8.5. knowing the subject and formal conditions of the judicial deeds (warrant for preventive arrest, arrest order, summon, Public Prosecutor's charge);
  - 8.6. applying the court's decision – knowing the attributions of the application of the decision appointed judge, legal possibilities for submitting appeal to such decision, postponing the execution of the conviction, appeal to execution;
  
9. Professional works specific to the criminal lawsuit – content, drawing techniques, ways of drawing up
  - 9.1. requests formulated during the stage of criminal prosecution – clearly formulated request and indication of the legal ground;
  - 9.2. objections formulated by the lawyer during the hearings of the litigant party the lawyer legally advises;
  - 9.3. formulating complaints against the deeds and the decisions made by the criminal prosecution authorities;
  - 9.4. requests, objections formulated when submitting the criminal prosecution material to the defendant or the accused;
  
10. Aspects of Romanian constitutional law – fundamental rights and liberties:
  - 10.1. article 19 of the Romanian Constitution – extradition and evacuation; authorities in charge; procedural and judicial deeds;
  - 10.2. article 21 of the Romanian Constitution – free access to justice; the right to a fair judgment and settling within a reasonable time;

- 10.3. article 23 of the Romanian Constitution – individual freedom; search, arrest, assumption of innocence;
- 10.4. article 24 of the Romanian Constitution – right to defence;
- 10.5. article 27 of the Romanian Constitution – inviolability of domicile – researches shall be executed only under the terms and the provisions of the applicable law;
- 10.6. article 28 of the Romanian Constitution – secret nature of mail;
- 10.7. article 53 of the Romanian Constitution – the restraint of the exercise of certain rights or liberties;
- 10.8. Title III, Chapter VI of the Romanian Constitution – judicial authority;
- 10.9. Title V of the Romanian Constitution – Constitutional Court;

## 11. Aspects of the EC Law

- 11.1. completing and consolidating the knowledge regarding to the Community justice;
- 11.2. knowing the European legal institutions from the perspective of the European arrest order;
- 11.3. knowing the jurisdictional procedures, the norms incident in front of the European Court of Justice and the Court of First Instance;
- 11.4. knowing the forms of the legal advise, specific to the procedures in front the European Court of Justice and the Court of First Instance;
- 11.5. jurisprudence of the European Court in Luxembourg in terms of criminal law;
- 11.6. knowing the European regulation related to the criminal law field;
- 11.7. EC law related to the criminal judicial co-operation;
- 11.8. the part of the prosecutor in the European criminal judicial co-operation;
- 11.9. relation between criminal law – EC law.

## 12. The European Convention of Human Rights

- 12.1. article 5 of the European Convention of Human Rights – the right to freedom and safety; the notion of deprivation of freedom; the notion of lawful deprivation of freedom; guarantees instituted for the persons deprived of freedom; minimal jurisprudence;
- 12.2. article 6 European Human Rights Convention – the right to a fair trial; the application field; the guarantees of a fair trial (implied and explicit); guarantees granted to the defendant in a criminal lawsuit; minimal jurisprudence;

## 13. Criminal Law International Judicial Co-operation:

- 13.1. international treaties
- 13.2. temporary arrest for extradition – conditions, procedural aspects;
- 13.3. re-judgment in case of extradition;
- 13.4. European arrest order;
- 13.5. the validation of foreign decisions;
- 13.6. theoretical and practical aspects related to establishing rogatory commissions;
- 13.7. validation and execution of the foreign courts' decisions; extradition;
- 13.8. international criminal law legal advise; extradition, transfer of individuals;
- 13.9. criminal law international co-operation;

## 14. The right of the defendant or the convicted to remain silent

- 14.1. internal regulations;
- 14.2. international regulation;

14.3. practical ways of exercising;

15. Defence of the defendant in criminal lawsuits investigating the offences as provided under Law no. 39/2003 (organized crime) and Law no. 656/2002 (preventing and fighting against money-laundering)

15.1. knowing the incident criminal norms;

15.2. ways of notifying the criminal prosecution authorities;

15.3. material competence of the criminal prosecution bodies;

15.4. notion, limits, objectives, judicial nature of the preceding deeds drawn up by the criminal investigation authorities;

15.5. commencing the criminal investigation;

15.6. commencing the criminal legal action;

15.7. changing the category of an offence according to the classification of the criminal offences;

15.8. extension of the criminal investigation;

