GENERAL CONCEPTS REGARDING THE ORGANIZATION OF JUSTICE AS A PUBLIC SERVICE IN ROMANIA

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ABSTRACT: *A principle of law is the result of social experience, and the practical utility of knowing the general principles lies in the fact that they draw the guidelines for the entire legal system and exert a constructive action, orienting the legislator's activity. The principles of law can therefore be defined as rules of maximum generality that summarize social experience and ensure the balance between the observance of rights and the fulfillment of obligations.*

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Starting from the definition of the term "jurisdiction" found in the Explicative Dictionary of the Romanian language[1], it has two meanings: On the one hand, in a formal sense, the term represents "*the power, competence of a judge or a court to judge; a territory where a judge or a court may exercise that power.'.*

In the specialized doctrine it has been stated that the assessment of the term jurisdiction as "power" is insufficient, incomplete, because the judge has not only the "power" to judge, but also the "obligation" to do so, not referring to a faculty in this regard, but about a legal obligation (Ion Leș, 2019).

On the other hand, in the second sense of the term, the organic one, it means "the totality of the judicial bodies of the same degree or competent to settle a certain category of disputes".

From an etymological perspective, the term jurisdiction comes from the Latin *jurisdictio,* composed of *juris (jus)* meaning "right", and *dictio* which comes from the verb "dicere", to say.

The meaning of the term "judicial", which is found in such phrases as judicial institutions, judicial system refers to everything related to the administration of justice and has to do with this activity (Spinei, 2010).

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[1] Explanatory Dictionary of Romanian Language, Institute of Linguistics „ Iorgu Iordan – Alexandru Rosetti " of the Romanian Academy, Univers Encyclopedic Publishing House, Bucharest, 1998.

Our interest in studying the organization of the legal system in Romania goes toward the second acceptance of the concept, the organic one.

The first acceptance of the term of jurisdiction, the material one, is not without interest, because through it we will be able to clearly delineate the activity of the courts, from the activities carried out by the other public authorities in Romania.

In Romania, the role of the judiciary has been assumed by the state, and the fact that justice is a state monopoly entails the consequence that it is performed only by the courts legally invested, under the constitutional provisions contained in Article 125 al.1 of the Romanian Constitution.

Also, an important aspect that derives from the fact that the Romanian justice is a state monopoly is represented by the fact that the state is obliged to ensure its implementation, and the judge through whom this public service is performed cannot refuse to solve a case on the grounds that the law does not provide, It is unclear or incomplete, as provided for in Article 5 of the Romanian Civil Procedure Code (T.C. Briciu, 2016).

The relationship between the activity of the courts and the other public authorities in Romania

Turning our attention to the principle of separation of powers in the state, a principle found in the foundation of modern democratic societies[2], enshrined in the Romanian Constitution in Article 1 of 4, which states that *"it is organized according to the principle of separation and balance of powers – legislative, executive and judicial – within the framework of constitutional democracy"*[3], The activity carried out by the judiciary transposed into the formal sense of the notion of jurisdiction, differs primarily from the activity of the legislative power, from the legislative activity of the Parliament.

The simultaneous, reciprocal combination of the three powers of the state, *legislative, executive* and *judicial*, requires each to have a special and separate domain, part of the public power, and to have at hand "defensive weapons" in relation to the other powers (Deleanu, 1993).

Between the three powers there is an interdependence, the separation between the powers of the state cannot be understood as a complete autonomy of each of them, between them there is a mechanism of regulation, in which the principles of mutual cooperation and control intervene.

Parliament thus exercises its influence over the judicial system by its competence to legislate and thus intervene in the way the courts are organized and operated, as well as by legislating on the judicial procedure. This configuration prerogative does not interfere with the work of the courts.

On the other hand, the courts also exercise control over the legislative power through their various powers, related to the legislative power, whether we are talking about electoral matters or about their competence to solve criminal cases involving members of Parliament, let's talk about the decisions they pronounce in terms of interpretation of normative texts.

