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THE JUDICIARY SYSTEM IN ROMANIA

The year 1989 meant for Romania the end of the communist totalitarian regime and the revival of the democratic values of social organization. Among these, the separation of powers in the state, the supremacy of the law, the independence of the justice, the respect for human rights, as well as the market economy, based on private property and free initiative, stand for its main features. They are included in the new Constitution adopted by referendum in 1991.

The Constitution was based on the ideas that the new organization of the society as well as the respect for democratic values is essentially related to a real and profound reform of the judiciary system. Its goal is to redeem to the justice the role of a power in the state-, which should be equal and independent in relation to the legislative, and the executive- and a well-deserved status for the magistrates in comparison with the social importance of their activity.

Therefore, the Constitution proclaims that justice shall be rendered in the name of the law (art 123, 1st al), that judges are independent and subject only to the law (art 123, 2nd al). Judges are appointed by the President of the country and they are irremovable, according to the law (art 124).

The Constitution also proclaims that promotion, transfer and sanctions against Judges may be decided upon by the Superior Council of the Magistracy only, in accordance with the law. (art 124) Some other constitutional articles, that set the general principles, deal with the organization of the courts of law (art 125), the publicity of debates (art 126), the right to have an interpreter (art 127.), the use of appeal (art 128) and Police in the Courts (art 129.).

As for the Public Ministry, the Constitution acknowledges that within its judicial activity, it represents general interests of the society and it defends legal, as well as the citizens' rights and freedoms. (art 130., 1st al). The Public Ministry shall discharge its powers through Public Prosecutors, constituted into public prosecutor's offices, in accordance with the law. (art 130., 2nd al.) Public Prosecutors carry out their activity in accordance with the principles of legality and impartiality, under the authority of the Minister of Justice. (art 131.).

The Constitution also acknowledges the initiation -after almost 50 years- of the Superior Council of Magistracy that consists of magistrates elected for a term of four years by the

Chamber of Deputies and the Senate, in a joint session. (art 132.)The Superior Council of the Magistracy nominates Judges and Public Prosecutors for appointment by the President of Romania, except those on probation, in accordance with the law. The Council also performs the role of a disciplinary council for Judges. (art 133.)

These constitutional principles have been stated in the law of judicial organization NR. 92/1992. After 5 years of practical implementation, considering the experience gained by the operative democratic institutions, several articles have been modified by the Law NR. 142/1997. The whole title number IV of this legal document deals with the body of the Magistrates, their appointment and promotion in Office.

According to art. 42., the judges from all the courts of law, the public prosecutors from the framework of the public prosecutor's offices attached to these courts, as well as the assistant-magistrates of the Supreme Court of Justice shall be qualified magistrates and shall belong to the body of magistrates.

In order to be appointed magistrate, a person shall have to meet the following conditions:

- a) to be a Romanian citizen only with permanent residence in Romania, and in full possession of the legal capacity to exercise his/her rights.
- b) to be graduated in law and to have fulfilled the time of probation required by law for the office to which he/she is to be appointed.
- c) to have no past criminal record and to enjoy a good reputation.
- d) to know Romanian language.
- e) to be apt from a medical point of view for the exercise of the office.
- f) to have graduated from the National Institute of Magistracy or to have passed the examination for admittance in magistracy (art 46).

There is no special probation required in order to be admitted in magistracy. The majority of the new judges and prosecutors are young people who have just graduated from the University and have passed the examination of admittance in magistracy. By order of the Minister of Justice, they are appointed judges at a court of first instance, or public prosecutors at the public prosecutor's office attached to that court.

There is no political condition that needs to be fulfilled. Moreover, article 110 from the same law, proclaims that magistrates are forbidden to be affiliated to political parties, or to be engaged in public activities with a political character.

The Ministry of Justice organizes the qualification examination and by order of the Minister, it designates a board consisting of professors and famous practitioners. The conditions that need to be fulfilled by the candidates are mentioned in article 46.

The qualification examination consists of two written tests, both of them compulsory: one of private law (civil, commercial, trial law) and one of public law (constitutional, judicial organization and criminal law).

The average grades required in order to pass the examination have often been above 7 (on a scale of grades that goes from 0 to 10).

The examination procedure is made public by mass media, as well as the results.

The list of vacant offices is published as soon as the classification table of the candidates has been set up, so that they would be able to know the exact number of vacant offices.