15.9. managed rules of evidence and the activities related to the specific criminal investigation initiated in order to manage the rules of evidence in such criminal lawsuits;

15.10. deciding, the objectives, the executing and drawing up of the accounting report, financial-accounting or bank expertise;

15.11. assessing the accounting, financial-accounting or bank expertise by subject and formal verification;

15.12. addition to the accounting, financial-accounting or bank expertise report; clarifications provided by the expert running the expertise; executing new expertise;

16. Defending the defendant in the criminal lawsuits investigating the offences stipulated under special laws:

16.1. offences related to preventing or fighting against the tax dodging;

16.2. offences related to the real estate and stock exchange;

16.3. offences related to the bank and cheque regulations;

16.4. offences related to the intellectual property;

16.5. offences related to the information technology;

16.6. offences stipulated under Law no. 31/1990, republished, on the commercial companies;

16.7. offences related to unlawful drug traffic or consumption.

### **C. Constitutional Right.**

#### **Constitutionality control - fundamental attribution of the Romanian Constitutional Court**

1. control over the constitutional nature of the laws, prior to their promulgation.

2. Non-constitutional exceptions:

*a). the functions of the non-constitutional exceptions;*

*b). admissibility conditions of the non-constitutional exceptions;*

*c). the owners of the right to notify the Constitutional Court on the non-constitutional exception;*

*d). the case law the non-constitutional exception is applied to;*

*e). notifying the Constitutional Court and the prior activities to the debates sessions;*

*f). rules or principles specific to the judgment activities in front of the Constitutional Court;*

*g). the activity subsequent to the debate session in front of the Constitutional Court: deliberation, passing the decision, expressing and communicating the decision;*

*h). the effects of the decision passed by the Constitutional Court over the exception of non-constitutionality.*

## **Romanian Constitutional Court Acts**

1. Categories of acts and their legal nature.
2. Compulsory nature of the decisions passed by the Constitutional Court.

### **D. Administrative Law.**

1. Prior procedure
2. Object of the legal action
  - competent court;
  - term for starting legal actions;
  - necessary documents.
3. adjourning the execution of the deed
  - requesting the adjournment by the main action;
  - petition for clerk summons.
4. Judging the requests and the solutions the court may pass
5. prescription term for compensations
6. remedy at law. Appeal
7. Execution procedure
  - enforceable titles;
  - obligation to publish;
  - execution obligation;
  - execution court.

### **E. Commercial Law.**

#### **1. Commercial Companies**

- 1.1 Administration and managing the company.
  - 1.1.1 The administrators attributes.
  - 1.1.2 Managers and the independent administrator.
  - 1.1.3 Administration systems of the joint stock company. Unitarian System.  
Dualist system
  - 1.1.4 Legal regulations applicable to the administrators. Particularities of the empowerment
  - 1.1.5 Civil and criminal liability of the administrators.
- 1.2 Funding the commercial companies
  - 1.2.1 Issuance of shares
    - 1.2.1.1 Listing on BVB
    - 1.2.1.2 Listing on external markets. Case study.
  - 1.2.2 Issuance of debentures.
- 1.3 Merge of commercial companies
  - 1.3.1 Stages of the merging process
  - 1.3.2 Date of the merging
  - 1.3.3 Protection of the creditors in the merging process
- 1.4 The company groups and other commercial structures
  - 1.4.1 Group company concept

- 1.4.2 Application of the concept in our law
- 1.4.3 Economic interest group
- 1.4.4 Ad-hoc consortiums

## **2. Special Commercial Agreements**

- 2.1 Commercial sale-purchase agreement
  - 2.1.1 The commercial nature of the sale-purchase agreement
  - 2.1.2 Real estate sale-purchase, civil or commercial agreement?
- 2.2 INCOTERMS Regulations
- 2.3 The mechanisms of the mandate agreement, fees and agency
- 2.4 No name agreements
  - 2.4.1 Consortium Agreements
  - 2.4.2 Complex Funding Agreements
  - 2.4.3 Real Estate Promotion Agreement
  - 2.4.4 Joint venture agreement. Venture agreement
  - 2.4.5 Distribution Agreement