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[2] Principle first stated by John Locke (Two TREATIES on government, 1961) and Charles de Montesquieu (De l`esprit de lois, 1748) in the fight against absolutism, principle which became the foundation of the modern constitutional state.

[3] Amendment brought to the 1991 Constitution by the Revision Law published in the Official Gazette of Romania no. 669 of September 22, 2003.

We could say that the role of the judiciary has evolved. The number of cases brought before the courts and the number of legislative and normative acts that they must apply in Romanian jurisdictions has increased exponentially.

Last but not least, judges are in a relationship of interdependence with the administrative power. We say interdependence because, on the one hand, they are appointed by the President of Romania, on the other hand, the courts are competent to check the legality of the administrative acts issued by the public authorities or to intervene and award compensation, where a citizen is prejudiced by a right or legitimate interest by issuing an administrative act or refusing to issue such an act.

The purpose of the jurisdiction, in the material sense thereof, shall be achieved by means of the judicial act.

The judicial act

From a formal perspective, we could appreciate at a simple glance that any act emanating from a court of law could be regarded as a judicial act.

However, not all acts issued by a court will meet the criteria specific to a judicial act, so the formal criterion is not sufficient. We must bear in mind that some administrative bodies may also issue legal acts (Chiriac, 2011).

In such a situation, other material criteria were used to help identify and correctly distinguish the judicial act from other legal acts emanating from state authorities.

Such a criterion takes into account the fact that the judicial act seeks to restore the order of law (F.Carnelutti, 1936-1939). However, the criterion embraced by the vast majority of the doctrine takes into account the exclusive attribute that distinguishes a judicial act from other types of legal acts, namely the judicial authority, regulated in Article 430 of the Code of Romanian Civil Procedure.

This is the solution which the judge competent to hear a case, decides on the claim which is the subject of it, contained in the judgment,

Two are the consequences that arise from the authority of the matter being judged: judicial act - the court decision in execution, and the legal impossibility of reconsidering the same civil dispute or the same criminal act before the courts (Zidaru, 2008).

It has been assessed in the doctrine that, in a technical and limited sense, only the judicial decision would meet the specific elements of a judicial act (Ion Leș, 2019).

Types of jurisdiction

There are different types of jurisdiction in the Romanian judicial system, classified according to different criteria, but we stop on the more relevant classifications.

A. Contentious jurisdiction and non-contentious jurisdiction

The non-contentious procedure (graceful or voluntary) is, according to Article 527 of the Romanian Civil Procedure Code, that procedure under the empire of which the court is empowered to settle claims for whose absolution it is not necessary to establish an adverse right to another person.

For example: Approval of adoption, registration of the trade Union in the special register, appointment by the court of the special curator, complaints against land registration, establishment of associations and foundations, etc.

Unlike the non-contentious procedure, the contentious one represents the rule in the work carried out by the judicial bodies, being considered as its main component (Ion Leș, 2019).

The contentious proceedings are inextricably linked to the application of the adversarial principle, which implies the possibility for each party involved in the act of justice to express his or her views on the evidence, defense or any matter brought to trial.

B. Jurisdiction under common law and special jurisdiction

The criterion that distinguishes the two types of jurisdiction is that of the amplitutness of the powers of the different jurisdictions.

Thus, the common (ordinary) law jurisdiction belongs to and is performed by ordinary courts: Judges, courts of appeal, High Court of Cassation and Justice (Barac, fără an), having the plenitude of powers, which are, in principle, reflected on all types of cases (jurisdictio plenior).

Unlike the common law jurisdiction, the special jurisdiction has limited powers conferred under a special law (jurisdiction minus plena). They are defined by carrying out an activity of dispute settlement by state or private bodies other than courts, which have been expressly given to them by law within their jurisdiction.

Special jurisdictions are characterized by the following distinctive features:

a. They are carried out through entities that are not part of the public judicial system.

b. Resolve legal disputes that have been conferred upon them in their jurisdiction by special laws.

c. Judgments given by special jurisdictions may be checked in terms of legality and substance by the courts which are part of the public judicial system[4].

