The Independence of Judge – a guarantee of the rule-of-law state

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Abstract
One of the principles of justice organization and performance is the independence of judge.
This principle implies the fact that the judge may not be undoubted in any way when resolving different invested cases in the determination of the pronounced solution, excluding all divisioned activity referring to the Ministry of Justice.
Constitutional principle of the independence of judges is an essential guarantee for any system of law, reflected in the procedures of the recruitment and promotion of judges, in their deposition, but also in judges remuneration, adding the control of court orders made after certain juridictional procedures.
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1. General Considerations to the Justice

One of the aspirations of people from everywhere is justice. Justice, as a public service, organized by the state in centuries and millennia, has been carried out on the basis of different criteria, but it was always considered that those official criteria are the criteria of justice. The rule-of-law state requires that the dimension of constitutional democracy, the independence of the judiciary and judges obedience only to the law, in order to ensure that the act of justice is straight, both to the official criteria and the aspect of popular perceptions.

It is understood, after December 1989, that the Romanian citizens have had an expectation in respect of justice. For various reasons, citizens perception of justice is far from what it should actually be justice, as an element of Western civilization where to Romanian society tends [1].

On the basis of European officials warnings in respect of misdeeds in the justice system, or of the corruption phenomenon as a whole, it has laid the foundations of legislation modifications by filling out existing texts, including constitutional, without any modification which, the process of identifying solutions for the entry into normality would have been more heavily, which would generate a loss of the citizens trust in the act of justice.

By "justice" someone should mean, the one hand court system (judicial authorities), and on the other hand we understand the activity of processes for resolving the civil, administrative, commercial, penal, employment, etc. , for the application of penalties, the laying down of the rights and infringed legitimate interests. In usual language, doing justice means doing equity. And Puffendorf`s remark, within the meaning of that, "If there weren't justice, we would eat each other", has been and remains valid even today .[2]

2. Aspects Concerning the Independence of Justice System

Designed as a function performed independently and impartially, the justice has established itself as an idea and reality in which people believe that it can defend them when their legitime rights and interests are infringed, as a similar of justice always triumphant. Fiat justitia pereat mundus (justice should run its course, even if the world were to be destroyed) has become a favorite saying in connection with the justice. The meaning of this principle is that as well as the recurrent right of Divinity is steady in its firmness, unveiled in all conditions, even of collapse all over the world, just as the judge who is in charge of a specific event was to be completed and resolved as he urges science and consciousness, even if, in the meantime, it would be the end of the world in all the terrible deeds(Werner Bergengmen) .[3]

The understood and reversed independence of the judges is meant to have a great role in ensuring all the institutions of the rule-of-law state. The correct division of doing justice is in fact an essential proof of the attachment of a country or another in front of the great international principles. On the other hand, it is found that the truly effective role of judicial power shall be subject to the guarantee of the judges immovibility, by clear and effective mechanisms to guarantee the personal rights, the access without discrimination at all the courts of law, the opportunities of any citizen who feels that an injustice has been done to appeal to Justice services. Arbitrary interference of the executive in justice has always been a real obstacle in the way of exercising the functions of courts of law. Mixtures of any kind and "suggestions" given to the judges in one way or another have blighted the idea of justice, thereby reducing the value of one of the most important functions of the state and reducing its servers to the modest position of ordinary officials. Besides his ideas of the rule-of-law, and the

guarantee of an authentic democracy are, therefore, the re-establishment of the middle-aged prestige of the judiciary, to guarantee its efficiency mechanisms, discarding any conditions which would dent, it would prevent or diminish the reputation of judges to make dependent on certain political forces. In this respect it is to be mentioned that all democratic constitutions granted an essential role of the judiciary, the matter shall be referred to law supremacy, ensures that immovability of judges, shall establish clear, efficient mechanisms that the citizens can use to address justice and obtain the ensuring of compliance with their rights .[4]

3. The Independence and Commitment of Judge Only to the law

It is one of constitutional principles of the justice system. According to this principle, in the course of work, the judge shall be subject only to the law and his own conscience. As a result, in solving the disputes, the judge may not receive any kind of orders and instructions, hints, tips or other such stimuli on the given solution.

The independence of judge and of the justice system, even come under occulted/balance of powers in the state, people speak of judicial independence of the authority. It expresses the possibility of protection of governers, being in fact a guarantee for the abuses of powers (authorities). Of course, independence is substantially linked to the character, morals and traditions specific to each country, it cannot be guaranteed absolutely by law .[5]

According to the dispositions of Article 124 para.(3) of the Constitution of Romania, "Judges shall be independent and conformed only to the law".

