

SELECTIVE ASPECTS ON THE EVOLUTION OF THE REGULATIONS REGARDING THE JUDICIARY IN THE ROMANIAN CONSTITUTIONS AND IN THE ROMANIAN LAW 100 YEARS AFTER THE GREAT UNION

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Abstract

This study has the following title: Selective aspects on the evolution of the regulations regarding the judiciary in the Romanian constitutions and in the Romanian law 100 years after the great union

Using a Key- Scheme, the following parts of the study are analyzed successively, called: 1. Preamble. 2. The identification of the constitutional regulations on the judiciary in the Romanian constitutional system - selective aspects. 3. Romanian doctrinal references on the judiciary. 4. Judicial references on the judiciary in the decisions of the Constitutional Court of Romania. 5. Conclusions.

Keywords: *the judiciary, the Romanian constitutions, the doctrinal references, the Constitutional Court decisions.*

1. Preamble

The object of study of this research will be circumscribed to the scientific analysis of the four great parts thereof, i.e.: 2. The identification of the constitutional regulations on the judiciary in the Romanian constitutional system - selective aspects. 3. Romanian doctrinal references on the judiciary. 4. Judicial references on the judiciary in the decisions of the Constitutional Court of Romania. 5. Conclusions.

For the purposes of this study, it is worth highlighting the approach on the regulations on the the judiciary in the constitutional system starting with the first document with constitutional value, i.e. *the Developer Statute of the Paris Convention of 7/9 August 1858* until this day, i.e. *the Constitution of Romania of 2003, the republished form of the Constitution of Romania of 1991.*

Considering this generous topic of study of over 145 years of constitutional evolution of the regulations on *the judiciary* in Romania we should point out since the very beginning the *need of a diachronic approach of this topic* by identifying all the Romanian Constitutions which regulated the constitutional regime during this period.

Moreover, we should also point out that during the stated period, Romania had several forms of government, i.e., monarchy, people's republic, socialist republic and semi-presidential republic.

For a full but not exhaustive coverage of the area of study, we present a selection of the doctrinal and jurisprudential references to *the judiciary*.

On the other hand, it is important to mention here that the jurisprudence of the Constitutional Court of

Romania contributed to the constitutionalization of the judiciary ever since its establishment.

According to the bibliographic research, *the judiciary* is new in point of formulation, but it is not new in point of its existence. Starting from this axiom, and paraphrasing K. Mbaye¹ we may say that: „The history of *the judiciary* overlaps the history of humankind”.

The proposed study opens due to this approach a complex and complete view, but not exhaustive, in the current sphere of the judiciary.

In our opinion, the field under analysis is important for the constitutional doctrine, for the parliamentary law doctrine, for the comparative law doctrine, for the general theory of law, for the legislative activity of elaboration of the normative acts, for the legislative technique as well as for the research activity in the field covered by the theme of the study.

Even if the regulation and theorization of *the judiciary* goes back in time to the first constitution written in Romania, the theoretical interest to resume it is determined by the fact that the current specialized literature has not always paid enough attention to the three aspects, normative, theoretical and jurisprudential concerning *the judiciary*, analysed here.

We used the phrase *the judiciary* recalling of the famous theory of the separation of power in a state released by John Locke (*Traité du gouvernement civil*, 1690). This theory was later elaborated and consecrated by Montesquieu in his *De l'esprit des lois* (1748), a work which brought its author the title of father of the classical theory of the separation of powers in the state.

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¹ Baye K. M., *Les droits de l'homme en Afrique*, Manuel UNESCO, A. Pedone, Paris, 2002, p.651.

1. The identification of the constitutional regulations on *the judiciary* in the Romanian constitutional system - selective aspects.

1.1. Developer Statute of the Paris Convention of 7/9 August 1858²

A special attention should be paid to the *Developer Statute of the Paris Convention of 7/19 August 1858*. In our opinion, *the Statute* may be considered a Constitution, considering the provisions of art. XVII which set out the following: "All civil servants, without exception, when taking office, *should pledge allegiance to the Constitution and laws of the country and faith to the Lord*".

The systematic analysis of the normative content of the Statute shows that it contains no regulation concerning *the judiciary*.

1.2. The Romanian Constitution adopted at 29 June 1866³

It should be noted that the Fundamental Law of Belgium of 1831 was an inspiration for the constitutions of other states among which the Romanian Constitution adopted at 29 June 1866.