There are such special jurisdictions the Constitutional Court[5], in the matter of constitutionality control of laws, the departments of the Superior Council of Magistracy[6] in the matter of solving disciplinary complaints against magistrates, the National Council for solving complaints for verifying the unlawfulness issues arising in public procurement procedures[7].

C. Civil, criminal, administrative and constitutional jurisdiction.

This classification is differentiated from the subject matter. *The civil and criminal jurisdiction* falls within the competence of the same judicial bodies, different being, as I said only their nature, namely a civil claim in the situation of civil jurisdiction, respectively a criminal offense in the case of criminal jurisdiction. In essence, the differences between the two types of jurisdictions are determined by the different legal nature of the legal relationships inferred to judgment at the level of principles and procedures.

Administrative jurisdiction is mainly carried out through ordinary courts and has as its object the verification of the legality of administrative acts or the remediation of injuries to subjective rights or legitimate interests by issuing administrative acts or by unjustified refusal to issue them[8].

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[4] See the definition of special jurisdiction in Legal Dictionary, available on https://legeaz.net/.

[5] Whose organization and functioning is regulated by Law no. 47/1992 on the organization and functioning of the Constitutional Court – republished in the Official Gazette no. 807 of May 18, 1992.

[6] Whose organization and functioning is regulated by Law no. 305/2002 on the Superior Council of Magistracy, published in the Official Gazette no. 1105 of November 16, 2022.

[7] Whose organization and functioning is regulated by Law no. 101/2016 on remedies for the award of public procurement contracts, of sectoral contracts and of the contracts for the concession of works and concession of services, as well as for the organization and functioning of the National Council for Settlement of appeals, published in the Official Gazette no.393 of May 19, 2016.

[8] Art.1 of Law no. 554/2004 on administrative litigation published in the Official Gazette 1154 of December 2, 2004.

Constitutional jurisdiction is carried out through the Constitutional Court, which is not part of the system of legal bodies that are constituted in the public judicial system, being a specialized body of the state whose competence consists in carrying out a control regarding the compliance of laws with the supreme law of the state, the Constitution.

D. Jurisdiction of law and jurisdiction in equity

If the jurisdiction of law is characterized by the fact that the judge, in his or her work of solving cases, relies on legal regulations that are circumscribed to the judgment case, in the case of jurisdiction in equity, the judge seeks to apply the principles of ideal justice to a specific situation, the judge makes a personal appreciation of what is fair and just (Ciongaru, 2014).

The Principles of the Romanian judicial organization

A quality, efficient, effective, economic and above all independent, impartial and upright public justice service requires the regulation of principles dedicated exclusively to the justice service, regardless of its organization.

It has been stated in the specialized doctrine that these principles, although they are analyzed as being at the basis of the functioning of justice as a public service, some of them involve rather a perspective specific to the civil procedure (T.C. Briciu, 2016).

1.1. Justice is a state monopoly

According to Article 126 paragraph 1 of the Constitution, justice is carried out through the High Court of Cassation and Justice and the other courts established by law. It is the state that carries out justice in a modern society after a long historical evolution, unlike the old law, in which justice was considered a private business (Ion Leș, 2019).

As I mentioned, from here comes the consequence that no authority other than the legally established courts can do justice by issuing decisions that enjoy the authority of the matter being judged and the enforceability.

The state is also obliged to share justice when requested. The judge who has been invested with the resolution of a request cannot refuse the judgment. According to Art. 5 al.1 Romanian CPC *"no judge may refuse to judge on the grounds that the law does not provide, is unclear or incomplete".*

In the matter of Romanian civil procedure, the provisions of Article 5 al.3 provide that if the judge is unable to resolve the case with which he was invested under a text of law the content of which is unequivocal and perfectly applicable to the factual situation characterizing the case, it will have to apply the usages, and in the absence of them the legal provisions relating to similar situations, and if the latter are lacking it will have to settle it on the basis of the general principles of law, having regard to all its circumstances and taking into account the requirements of equity.

A relative exception to this principle is the arbitration, regulated in Book IV of the Romanian Code of Civil Procedure (Articles 541-621). This is a relative exception because even if the dispute is settled by individuals appointed by the parties, to the solution given by that "private jurisdiction", the law recognizes the effects of a final judgment, if it is not heard before ordinary courts.

1.2. The principle of the autonomy of the romanian courts

Montesquieu said, "there is no freedom unless the power to judge is separated from the legislative and executive powers."[9]

[9] *De l`esprit des lois*, 1748.

Rather, this principle takes into account the relations between the judiciary and the authorities of the non-state (Spinei, 2010).

The autonomy of the courts derives from the *very autonomy of the judicial function*, which implies a concrete and clear delimitation of the powers of the state authorities. Law No. 304/2022 on judicial organization[10] sets the judicial power apart from the other powers of the state by its provisions.

Thus, the autonomy of the courts is guaranteed not only by the *independence* and *immovability* of the judges, but also by *delineating the powers* of the legislature and the executive so that the effective performance of the judicial function is achieved without interference from other public authorities.

The autonomy of the courts is also achieved by *regulating organizational and functional structures, including their own administrative management bodies* as well as by a *separate budget*, in order not to depend in any way on the other authorities of the rule of law.

The autonomy of the courts does not exclude the intervention of the courts of judicial review which, following the exercise of appeals against decisions, verify either their legality or their merits.

At the same time, it should be stressed that neither the control exercised by the Superior Council of Magistracy or by the management of the courts affects the independence and autonomy of the courts. This control does not concern in any way the work of judgment, but only the managerial aspects.

1.3. The principle of the independence of judges

The independence of the judges, as enshrined in the provisions of Article 124 of the Constitution of Romania, presupposes the fact that judges are *independent and are only law-abinding*. On the other hand, *no one is above by law*, as provided for in Article 16. al.2 of the Romanian Constitution. This does not allow any interference or interference by any authority or person (Spinei, 2010).

The Constitutional Court of Romania held in its case-law that the above-mentioned constitutional text is not declarative, but its provisions are binding rules for the Parliament.

Parliament is obliged to regulate mechanisms in such a way that the principle of independence of judges is fully real (Ionescu, 2017).

Article 1 of the Universal Charter of the Judge[11] states: *"Judges must ensure, in all their activity, the right of everyone to a fair trial. They shall ensure the right of every person to hear his case fairly, publicly and within a reasonable time, by an independent and impartial court established by law, which shall decide either on the violation of his civil rights and obligations or on the criminal charge brought against him."*

This is essential in ensuring the *quality* and *objectivity* of judicial decisions, so that confidence in this public service increases.

This presupposes that *no body of state administration, including the judicial governing bodies and no judge of a higher court, is entitled to order or make suggestions to the judge*, when the judge is required to give the judgment or to give orders in a particular case, how to resolve it.

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[10] Published in the Official Gazette no. 1104 of 15.11.2022.

[11] Adopted by the Central Council of the International Association of Judges in Taiwan on 17 November 1999, updated by Santiago de Chile on 14 November 2017.

Thus, the appreciation of the facts, as well as the application of the law to the state of fact, belong exclusively to the intimate conviction of the judge, who is protected from any interference from outside.

On the other hand, there is the correlative obligation of the judge to obey only the laws, the judge being solely *responsible* for his decision.

Another guarantee of the independence of the judge is the *secrecy of the deliberation*. However, the independence of judges must not be detached from the general political framework of the laws of the state, because the court is called upon to defend these laws.

The same Universal Charter of the Judge, mentioned above, states that: *"The independence of the judge is indispensable for an impartial and law-abiding justice. She is indivisible. It is not a prerogative or privilege granted in the personal interest of judges, but in the interest of the rule of law and of any person who seeks and expects impartial justice."*[12]

However, it should be stressed that neither the courts nor the judges are independent of the law to which they must be subject, and there is no autonomy for them in relation to the law, judges being obliged to apply the law in force (Ciobanu, 1996).

1.4. The principle of immovability of judges

"Judges – as soon as they are appointed or elected – are irremovable until they reach the mandatory retirement age or until their term of office is terminated."[13]

The immovability of judges is one of the essential components of *the rule of law* (Diaconu, 2015). It is essentially one of the components necessary to achieve the constitutional principle of *the independence of the judge***.**

Regulated in article 125 al.1 at the Constitutional level, also in article 2 of Law no.303/2022[14], *the immovability of judges assumes that they cannot be revoked, transferred for business or suspended, and the move, following the advancement, can only be done with their consent*. (Article 2(2) of Law no. 303/2022).

In fact, the immovability is a state of fact and law with the consequence of *A STABILITY* which gives the judge the necessary comfort for the correct application of the law.

This presupposes that no legislative, executive or judicial body can influence judges in the conduct of their work, and no one can compel them, or give them suggestions to make them decide against their intimate convictions.

In essence, *the judge`s immovability* concerns not only the person, dignity and tranquility of the magistrate's life, but the very situation of the litigant, his confidence that the magistrate is safe from every external promise or threat, that he judges everyone equally, at any stage of society, according to his law and conscience (Bănescu, 1936).

That is why there have been doctrinal opinions which have held that perfect immovability is that in which even advancement in the professional degree does not presuppose the interference of the executive power.

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[12] Art.1 of the Universal Charter of the Judge, Adopted by the Central Council of the International Association of Judges in Taiwan on November 17, 1999, updated in Santiago de Chile on November 14, 2017.

[13] Art.2 of the Universal Charter of the Judge, Adopted by the Central Council of the International Association of Judges in Taiwan on November 17, 1999, updated in Santiago de Chile on November 14, 2017.

[14] Law no. 303/2022 on the status of judges and prosecutors, published in the Official Gazette no. 1102 of November 16, 2022.

1.5. The principle of permanence and the sedentary character of the court

The permanent nature of the courts implies that their activity is carried out *continuously, in the sequence of days, without interruptions*, except for non-working days, public holidays and judicial vacation that occurs between July 1 and August 31 of each year (T.C. Briciu, 2016). It contributes to the continuity of the resolution of civil and criminal cases (Ion Leș, 2019).

Non-working days and public holidays will be established by normative acts. The judicial holiday is 2 months in each calendar year, between July 1 and August 31[15]. During this period, the activity of the courts is not completely interrupted but is diminished, involving only the resolution of cases involving urgency, *thus a easier service regime*, necessary to perform the leave to which the magistrates and auxiliary staff of the courts are entitled. The cases that will continue to be judged, considered to be *urgent* under the provisions of the Code of Civil Procedure will be the Presidential ordinances, those on maintenance obligations, the owners' actions, requests for clarification and completion of the court decision, etc., and according to the Code of Criminal Procedure, in criminal matters, the cases in which persons in pre-trial detention are tried will be settled.

The sedentary nature of the courts implies the fact that they operate in the locality of residence established by law. In Annex no.1 to Law no. 304/2022 on judicial organization are expressly mentioned the courts, as well as their localities of residence. The fact that the activity of the courts of law is sedentary *makes the courts a stable place*, the one determined by the above-mentioned law.

The sedentary nature of the courts, however, allows the carrying out of procedural activities outside their premises. This happens when the procedural provisions allow, usually in connection with the performance of procedural administration acts when necessary, and which cannot be carried out at the permanent seat of the court. Obviously, the performance of such activities outside the permanent seat of the court will be carried out with the knowledge of all the parties involved and interested in the conduct of the case. For example, conducting an on-the-spot investigation or hearing a witness who is immobilized, not being movable or the situation in which the judge is delegated to carry out some duties in the electoral bureaus.

1.6. The principle of collegiality of judicial bodies

The principle of the collegiality of the court expresses the rule that the work of the court is carried out collectively by several judges and not by only one judge[16].

In Romania, a mixed system is regulated by Law no. 304/2022, the panel of a single judge being constituted in the cases of first instance of the court, tribunal and court of appeal, appeals are judged in a panel by two judges, and appeals in a panel by three judges, except where the law provides otherwise.

Therefore, contrary to the principle of the single judge, this principle requires that the judgment be made by several judges, the doctrine analyzing both variants.