## **3. Complex Legal Operations**

- 3.1 Overtaking companies
  - 3.1.1 Overtaking concept
  - 3.1.2 Overtaking mechanisms
  - 3.1.3 Due diligence
  - 3.1.4 Share Sale-Purchase Agreement
- 3.2 Funding acquisitions
  - 3.1.1 Funding acquisition concept
  - 3.1.2 Transaction structure
  - 3.1.3 Types of acquisition funding
  - 3.1.4 Case studies

## **4. Demand for Payment procedures. Particularities. Analysis of the decisions passed by the Constitutional Courts related to the provisions of GO 5/2001.**

## **5. The preceding conciliation stage: incidence, effects and application exceptions**

## **F. Banking Law.**

### **1. General Aspects**

- 1.1 The concept of bank operation and bank activity (article 3 point 11 Commercial Law GO 99/2006)
- 1.2 The structure of the legislation applicable to the bank activities

### **2. Credit Institutions**

- 2.1 Notion and types
- 2.2 Delimitation from other financial entities
- 2.3 Access to activity
- 2.4 Prudent supervision. Basel Regulations and their reception in the internal law

## 2.5 Operational structure of the credit institutions. Case study

### **3. Operations and Bank Agreements**

#### 3.1 Bank Deposit Agreement

#### 3.2 Bank credit agreement. Inconsistencies between the mortgage agreement and the real estate credit

#### 3.3 Additional bank operations

## **G. Community Law.**

### **1. Application of the community regulations related to the internal law**

- Immediate application;
- Direct application;
- Priority application.

### **The principles of the legal order in EU**

- The principle of appointing competencies (article 5 TCE);
- Subsidiary principle (article 5 par. 2 TCE);
- Principle of proportionality (article 5, par. 3 TCE);
- Principle of co-operation in good faith (article 10 TCE);
- Principle of non-discrimination or the principle of treatment equality (article 3, § 2 ; 12 ; 13 ; 39, § 2 ; 141).

### **2. European Community Court of Justice**

- Conceptual delimitations;
- Structure;
- organization;
- functioning;
- competence;

### **3. Procedures in front of the European Community Court of Justice**

- ordinary procedure;
- exceptions from the ordinary procedures;
- special procedures.

### **4. Actions submitted to the European Community Court of Justice (I)**

- appeal for cancellation;
- appeal for deficiency.

### **5. Actions submitted to European Community Court of Justice (II)**

- appeal in interpretation;

### **6. Procedure for failing to fulfil the obligations undertaken by the member states**

### **7. Free merchandise circulation within European Union – related jurisprudence**

- the merchandise enjoying free circulation right;
- forbidding the custom duties and the taxes having similar effect as the custom duties;
- forbidding the quantity related restrictions and the actions equivalent of quantity restrictions;
- exceptions from the merchandise free circulation principle;
- dispositions of the Romania's European Union Accession Treaty on the free merchandise circulation.

### **8. Free circulation of the individuals and the services – related jurisprudence**

- the beneficiaries of the free individual and service circulation;
- right to travel and accommodation;
- the freedom of carrying on an economic activity;

- exceptions from the principle of the free individual and service circulation;
- disposition of the Romania's European Union Accession Treaty on the free individual and service circulation.

#### **9. Free circulation of the capitals and payments – related jurisprudence**

- material office;
- exceptions from the capital and payment free circulation;
- the dispositions of the Romania's European Union Accession Treaty on the free capital and payment free circulation.

#### **10. Regulations applicable to the enterprises competition field – jurisprudence related aspects**

- forbidding the monopolist agreements between enterprises;
- dominant position abuse;
- safeguarding clauses;
- control means over the enterprises behaviour
- operations of enterprises concentration;

#### **11. Regulations applicable to the member states competition field – jurisprudence related aspects**

- the statute of the public enterprises;
- the regulations on the help granted to the member states
- state monopoles of a commercial nature.

#### **12. The legal protection of the community mark**

##### **13. European lawyer**

- free circulation of the freelancers;
- quality of the Services and Competence;
- financial issues (quantum of the fees; free of charge advise; Pacts of *Quota litis* – possible fees and speculative actions; Distribution of fees, payments to other persons than the lawyers and the ways of making payments in order to obtain other cases; client funds protection);
- relations established with the Court;
- relations and communication among lawyers.

