

Four Years of a Romanian Juridical Clinic* 1998 – 2002

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I. Introduction

Most of the jurists – no matter in which functions and places they are working now – will confirm that the theory which they learned in faculty was good to be known, but it was not enough for them to affirm their skills: they did not practice at all or not enough during their college years what really means to profess. And it is well known that learning anything is easier when the theory is applied into practice simultaneously.

In the 1930s, one of the most important Romanian professors in General Theory of Law, Mircea Djuvara, said that the Law Faculties were preparing the students only theoretically, without too much practice; this is why he considered that the theoretical preparation of the students was not enough, and said that a method should have been found to introduce them to practice as well, while they were still studying in college.

In any profession one needs to be taught in order to practice it well. If you have to work with clay, with metal, with wood, cement etc., it takes some time to get some experience and to get used to the properties of the material and how to put into practice the theory about them. But being a jurist (a lawyer, a judge, a prosecutor, a law councilor for that matter) – is one of the professions which deals with the most sensible and perfidious of all materials: human mind. Why human mind? Because it is in our minds that the juridical conscience is created and then it is reflected in the way we think and, especially, in the way we put into practice our more or less legal thoughts.

This is why, a respectable jurist must develop professional skills and combine them with the theoretical knowledge of objective law, positive law and substantial law, the way it is perceived, applied and followed or not by the people.

* The article refers to the period of time in which the authors were the coordinators of the Clinical Legal Education course, from the very beginning, from the first negotiations till it was well equipped competing with a Western Juridical Clinic course.

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More, a good jurist must be flexible, must be used to communicating and dealing with people who sometimes have no idea about the law, must have good skills for speaking in public etc.

Our target and mission as law teachers is to do our best in order to give the society well prepared jurists. How can we do that? By combining the theoretical disciplines with a practical approach, such as Clinical courses. Among other courses, as Mr. Stuckey was saying, “clinical education courses offer law students their first opportunities to discover firsthand how difficult it is to be a professional lawyer”.³

Based on our five years of experience, we would add that in the Romanian system of law Clinical education also shows how difficult it is to be a judge or a prosecutor.

For sure, most of the readers of this article, if not all of them, already know what Juridical Clinic means and how is it organized and functioning in the American⁴ and British⁵, as well law faculties in other countries.⁶ The authors’ intention is to present a Romanian Juridical Clinic, the way it has been functioning so far, the conditions we were offered when we set it up, what we achieved, the difficulties we were faced with, our reasons to be satisfied of what we have done, our regrets for what we couldn’t do, leaving to the generation to come the continuation of our work.

2. History

Long before ABA came to Romania with the proposal to introduce this discipline in the law faculties curricula, students from the Law Faculty Cluj-Napoca were familiar with the simulation of trials, though this wasn’t done in an official way, by transforming the civil procedure seminars in simulated trials by members of the staff; the students have experienced what it means to be a lawyer or a judge or a law councilor without having too much actual practice and with just a theoretical knowledge of the procedures. In these simulations the students were discovering the different roles of the participants in a trial such as: defendant, lawyer, prosecutor, judge etc. and also some of the “secrets” of the trials, which no professor can or has enough time to teach. All this could remain unknown to the students until they are graduates and start to practise.

In the 1980s, this kind of simulation of a trial was experienced by Romulus Gidro, then a young assistant in civil procedure, and having had experience as a lawyer before coming to teach in the Law Faculty. Aware of the difficulties he had had when he started practicing as a lawyer, Mr. Gidro started to simulate some civil trials – during the limited time offered by the seminars – and noticed that the students were more interested, more active, and acquired more information. This couldn’t have been achieved if the students had only the theoretical approach to the trials.

Being so pleased of the way students were learning by practicing the civil procedure, Mr. Gidro organized a simulated trial where he invited the academic staff of the faculty. Everyone was amazed of the results and Mr. Gidro was encouraged to continue with this system doing seminars at civil procedure. More, the students’ marks at the end of the semester were better than expected and improved as compared with other years of study.

3 Roy T. Stuckey, “Ensuring Basic Quality in Clinical Courses”, (2000) 1 *International Journal of Clinical Legal Education*, pp. 47–53.

