

# THE RIGHT TO AN INDEPENDENT COURT

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## Abstract

*The independence of the court is essential of state of rule, to maintain the stability in juridical intercourse, for the existence of a constitutional democracy achieved through a warranty of the necessary objectivity for the steady and legal settlement of the causes deducted to the trial and the achievement of a fair trial.*

*The article emphasizes the main international juridical tools in which independence of justice is reflected, achieving an examination of judicial practice of European instance as well as an analysis of this principle as it is regulated by Romanian justice.*

**Keywords:** *independence, impartiality, justice, judge, instance*

## 1. Introductory Notions. Juridical Framework

The justice independence is, beside its impartiality, essential for the legal state, in order to keep the stability in the juridical relations, for the existence of a constitutional democracy, being constituted in order to guarantee the objectivity needed for the reasonable and legal settlement of the causes, for protecting the society's general interests, the legal order and also the civic rights and liberties.

The two notions never overlap whereas independence does not necessarily suppose impartiality. A court may be independent, automatically meaning that it does not necessarily have to be impartial<sup>1</sup>, but if a judge can be independent and not partial, he cannot be impartial unless he is independent<sup>2</sup>. Therefore, independence is prior to impartiality.

Even independence and impartiality are two separate and distinct values of justice, there is a tight connection between them. Given this connection between independence and impartiality, the two values are regulated together by the stipulations of the main incident international juridical tools in the legal matter at an equitable lawsuit, respectively:

- art. 10 of Universal Declaration of Human Rights consecrating every person's right to be equitably, publically examined in a reasonable term by an independent and impartial court;

- art. 6, paragraph 1 of the European Convention for protecting the human rights and basic liberties that, by regulating the right to an equitable process, shows that the judgement of any person's cause must be equitably and publically made in a reasonable term by an independent and impartial court;

- art. 47, paragraph 2 of the Charter of Basic Rights of the European Union that acknowledges any person's right to an equitable, public process in a reasonable term in front of an independent and impartial judicial court constituted in prior by law.

The tight connection between independence and impartiality also results from art. 2 of the Basic Principles referring to the magistracy independence<sup>3</sup> that, specifies that justice must decide in

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<sup>1</sup> V. Pătulea, *Theoretical and Judicial Practice Synthesis of the European Court of Human Rights related to art. 6 of the European Convention of the Human Rights. The right to an equitable lawsuit. The right to an independent and impartial court (III)*, in Law no. 12/2006, p. 218.

<sup>2</sup> Magistrate Association of Romania, *Magistrate Deontological Code, Application Guide*, Magistrate coordinator Fl. Costiniu, (Hamangiu Press, 2007), p. 29.

<sup>3</sup> Adopted by the 7<sup>th</sup> Congress of the United Nations for preventing the offences and the delinquents' treatment (Milano, August, 26<sup>th</sup> – September, 6<sup>th</sup> 1985) and confirmed by the General Assembly of the United Nations Organization by means of resolutions no. 40/32 from November, 29<sup>th</sup> 1985 and no. 40/146 from December, 13<sup>th</sup> 1985.

the causes brought to it based on the facts and according to the law, with no restrictions, no unwanted influences, no delusions, pressures, threats or direct or indirect interferences of anybody, no matter the reason, considering elements related both to independence and impartiality<sup>4</sup>

Beside the stipulations of art. 10 of the Universal Declaration of Human Rights, of art. 6 of the European Convention for Protecting the Human Rights and Basic Liberties and of art. 47, paragraph 2 of the Charter of Basic Rights of the European Union at the international level, a special importance regarding the judges' independence belongs to the Basic Principles regarding to the magistracy independence stipulating the obligation of every government and of the other institutions to acknowledge and respect the judges' independence.

Following the promotion of the judges' independence in order to reinforce the law supremacy in the democratic states, at the European level it was adopted, in the matter of the judges' role and the justice independence, Recommendation no. (94) 12 regarding the judges' independence, efficiency and role<sup>5</sup>. At point 2 letter d of Principle I – General principles regarding the judges' independence, it is established, in imperative terms, that in the process of making decisions, judges must be independent. Also, point 3 letter a of Principle V- Judicial responsibilities of the same Recommendation shows, among other things, that especially judges must act as fully independent in all the cases and ignoring any extern influence.

The judges' independence principle is also regulated by art. 1 of the Judges' Universal Status<sup>6</sup> stipulating that the judge, as an owner of the judicial authority, must be able to exert his function in a full independence in relation to the constraints / the social, economical, and political forces even in relation to other judges and to the judicial administration.

The judge's independence is also reflected by Bangalore principles where it is shown that justice independence is the premise of the legal state and a basic guarantee of the equitable lawsuit (Value 1-Independence). The judge must independently exert his judicial function based on his own appreciation of the facts and in the spirit of the law, with no external influences, suggestions, pressures or direct or indirect interference, no matter whom they come from and under what reason.