The systematic analysis of the normative content of the Constitution shows that in Title III entitled *On the powers of the state*, the following fundamental principle concerning the *judiciary* is consecrated, under the following phrasing: "The judiciary is exercised by Courts and Tribunals. Their decisions and sentences are pronounced under the laws and executed in the name of the Lord".

1.3. The Constitution of Romania of 29 March 1923⁴

At the onset of the study we should specify that the Fundamental Law of Romania of 1866, remained effective for 57 years, though meanwhile important economic and political transformations occurred.

The systematic analysis of the normative content of the Constitution shows that in Chapter IV, Title III, entitled *On the judiciary*, the following fundamental principles concerning the *judiciary* are consecrated, under the following phrasing:

1. *Art. 101.* – No jurisdiction can be set up except under the power of a certain law. Extraordinary commissions and tribunals cannot be set up under any name and any word whatsoever with a view to certain trials, either civil or criminal, or in order to judge certain persons.
2. *Art. 102.* – There is only one Court of Cassation and Justice for the entire Romanian State.
3. *Art. 103.* – It is only the Court of Cassation in united sections that has the right to judge the

constitutionality of the laws and to declare as unenforceable those laws which are contrary to the Constitution. The judgement on the unconstitutionality of the laws is limited only to the case on trial.

The Court of Cassation will pronounce just like in the past on the conflicts of assignments.

The right of cassation appeal is constitutional.

4. *Art. 104.* - The judges are irremovable under special conditions set by the law.
5. *Art. 105.* – The jury is set in all criminal matters and for the political and press crimes, except for the cases set forth by this Constitution.

The action for damages resulting from press facts and crimes cannot be filed before the same jurisdiction where the offense was committed.

6. *Art. 106.* – Military justice is organized under a specific law.
7. *Art. 107.* – Special authorities of any kind, having assignments of administrative litigation, may not be established.

Administrative litigation is within the scope of the judiciary, according to the special law.

The injured person, either due to an administrative act of authority or due to a management act made by breaking laws and regulations, either by bad intention of the administrative authorities to settle the claim of a right, may file a petition to the courts for the recognition of his right.

The bodies of the judiciary judge whether the act is illegal or not, they may cancel it or may pronounce for civil damage until the date of restoration of the injured right, also having the power to judge the claim for damages, either against the administrative authority summoned to court, or against the guilty civil servant.

The judiciary has no authority to judge government acts or the military headquarters acts.

1.4. The Constitution of Romania of 28 February 1938⁵

In the preamble of this study we should point out that the Fundamental Law of Romania of 1923 remained effective for 15 years.

Under the historical conditions of 1938, the new Constitution Draft was subjected to plebiscite on 24 February 1938. The Constitution was promulgated and was published in the Official Gazette Part I, no. 48, from February 27, 1938.

From the systematic analysis of the constitutional content of the Constitution, it follows that this in Art. 73 - Art. 78 of Chapter V of Title III, titled *About Judicial Power*, establish the following fundamental principles regarding the judiciary, under the following form:

²Muraru I., Iancu G., *The Romanian Constitutions, Texts, Notes, Comparative Presentation*, Actami Publishing House, Bucharest, 2000, pp. 7-27.

³ *Ibidem*, pp. 29-60.

⁴ *Ibidem*, pp. 61-92.

⁵ *Ibidem*, op. cit. 93-119.

1. Art. 73. - No jurisdiction can be established except in the power of a law.
Commissions and extraordinary courts cannot be created, under any appointment and word, in view of certain processes, whether civil or criminal, or for the trial of certain persons
The jury is abolished.
2. Art. 74 - For the entire Romanian State there is only one Court of Cassation and Justice.
3. Art. 75 - Only Court of Cassation and Justice in united sections has the right to judge the constitutionality of laws and to declare those that are contrary to the Constitution inapplicable. The Judgment of the unconstitutionality of the laws is bordering only to the case
The Court of Cassation and Justice will speak of conflicts of attributions.
Right of appeal in cassation is of order constitutional.
4. Art. 76 - The judges are irremovable. Immovability will be established by a special law which will intervene no later than six months since the promulgation of this Constitution.
In this time, disciplinary sanctions will be applied by the Royal Decree.
5. Art. 77 - Military justice is organized by law.
6. Art. 78 - Administrative litigation is in the fall of the judiciary, according to the special law.
The judiciary has no power to judge acts of government as well the acts of command with military character.
6. Art. 91. - The debates are public, unless otherwise provided by the laws for certain cases.
7. Art. 92. - The right of defence before any court is guaranteed.
8. Art. 93. - The judges of any rank are subject only to the law in the exercise of their duties and enforce the laws equally for all citizens.
9. Art. 94. - A law shall determine the organization and functioning of the courts, as well as the way of appointing and removing the judges of any rank.
10. Art. 95. - In the People's Republic of Romania, the Prosecutor's Office supervises the compliance with the criminal laws, both by the civil servants and by the other citizens.
11. Art. 96 - The Prosecutor's Office watches especially the prosecution and punishment of the crimes against democratic order and freedom, of economic interests, of national independence and sovereignty of the Romanian State.
12. Art. 97 - The Prosecutor's Office consists of a general prosecutor of the People's Republic of Romania and several prosecutors.
It will be determined by law the organization, assignments and functioning of the prosecutor's office.
13. Art. 98, - The General Prosecutor of the People's Republic of Romania shall be appointed by the Presidium of the Grand National Assembly of the People's Republic of Romania, at the proposal of the government.