4 Philip G. Schrag, “Constructing a Clinic”, vol. 3, nr. 1, Fall (1996) *Clinical Law Review*, pp. 175–244.

5 Richard Grimes, “Learning law by doing law in the UK”, in (2000) 1 *International Journal of Clinical*

Legal Education, pp. 54–57.

6 Judith Dickson, “Clinical Legal Education in the 21st Century: Still Educating for Service?” in (2000) 1 *International Journal of Clinical Legal Education*, pp. 33–44. See also Philip G. Schrag, *op.cit.*, *supra*, p. 244 referring to the Eastern Europe countries and the republics of the former Soviet Union.

Everyone considered this way of doing seminars a very good method of teaching procedures, but no one thought that it could be transformed into an academic discipline.

Mr. Gidro was promoted as a lecturer; he started to teach Roman Law and Labor Law, and stopped holding seminars.

In 1996, Ms. Rebreanu started her full time academic activity with seminars in civil procedure. Without knowing anything about Mr. Gidro's experience and good results in this field, she simulated the trials with the students and taught them how to make a court file with all the papers, declarations, written procedures etc. The results were obviously very good: better attendance by the students; the students were more interested in preparing for the trial simulation seminars; the marks were again very good; other members of the staff were amazed at the great interest of the students and also at the load of work the professor took upon himself – it is a lot more difficult to teach in an active way.

3. Beginnings and further relations with the initiator – ABA

1. In May 1997, between the Dean of the Law Faculty – “Babe_Bolyai” University Cluj-Napoca, prof.univ.dr. Liviu Pop, and an ABA representant in Bucharest, Mr. Lawrence Albrecht – lawyer – a discussion took place about the introduction of the Legal Clinic course in the Curricula of the faculty.

The idea of simulating trials was not completely new in our faculty – as I mentioned before. Assistants, lecturers were unofficially organized trial simulations to help students to better understand the procedures. But the novelty and, especially, the success of the discussion with Mr. Lawrence Albrecht lay in the fact that we found a way to give an official character to the trial simulations, by introducing a new discipline of study: “Juridical Clinic”. Starting with the second semester of the 1997–1998 Academic year.

2. After Mr. Albrecht left Romania, other ABA members and representatives in Romania paid regular visits to our Faculty, to see in which stage we were and how we were getting on with the Clinical Legal Education. As much as it was possible, we were invited to participate in international and Romanian meetings on this subject organized by ABA, and monitored by the ABA representatives in Bucharest, as follows:

In January 1998, Mr. Gary Marek visited our Juridical Clinic. During the time he was the ABA representative in Romania, we had the pleasure to be invited and to participate in the Regional Legal Education Workshop “Strategies for implementing practical legal education programs”, which took place in Opatija, Croatia, March, 25–27, 1998. Both coordinators from Cluj-Napoca Law Faculty, dr. Gidro Romulus and dr. Rebreanu Veronica, participated in this Conference, where we met other coordinators of Clinical Legal Education, from Romania⁷ and from other academic centers in the South-East of Europe.

The participation to this Conference was very helpful to us because it showed us that all the Clinical Legal Education coordinators had almost the same questions and difficulties. Also, we had the occasion to learn from other clinicians' experience and to avoid making the beginners' mistakes.

7 Bucharest and Timisoara.

The next visit by an ABA representative was in September 1998 when Mrs. Laura Bucher, Mr. Gary Marek's successor, visited our Faculty, together with professor Rodney Uphoff – from Clinical Legal Education, Oklahoma University. Both were delighted with our Juridical Clinic Room for simulating trials. We analysed the way our programme was developing and our way of implementing it was appreciated. They suggested a few ways in which we could make our programme functional and we put these into practice, as much as our legislation permitted it.

In October 1998, prof. Rodney Uphoff visited our faculty again, when he presented the history of Juridical Clinic in the United States of America and the different types of Juridical Clinic which exist and function in USA. His talk had a great impact over our staff and especially on the students: the number of those who chose this optional discipline was subsequently greater than the previous academic year, 1998–1999. Mr. Uphoff was very impressed by the great number of questions which proved that our students were extremely interested in knowing more about the discipline and about the Common Law system of law, which is very different from the Romanian one.