Thus, several considerations have been invoked in favor of the single judge system, namely: Being alone, the judge pays more attention in the judgment of cases by becoming more aware and responsible for his role, with the consequence of reducing the number of

[15] Art.170 of the Rules of Procedure of the courts of December 22, 2022, published in the Official Gazette no. 1.254 bis of December 27, 2022.

[16] Definition available on https://legeaz.net/dictionar-juridic/principiul-colegialitatii-instantei.

judges with the consequnce of a better remuneration. It is also argued that the system of the single judge would achieve a better specialization of them. The main criticisms made against the single judge system or panel are those related to the fact that a single judge is more exposed to corruption and the risk of arbitrary solutions is higher.

Arguments have been made in favor of the principle of collegiality, such as: Better implementation of the act of justice due to the participation of several judges; the possibility of less external intervention on the work of judges, with the consequence of ensuring *their impartialit***y** and *preventing arbitrariness* due to mutual control between judges; by forming a panel of several judges, young people will be able to benefit from the experience of older people, which will again *lead to the improvement of justice* through the exchange of ideas between the members of the panel. Obviously, this system also involves criticism from doctrine, such as higher costs. At the same time, the doctrine invokes the fact that a collegial system does not automatically require a quality act of justice. Collegiality would allow less prepared judges to rely on secrecy of deliberation.

Therefore, both systems are susceptible to both favorable arguments and criticism, and as I pointed out, the current law on judicial organization no. 304/2022 regulates both systems, trying to capitalize on the favorable arguments of each system, the legal provisions regarding the composition of the court panels being imperative and their non-observance being sanctioned by the scrapping of the decision issued by the illegally composed panel.

1.7. The principle of dual jurisdiction

The principle of the organization of justice in the system of dual jurisdiction is defined as the organization of the judicial system so that a judgment can be subject to judicial review at a higher court, in order to remove any errors of judgment committed by the lower court[17].

As it follows from the Law no. 304/2022 on the judicial organization, the courts are organized vertically hierarchically, from step to step, at their top being the High Court of Cassation and Justice.

The hierarchical establishment of courts is motivated, on the one hand, functionally, because only under the conditions of the existence of hierarchical courts can ensure judicial control over judicial decisions, and on the other hand, by the statute of magistrates, it contains the distinctive elements in relation to the degree of the court at which the magistrate operates.

As mentioned above, courts are ordered in court activity according to the principle of double jurisdiction, which is a guarantee of the legality and soundness of judicial decisions, as a result of the possibility to exercise, under the law, remedies against judicial decisions.

Therefore, hierarchical control of judicial decisions involves protecting the litigant from abuses and mistakes that might occur in the work of a judge. This implies that the courts are not at the same hierarchical level, so a trial in a court can then reach, by means of appeal, a higher court for verification (example: If a case is tried at first instance in the court, the appeal will be settled by the court of appeal and the appeal to the High Court of

[17] Available definition on https://legeaz.net/dictionar-juridic/dublu-grad-de-jurisdictie.

Cassation and Justice. However, there is no question of a triple degree of jurisdiction because the appeal is an extraordinary remedy which does not allow the case to be discussed in all aspects, but only in legal aspects).

In criminal matters, the principle of double jurisdiction derives from an international regulation which is particularly necessary in relation to any domestic rule. According to Article 2(1) of the additional Protocol No. 7 of the European Convention on Human Rights, *"any person declared guilty of an offense by a court shall have the right to request an examination of the declaration of guilt or conviction by a higher jurisdiction."*

In civil matters, the double degree of jurisdiction derives from the concept of fair trial, imposed by Article 6 item 1 of the European Convention on Human Rights, taken over in the Romanian Constitution when it was revised in 2003, which also includes a component related to the right to appeal, in most cases, the principle of double jurisdiction is expressed.

The materialization of this principle is achieved by the appeal against the decision on the merits, both the first instance judgment and the appeal judgment being the practical reflection of the double-degree system of jurisdiction.