1.5. The Constitution of 13 April 1948⁶

The systematic analysis of the normative content of the Constitution shows that in Title VII, entitled *The Judiciary and the Prosecutor's Office* consecrates the following fundamental principles, having the following phrasing:

1. Art. 86. - The courts are: the Supreme Court, one for the whole country, the Courts, the tribunals and the popular district courts.
2. Art. 87. - Special courts for certain branches of activity may be established under the laws.
3. Art. 88. - In all the courts, except for the Supreme Court, the judgement takes place with popular referees, unless otherwise ordered by the law for certain cases.
4. Art. 89. - The first president, the president and the members of the Supreme Court are appointed by the Presidium of the Grand National Assembly of the People's Republic of Romania at the proposal of the government.
5. Art. 90. - The Supreme Court oversees the judicial activity of the courts and judicial bodies, under the laws.

1.6. The Constitution of 24 September 1952⁷

The systematic analysis of the normative content of the Constitution shows that in Chapter VI, entitled *The courts and the Prosecutor's Office* consecrated the following principles, having the following phrasings:

1. Art. 64. - Justice in the People's Republic of Romania is served through the Supreme Court of the People's Republic of Romania, the regional tribunals and popular tribunals, and by the special courts established under the laws.
The organization, jurisdiction and procedure of the courts are set by the law.
2. Art. 65. - The tribunals defend the regime of popular democracy and the achievements of the working people; ensures popular legality, public property and citizens' rights.
3. Art. 66. - Judgment of the lawsuits in all courts is done with the participation of the popular referees, unless otherwise provided by the law.
4. Art. 67. - The Supreme Court of the People's Republic of Romania is elected by the Grand National Assembly for a five-year term.
The judges and popular referees are elected according to the procedure provided by the law.

⁶ *Ibidem*, op. cit. 123-139.

⁷ *Ibidem*, op. cit. 143-166.

The appointment of the judges in special courts is determined also under the law.

5. Art. 68. – In the People’s Republic of Romania, the judicial procedure is in Romanian, and providing in the regions and districts inhabited by a population of a different nationality than Romanian, for the use of the maternal language of that population.

The parties who do not speak the language of the judicial procedure may get acquainted, through a translator, with the parts of the file, and the right to speak in court and draw conclusions in the maternal language.

6. Art. 69. – In all courts judgement is public, unless otherwise provided by the law.

The accused is guaranteed the right of defence.

7. Art. 70. – The judges are independent and subjected to the law only.

8. Art. 71. – The courts pronounce their decisions in the name of the people.

9. Art. 72. – The Supreme Court of the People’s Republic of Romania supervises the judicial activity of all courts in the People’s Republic of Romania.

10. Art. 73. – The General Prosecutor of the People’s Republic of Romania exercises superior supervision of the compliance with the laws by the ministries and other central bodies, by the local bodies of the state power and administration, by the civil servants and the other citizens.

11. Art. 74. – The General Prosecutor of the People’s Republic of Romania is appointed by the Grand National Assembly for a five-year term.

The deputies of the General Prosecutor of the People’s Republic of Romania and the prosecutors of the local units of the Prosecutor’s Office are appointed by the General Prosecutor for a four-year term.

12. Art. 75. – The General Prosecutor shall be accountable to the Grand National Assembly of the People’s Republic of Romania and – in the interval between sessions – to the Presidium of the Grand National Assembly and to the Council of Ministers.