In May 1999, the ABA representative organized in Sibiu a Romanian Conference on Clinical Legal Education, in which Mr. Gidro Romulus participated. Many written and video materials were given to us for our Juridical Clinic. The Romanian experience in implementing this discipline was discussed and analysed.

The ABA representative in Bucharest during 1999–2000 Academic year was Mrs. Irene Banias. She visited us in September 1999 and was satisfied with the way we implemented and adapted Clinical Legal Education to our teaching system and our Law system within the limits of the Romanian laws. The last Romanian meeting of the Clinicians, organized by the ABA representative in Bucharest – Mrs. Irene Banias, was in October 1999. Unfortunately, none of the Cluj-Napoca coordinators were able to participate.

The Bucharest ABA representatives sent us some written materials and video tapes, a few issues of the “Clinical Law Review”.⁸ The Cluj Faculty of Law made sustained efforts to ensure the infrastructure needed for the course: a special room arranged like a trial court room; a video recorder; a TV set; a video camera.

4. How it functioned

Once accepted and put into practice, this new discipline – even though an optional one – had a lot of success with the students and most of them have chosen it as the optional discipline.

The members of the staff who were in charge of the implementation of Clinical Legal Education were dr. Romulus Gidro and dr. Veronica Rebreanu. It is obvious why: because the Dean knew their activity in this field and considered them the best qualified people to do it, instead of some other persons who did not experience at all the trial simulations. They organized it, kept in touch with the practitioners who helped us implement it. In the first two years, they also participated directly during courses and seminars until there a way of working with the students was formed.

8 They forgot to send us the number (1999) in which Prof. Rodney Uphoff wrote an article in which he made some remarks about the Romanian Juridical Clinics. Prof. Uphoff visited the Cluj Juridical Clinic in 1998 and, although he showed himself very well impressed about our project and the way we just started

to implement it officially, and the Clinical Law Room was already arranged as a court room, what he wrote in the article was not reflecting our discussions. Unfortunately, he did not understand that we had to adapt the Juridical Clinic course to Romanian legislation and possibilities.

Taking into consideration the coordinators' proposal, the Dean approved and supported us, to set up a special room for trial simulations, which was the exact replica of the real ones. This made the students feel very close to real trials, respecting the places of the participants and experiencing the official character of being a judge, a lawyer, a prosecutor etc.

After this new course was integrated into the curricula of the Faculty and having a special room for it, we paid a great deal of attention in organizing and developing this course. We kept in touch with the practitioners who agreed to help us and we were also attentive to supply it with suitable equipment so as to make it competitive with the western ones.

Right from the start, there was a lot of enthusiasm on both sides: that of the practitioners who still remembered how hard it had been for them at the beginning, when they had no idea of how to practise law. They immediately replied positively and proposed a lot of methods for working with the students; on the other hand, the students also replied positively by choosing this optional course.

But too much enthusiasm in the beginning does not always bring immediate happiness! And we say that, having in mind the analysis of the discipline from the two perspectives:

- firstly, soon after the meeting with the practitioners we were asked by some of them what their benefits were from the participation in this course (the only possibility to pay them was by the hour and in a State university the salaries are much lower than a lawyer gains maybe in one week; none of our colleagues which are also practitioners agreed to participate). The other question was if they had any chance of going to the USA!;
- secondly, it cannot be denied the fact that most of the students have chosen this course wanting to acquire more information; These were prepared to work hard for that. But there were also students who came just thinking that they would manage somehow without working very hard and very seriously – this is why in the first two years we had more than 100 students per semester. Yet it was not very easy for them to fulfil the professors' requirement that each of them should complete a juridical file and have an active presence during the simulations.

That made our mission very hard: on the one hand, because it is not too easy to work a certain number of hours with more than 100 students at each meeting. We had no possibility to increase the number of hours because nobody would have accepted to work without being paid. On the other hand, we had no possibility to stop them choosing this discipline. In this respect, we tried to find a way to select them, but none of our proposals was agreed: upon just as we could not make them choose an optional discipline, we cannot stop them choosing it. This was a "problem" for years, not only as far as "Juridical Clinic". So, all our projects and ideas for finding ways to select the students for this course failed and we had to accept all the students who chose it as an optional discipline. As time settles everything, so it did with our course: in time, the offer for optional disciplines increased up to four and our students began to choose the other disciplines as well; during the last two years the number of students who have chosen our course was perfect, without causing any trouble and all the students could participate more during the simulations and express their skills for being a lawyer, judge, prosecutor etc.

