

**OSCE Human Dimension Implementation Meeting - 2016**

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**ROMANIA / Statement - Rule of Law I (Working Session 8)****Democratic law - making**

The primary normative framework for ensuring the democratic lawmaking process it is provided in the Romanian Constitution. It establishes the relationships between the various actors involved in the legislative process (holders of legislative initiative, the legislator's role, the role of the President of Romania within the legislation process, but also the exercise of the constitutional role for the legislation revision).

Thus, according to the article 74 paragraph 1 of the Romanian Constitution the legislative initiative shall lie, as the case may be, with the Government, Deputies, Senators, or a number of at least 100 000 citizens entitled to vote. Further, according to the article 61 paragraph 1 of the Romanian Constitution, the Parliament is the sole legislative authority of the country and is entitled to adopt constitutional laws, qualified majority special laws and ordinary laws.

Subsequent to the adoption by Parliament, laws are promulgated by the President of Romania, in accordance with the provisions of art. 77 of the Constitution. Laws shall be published in the Official Journal and shall enter into force three days after its publication date or at a later date provided in its text (article 78 of the Constitution).

According to the article 146 of the Romanian Constitution, the laws are subject to the control of constitutionality, in both "ex ante" and "ex post" situations.

The above constitutional provisions are further developed in the subsequent legal acts, while respecting the General rules laid down in the Constitution.

**The independence of the judiciary**

According to the article 1 paragraph 3 and 4 of the Romanian Constitution, in its revised form, the Romanian State is organized based on the principle of the separation and balance of powers - legislative, executive, and judicial - within the framework of constitutional democracy.

Moreover, according to the art. 126 paragraph 1 of the Romanian Constitution the Romanian justice is administered by the High Court of Cassation and Justice, and the other courts of law set up by the legislation.

As it is foreseen in the art. 2 paragraph 2 of the Law 304 / 2004 regarding the judiciary organization, the other judiciary courts (except for the High Court of Cassation and Justice) are as follow: the appeal courts, the tribunals, the specialized tribunals and the first level courts.

It is also foreseen by the Romanian legislation that the judges are independent and subject only to the law, they are appointed by the Romanian president through presidential decree and they benefit of immovability. The appointment proposals, as well as the promotion, transfer of, and sanctions against judges are only within the competence of the Superior Council of Magistracy

which, according to the law is the warrant of the judiciary independence. Both the admission within the Magistracy and the judges' promotion at higher courts can be accomplished only through an open competition system, where the equality and transparency principles are carefully observed.

Furthermore, according to the article 1 paragraph 3 of the Law 304/2004 regarding the judiciary organization, the Public Ministry exercise its authority through prosecutors who carry out their activity within the prosecutors' offices.

In order to better implementing the above mentioned legal provisions, within the Supreme Council of Magistracy permanently operates a working committee regarding the independence and accountability of the judiciary, the efficiency of its activity and performance, the integrity and transparency of the judicial system.

Starting with 1<sup>st</sup> of March 2005 in all the courts of Romania became functional the random distribution of files system. This is achieved by means of a computer system using a specialized software, and only where there are objective reasons when this software cannot be used, it is applied the former method of cyclic system. As regards the work of prosecutors' offices, the distribution of the files is done on the basis of objective criteria and in accordance with the principle of specialization of prosecutors.

According to the legislation in force, the activity of judges and prosecutors is evaluated every three years, considering the effectiveness of the quality and integrity of the activity, the obligation of continuous training, as well as how the managerial duties to judges and prosecutors who have managerial functions. We believe that this approach meets the conditions of transparency and equity in assessment of magistrates.

Currently, in all courts operates a computer software (Ecris) that allows any interested person to access information concerning judgments in a certain case.

<b>Right to a fair trial</b>
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Access to justice and the right to a fair trial is one of the fundamental rights established both in international documents and internal normative acts. The Romanian Constitution regulates this right in the article 21:

- (1) Any person may apply to the judiciary for the protection of rights, freedoms and legitimate interests;
- (2) No law may restrict the exercise of this right;
- (3) Parties are entitled to a fair trial and resolve the causes in a reasonable time.

Similar provisions are found in law No. 304/2004 on the organization of the judiciary, at art. 6 of Chapter 2 entitled *Access to justice*:

- (1) Any person may apply to the judiciary for the protection of rights, freedoms and legitimate interests in the exercise of the right to a fair trial;
- (2) Access to justice cannot be restricted.

The measure of preventive arrest of the defendant may be taken, in the course of criminal proceedings, by the judge of freedoms and rights in the procedure of preliminary room, and in the Court proceedings, by the judge, in accordance with the provisions of the code of criminal procedure.

Apart from the preventive detention measure, the criminal procedure code also provides other preventive and procedural measures. Thus, the category of preventive measures form part and: retention, judicial control, judicial control on bail, house arrest. According to art. 202 para. 3 of the code of criminal procedure, any preventive measure must be proportionate to the incrimination and required to achieve the aim pursued.

According to the vision of the new code of criminal procedure (Act No. 135/2010) which came into force on February 1, 2014, the measure of preventive arrest has, at the level of principle, an exceptional and subsidiary nature related to the rest of the non-custodial preventive measures. In this context, the preventive arrest shall be ordered only where the other preventative measures are not sufficient to achieve the legitimate purpose.

The existence of a clear and comprehensive legal framework is one of the prerequisites for a good combating of the discrimination phenomenon. The legal framework in this area is the EO 137/2000 on preventing and sanctioning all forms of discrimination. A significant change of this law was the amendment of the provisions concerning the burden of proof, namely the relative presumption in favor of the person who presents the facts on the basis of which it can be assumed that was committed an act of discrimination. Thus, in the process taking place in front of the Court or in front of the National Council for Combating Discrimination, "a person will present facts from which it may be presumed a direct or indirect discrimination, and the person against whom it was worded has to prove that there has not been a breach of the principle of equal treatment. Before the Court can be invoked any evidence respecting the constitutional regime of fundamental rights, including audio and video recordings or statistical data".

At the same time, in criminal matters there are relevant legislative provisions regarding the sanctioning of the acts of discrimination in the Criminal Code (art 77 - aggravating circumstances; art. 282 - torture; art.297 - abuse of power, art. 369 - Incitement to hatred or discrimination; art. 438 - Genocide; art. 439 - crimes against humanity) and in special legislation (EO 31/2002 prohibiting organizations and symbols with fascist nature, racism or xenophobia, and promoting the cult of persons guilty of committing crimes against peace and humanity).

Also, specific provisions prohibiting discrimination exist in the law regarding the execution of criminal decisions 253/2013 and in the new law in matters of evidence.

With regard to combating discrimination in civil law and civil procedural law, we consider the following provisions:

- Law No. 287/2009 on civil code stipulates in art. 30, the equality before the civil law as follows: "race, color, nationality, ethnic origin, language, religion, age, sex or sexual orientation, opinion, personal beliefs, union membership, political, social category or a category of disadvantaged, social origin, wealth, culture, as well as any other similar case does not have any influence on civil capacity."
- Law No. 134/2010 regarding the new code of civil procedure expressly provides in article 8, the equality of the parties in the civil process that guarantees the exercise of procedural rights equally and without discrimination. We wish to emphasize that article 8 is part of chapter II, concerning the fundamental principles of civil trial precisely on the grounds that discrimination is a violation of fundamental rights.

In the matter of fighting racism and xenophobia, we wish to mention that Romania has transposed into national law the provisions of Framework Decision 2008/913/JAI of the European Council on combating certain forms and expressions of racism and xenophobia by means of criminal law.

Related to crimes motivated by hatred, at the request of the Office for Democratic Institutions and Human Rights of OSCE, the Ministry of Justice sends annually information concerning legal framework, training and case studies of infringements of this kind, according to the data provided by national institutions that have competence in the matter.

#### **National human rights institutions**

The Romanian Institute for Human Rights (IRDO), national independent institution, is vested by law with establishment of research, training, information and advice. The Law no. 9/1991 also establishes guarantees of independence and equidistance, in line with the criteria established for this type of institutions of the United Nations and the Council of Europe, which recommends their establishment in all democratic States.

Since the establishment of the Institute, Romania signed an agreement on the implementation of a program of technical assistance for several years, with the UN Centre in Geneva. At the completion of the program, the final evaluation, it was praised as "the first truly comprehensive program of advisory services and technical assistance undertaken by the Centre for human rights".

Although initially the Institute was designed to be the recipient of some of the activities of assistance, the IRDO assumed the role of the partner and co-organizer, how was still considered at the outset of the UN Centre in Geneva.

Under this program, it has been developed several series of courses, adapted to the specific requirements of various professional groups. We can mention the cycles "Human rights in the administration of Justice", "Teaching and learning of human rights", "Media and human rights", "Human rights and the issue of minorities", "Prevention and resolution of conflicts between citizens and the local administration", "Children's rights" etc.

The beneficiaries were the judges, prosecutors, lawyers, members of the police and prison staff, primary, secondary and higher education, the central and local administration, representatives of the media and non-governmental organizations interested in the field of human rights, etc.

The published reports are a detailed picture of all these activities, most of them organized by the Institute in partnership with the Romanian Parliament, the Government and ministries with specific powers, as well as with non-governmental organizations interested in the matter.

An international recognition of work on the human rights education undertaken by IRDO, was made by the National Commission for Human Rights of the Prime Minister of the French Republic in 1998 on the occasion of the 50th anniversary of the Universal Declaration of human rights. Also, IRDO has been elected in different structures of international organizations devoted to the promotion and protection of human rights.