13. Art. 76. – The Prosecution is independent from local authorities, subordinating only to the General Prosecutor of the People’s Republic of Romania.

1.7. The Constitution of 21 August 1965, as republished⁸

The systematic analysis of the normative content of the Constitution shows that in Title VI, entitled *The Judiciary* and in Title VII, entitled *The Prosecution* the following fundamental principles are consecrated, having the following phrasing:

1.7.1. Title VI – The Judiciary

1. Art. 101. – In the People’s Republic of Romania justice is served, under the laws, through the

Supreme Court, county courts, district courts and military courts.

2. Art. 102. – Due to their judgement activity, the tribunals and district courts defend the socialist system and the individual rights, educating the citizens in the spirit of compliance with the laws.

The tribunals and district courts aim, by enforcing criminal sanctions, at the correction and re-education of the offenders and at the prevention of new crimes.

3. Art. 103. – The tribunals and the district courts judge the civil matters, the criminal matters and any other matters under their jurisdiction.

In the matters provided by the law, the tribunals and district courts exercise control on the decisions of the administrative or public authorities with jurisdictional activity.

The tribunals and district courts judge the claims of the injured in their rights by administrative acts and may pronounce under the laws on the legality of these acts.

4. Art. 104. – The Supreme Court exercises general review on the judgement activity of all land any tribunal and district court. The exercise of this review is set by the law.

For a unitary enforcement of the laws in their judgement activity, the Supreme Court issues, in its plenary, guidance decisions

5. Art. 105. – The Supreme Court is elected by the Grand National Assembly during the legislature, in its first session.

The Supreme Court functions until the election of the new Supreme Court in the following legislature.

6. Art. 106. – The Supreme State Council shall account for its activity to the Grand National Assembly, and between sessions, to the State Council.

7. Art. 107. – The organization of the district courts and tribunals, their jurisdiction and trial procedure are set by the law.

Judging trials at first instance, at the tribunals, county courts and military courts is done with the participation of popular referees, unless otherwise provided by the law.

8. Art. 108. – The judges and popular referees are elected in accordance with the procedure set by the law.

9. Art. 109. – In the People’s Republic of Romania the judicial procedure takes place in Romanian, providing in the administrative and territorial units inhabited by a population other than the Romanian, for the use of the maternal language of that population.

The parties who do not speak the language of the judicial procedure are provided for the possibility of taking note, through a translator, of the pieces of the file, and for the right to speak in court and to draw conclusions in their maternal language.

⁸ Republished under art. 11 of Law 19 of 23 October 1986, published in the Official Journal of the People’s Republic of Romania, Part I, no. 64 of 27 October 1986.

10. Art. 110. – The judgement takes place in public session, unless otherwise provided by the law.
11. Art. 111. – In the judgement activity, the judges and the popular referees are independent and are subject only to the law.

1.7.2. Title VII – The Prosecution

1. Art. 112. – The Prosecution of the People's Republic of Romania exercises supervision of the activity of the criminal prosecution bodies and the punishment enforcement bodies and watches, under the laws, upon the observance of legality, the defence of the socialist system, of the legitimate rights and interests of the socialist organisations, of the other legal persons and of the citizens.

2. Art. 113. – The Prosecution is led by the general prosecutor. The Prosecution bodies are: General Prosecutor's Office, county prosecutor's offices, local prosecutor's office and military prosecutor's offices.

The Prosecution bodies are hierarchically subordinate.

3. Art. 114. – The General Prosecutor is elected by the Grand National Assembly during the legislature, in its first session, and functions until the election of the new general prosecutor in the first session of the next legislature.

The prosecutors are appointed under the law, except as provided by Art. 87 pct. 6.

4. Art. 115. – The General Prosecutor shall be accountable to the Grand National Assembly for the activity of the Prosecutor's Office, and in the interval between sessions, to the State Council.

1.8. The Constitution of Romania of 8 December 1991⁹

The systematic analysis of the normative content of the Constitution shows that in Chapter VI, Title III, entitled *the Judicial Authority*, it consecrates the following fundamental regarding: *The Courts – Section I, at the Public Ministry – Section 2, and, at the Superior Council of Magistracy – Section 3*, having the following phrasing:

1.8.1. Section 1 - The Courts

1. Art. 123: - *Serving justice*
- Justice is served in the name of the law.
 - The judges are independent and are subject only to the law.
2. Art. 124: - *Status of judges*
- The judges appointed by the President of Romania are immovable, according to the law. The President and the other judges of the Supreme Court of Justice are appointed for a 6-year term. They may be re-invested in office. The judges' promotion, transfer and sanctioning may be ordered only by the Superior Council of Magistracy, under the laws.
 - The judge office is incompatible with any other public or private office, except for the teaching

positions in higher education.