#### **14. The role of the Romanian lawyer in application of the Community legislation**

- identification of the community deeds with direct and immediate applicability;
- interpretation of the communitarian deeds with direct and immediate applicability;
- identification and interpretation of the communitarian jurisprudence – source of communitarian law

#### **H. European Law of Human Rights.**

##### **1. The procedures of individual complaint submitted to C.E.D.O. and the procedural deeds**

- the content, structure, form, submitting, registration of the individual complaint; communication of the procedural deeds, the relation petitioner – Territorial Jurisdiction of the Court in Strasbourg
- the condition of admissibility of the individual claim
- trying to amiably settling and the convention of amiable settle
- delivery of a judgment of first instance
- remedy at law
- decision execution
- similitude and difference between the personal complaint procedure and the state complaint procedure

**2. Reopening the internal procedures consequent to convicting Romania to CEDO**

**3. The right to freedom and safety. Procedure related rights**

**4. Procedure related rights: the right to a fair trial, the right to an effective appeal**

**5. The right to respecting private and familial life, of the domicile and mail.**

**6. Freedom of expression. Limitations of the expression freedom in the Romanian law. Journalistic freedom of expression**

**7. Forbidding discrimination**

**8. Protection of ownership**

**9. The lawyer and the human rights sanctioned by the Human Rights European Convention**

- the rights of the defence
- direct and confidential contact of the lawyer and his client
- lawyer freedom of expression
- freedom to meet and associate
- compulsory legal advise; consequences of not observing the right to defence from the perspective of the fair trial notion.
- The protection of the lawyer against the bad treatment and protection of his professional office

**10. Privileges and immunities of the lawyer within the procedure in front of CEDO**

**I. Organizing and exercising the lawyer profession.**

**Professional activity of the lawyer**

1. exercising by the lawyer of the mediator profession on the ground of Law no. 192/2006 on mediation and organization of the mediator profession (published in the Romanian Official Gazette, part I, no. 441 of May 22, 2006):

- a). acquiring of the mediator capacity by the lawyer;
- b). organizing and exercising by the lawyer the mediation activities;
- c). the rights and obligations of the lawyer in his/her capacity as mediator;
- d). liabilities of the lawyer arising from exercising the mediator profession;
- e). mediation procedure;
- f). mediating different conflict categories (in civil, commercial, family, criminal matter etc.)

2. carrying on fiduciary activities by the lawyer:

- a). undertaking as deposit the client's financial funds and goods;
- b). placing and capitalizing the client's financial funds and goods;
- c). administrating the funds or the goods the lawyer is entrusted with by the client.

3. carrying on by the lawyer activities of temporarily establishing commercial companies' registered offices, their registration (including the registration of the interest shares, social shares/shares).

**The situation of the collaborator lawyer from the perspective of the amendments made to the Profession Statute by the Decision no. 10/2007 of the National Association of the Romanian Bars (published in the Romanian Official Gazette, part I, no. 511 of 31 July 2007):**

1. The right of the collaborator lawyer to have personal clients.
2. The rights and the obligations of the collaborator lawyer by reporting to personal clients.
3. The rights and obligations of the titular / coordinators of the forms of exercising the profession the cooperating lawyers belong to have the right to personal clients.

**Relationship between the lawyer and the client**

1. Legal advise agreement.
2. legal advise .
3. Exercising the lawyer profession without having the right. The exception of the lack of representative capacity. Effects and sanctions.

**The norms of the lawyers' code of conduct. References for conceiving a Code of Conduct of the Romanian lawyer**

1. Independence, freedom and lawyer profession dignity
2. Conduct of the lawyer with his client.
3. Conduct of the lawyer in relation with other lawyers.
4. The lawyer's conduct in relation with the court and other legal authorities.
5. Incompatibility of the lawyer profession with other activities.

**Exercising the lawyer profession in Romania by the lawyers having achieved the professional qualification in one of the member state of the European Union and the European Economic Area**

1. Acquiring the capacity as member of a bar in Romania by the foreign natural bodies in their capacity as lawyer.
2. Certifying their lawyer capacity for registering with a bar chart in Romania.
3. Registering the foreign groups practicing the lawyer profession with the Table of Lawyers in Romania.

**IV.** The counsels of the bars in co-operation with the National Institute for Training and the Improvement of Lawyers – I.N.P.P.A. can adopt decision for applying the Lawyer Continuing education Program during January1, 2008 – January 1, 2011 for other domains than those provided in the guiding syllabus as provided under point III.

The bar counsels can co-operate with the forms of exercising the lawyer profession, the higher education institutes interested and other judicial professions for achieving the forms of lawyers professional specialization.