Independence of judges and their obedience only to the law are of such a nature as to ensure the quality and objectivity of judgments, to inspire confidence in the course of their work parties courts and increase in this way the justice prestige.[6]

Independence of judges considers, in the first place, their relationships with other public authorities. Indeed, the judges are not in relationships of subordination toward other public authorities and regardless of their position in the state .[7]

4. Guarantees Referring to Independence of Judges

A special role to consolidate the independence of judges is represented by the rules relating to recruitment, promotion, immovability, the incompatibilities establishment, judges responsibility, as well as the control of judgments.

Admission to Magistracy shall be carried out following a contest based on professional competence, skills and a good reputation, it will be made by National Institute of Magistracy, in compliance with the principles of transparency and equality.

Independence of judges is guaranteed by another principle, covered by Article 125 para.(1) of the Constitution of Romania, namely that of judges inamovibility, principle according to which the judge is protected against transfer, assignment, detachment, suspension and arbitrary prosecute.

The provisions of Article 21 para. (3) of Law No. 303/2004 [8] shall provide that only the judges appointed by the President of Romania shall be irremovable, judges trainees enjoying only stability.

Promoting judges shall be made only following a contest organized by the Superior Council of the Magistracy, and the transfer, the delegation and the secondment of judges shall be available to the judges of the Superior Council of the Magistrature.

Sanctions against judges shall be made only in accordance with the conditions laid down by the law, by the judges of the Superior Council of the Magistracy, in accordance with the procedure laid down by an organic law. Division judgment is subject to appeal to The panel of 5 judges at the High Court of Cassation and Justice (Article 51 para.(3) of Law No. 317/2004).[9]

Incompatibilities establishment constitutes of another guarantee of the independence of judges. Thus, the office of a judge, irrespective of the level at which court and carrying on their business, it is incompatible with any other public or private office, except that of an academic professorial activity. This ensures the independence and impartiality of judge.

Immovability assumes that the judge may not be transferred (to another court or to the prosecutor's office) or promoted to a superior court without his consent, and the disciplinary sanction can be ordered only in case of having committed serious deviations and after a jurisdictional procedure.

Another guarantee for the independence of judges is the control of the decisions of the court, checking that it is carried out by courts in compliance with court proceedings.

Immovability is a guarantee of the proper management of the justice system and the independence and impartiality of judge. It is not included only in the interest of judge, but also in the case of the justice system. That's why the legislator understood to lay down special conditions for appointment as a function of the magistrates. This system requirements established for appointment magistrates are meant to carry out effectively the principle of independence of judges, while at the same time providing prestige professionalism and justice. Immovability refers to the judge status, not to his ability to be part of the court .[10]

Judges may not be independent of law, as they were bound to respect and apply the law .[11]

Constitutional provisions, according to which, "Judges shall be independent and subject only to the law", are not declaratively, but they constitute binding constitutional rules for the Parliament, which has duty to legislate appropriate mechanisms to ensure real independence of judges, without which the existence of the rule-of-law state cannot be conceived [12].

5. Constitutional Jurisdiction on Romanian Independence of Judge

A vast range of decisions of the Constitutional Court relating to independence of judge, we will examine only a part of them, namely those concerning legal guarantees of the principle of independence of judge.

Interpretative solutions given in the appeal in the interests of law, being named clarifications of law may not be regarded as source of law, in the ordinary sense of this concept. The institution of appeal in the interests of law confers to the supreme court judges the right to give a certain interpretation, by unifying the differences of interpretation and application of the same text of law by inferior courts. Interpretative solutions also remain constant and uniform, and are not linked to some of the parties as they have no effect on previously pronounced solutions, which have been in judged trial, are invoked in doctrine as "judicial precedents", being considered by legal literature as "secondary sources of law" or "interpretative sources" . [13]

European Court for Human Rights, through the judgment handed down in "Brincat against Italy", 1992, acted that independence of judges is regarded in relation

to the executive, without the fact that this independence exclude subordination to other judges, if they enjoy themselves to be independent of the executive.

The Court stated that: "The principle of judge's obedience only in front of the law, in accordance with Article 123 para. (2) in the Constitution, does not and cannot have the significance of applying different and even contradictory of the same provisions laid down by law, depending only by subjective interpretation of belonging to different judges. Such an idea would lead to the consolidation, even on grounds of independence of judges, of some solutions which could be an infringement of the law, as it is unacceptable, whereas the law was given, its application may not be different, and intimate conviction of judges cannot justify such a result." The Court also considered, by the same decision, that "Ensuring unitary character of judicial practice is imposed by constitutional principle that all citizens are equal before the law and public authorities, therefore including the judicial authority, because this principle would be seriously affected if in applying one and the same law courts solutions would be different and even contradictory" [14] .