3. Art. 125: - *The Courts*

- Justice is served through the Supreme Court of Justice and by the other courts as set by the law.
- It is prohibited to establish extraordinary courts.
- The jurisdiction and judgement procedure are established by the law.

4. Art. 126: - *Public character of debates*

The judgement session is public, unless otherwise provided by the law.

5. Art. 127: - *The right to an interpreter*

- The judicial procedure shall take place in Romanian.
- The citizens belonging to national minorities and the persons who do not understand or speak Romanian are entitled to take note of the acts and deeds of the file, to speak in court and to draw conclusions, by interpreter; in the criminal trials, such right is ensured for free.

6. Art. 128: - *Use of remedies*

The stakeholders and the Public Ministry may exercise against the court decisions remedies, under the laws.

7. Art. 129: - *Courts police*

The courts shall have special police in their service.

1.8.2. Section 2 – Public Ministry

1. Art. 130: *Role of the Public Ministry*

• In the judicial activity, the Public Ministry represents the general interests of the society and defends the rule of law, as well as the rights and freedoms of the citizens.

- The Public Ministry exercises its powers by prosecutors belonging to prosecutor's offices, under the laws.

2. Art. 131: *Prosecutors' status*

• The prosecutors carry on their activity according to the principle of legality, impartiality and hierarchical control, under the authority of the minister of justice.

- The prosecutor office is incompatible with any other public or private office, except for the teaching positions in higher education.

1.8.3. Section 3 – Superior Council of Magistracy

1. Art. 132: *Structure*

The Superior Council of Magistracy consists of magistrates elected for a 4-year term by the Chamber of Deputies and by the Senate in joint session.

2. Art. 133: *Powers*

• The Superior Council of Magistracy proposes the President of Romania the appointment of the judges and prosecutors, except for the trainees, under the laws.

In this case, the works are presided without the right to vote, by the minister of justice.

- The Superior Council of Magistracy fulfills the

⁹ The text of the Constitution of Romania was published in the Official Journal of Romania, Part I, no. 233 of 21 November 1991.

role of judges discipline council. In this case, the works are presided by the president of the Supreme Court of Justice.

1.9. The Constitution of Romania of 2003, the republished form of the Constitution of Romania of 1991.¹⁰

The systematic analysis of the normative content of the Constitution shows that in Chapter VI, Title III, entitled *The Judicial Authority*, the following fundamental principles are consecrated related to: *The Courts – Section 1, the Public Ministry – Section 2, and, the Superior Council of Magistracy – Section 3*, having the following phrasing:

Warning. We may see that as compared to the Constitution of 1991 the articles were renumbered and in the case of this section art. 123 of the old Constitution became 124, and this numbering is still maintained for this Chapter.

We also notice in this Chapter that amendments and supplements were made which we will operate in the text.

1.9.1. Section 1 The Courts

1. Art. 124: - *Serving justice*

- Justice is served in the name of the law.
- Justice is unique, impartial and equal for everybody.
- The judges are independent and are subject only to the law.

2. Art. 125: - *Status of judges*

- The judges appointed by the President of Romania are immovable, under the laws.
- The proposals of appointment, as well as the promotion, transfer and sanctioning of judges are the jurisdiction of the Superior Council of Magistracy, under its organic law.
- The judge office is incompatible with any other public or private office, except for the teaching positions in higher education.

3. Art. 126: - The Courts

- Justice is served through the High Court of Cassation and Justice and the other courts established by the law.
- The jurisdiction of the courts and the judgement procedure are provided by the law only.
- The High Court of Cassation and Justice shall provide for the interpretation and unitary enforcement of the law by the other courts, according to its jurisdiction.
- The structure of the High Court of Cassation and Justice and its operating rules shall be established under organic law.
- It is prohibited to establish extraordinary courts. Courts specialized in certain matters may be established, with the possibility of participating, as appropriate, of certain persons outside the judiciary.
- Judicial review of the administrative acts of

public authorities, through administrative litigation, is guaranteed, except for the act regarding the relations with the Parliament, and the commandment acts of military nature. The administrative litigation courts have the jurisdiction of settling the claims of injured persons by ordinance or, as appropriate, by orders in ordinances declared unconstitutional.

4. Art. 127: - *Public character of debates*

The judgement session are public, unless otherwise provided by the law.

5. Art. 128: - Use of maternal language and of the interpreter in court

- The judicial procedure shall take place in Romanian.
- The Romanian citizens belonging to national minorities are entitled to express themselves in their maternal language before the courts, under the organic law.
- The ways of exercising the right set out by par. (2), including by using interpreters or translations, shall be determined so that not to prevent the good administration of justice nor involve additional expenses for the stakeholders.

• The foreign citizens and the stateless who do not understand or speak Romanian are entitled to take note of all the acts and deeds of the file, to speak in court and to draw conclusions through an interpreter; this rights is ensured in criminal trials for free.

6. Art. 129: - *Use of remedies*

The stakeholders and the Public Ministry may exercise against the court decisions remedies, under the laws.

7. Art. 130: - *Courts police*

The courts shall have special police in their service.

1.9.2. Section 2 – Public Ministry

Role of the Public Ministry

1. Art. 131: *Public Ministry*

- In its judicial activity, the Public Ministry represents the general interests and defends the rule of law and the rights and freedoms of citizens.
- The Public Ministry exercises its powers through prosecutors in the prosecutor's office, under the laws.
- The prosecutor's offices function attached to the courts, manage and supervise the criminal investigation of the judicial police, under the laws.

2. Art. 132: *Status of prosecutors*

- The prosecutors carry on their activity according to the principle of legality, impartiality and hierarchical control, under the authority of the minister of justice.
- The prosecutor office is incompatible with any other public or private office, except for the teaching positions in higher education.

1.9.3. Section 3 – The Superior Council of Magistracy

1. Art. 133: Role and structure

¹⁰ The text of the Constitution of Romania was published in the Official Journal of Romania, Part I, no. 767 of 31 October 2003.

- The Superior Council of Magistracy is the guarantor of the independence of justice.

- The Superior Council of Magistracy consists of 19 members, of whom:

- a) 14 are elected in the general assemblies of the magistrates and validated by the Senate; they are part of two sections, one for the judges and one for the prosecutors; the first section consists of 9 judges, and the second of 5 prosecutors;
- b) 2 representatives of the civil society, experts in law, who enjoy a good professional and moral reputation, elected by the Senate; they participate only in the plenary works;
- c) the minister of justice, the president of the High Court of Cassation and Justice and the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

- The president of the Superior Council of Magistracy is elected for a one-year mandate, not renewable, from among the magistrates set out by par. (2) (a).

- The duration of the mandate of the members of the Superior Council of Magistracy is of 6 years.

- The decisions of the Superior Council of Magistracy are made by secret vote.

- The President of Romania participates in and presides the works of the Superior Council of Magistracy.

- The decisions of the Superior Council of Magistracy are final and irrevocable, except as provided by art. 134 par. (2).

2. Art. 134: Powers

- The Superior Council of Magistracy proposes the President of Romania the appointment of the judges and prosecutors, except for the trainees, under the laws.

- The Superior Council of Magistracy fulfils the role of court, by its sections, in the line of disciplinary liability of the judges and prosecutors, according to the procedure set forth by its organic law. Under such circumstances, the minister of justice, the president of the High Court of Cassation and Justice and the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice do not have the right to vote.

- The decisions of the Superior Council of Magistracy in disciplinary matters may be challenged at the High Court of Cassation and Justice.

- The Superior Council of Magistracy also performs other duties set forth by its organic law, while fulfilling its role of guarantor of the independence of justice.

2. Romanian doctrinal references on the judiciary.

We will select from the Romanian doctrine the opinions of authors with recognized prestige, who studied the judicial power or authority.

2.1. The first opinion¹¹ mentioned for this study analyses *The Judicial Authority*.

The term *justice* has two meanings. In a sense, justice means the judicial bodies, and in the second sense we understand the activity of settling civil, administrative, commercial, criminal, work etc. trials, of applying sanctions, of restoration of rights and violated legitimate interests. In ordinary words, serving justice means making justice

As social life should be led according to the constitution and laws, there should be a function (a power, an authority) which might know and be able to interpret them and correctly enforce them when they are violated, when the rights and freedoms are violated, when the rights and freedoms of citizens are endangered, neglected.