The enrollment requests for the qualification examination represents the candidates' own initiative, without any authority's intervention. The requests are forwarded to the Ministry of Justice and the candidates need to prove the fulfilling of all the conditions provided by law in art. 46.

After the two year long period of probation has been effected and the candidates have passed the qualification examination, they are designated as judges and prosecutors by the President of Romania, at the proposal of the Superior Council of Magistracy.

In special cases, the admittance to magistracy at the first instance courts and public prosecutor's offices can be recognized when the candidate has already completed a five year long activity as lawyer, notary, member of the teaching staff of the higher education schools of law, or of the research staff of the Juridical Research Institute of Academy.

In order to be appointed or promoted to higher offices, magistrates should have exerted a praiseworthy activity, attested by the qualification marks granted by the hierarchical chiefs and by inspectors.

The qualification marks are granted each year and they reflect the results of the magistrate's professional activity, his behavior at work and in society, his qualities and his perspectives in this profession.

- The magistrates should have fulfilled the following lengths of service time in the magistracy:
- 4 years for the offices of judge at a tribunal (second instance), public prosecutor at a public prosecutor's office attached to a tribunal;
 - 6 years for the offices of judge at the court of appeal (third instance) and public prosecutor's offices attached to the courts of appeal;
 - 12 years for the offices of judge at the Supreme Court of Judges.

As for the incompatibilities resulting from their status, the law on judicial organization proclaims several restrictions.

According to article 111, the office of magistrate is incompatible with any other public or private function, except higher educational didactic functions. Moreover, magistrates are forbidden the exercise of trading activities, participation in the administration or management of trading or civil companies, either directly or through interposed persons. Magistrates may not give oral or written consultations in litigious matters, even though the respective lawsuits are on

the roll of other courts than those in which they exercise their office, nor express an opinion in public, on unsettled lawsuits.

Judges and prosecutors are appointed by the President of the State, at the proposal of the Superior Council of Magistrature. If the Council refuses to propose the magistrate's candidacy to the President of Romania, the magistrate may forward a complaint to the Supreme Court of Justice, during the 30 days term since the acknowledgment of the refusal. The complaint suspends the implementation. The Supreme Court of Justice will express its decision, which is irrevocable.

Judges appointed by the President of Romania are irremovable. Members of the Public Ministry and judges on probation enjoy stability.

The Superior Council of the Magistrature is formed of 15 members, elected for a duration of 4 years by the Chamber of Deputies and the Senate in a common sitting.

The Superior Council consists of:

- a) 4 judges from the Supreme Court of Justice;
- b) 3 public prosecutors from the Public Prosecutor general's Office attached to the Supreme Court of Justice;
- c) 6 judges from the courts of appeal;
- d) 2 public prosecutors from the public prosecutor's office attached to the Court of Appeal in Bucharest.

For the election of the members of the Superior Council, each court and public prosecutor's office, in the general meeting of the magistrates, designate a number of candidates.

The Superior Council of the Magistrature's main prerogatives are:

- to propose to the President of Romania the appointment of the judges and public prosecutors, except those on probation;
- to dispose with regard to the promotion, transfer, suspension and cessation from the judge offices;
- to validate the qualification examinations of the magistrates;
- to fulfill the role of disciplinary council of the judges;
- to give advisory opinions on matters with regard to the administration of the judiciary, at the request of the Minister of Justice.

The works of the Superior Council of Magistrature are presided over by the Minister of Justice, without voting right, and by the president of the Supreme Court of Justice when it acts as a disciplinary council.

There are no special conditions that need to be fulfilled by candidates belonging to the national minorities. Women represent 2/3 of the total number of magistrates.

The President of Romania appoints judges for life and they are irremovable, with the exception of the judges from Supreme Court who are appointed for a 6 year long mandate that can be renewed.

As for the magistrates' professional education, several ideas need to be stated.

Candidates that have passed the admittance examination can either start their activity in the courts of law, and take a special exam two years later, or they can attend one or two year long classes at the National Institute for magistrates. This public institution is exclusively subordinated to the Ministry of Justice and its goal is to train soon to become judges and prosecutors as well as magistrates already in function.

The teaching staff consists of magistrates who suspended their activity in the courts of law for a period of 3 years, with their express consent, as well as professors and foreign specialists.

The candidates admitted at the entrance examination for the National Institute for Magistrates shall have the capacity of trainees of this Institute and shall be granted a monthly scholarship which amounts to the salary of a probationist judge.