For teaching Clinical Legal Education one must be entirely dedicated to it. I would consider this dedication from two points of view:

- firstly, one must be dedicated in the sense of having the proper skills to show and introduce the students to that kind of knowledge. Students must acquire the art of knowing how to react and deal and treat the people involved in a certain situation. We usually “steal” this knowledge attitude by observing our master, how he/she deals with delicate situations for which nobody prepares you in advance; even though most of the situations can be anticipated, we cannot expect to be told about all of them;
- secondly, one must be dedicated in the sense of finding pleasure in teaching and initiating the students in the secrets and tricks of how to behave in simple simulated situations, so that later they should be able to be at their best in complicate and delicate or peculiar real situations or with difficult clients.

5. Method of work

The methods of work used in Cluj-Napoca Juridical Clinic were a combination between the “clinicians” experience and the vision of the practitioners who helped us to develop this discipline. We also took into consideration what the students should know when finishing the faculty, in order not to be surprised by the practice, the way we were before them.

Students were given two cases: a civil one and a criminal one. They studied them and each of them chose a role in the civil trial and another one in the criminal trial. So everyone got a chance to be could have been judge, lawyer, prosecutor, clerk, even witness.

It was established that every student participating in the Juridical Clinic course, no matter what role he had chosen, must have a complete court file with all the papers a trial file should have: the writ of summons, public prosecutor’s charge, the writ against smb., the proof by witness, other proofs according to the type of the trial, the minutes of the meeting, the sentence etc.

The trials were simulated in a succession at the students’ request, irrespective of the order, so that they were able to get used with civil and criminal procedures.

After one of the participants to the trial spoke, the trial was stopped and there followed observations, comments, completions, rectifications. This means that even though not all the students had the chance to be a lawyer, a prosecutor or a judge, at least they had the possibility to comment on others’ work and to contribute with the way they would have done the same “job”.

Especially in the last two years while the authors of this article worked as coordinators on this course, all the students in Juridical Clinic had the chance to participate directly in the simulated trials, having an active role: they were one of the participants to the trial in a certain role and also had the possibility to intervene with comments and suggestions about the way they were understood the trial and the doctrine as well.

When the students have been marked, the following aspects have been taken into consideration:

- the way the simulated file was completed with the procedural papers and the quality of their work;
- each student’s contribution in the simulated trials – as participants or as “active public”, commenting and correcting the others’ activity;
- the way they used the legislation, interpreting it and applying it correctly to the given cases;

- the way they knew how to do their research into jurisprudence and use it;
- also, the way they showed interest in knowing and using the doctrine.

At the beginning of the 2002–2003 academic year the best conditions were provided to continue teaching Juridical Clinic course:

- there was a well-equipped court room;
- there were a TV set, a video recorder, a camera and enough video cassettes.

This means that this course could have been taught at a higher level than before and could have competed with any other western Clinical Legal Education course.⁹

6. Regrets

During the five years when we worked as the coordinators of this course, there were several aspects which raised question marks, but some of them were eventually solved as time passed. With others we dealt by taking what we considered to be “the most rational decision” for the moment. We consider at least two of them worth being mentioned here.

One of the first issues¹⁰ we had to deal with was to find a way of selecting the students for this course, without causing any inconvenience. This was hard to do because of various reasons. Here are some of them:

- it was an optional¹¹ course – this means that theoretically we cannot obstruct the students to choose it in any way; we thought that any way to select them could be considered by the students a source of “injustice”, as long the course was optional;
- in the beginning, the Juridical Clinic was taught for students in their 3rd and 4th year of study; in the third year of study, second semester, they were taught civil and criminal procedures, in parallel with our optional course. This meant we could not condition the choosing of the course by the marks they had to the disciplines we mentioned. Neither could we condition their admittance by the marks the students obtained to other disciplines;¹²
- after two years, the course was restrained to the 4th year of study. The reason for this change was the students’ best interest: it was considered that in order to follow this course they needed

9 We knew that in USA Juridical Clinic courses it is used the system of recording the students’ performance on tape because we received such cassettes from ABA. The idea of providing our Juridical Clinic course with a camera was strengthened during a visit in 2000 to the Exeter University School of Law where Veronica Rebreanu had the pleasure of exchanging some experience with the coordinator, at that time Mrs. Sue Prince. She also participated in a simulation of a trial where the students were recorded on video tape with the camera and could observe their performance.

10 We refused to call them “problems” and preferred to consider them as being “issues”, thinking that we would soon find a way to answer them and make our job easier.

11 Romanian curricula of the disciplines taught in

faculties has three kind of courses: compulsory courses which every student has to pass; optional ones – there are several optional courses offered in any academic year for each year of study they are in and the students cannot be obstruct to choose one or another (sometimes some of these optional courses are not taught because the students did not choose them); facultative courses where they can participate or not, but the marks obtained to these disciplines are not taken into consideration for the credits. Only the marks obtained at the compulsory and optional courses are taken into consideration for obtaining the scholarships, places in the campus, marks (credits) to pass in the following year of study etc.

12 Sometimes students with low marks prove to be better practitioners than some of the best marked ones which, with time, prove to remain only good theoreticians.

to have some knowledge of civil and criminal procedures, instead of studying them in parallel;

- the idea of selecting the students by their skills it was taken into consideration but the first reason came up again: optional course – anyone can choose it.

This was one of the aspects which was solved by the passing of time: now four optional courses are offered in the first semester of the 4th year of study; students have been told what each course is about and the methods of work. They realized that if they are too many most of them will be only passive participants to the simulations and won't have the occasion to show what they can really do. So, in a "spontaneous" way, we can say that everything was solved and in the academic years 2000/2001 and 2001/2002 the number of the students was perfect and covered exactly the number of the participants for the civil and the criminal simulated trials.

The other issue we had to answer to was related to the name to be given to this course. Some of the proposed names were: "Juridical Clinic", "Clinical Law", "Legal Clinic", "Clinical Legal Education", "Practical Legal Education", "Laboratory of Legal Education", "Experimental Legal Education".

The first three titles were proposed by the ABA initiators and we decided to use the title Juridical Clinic.

Firstly, because we considered that this name could very well cover the methods used in simulating the trials, the juridical theory and the procedures students have to know and achieve during the course.

Secondly, it was a decision in which we took into consideration the ABA initiators' proposals.

The fourth title, *Clinical Legal Education*, is used in United Kingdom Law Faculties. For some reason we avoided to use "legal education" because we considered this to refer to the whole period the students study in the law faculty they are legally educated. Still, this possibility of changing the name into Clinical Legal Education might be an option in the future.

The last two titles resulted from a discussion about this course with the coordinators from Timi_oara Faculty of Law (prof. dr. Gheorghe Mihai). We considered these proposals as being too technical, too close to engineering.

Two of our greatest regrets were:

- that most of our colleagues who are also practitioners (lawyers, notaries, judges, prosecutors) avoided to get involved with some activity in this new discipline;
- at the beginning of the academic year 2002–2003 our main collaborator could not continue to help us because of some objective reasons. Both of the coordinators had to give up coordinating this course¹³ – even though now it was on the way of becoming even more interesting. We suggested that this discipline should be coordinated by members of the staff who are also practitioners.

13 Each of them is teaching two disciplines: dr. Romulus Gidro is teaching Labour Law and Social Security Law and dr. Veronica Rebreanu is teaching General Theory of Law and Environmental Law.

7. Conclusion

The Cluj-Napoca Juridical Clinic course presented above can undoubtedly be considered as a success from many points of view: from the initiators' point of view because it was accepted and put into practice so soon and with a valuable collaboration between the Bucharest ABA representatives and the coordinators; from the students' point of view because they had the occasion to simulate juridical practice according to the theoretical knowledge they had achieved; from the coordinators' and practitioners' point of view because it was a real pleasure to observe the students during this course, how, step by step, they became more skillful in one or another of the "juridical roles" they had chosen and doing it with so much pleasure and abnegation.