The term *jurisdictional authority (power)* does not diminish the role of justice, but it emphasizes the similarity of content and principles among several activities which are imperative when the laws are not enforced. Justice remains the substantial part of jurisdictional activity.

The fundamental principles according to which justice is serviced are the following: 1. principle of legality, 2. justice is unique, impartial and equal for all. 3. use of official language and of maternal language in justice. 4. right of defence. 5. presumption of innocence. 6. independence of the judge subjecting him only to the law.

The bodies of the judicial authority are set forth by Title VI of the Constitution of Romania, entitled *The Judicial Authority*.

2.2. A second opinion¹² mentioned for this study analyses *The Judicial Authority*.

The Constitution of Romania in Chapter VI (art. 124-134) deals under the term "Judicial Authority" three different institutions: the courts, the Public Ministry and the Superior Council of Magistracy, which form together the judicial authority.

The courts are represented in Romania by a) the High Court of Cassation and Justice; b) courts of appeal; c) tribunals; d) specialized courts; e) military courts; and f) district courts.

1. **The notion of justice has two meanings.** In a wide sense the notion of justice designates the idea of justice, of equity and equality before the law.

In a narrow sense, justice means all institutions by means of which the act of justice is exercised: courts, magistrates, lawyers, bailiffs, etc. from this point of

¹¹ Ioan Muraru, Elena Simina Tănăsescu, *Constitutional law and political institutions*, 14th edition, volume II, C. H. Beck Publishing House, Bucharest, 2013, pp. 286-295.

¹² Ștefan Deaconu, *Political Institution, Edition 3*, C. H. Beck Publishing House, Bucharest, 2017, pp. 292-314.

view, justice is a public service exercised by the state specialized institutions.

2. **Judicial power** means only the judges who work in courts.
3. **The irrevocability of judges** is the strongest guarantee of justice independence, of the judge's independence and good administration of the act of justice.
4. **The principles underlying the making of justice** are the following: a) Principle of legality. b) Principle of independence of justice. c) Principle of free access to justice. d) Principle of uniqueness, impartiality and equality of justice for all individuals. e) Principle of the right of defence. f) Principle of the presumption of innocence. g) Principle of usage of official language and of maternal language in court. h) Principle of justice as a state monopoly. i) Principle of sessions' advertising. j) Principle of justice functioning on the hierarchy criterion.

2.3. A third opinion¹³ mentioned for this study analyses the Jurisdictional Authority.

2.3.1. Terminology and notions regarding judicial authority

At the onset of the course we should emphasize the place of judicial authorities in the triad of the separation of powers in the state. Concerning this aspect, the constitutional doctrine expresses the following opinion:

"The evolution of the classical theory of the separation of powers also involved the evolution of the explanations and practices regarding the judiciary. This explains the different terminology used to express this *power* in the constitutions and doctrine, i.e.: the judiciary, the jurisdictional power. The name of judicial authority clearly evokes justice, as a distinct function and as a distinct system".¹⁴

Moreover, the term *justice* is understood in a dual sense, „In a sense, justice means the system of judicial bodies, and in a second sense we understand the activity of settlement of civil, administrative, commercial, criminal, work etc. trials, of enforcement of sanctions, of restoration of violated legitimate rights and interests".¹⁵

In addition, „this function was and is entrusted to a distinct authority (power), vested with state powers which give efficiency and must be *independent and impartial*".¹⁶

Concerning the specifics of jurisdictional activity, constitutional doctrine sets forth the following: „in order for justice to be able to fulfil its mission, it has a certain organization, certain principles. The

organization of justice is done by degrees of jurisdiction".¹⁷

2.3.2. Fundamental principles according to which justice is made

With reference to the fundamental principles according to which justice is made, the constitutional doctrine expresses the following opinion: „Justice shall meet certain fundamental requirements. Among these requirement, we may list the following: legality, good administration of justice; access to a court; guarantee of a fair trial; trial advertising; judge impartiality; proportionality in deciding sanctions etc.". ¹⁸

The fundamental principles according to which justice is made, should meet two conditions: they should be principles set forth by the Constitution, or derive from constitutional principles.

The fundamental principles according to which justice is made are the following: 1. Principle of legality. 2. Justice is unique, impartial and equal for all. 3. use of official language and of maternal language in court. 4. right of defence. 5. presumption of innocence. 6. Independence of the judge subjecting him only to the law.

2.3.3. Bodies of the judicial authority

The systematic analysis of the normative content of the Constitution shows that judicial authority is designated in Chapter VI, Title III, entitled Judicial Authority, and are regulated in the following order: 1. courts. 2. The Public Ministry. 3. Superior Council of Magistracy.