1.8. The principle of specialization of the courts

The provisions of Article 2 al.2 of Law no. 304/2022 list the courts through which justice, public service are performed, among which the *specialized courts* are mentioned.

The need to specialize the courts is the consequence of increasingly stuffy legislation and exponential growth in the number of cases.

As a result, the provisions of art.40 of Law no. 304/2022 provide for the possibility of establishing specialized courts and art.39 al.2 and 40 al.3 of Law no. 304/2022 provide for the possibility of setting up specialized sections and panels.

The judge can no longer cover, through his knowledge, the entire spectrum of the matters involved in the disputes with which the courts are invested, the character of the unit of jurisdiction specific to the Romanian judicial system, in which the panel of judges was invested both with the resolution of civil cases and with the resolution of criminal cases, it starts to make room for specialized courts (Ionescu, 2017).

The permanent enrichment of legislation, jurisprudence and doctrine in all fields leads to an objective impossibility determined by the natural human limit to master this information.

In order to increase the accountability in carrying out the act of justice, the legislator opted for the specialization of courts, sections and judges. Judicial practice will decide in the future whether the creation of specialized courts is the appropriate means of putting the principle of specialization into practice and whether it could not be manifested equally by the creation and maintenance of specialized sections in ordinary courts, option that costs less in terms of their organization.

1.9. The principle of free access to justice

Article 21 of the Constitution provides that *"every person shall defend his or her rights, freedoms and legitimate interests. '.* Article 6(1) of the European Convention on Human Rights states that *"everyone has the right to a fair, public and reasonable trial of his case by an independent and impartial court established by law."*

Therefore, access to justice is a fundamental right, without which it would be in vain to discuss fair trial and public justice within a reasonable time (Gavrilescu, 2011).

The rights, freedoms and legitimate interests referred to in Article 21 of the Constitution would be devoid of content if they did not correlate to the concrete ways of exercising and protecting by judicial means (G.Durac, 2018).

From the above mentioned legal regulations, a number of consequences arise:

On the one hand, the need for the state to provide legal levers materialized in procedural means that are available to the litigant in order to bring the situation in dispute before the independent and impartial court. The situations in which the legislator establishes that a prior procedure or payment of a stamp fee is necessary to bring proceedings before the court are not considered to be contrary to the principle stated;

On the other hand, the obligation of the State to create the necessary tools to eliminate any impediments that could restrict effective access to the trial (example: the state must provide the means by which a person who does not have financial resources can lawfully bring proceedings before the court and have a fair trial (Bona, 2014).

Access to justice is a right that should not be misused the provisions of Article 14 of the Civil Code mentioning that the subjective civil right must be exercised in good faith. Therefore, the promotion of an unjustified action exposes the litigant, on the one hand, to bear the costs incurred by the opposing party, on the other hand, to the payment of judicial fines.

1.10. The principle of equality before justice

Article 7 of the Universal Declaration of Human Rights[18], a reference document for the regulation and subsequent national and international guarantee of human rights, states: *"All people are equal before the law and have, without distinction, the right to equal protection of the law"*.

At the same time, in Article 16 paragraph 8 the Constitution of Romania enshrines the circumstance that citizens are equal before the law and public authorities, without privileges and without discrimination, nobody being above the law. The same principle is enshrined in Article 9 Law no. 304/2004, which provides that all persons are equal before the law, without privileges and discrimination. The same article reiterates the fact that justice is carried out equally for all, without distinction of race, nationality, ethnic origin, language, religion, sex, sexual orientation, opinion, political affiliation, wealth, origin or social condition or any other discriminatory criteria.

It is thus presumed that all persons will be subject to the same rules as regards access to the courts, the way in which the trial in which they will be involved will be organized and conducted, and the same rules of procedure being entitled to the same evidence will apply to them, the same defense and the same remedies. In other words, it is presumed that there will be no *"privileges of jurisdiction"* (Ciobanu, 1996).

The case-law of the European Court of Human Rights has developed the principle of *"equality of arms"* in a trial, with a content similar to that of equality before justice (T.C. Briciu, 2016).

