Modern methods of research in legal education using information technology

ANDREEA CIUREA
Faculty of Law and Sociology
“Transilvania” University Brasov
Eroilor St. no.29, Brasov
ROMANIA
a.ciurea@unitbv.ro http://www.unitbv.ro

Abstract: - The main purpose of this paper is the presentation of modern methods, materials and sources of information and legal research, which are not known enough and used by teachers and students in Romania.

Key-Words: - legal, research, information, globalization, dynamism, technology.

1 Introduction

The quality of education should be reflected in the results of this work: future jurists need to develop a set of skills as complex as practical.

Disputes between individuals and legal entities are more and more complicated; their solution requires interdisciplinary and multidisciplinary knowledge: economics, medicine, psychology, engineering, etc.

Also, the legal relations often have foreign elements, which require knowledge of international law and community law.

Moreover, beside the Romanian legislative hemorrhage after 1989, our jurists (judges, prosecutors, lawyers, notaries, legal advisers, police, etc.) are facing the diversity of international, public and private law, and rich community legislation.

In these circumstances, the question arises: how can we prepare to educate others, to make them competent to practice in an area that directly depends on social balance: Justice?

The traditional methods of teaching and research, and the classical sources of information no longer provide a comprehensive training adjusted to globalization conditions and to the dynamism of today’s legal life.

Thus - although we practice in an area where direct communication between people is essential - we need to inform ourselves, to do research and pass it on to our students, through the most modern, fastest and most effective means and methods in correspondence with the social and legislative changes, the current pace of life.

2 Presentation of modern methods of legal information and research

It is estimated that about 400 new normative laws appear monthly in Romania, of which approximately 40% are acts that modify the existing ones. The simplest information about these documents requires a high consumption of time and energy, especially when acts are permanently linked with other previous acts. This is complemented by a rich Community legislation which we must assimilate rapidly.

Starting to work, the research jurist firstly establishes the topic to which he will give attention, for example "divorce proceedings in Romania and other European countries." Then, he raises a series of questions: what kind of information is he seeking, more specifically, about this topic, how to find information on the given topic, where to start searching, how to use a library, saving the most important resources: time and energy.

We will try below to answer these questions to help jurists make an effective and efficient research, giving them tools and information useful in organizing scientific and didactic activity.

More specifically, whether we are scientists, teachers or practitioners of law, we seek three types of information on the research topic: legislation, doctrine and the law case. In other words, in order to have a full understanding on this issue, about "divorce proceedings", we want to know which are the regulations in force, what solutions the court has rendered, which are the specialists’, theoreticians’ and practitioners’ of law comments and opinions expressed in the so-called "legal literature or doctrine".

Given that our research will also expand internationally, we must relate to the distinction...
between the two major legal systems existing in Europe: the Roman-German and Anglo-Saxon. Roman-Germanic law (continental) has its roots in the Roman law and German traditions. This system can be found in France, Germany, Switzerland, Italy, Spain, Romania, Latin American states.

Roman-Germanic law characteristic is that the fundamental source of law is the law (in the broad sense), that is written rule adopted by the state competent authorities. In this law system the only basis of the given solution of the judge is the law. In the Romanian Constitution according to Art.124 paragraph 1: "Justice is rendered in the name of the law", paragraph 3 of the same article: "Judges are independent and submit only to the law." The judge does not legislate, he applies the law to the case he has to judge and his decision is only applicable to this case. The outcome in a particular case is not necessarily identical with the solutions that were given in the past in similar cases; also a case solution is not imperative for solving future similar cases.

The Anglo-Saxon law appeared in England and spread to former British colonies, USA, Australia, New Zealand, and Canada (except Quebec).

The Anglo-Saxon law is a law case system that is the main source of law is the judicial precedents (previous court decisions). The judge should not follow a body of laws but is free to determine from case to case which the correct solution is. He must comply with solutions given in the past in similar cases. Moreover, this law system can have written laws, especially in areas of public policy.

This distinction is important in the research work because for the Roman-German law we will focus on legislation and for the Anglo-Saxon law we will insist on the case law.

Where to start looking on the three interest plans?

Currently, we have two types of databases (data sources), depending on their physical media: printed sources (on paper) and online resources.

What are these resources, as can be found, what advantages or disadvantages has the use of them?

Traditionally, we enter a law library which primarily provides an impressive volume of printed sources: specialty books and journals. They present our issue in terms of legislation, legal doctrine and law case. Printed sources can be identified through catalogs. Nowadays, almost all libraries provide, on their websites, online catalogs that allow a quick search by various criteria: name of the book, the author, title or keyword content, etc. Also, online catalogs save us the trouble of going to the library: we can find out from home or office whether a particular book exists or not. Then, based on the code indicated in the catalog, one can look for books or magazines in the library shelves.

We indicate, as examples, online catalogs of two prestigious research institutes in the legal field: Max Planck Institute for Comparative and International Private Law (mpipriv.de) and the Swiss Institute of Comparative Law (isdc.ch).

In the late 90s an important change was occurred, related to the availability of online legal resources.