This training for the magistrate career is founded on getting acquainted with the tendencies and the development of the main legal institutions, including in the field of comparative law and on acquiring the necessary practical knowledge for becoming a judge or public prosecutor.

During the period of the courses, the trainees shall perform probation periods within judicial courts and prosecutorial offices, shall draw up, under the guidance of training staff and magistrates from courts and prosecutorial offices, attend the trial sittings and the activity of criminal pursuit.

On graduating from the National Institute for Magistrates, the trainees shall sit for an examination, which shall mainly consist of practical tests. The graduates of the Institute shall be appointed probationist magistrates by the Ministry of Justice. In case the courses of the National Institute for Magistrates will take 2 years, graduates will be entitled to enroll directly for taking the qualification examination. As for the magistrates' continuous training, it represents not only a right but also an obligation.

According to art. 119, magistrates shall be bound to effect, at least once every 5 years, according to the schedule approved by the Minister of Justice, training stages or, as the case may be, professional improvement stages at the National Institute for Magistrates, at domestic or foreign academic institutions or within the framework of courses organized by courts of appeal or by prosecutorial offices attached to courts of appeal.

At every court of appeal and prosecutorial office attached to it there shall be appointed a magistrate who shall be responsible with the professional improvement of magistrates.

Unfortunately, due to the lack of financial resources, the number of courses organized by the National Institute for Magistrates has been very low. Some trainees took part to different seminars, conferences, scientific reunions held abroad, thanks to our colleagues from Austria, France, Germany, Italy, Spain, USA. The Romanian Association of Magistrates brought many of these initiatives to life.

Moreover, there is a scientific debate that goes on every trimester at the Courts of Appeal's level, and it usually deals with the recent issues of the judicial theory and practice.

As a conclusion of this short presentation, we have to underline the fact that the new law, that details the main constitutional principles, involves several elements, that democratically configure the role and the status of justice in Romania.

In spite of this, there are a few legal dispositions and institutions that need to be reevaluated, remodeled, and the Romanian Association of Magistrates will continue its constant efforts aiming at implementing a whole new perspective, which is absolutely necessary.

First of all, it is hard to explain the following situation, not only theoretically but also practically: there are two laws on judicial organization: Law number 92/1992, modified by a 1997 law, that deals with all the courts with one exception: the Supreme Court of Justice and Law number 56/1993 of the Supreme Court.

The judicial system represents one indivisible system, by its nature and function. Its procedure dispositions, the competence and the right to defense create its unity. The differences between the Supreme Court of Justice and the other courts are certainly unimportant in comparison to what they have in common.

As far as we are concerned, it would be preferable to have just one law for the entire juridical system, including a special title for the Supreme Court of Justice, accentuating the unity and independence of justice, that has its own well established role and position in the democratic organization of our society.

On the other hand, both legal dispositions and practical activity should reveal the need for an increase of the role and competence of the Superior Council of Magistracy, as a supreme forum of juridical power.

According to the law, the Council does not have its own technical staff, relying on the one subordinated to the Ministry of Justice, thus not being able to have a full and direct contact and its own vision upon the numerous problems that magistrates have to deal with.

The vast majority of its prerogatives imply the Ministry's proposal or recommendation, including the essential prerogative of proposing the appointment of judges to the President of Romania. Also, the mere fact that the Minister of Justice, even without voting right, presides the

works of the Council, tends to turn this institution into an executive instrument of the Minister of Justice. In our opinion, the legal dispositions should be immediately revised, so that the Council's prerogatives should be increased, in case they refer to the magistrates' professional activity. The National Institute for Magistrates should be subordinated to this Council not to the Ministry of Justice.

The 1997 modifications of the law on judicial organization have extended the Minister's role and competence well beyond the administration of justice, offering him out of proportion powers and prerogatives. As the Minister of Justice, who is a member of the government, is a politician, the risk of mixing the political and administrative factors into the judicial activity appears as unavoidable.

The role and the importance of the Public Ministry need also to be evaluated again, considering the new democratic organization of our judicial system.

According to the Constitution and the law on judicial organization, prosecutors are magistrates.

On the other hand, especially after the 1997 modifications, the law on juridical organization states in art. 37 that the Minister of Justice has very important prerogatives and a vast executive competence in relation with prosecutors.

It is certain that a few more changes-such as the introduction after 50 years of the institution of "juge d'instruction" - need to occur in order for our juridical system to work at its maximum potential, in a new democratic society.

Thank you for your attention.