Financial differences may be reflected in a harder access to justice or in the impossibility of hiring a lawyer to perform a specialized defense, without which the procedural rights conferred by law may be lost by ignorance of the party. The court has the obligation to clarify the parties' rights, to give them guidance on procedural rights and

[18] Adopted on 10 December 1948 by Resolution 217 A at the third session of the United Nations General Assembly.

obligations when they are not represented or assisted by the lawyer, and to insist by all legal means to prevent any error in finding out the truth in question, based on the establishment of the facts of the case and the correct application of the law. The balance of the civil process is also achieved through the provision of free legal assistance.

1.11. The principle of free justice

Just as every cause has a value, every process has a cost. This does not mean that those who cannot afford the costs of a trial cannot claim their rights in court. We have determined that equal access to justice is a right enjoyed by all citizens of this country. For this reason, the Romanian legislature established the legal levers that would allow any citizen to benefit from a free justice.

Thus, the parties will not have to pay back those directly involved in the act of justice, judges, prosecutors, clerks, bailiffs, because they, serving a public service, are paid officials of the state, who perform their duties without bias, otherwise falling under criminal law.

This principle gives *efficiency* and *functionality* to the principle of equality before justice (Ciobanu, 1996).

Even if justice is done free of charge, in the sense shown, however, judging a case involves numerous expenses, such as: Stamp fees, lawyer and expert fees, travel expenses, etc.

In this regard, the legislation offers the possibility of granting judicial public aid under the provisions of GEO no.51/2008 on public judicial aid in civil matters[19], provisions in this respect being also found in Article 90-91 of the Code of Civil Procedure, as well as Article 89-96 of the Criminal Procedure Code.

Justice also has a *preventive role*, it serves everyone, and for those who fight in the defense of their right it must not become a luxury. In order to ensure a fair trial and equal treatment, this right is guaranteed in both civil and criminal proceedings.

Moreover, this right is also guaranteed in the case of other procedural activities such as assisting an interpreter free of charge if one of the parties does not understand or speak the Romanian language used in the process.

1.12. The principle of random distribution of causes and continuity

The principle of random distribution of cases is a rule of judicial organization found in the provisions of Article 13 of Law no. 304/2022 on judicial organization in Romania, rising to the rank of principle. The implementation of this provision is made in relation to Article 101 of the Rules of Internal order of the courts approved by the Decision of the Judges Section of the SCM no. 3243 of 2022. It involves the division of the causes deduced from judgment into a computerized system. This principle gives effect to the principle of impartiality and independence of the courts.

At all Romanian courts, the designation of the persons responsible for the random distribution of the files – judges and clerks – was made by order of service issued by the president of the court, or on the basis of decisions of the governing colleges of the courts.

This principle is closely linked to the principle of continuity to which the Rules of Procedure of the courts make many references without defining it. This means that a case will be settled by the same court panel during the same degree of jurisdiction, the replacement of the panel can intervene only due to procedural incidents (e.g. abstention,

[19] Published in the Official Gazette no. 327 of April 25, 2008.

recusal, incompatibility, etc.) or in other administrative situations (e.g. retirement, advancement, posting, etc.) (Ion Leș, 2019) .

The sanction applicable in case of non-compliance with these principles is found in the provisions of Article 488 of 1 item 2 of the Code of Civil Procedure: decision being quashed.

1.13. The principle of contradiction

The contradictoriality is defined as *"The possibility granted to the parties to discuss in contradiction all the elements of the cause which may serve to solve it."* (I.Stoenescu, 1977)

The contradictoriality is also defined as the possibility that the legislation offers the parties to discuss and argue against any factual or legal element of the civil process (Velescu, 1970). The same principle is also fundamental in the criminal proceedings.

It is the transposition into Romanian law of the Latin adage belonging to Seneca "audiatur et altera pars" (listen to the other side).

This principle concerns not only the parties to each other but also the public Ministry or even another independent entity participating in a phase of the process.

This principle accompanies the conduct of the trial, whether civil or criminal, throughout its course, crown it all in the final moment of the debate on the merits (Ionescu, 2010).

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