As noted Knowles and Thomas: "Finding useful information on the internet using web search engine ...

... has become second nature for many people” [1]. Today we can find online, with full text, legislation, case law, legal literature.

What are the online legal resources and how can we access them?

There are online legal databases providers offering updated legislation of different countries, recent case law and legal reviews, etc.

We emphasize that the use of these legal software does not need experts in informatics.

The most complex programs require the registration and payment of a website subscription to access the database. Typically, these products also have some interactive sessions that allow the formulation of questions and receiving answers.

In Romania, such a computer program (perhaps the first appeared on our market) is LEGIS designed and developed by the "Electronic Computing Territorial Centre" Piatra Neamt.

The computer application LEGIS provides documentation on the normative acts issued from 1837 until now. Thus, we can be aware of legal requirements in all areas in a short time and with minimal effort. It is estimated that the search of a normative act (including acts to which it is connected) takes about 2 seconds.

Laws, decrees, circulars, decisions, orders, rules, regulations, instructions, constitutions, codes, etc., namely all official documents issued by the Government, Parliament, Presidency, National Bank, Ministries can be accessed easily and quickly by computer.

The identification of normative acts is made according to different criteria of selection: author of the act, date, keyword, documents state, document type, etc.

In addition, the program offers a special feature: "the link between acts "- a simultaneous view of two documents that relate to each other (the modified act and the original act); if in an act another document is referred to (hyperlink), the user can simultaneously view the current act and the act of reference at an article level by posting two documents in parallel, horizontal or vertical format.
Along the legislation, LEGIS also contains the following modules: "Acts in English", "The Case Law" (over 40,000 cases), "Internal Acts", "Public acquisitions" (the sixth part of the Official Gazette), "Doctrines" "Economic Summaries," "Models" (contracts, legal actions, claims, petitions, etc.). "Case Law - Human Rights", "Comments" (from specialty journals: Pandect novel, "Judicial Courier" magazine, "Law" etc.), "Dictionaries" (Romanian, Latin, law, civil law, labor law, international law and business, banking and insurance), "Classifications" (COR, CAEN, CPSA, CPV), "Authorizations", "Definitions and abbreviations".

In addition, the application "EuroLEGIS", developed by CTCE Piatra Neamt, gives users an overview of EU legislation and practical access to EU legislation; the text of the documents is in English, French, German, Italian and Romanian. The access to EU legislation is made using filters specific to Community legislation (number, type and year note, theme, publication, keywords, etc.). EuroLEGIS treats in a special way the European legislation documents which refer to the Romanian legislation. The application provides the user an equivalence between the two laws (European legislation and Romanian legislation), allowing a better understanding of the legislative process.

In Romania new legislation programs have been developed, such as "SINTACT" and "INDACO SYSTEMS".

All these are in a continuous development and improvement, giving users more interesting facilities.

Thus, "Syntact" technology is able to provide updated forms, consolidated of all normative acts and for any time. Also, this program provides, after a single search, results from all sections simultaneously.

How do we learn about the existence of such legal documentation software? Either by using a search engine like Google or entering the site of large law libraries, professional associations (notaries, lawyers) and legal institutions that have links to these suppliers of legal resources online.

For example, on website of the Swiss Institute of Comparative Law (isde.ch) we find a section called "Online Law", in which we are given links by country or region, theme, international organizations, etc. We are led to both sites based on registration (with fee) and to sites with free access.

For Romania it is shown only the site of the Chamber of Deputies and the High Court of Cassation and Justice (scj.ro)

We will present below some international legal information providers, based on subscription, to get them known by Romanian lawyers and to show a starting point for their informing work.

In France, among the leading providers of online legal databases (legislation, case law, doctrine) based on subscription, we can mention: dalloz.fr, lexisnexis.fr. (JurisClasseur) lextenso.fr, etc.

In Spain we mention: vlex.com, westlaw.es, etc.

In Belgium: jura.be, strada.be, etc.

In Portugal: bdjur.almedina.net (Base de dados juridica almedina).

In Germany, worth mentioning are : Beck-online.beck.de, recht.makrolog.de, vfst.de (Verlag für Standesamtswesen), etc.

In the UK: justis.com, justcite.com, etc.

In the U.S.A.: heinonline.org, lexisnexis.com, westlaw.com, foreignlawguide.com (Current Sources of Codes and Basic Legislation in Jurisdictions of the World), etc.

As previously mentioned, there are free online sources. These are primary sources of legislation and - possibly – of case law. In general, it is about official sites of some state, government institutions; this is why, usually, they do not offer legal doctrine as for this the question is the law of intellectual property. The states understand that it is much safer for citizens, when it comes to the accuracy and timeliness of information, to provide online access to key state legislation (constitution, codes, etc.) and to higher court sentences. Thus, public institutions have also on their websites a section of legislation; there are, however, private institutions that provide free legal information.


For Spain: porticolegal.com, tribunalexistencial.es, cncompetencia.es, noticias.juridicas.com, etc.

For Italy: giustizia.it, senato.it, camera.it, cortecostituzionale.it, giurcost.org, diritto.it, infoius.it, notarlex.it, etc.

