

## **ABSTRACT**

### **Analysis**

The aim of this thesis is to carry out the study of some essential elements of the legal profession from the point of view of its ground, analysing it at the same time from a philosophical and legal perspective.

Lawyer has played an essential role throughout the History and he has been a main operator in the field of the legal system. This professional personifies the Right to Defence and he guarantees an important part of the material implementation of Law regarding an effective ward of court, as established in our Constitution. Since Law is one of the pillars of the State of Law, lawyer becomes one of the fundamental professionals of the Rule of Law. Nevertheless, this figure has not been considered as a key player of Law, therefore it does not seem to have caused a great interest among the *ius philosophers*. Philosophy of Law has remained more focused on reflecting and studying other essential figures of Law, like the Legislator or the Judge. On the other hand, the aspects from which its task, its legal ethics and its function can be tackled are varied. The successive legal modifications and the different legislative initiatives affecting the world of the legal profession and the professional himself, set a point of inflection and place us in a key time for the future of the legal profession.

In this thesis it is tackled one of the matters as regards lawyers, which can cause more controversy or polemic in the society in general and within the juristic professions in particular. An issue that I think is essential, because it is an intrinsic part of the task of a lawyer. This is, of course, about the relationship between a lawyer and a client. This lawyer-client relationship is vital, because without it, the Right to Defence could not have a real implementation and it would be being violating one of the basic and fundamental pillars of the Rule of Law.

To study this aspect of the legal profession, it has been necessary to make a reflection about the role lawyers are in practice nowadays. In the same way, it is necessary to study one of the purposes of the conservation of the Codes of Legal Ethics in certain professions, like that of the basis of the professional trustworthiness. The roles that may be given to the trust and the professional trustworthiness are fundamental to carry out an approach to the analysis of the profession of the lawyer, principally from the point of view of his relationship with the client.

To go deeply into this aspect, it is also essential to go deeply into the role that the Bar Associations play to guarantee this trustworthiness of the

professional and, consequently, to make easier the trust relationship between the lawyer and his client.

The concepts of Trust and Trustworthiness, the contents and the justification of the Principles of Conduct of lawyers, and also the work of the Bar Association as a guarantee of these previous concepts, and the influence that all these components have in the relationship between a lawyer and his client and the legal profession itself, are the fundamentals of this thesis.

## **Methodology**

To write this thesis, I have analysed different norms and judgments, and also some reports and doctrines. I have also analysed some national norms and some from some Spanish Autonomous Regions, as well as sectorial norms and norms coming from different Professional Bodies. Of course, I have focused on different norms, emanated from the College of Lawyers, as well as from the General Council of the Spanish Legal Profession.

To establish the comparison of the Spanish situation, as regards the international situation, I have analysed different norms from the European neighbouring countries, whose legislation is especially relevant to this issue. Especially important are some norms from the United States, thereby I used this country as a point of reference when I had to make comparisons with non-European legislations. Like with the Spanish norms, to carry out the study on comparative law, I have focused on those norms regarding the field of the professional associations in general and the legal profession in particular.

As for Jurisprudence, I have studied mainly those sentences that may be more significant in relation with this study. Throughout nationwide, I focused on those from the High Courts, like the Constitutional Court and the Supreme Court, and in a supra-national aspect those sentences from the Court of the European Communities and from Strasbourg Court. Similarly, it has served as a base for this research the reports from public organisms, but mainly and fundamentally, the specialised doctrine, not only the Spanish one, but also from different European and American authors.

## **Conclusion**

After the analysis of all the sources and on reflection about some important aspects throughout the whole work, it is necessary to underline some issues. Trust is the main element in the professional relationship between a lawyer and his client; without it, this relationship could not be established truthfully. However, no organism can ensure the trust because this trust is a phenomenon starting from the person who places his or her trust in somebody,

and not from the person who receives it. However, it can be guaranteed the trustworthiness in the professional. This trustworthiness must be understood as the capacity to assume the obligation and the necessary competence to carry out the trusted task. This quality is to be ensured through the guarantee of determined behaviours which have to be considered compulsory in the professional environment, as well as through a serious and effective disciplinary procedure in case of non-observance of these behaviours.

The organism which groups the professionals of the legal profession is the Bar Association, which in addition has granted the consideration of Corporation of Public Law. That is why this is the organism on which it fall or should fall the task and the responsibility to guarantee the trustworthiness of the professionals. However, the Professional Associations are not very effective to protect the client's interests, but on the contrary they are perceived as a protector entity of the professional and not always convergent with the interests of the citizen. That is why the existence and justification of the Professional Associations are more and more in doubt.

In the face of this situation, the State will have to take a decision about these Corporations, to recover the effectiveness of this position as guarantor. If we start from the base of the necessity of its existence, the solution should be to undergo necessarily a deep reform of the associations that ensures the efficiency of these to guarantee the trustworthiness of the professional. To do that, in addition it should be able ensure also the transparency in his work as well as in their internal procedures.

On the contrary, if we do not consider as necessary its existence to regulate the profession, it would be necessary to decide about the convenience of the abolishment of the associations as entities of Public Law, or their transformation in some other kind of entity without the prerogatives that the Public Law grants.