Independence of justice involves a special status, adequate to magistrates, designed to print an unquestioned value to act of justice, through the protection of members of magistrates against subjectiveness and unjustified or abusive actions of criminal prosecution components which could affect their credibility[15].

Principle of independence of justice, enshrined in Article 124, para. (3) of the Constitution, derives from the separation of powers in the state, in view of the need of a balance between the authorities who exercise power in the state. It is imperious that courts of law to be protected from any interference and, therefore, independence of judges is a fundamental guarantee of the pursuit of human rights.

Principle of independence of justice reforms on the one hand, the judges requirement to settle disputes with which are invested only based on the law, but on the other hand, the requirement that all public authorities refrain from any interference in the activity of the court.

Considering the judicial control which shall be exercised by the courts which rectify the judicial remedies available on courts which have pronounced attacked judgments, it does not constitute a restriction on the independence of justice, because

the judiciary is always back, which is not possible to have an influence on judge who delivered the judgment given to judicial supervision.

The legal criticized provisions do not constitute a breach of the independence of judge by the fact that, rejudging the case, it takes the resolve in as laid down by the court disposition, because these guidelines are given in the course of judicial activity of courts of varying degrees, on the way to pronounced judgment on the basis of contradictory debates. Also, independence of judge from the fund is not analyzed by the fact that, rejudging the case, it adopts the resolve in as laid down by the court disposition, because by doing this he is not subject to a foreign authority by the judged cause, but he complies with a judgment given in the exercise of legal jurisdiction of judicial control.

On the other hand, the Court noted that in all the legislations shall be permitted upper courts intervention within the framework of the system of appeal, this principle keeping independence of the justice system. In the same direction is the case-law of the European Court of Human Rights relating to the concept of "independent court", contained in Article 6, paragraph 1 of the Convention for the protection of human rights and fundamental freedoms (Cauza Pretto and others against Italy, 1983) [16].

Thus, the Court noted that both independence of justice system - institutional component (concept of the "independence of judges" referring entirely to judges, but covering the whole justice system), as well as independence of judge - single component implies the existence of many aspects, such as: no involvement of other powers in respect of the work of the court, the fact that no other component part than the courts cannot decide on their specific powers provided by law, that there is a procedure laid down by the law relating to the means of redressing the decisions of the court, the existence of sufficient financial funds for the purposes of carrying out and managing the activity of the court, the procedure for the appointment and promotion on the basis of the magistrates and, possibly, the period for which they are appointed, appropriate working conditions, the existence of a sufficient number of magistrates of the respective court in order to avoid the risk of an excessive amount of work and in order to allow for the processes completion within a reasonable time period, proportional remuneration to the nature of the work, impartial distribution of the files, the

possibility to form associations which have as main object the protection of independence and interests of magistrates, etc.

There's no doubt that the principle of freedom of justice may not be restricted only to the amount of remuneration (including both the salary, as well as their pension) of magistrates, this principle involving a series of guarantees, such as: the status of magistrates (the access conditions, the nomination process, solid guarantees to ensure transparency of procedures by which the magistrates are to be appointed, promotion and transfer, suspension and termination of office), stability or their irremovability, financial guarantees, administrative independence of magistrates, as well as independence of the judiciary against the other powers in the state. On the other hand, the independence of justice includes financial security of the magistrates, which involves the ensurance of social guarantees, such as the pension of service of the magistrates.

In conclusion, the Court found that the principle of freedom of justice defend the pension of magistrates service, as an integral part of their financial stability, to the same extent to which appear other warranties of this principle.

Both in the case law of the Court of Romania's Constitution, as well as in the case law other Constitutional Court has stated that financial stability of the magistrates is one of guarantees relating to the independence of the justice system.

Constitutional Court has found that the concept of the independence of judges shall include an adequate remuneration, comparable to the reputation of profession and for the purpose of responsibility. Taking into account the status of judge, the purpose of remuneration of judges is to ensure the independence, as well as to compensate for the partial restrictions imposed by law. Also, the requirement to ensure the adequate remuneration for judges is not only in connection with the principle of independence of judges, but also with the requirements of set qualification and competence and with prohibitions imposed on them [17].

Conclusions:

Independence of judge is a necessary element in a democratic society which implies that there is no interference with the act of justice, as well as protection of judge in relation to all pressures which could arise from the outside of public authorities.

Constitutional Court, by its vast law, has made a major contribution to judge outlines independence principle as a guarantee of the rule-of-law state.

Moreover, the independence of judge is guaranteed by immovibility principle, to which other specific guarantees add results from both constitutional provisions, the provisions of other normative acts, as well as on the extensive law of the Constitutional Court in this matter.

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