For Belgium: just.fgov.be, cass.be, constcourt.be, etc.

For Germany: bundesverfassungsgericht.de bundestag.de., iuscomp.org, online-recht.de, etc.

For Great Britain: opsi.gov.uk, bailii.org, justice.gov.uk, sosig.ac.uk, hmcourts-service.gov.uk, statutelaw.gov.uk, etc. The Office of Public Sector Information (OPSI) allows the access to the full text of Acts of Parliament from 1988 onwards and Statutory Instruments from 1987.” "The BAILII (British and Irish Legal Information Institute)
provides access to British and Irish case law & legislation, European Union case law, Law Commission reports, and other law-related British and Irish material...” Also, there are provided links for a series of world law resources.

For the USA, it is worth using (also for a starting point for international legislation): findlaw.com.

We can also mention ECOLEX which is a database providing the most comprehensive, global source of information on environmental law.

For Romania, the online law sources with free access are: edep.ro, senat.ro, just.ro, scj.ro, unbr.ro, uniuneanotarilor.ro, avocatnet.ro, etc.

Nowadays, for the law experts from Romania there is a particularly important issue: that of being aware of EU legislation and of the case law of both courts of the EU (European Court of Justice and the Court of the First Instance). We quote in this context, the Romanian Constitution paragraph 2, art.148: "As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act".

That is why we consider that legal databases in Romania should make more references to the Community legislation and case law.

The main website of the European Community is europa.eu.int. On this site we find information about EU institutions, official documents, about treaties, legislation and case law.

To effectively access legal information, we are directed to a particular site: eur-lex.europa.eu. EUR-Lex provides free access to EU legislation and other documents deemed public. The site is available in the 23 official EU languages and includes about 2 815 000 documents, the oldest dating from 1951. The database is daily updated, each year about 12 000 documents being added.

Specifically, the EUR-lex contains the full texts of EU treaties, agreements between Member States and agreements with non-member states and international organizations, the present legislation (secondary legislation: regulations, directives, decisions and other acts), proposed legislation and case law.

Official Journal of the European Community is available online on EUR-lex. It is published early in the morning, after each working day. It includes two sets: L (Legislation) and C (Communication and Notices).

EU court case law can be found on the website of the EU Court of Justice: curia.europa.eu. More specifically, we can find the full text of judgments, notices, conclusions and decrees of courts of the Union, published in "Directory of ECJ case law" and "Court of First Instance. The text of decisions is available on the day of delivery, that of notices when they are issued and that of conclusions on the day the Advocate General presents them. The decrees are made public only after the parties make them known. Also, a particular issue can be searched by number, date, name of parties, field, and keywords.

3 Conclusions

Jurists have a great power in society, as well as a high responsibility. Therefore, the interest of educators is to increase the share of methods that activate students. Through them, we must stimulate and endow the receiver with a value system and a potential involvement in social issues, decision making and assumption of responsibility.

In their teaching activity, law professors use mainly oral communication methods, which are appropriate to the exercise of legal practitioners; oral communication not only includes information, but also attitude, feeling, belief, intention. More specifically, during the course sessions expository or affirmative methods prevail (lecture, explanation) whereas during seminars – interrogative methods are preferred (conversation, problematization).

But the accelerated pace of socio-economic change determines the existence of a large volume and complex information to be rapidly transmitted to the jurist in training. Under these conditions, both teacher/trainer and student feel the pressure of time, which seems insufficient for the transmission and assimilation of information. In this situation, it is often insisted on expository methods that allow the teacher to communicate large amounts of knowledge in a relatively short time. On the other hand, the student receives a series of ready elaborated and synthesized knowledge; he is exempt from search and verification of information sources in the current "legislative jungle", activity that would take him long time, but would develop thinking, critical spirit, the will (perseverance), etc. Thus, it is created a one-way flow of communication and a passivity of students / receivers.

How can we revitalize this communication, saving an extremely valuable resource, time?

An effective solution would be to turn the lawyers in training to online legal resources. Currently, in Romania, these are insufficiently known and used, by beginners and experienced jurists alike.

Therefore we considered useful a presentation, how they can be discovered and accessed. Electronic
databases allow rapid information on international and interdisciplinary knowledge, facilitates a current, complete and complex documentation over the legal problems whose solution must be found. Thus, we gain time for discussions, for the development of a creative and enforced thinking.

Obviously, the access requires having certain logistics (computer, internet, etc.). But now that technical equipment is no longer a major problem.

However, we do not suggest a unilateral use of online resources.

The access to printed resources obviously requires more time and energy. However, these resources are more numerous and varied than online resources. For now, online databases are more limited than those printed; for example, few providers offer full-text online books. In addition, many online resources require the payment of a subscription which usually is more expensive than the traditional library subscription. Also, another advantage of printed sources is that reading of a material on paper (especially if it contains tens or hundreds of pages) is less tiring if done on the computer screen.

"It is not simply the case that “online” means “modern” and “paper” means “old fashioned”... To make the best use of law library resources you must learn how to move comfortably between the electronic and print sources."[1]

References: