„LUCIAN BLAGA" UNIVERSITY OF SIBIU
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DOCTORAL THESIS

„THE INSTITUTIONAL REFORM OF THE ROMANIAN JUDICIAL SYSTEM"

(SUMMARY)

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Given that we can consider the judicial organization as one of the most important branches of the law system of a modern and fully democratic country, then its treatment requires greater rigor, and any assertions issued on this matter regarding the Romanian judicial institutions current or previous ones will be widely debated and treated throughout the thesis.

This paper brings together the results of the scientific research carried out over three years (2014-2017), the results and conclusions drawn with the help of participation in various scientific conferences and the elaboration of specialized papers on various themes from the civil and civil procedural palette, all being exponents of the topic briefly called "organization of the Romanian judicial system".

The idea of "reforming" the Romanian judiciary came as a result of our documentation of some systems of law in Western countries, (we talked about the German and French systems, about the organization of the courts in these countries, the status of magistrates, etc.), on the functioning, in some cases faulty but in the end efficient, of the Romanian system of law, as institutions such as the Superior Council of Magistracy will become a real point of reference in our research.

We are convinced that the temporal evolution of the judicial organization laws will keep pace with the modern times we live in, but will also take into account the well-grounded customs laws in the consciousness of the participants in the act of justice, and the Romanian justice will advance, prosper and will continue to grow as it has done so far, and the law system will remain an area as spectacular as it used to be in the past.

That is why the present paper was based on two very important concepts for us, namely the existence of a fully functional judiciary system, and a professional body (the participants in the act of justice and the elaboration of the justice act) competent and well organized, in a permanent search for the truth, be it a judicial or a moral one.

Consequently, we often did not just limit ourselves to simply discussing legal norms regarding the judicial organization of Romania, but we sought to come up with

answers to the lacunar issues, we proposed solutions and we supported our point of view when appropriate. In this way, we hope to help the students or practitioners in the future, and to build among the many opinions expressed by other writers, viable alternatives to consider when the necessity of a change will be stringent in terms of legal norms judicial organization.

The main themes dealt with during the thesis were: the comparative study of the European judicial systems, especially with reference to the German law system, which we considered as effective and functional as well as the French one, the competence of the national courts in view of the multiple amendments to the judicial organization laws over the time which dictates procedural norms in the field of competence, the organization and functioning of the judicial institution called the Superior Council of Magistracy, the central body of the Romanian law system, which is of great importance for our study; not least, one of the most disputed themes in the whole available judicial area, the magistrates' liability, a topic of real interest in the current year.

As a matter of fact, among all the legal disciplines currently being studied in law faculties, the "Judicial Systems Organization" discipline seems to be one of the only ones to merit a complete and detailed analysis on our part, both in terms of issues (which can highlight both the advantages and disadvantages of the Romanian legal system) as well as information and studies that would improve the Romanian legal system by applying the methods and strategies used by other countries, democratic, from Europe and beyond.

In the first part of this thesis, we have directed our research and bibliographic documentation to different spheres of classical law, namely to the unknown face of the Romanian judicial system, namely "comparative law", which dictates the way in which the Romanian legal institutions public or private intertwine with those in other legal systems, whether these mixes are based on firm, legal bases in the field, or are only innocuous takeovers from models of other law systems.

Our recourse to this discipline has treated both singularily and in general the institutions in the Romanian judiciary system, which have the equivalent of other countries and systems of law close to us, such as those in Germany or France, but, by way of exception, those in the "common law" anglo-saxon system, where we can often find both common and distinct elements from our legal system, in countries such as the United Kingdom or the United States of America.

This being a first comparative study, we used all the tools necessary to highlight the most qualitative and quantitative differences between our law system and that of other countries, and we used, in addition to the classical research related instruments comparative studies, namely bibliographic research, theoretical descriptions and explanations, classical comparisons between two or more components, and finally, we can compare totals as well as other methods such as those used in other disciplines such as the statistical analysis of some phenomena, all of which are very useful tools, judging by the level of knowledge that will be developed as a result of their use.

From some points of view, we consider the possibility of inserting and developing this knowledge from our research into different sections of other works or using them at different symposiums, conferences, scientific sessions abroad as topics of debate, which can even become the resources needed for members of special commissions for EU member states, the elaboration of continuous judicial development plans and strategies, as well as for persons who have absolutely no connection or involvement in the Romanian judicial system.

That is why we make it clear that, most of the time, we want to be of help to those who are in the process of explaining certain phenomena or legal institutions, or, on the contrary, they are simple and disinterested observers but who, through these discussions and assertions, establish important issues that may become possible "de lege ferenda" proposals through our study.

Using the tools outlined above and the experience offered by the relevant jurisprudence in the matter, it is necessary to expose in this situation the causes in

which Romania participated in the cases of the European Court of Human Rights, we hope to present with this study all the aspects by which Romanian justice excels, but also the obvious shortcomings and problems that we consider worthy of revision. The relevant jurisprudence on judicial organization is not voluminous, but on the contrary it reflects, in the few cases on legal organization, the shortcomings and problems that need to be remedied in relation to the facts set out in the respective cases.

In addition to the tools described above, other means of information were also used, such as articles published in journals of legal specialty such as "International Private Law and Comparative Private Law Review", "Law Magazine", "Romanian Journal of Jurisprudence", "Romanian Journal of Public Law", "Human Rights Review" or "Romanian Journal of Comparative Law", as well as on-line documentation, scientific research platforms, etc., from which the interesting topics of debate. We have tried in this context to come up with new ideas, proposals and even recommendations regarding the current organization of the Romanian judiciary, and even the future organization.

Although we do not intend to distort any of the essential and distinctive features of the Romanian judiciary, features that reveal its size and personality, we have outlined details of what we consider to be worthwhile from the organization of intra and extra-judicial judicial systems, as elements of change and addition to our system of law, which, whether we recognize it or not, whether we are practitioners and face daily legal gaps or misinterpretations of legal texts, or theoreticians who reconsider the necessity of adopting new elements, is in a complex and difficult time of its existence.

The comparative study of the law systems will only bring to light all the "energies" that contribute to the achievement of the justice act in Romania, all the ways in which the justists understand to exercise their rights or to demand the fulfillment of the obligations assumed by the parties, institutions that operate in our country and which do not exist in other systems of law, or vice versa, and others, all of which, of course, through comparison with other contemporary judicial systems,

from which we hope to copy all the qualities, even informative, but in no way follow their path in defects.

And to be sure that the current/modern judicial organization does not escape some objective criticisms that we consider extremely useful, we have expressed some of the previous concerns in the chapters of the thesis, and we have set out some ideas regarding a potential "reform of the Romanian judiciary", details of the organization of the "Magistrates' Government", namely the Superior Council of Magistracy, without departing from our objectives.

Judicial management, despite its lack of university curricula of the major law schools in Romania, is of particular interest to future graduates of these schools, since, without these management notions, be they basic, about the "organization and composition of the courts" , the composition of the body of magistrates, the ways of joining the profession, the specialists present in the courtrooms and their attributes, the public institutions and the civil servants who participate and support, through the exercise of their profession, in the implementation of justice, psychology and discipline in the legal field, will not perceive too easily, or almost never, the importance and finality of the act of justice, the suppleness of the distinction between a professional and an amateur in solving judicial issues.

That is why we, through this thesis, tried to combine the practical aspects with the theoretical ones as efficiently as possible in order to help all those interested in the judicial organization, the role played by each "actor" of this great piece, and by the constant improvement of the jurisdiction.

As we will see later, during our investigations, we also stopped on the jurisdiction of the Romanian courts, notably on the material jurisdiction of the courts of appeal and on the competence of the specialized courts.

The institution of material jurisdiction of the courts of appeal in our country was the main subject of the bibliographic research and documentation we started in the second part of this thesis. The jurisdiction of courts will be determined by using all aspects of court jurisdiction as delimited by the "New Code of Civil Procedure",

which enshrines the monistic conception adopted by the New Civil Code, which unifies the provisions of civil law with those of commercial law.

Thus, Title 3 of Book I of the New Civil Procedure Code, in the Art. 94 - Art. 147, establishes a series of articles of particular importance, drawing the competence of the Romanian courts. To begin with, the definition of competence and its classification were the subject of the first assertions on this issue, and then the competence of the courts in civil matters was the object of our research. We also added our reflections on the competence of specialized courts.

Then, the most important part of these theoretical considerations was intertwined with a few notions of the matter of administrative litigation, and finally we could exemplify relevant jurisprudential solutions in the matter of common law appeal and administrative litigation.

In the absence of rules of competence which determine the extent of the powers and attributes recognized by law to the judicial bodies belonging to the judicial authority or to the bodies having as their main activity the procedure of litigation it would be impossible to determine which of all these types of organs is entitled to establish the fairness and extent of the acts or facts inferred from the judgment.

Our theoretical approach to the jurisdiction of the courts was concluded with a study on the appeal procedure in administrative litigation, and of course, with recommendations and suggestions, referring to the notions presented.

In the third part of the complete structure of the doctoral thesis, we have focused our attention on one of the most powerful institutions of the Romanian judicial system, a legal institution that "dictates" and sanctions the behavior of the "staff" of the courts, having attributions that concerns the recruitment and career of magistrates, but also in disciplinary matters, where it has the decisive role of a court, its specialized departments being able to sattle the judicial disputes regarding the activity of magistrates, institution called the "Superior Council of Magistracy".

Our incursion into the discipline of the judicial organization treats singularly and generalized the central institution of the Romanian judiciary with distinct legal personality, which finds its equivalent in the new countries and systems of law similar to those in Germany or France, where, as we can see, there are both common and special elements to the current organization of our law system.

We mention that "the judiciary represents in any democratic state an essential component of civilization and social progress, and the basis of modern democracy." We leave this notion since the basis of the state judicial organization is the democratic principles and norms of modern civilization, which can only be improved by constant efforts and consistent reforms.

As a first conclusion, the justice reform, as can be distinguished from the pages of the paper, is a subject of great interest, both in the academic environment and in the environment of practitioners of law.

When we talk about justice and its distribution in the territory, we always start with the term "jurisdiction", the concept itself having multiple meanings, two of which are primordial in the process of implementing and applying justice, and are also of interest to the study of judicial organizations in democratic states.

The Constitution and the law on the organization of the judiciary sometimes refer to "courts" and just in this consecrated version. This understanding of the concept of jurisdiction has been, for our research, a basic element of particular interest.

The current organization of the courts is the result of a severe historical development. The judicial power became independent only in the modern age, with the ever more remarkable affirmation of "the principle of the separation of powers in the state" in England, France, and then in other Western states.

Previously, justice coincided in practice with the executive function and was often carried out by the same organs. In accordance with the provisions of the Constitution of Romania, in the most complete and up-to-date version, the judicial

authority is made up of the courts, the public ministry and the Superior Council of Magistracy, a guarantor of the independence of the judiciary.

In Romania, justice is carried out only by the High Court of Cassation and Justice and the other courts, namely courts of appeal, tribunals, specialized courts, military courts.

The High Court of Cassation and Justice is the highest court in Romania, and its primary role is to ensure the unitary interpretation and application of the law by the other courts. The main method of unifying judicial practice is the "appeal in the interest of the law", in which the correct way of interpreting the law is established in matters of law that have received a different judicial separation (non-unitary judicial practice).

The current organization of the Romanian courts is governed by Law no. 304/2004. Currently, according to art. 2 par. (2) of Law 304/2004 on judicial organization, as subsequently amended and supplemented, the judiciary is carried out through the following courts: "ordinary courts, military courts, tribunals, specialized courts, courts of appeal, and the High Court of Cassation and Justice".

In modern societies, justice is a fundamental function of the state, and its administration is one of the essential attributes of sovereign power. This function involves the existence of state structures and adequate public services, which are meant to carry out the judicial activity.

The reason we approached this legal institution lies in the fact that justice, in all the effects it produces, is a guarantor of respect for the supremacy of laws and principles of state organization, as the Superior Council of Magistracy must present itself to the common man as a guarantor of law enforcement and the "guardian" of judges and prosecutors, the foremost actors of the legal circuit, our approach to all aspects that we consider to be worthy of revision, which may change in the current organization of the Romanian judicial system.

In particular, we want to address the uncertainties and bring along proposals to amend the institution of the Superior Council of Magistracy, a body with a great impact in the legal sphere.

We tried to come up with new ideas, proposals and even recommendations regarding the modification of the current organization of the Romanian judiciary, and even the organization of the Superior Council of Magistracy, a prestigious institution considered of cardinal importance for the institutional organization of justice in Romania.

Without further clarification, we have reviewed all the elements necessary for a complex and lasting judicial reform.

Towards the end of the doctoral thesis, we focused our research activities on the most important "piece" of the Romanian judiciary. It is, as we shall see, about the Romanian magistrates, and we talked about their institution of "responsibility".

The liability of judges and prosecutors, as suggested by the legal norms in force regarding the organization of the profession of magistrate, is of three types: civil, disciplinary and criminal, and Chapter II of Title IV of Law no. 303/2004 on the judicial organization, as subsequently amended and supplemented, a law that definitively establishes the procedures for the accountability of the magistrates, very delicate aspects regarding the improvement of the professional framework of the judicial activity.

Strengthening the rule of law and facilitating the emergence of judiciary acts of the highest quality from magistrates can be realized, as we can easily observe, only by building the best methods of professional training of judges and prosecutors, but also by attracting responsibility as a coercive method, for "mistakes" committed, possible omissions, or unjustified delays.

In the following, we have dealt with the concept of legal "accountability", as it is present in the Romanian law system, both historically and analytically. Once the overall framework of the discussions has been established and since the definition of

liability is complete, we have analyzed the disciplinary, civil and criminal liability of judges and prosecutors.

When it comes to the magistrates' responsibility, it is inextricably linked to this institution the discussion on limiting the legal liability of magistrates. We have been using this part of the paper for numerous judicial decisions in this area, trying to explain the mechanism of magistrates' liability and the critical importance of limiting magistrates' liability, precisely because when there are abuses from the latter categories of law professionals, or when it is considered by the parties to a trial that there have been injuries to them through the work of the magistrates, there must be an efficient and transparent mechanism for solving such problems in order to avoid intimidation or oppression of the magistrates, everything to achieve a proper judicial system with a good functioning.

Towards the final part of this section, we briefly presented issues regarding the accountability of magistrates who are part of other legal systems as well as of those who belong to the category of magistrates benefiting from different treatments from other European countries and not only.

The legal responsibility of magistrates, namely the representatives of the judiciary in the territory, in a society that really wants to be democratic, becomes a strong indicator of the level and quality of the judicial act, and justice, totally unintentional, is the one that guarantees the efficiency democracy in a modern state.

In our new systems of law, such as those in Germany or France, we have noticed that there are common elements regarding the accountability of magistrates. Also, taking into account the Anglo-Saxon law system, the ways in which judges and prosecutors in these courts have been accountable have proven to be different.

The constitution and laws of judicial organization are of theoretical and practical interest in this study, since engaging the legal responsibility of magistrates can only be done through legal procedures following research as we will see.

We have concluded our approach with issues related to the nature of the recommendations, and have concluded on all the important aspects of the paper.

Finally, we appreciate the need for each and every one of us, regardless of our status or close ties to judicial activities, or even in the absence of any such link, to contribute to justice and the promotion of justice as they must in a moral and democratic society, and do not diverge, alongside the magistrates, from this desideratum, regardless of the consequences.

Thus, each of us desires a fair justice, respecting the laws and principles of democracy, with the strict application of the provisions on the rights and freedoms of citizens.