3. Jurisprudential references on the judiciary in the decisions of the Constitutional Court of Romania –selective aspects.

3.1. DECISION No. 611 of 3 October 2017 regarding the claims of settlement of legal conflicts of constitutional nature between the Parliament of Romania, on the one hand, and the Public Ministry — the Prosecutor's Office attached to the High Court of Cassation and Justice, on the other hand, such claims formulated by the chairmen of the Senate and of the Chamber of Deputies.

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1. Pending lies the examination of the claims for settlement of the legal conflicts of constitutional nature between the Parliament of Romania, on the one hand, and the Public Ministry — the Prosecutor's Office attached to the High Court of Cassation and Justice, on the other hand, such claims formulated by the chairmen of the Senate

¹³ Nicolae Pavel, *Constitutional law and political institutions*, Part II Political Institutions, Course in IFR Technology, Romanian Tomorrow Publishing House, Bucharest, 2013, pp. 92-97.

¹⁴ Ioan Muraru, Elena Simina Tănăsescu, *Constitutional law and political institutions*, 15th edition, volume II, C. H. Beck Publishing House, Bucharest, 2017, pp. 284-295.

¹⁵ *Ibidem*, p. 267.

¹⁶ *Ibidem*, pp. 267-268.

¹⁷ *Ibidem*, p. 269.

¹⁸ *Ibidem*, pp. 269-270.

and of the Chamber of Deputies. The referrals are based on the provisions of art. 146 (e) of the Constitution and of art. 11 par. (1) pct. A (e), of art. 34, 35 and 36 of Law no. 47/1992 on the organization and functioning of the Constitutional Court were recorded at the Constitutional Court under no. 9.686 and no. 9.687 of 13 September 2017 and are the object of Case File no. 2.428E/2017, of Case File no. 2.429E/2017 respectively.

2. By the Claim no. I 2.480 of 13 September 2017, The Chairman of the Senate requested the Constitutional Court to rule on the existence of a legal conflict of constitutional nature between the Parliament of Romania, on the one hand, and the Public Ministry, a component of judicial authority, on the other hand.
3. The Court considering the claims for settlement of the legal conflicts of constitutional nature between the Parliament of Romania, on the one hand, and the Public Ministry — the Prosecutor's Office attached to the High Court of Cassation and Justice , on the other hand, claims filed by the chairmen of the Senate and of the Chamber of Deputies, the opinions of the Chamber of Deputies, the Public Ministry — the Prosecutor's Office attached to the High Court of Cassation and Justice — National Anticorruption Directorate, the documents duly filed, the report drawn up by the Judge Rapporteur, the allegations of the representatives of the present parties, the provisions of the Constitution and of Law no. 47/1992 on the organization and functioning of the Constitutional Court, holds the following:
The Court
4. Finds that there is a legal conflict of constitutional nature between the Parliament of Romania, on the one hand, and the Public Ministry — the Prosecutor's Office attached to the High Court of

Cassation and Justice, on the other hand, generated by the refusal of the chief prosecutor of the National Anticorruption Directorate to appear before the Special Investigation Commission of the Senate and of the Chamber of Deputies to verify the aspects related to the organization of 2009 elections and the result of the presidential poll.

The: Final and binding.

4. Conclusions.

Considering the above-mentioned we hold the following ideas here below:

4.1. The aim of the study on the Selective aspects on the evolution of the regulations regarding the judiciary in the Romanian Constitutions and Romanian Law 100 years after the Great Union, was attained. in our opinion.

4.2. In our opinion, the analysed area is important for the constitutional doctrine in the matter, for the doctrine of human rights and for the doctrine of the history of the Romanian state and law.

4.3. Constitutional regulations were successively identified concerning the evolution of the regulations regarding the judiciary in the Romanian Constitutions la 100 years from the Great Union.

4.4. The three parts of the study may be considered a contribution to the extension of research in the matter of the evolution of the regulations regarding the judiciary in the Romanian Constitutions la 100 years from the Great Union, in accordance with the current trend in the matter.

4.5. We further point out that this study opens a complex and complete view, but not exhaustive, in the analyzed field.

4.6. The key-scheme proposed, considering the selective approach of the evolution of the regulations regarding the judiciary in the Romanian Constitutions la 100 years from the Great Union may be multiplied and extended for further research in the matter.

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