Considering the stipulations of art. 6 of the Convention for Protecting the Human Rights and Basic Liberties, of the Basic Principles referring to the judges' independence, referring to Recommendation no. (94) 12 of the Minister Committee of the Member States and interested ones in the fact that the promotion of the judges' independence needed for reinforcing the supremacy of law and of protecting the individual rights and liberties in framework of the democratic states should be effective, the participants to the multilateral reunion regarding the judges' status in the Europe organized by the European Council on July, 8<sup>th</sup> – 10<sup>th</sup> 1998 at Strasbourg adopted the European Charter regarding the judges' status<sup>7</sup>. This contains stipulations showing that the Judges' Status wants to provide the competence, the independence and the impartiality any person legally waits from the courts and from every judge whom the protection of their rights is entrusted to. He excludes any stipulation and any procedure able to debase the confidence in this competence and impartiality. The Charter contains the stipulations most able to guarantee the achievement of these objectives (General Principles, point 1.1.).

<sup>4</sup> V. M. Cioabanu, *Judicial Authority in Romanian Constitution. Comment on articles*, Coordinators I. Muraru, E. S. Tănăsescu, (C.H. Beck Press, Bucharest, 2008), p. 1219.

<sup>5</sup> Adopted by the Minister Committee of Member States of the European Council on October, 13<sup>th</sup> 1994.

<sup>6</sup> Adopted by the Magistrate International Union in 1999 at Taipei.

<sup>7</sup> When contracting the works of the first multilateral reunion in Strasbourg from July 1997, the participants to this reunion, coming from 13 countries of Western, Central and Eastern Europe, together with the representatives of the Magistrate European Association (MEA) and the European Magistrate Association for Democracy and Liberty (EMADL) expressed their will to be offered by the European Council the frame and the support needed in order to elaborate a Charter regarding the judges' status. The Juridical Affairs Direction entrusted to an expert in France, Poland and Great Britain the publishing of a Charter pre-project. The pre-project was elaborated in the spring of 1998 and presented to the participants to the second multilateral reunions develop still in Strasbourg on July, 8<sup>th</sup> – 10<sup>th</sup> 1998. After being brought a series of amendments, the text was unanimously adopted.

As it results from the Basic Principles referring to the magistracy independence, the magistracy independence must be guaranteed by the state and stated in the Constitution or in other national law. In the same sense, at point 2 letter a of Principle I – General Principles regarding the judges' independence of Recommendation R (94) 12 it is specified that judges' independence must be guaranteed (...) by adopting express stipulations in this sense in the Constitution or in other legislative texts (or by incorporating the stipulations of this Recommendation in the intern law).

In the Romanian law, the justice independence principle is consecrated by art. 124, paragraph 3 of the Constitution stating that judges are independent and only obey to the law. Thus, in the constituting legislator's conception, the judges' independence is accomplished by the fact that they only obey to the law. As a consequence, independence also supposes the settlement of the cause deducted to the judgement only based on the administrated evidence and according to the legal stipulations that are mandatory for the judges, without other factors influencing his conviction. Considering the importance of this principle, the legislator established in the basic law that the justice independence cannot make an object of the Constitution review.

The justice independence principle also results from other texts of the Romanian legislation in the matter and of the Judges and Prosecutors' Deontological Code. Thus there are:

- art. 2, paragraph 3 of Law no. 303/2004 stating that judges are independent, only obey to the law (...);
- art. 10 of Law no. 304/2004 that, under the direct influence of the stipulations of the Universal Declaration of the Human Rights and of the European Convention for Protecting the Human Rights and Basic Liberties establishes that all the persons have the right to an equitable lawsuit and to settling the cases in a reasonable term by an independent court (...), constituted according to the law;
- art. 3 of the Judges and Prosecutors' Deontological Code that, after instituting the judges and prosecutors' obligation to protect the justice independence, shows that they must objectively exert their function (...) their only basis being the law, without encouraging any type of pressures and influences.

## 2. Institutional Independence and Individual Independence

The magistrate's independence must be analysed under a double aspect, namely:

- The one of the institutional (or functional) independence referring to the relations between magistrate and other internal factors (other magistrates) or extern ones this interferes with (legislatively, executively, parties etc);
- The one of the personal independence referring to the actual magistrate's independence (de facto independence).

The two aspects are in an interdependence relation and together, they provide a real independence of justice. The institutional independence and the personal one must not be dissociated and analysed separately from each other whereas it may occur for a judge to be in that mood providing the personal independence but, if the court he belongs to is not independent in report to other factors, we cannot say that the judge is independent.

**1. Institutional independence.** The essence of justice independence consists in the judge's full freedom to decide in the causes deducted to the judgement. In this sense, in the content of Principle I of Recommendation no. (94) 12 (point 2 letter d) it is shown that judges must be absolutely free to decide impartially on the causes they are announced of based on their intimate conviction and on their own interpretation of the facts and according to the valid legal norms. In the decision making process, judges must act with no restriction and without making the object of any influences, suggestions, pressures, threats, or direct or indirect interferences, no matter where they come from and under what reason. Judges must not be forced to account to any person outside the judicial power on the settling offered to the causes. The stipulations of the Recommendation no. (94)

12 develop the ones contained by the UN Basic Principles regarding the justice independence establishing that the judges must solve the causes deducted to judgement based on the facts and according to the law, with no restrictions, inadequate influences, suggestions, pressures, threats or direct or indirect interferences, no matter where they come from and under what reason (Justice Independence, Principle 2). The stipulations meant to provide the judge's full freedom in the judging activity are also found in Bangalore Principles where it is shown that the judge must independently exert his judicial function based on his own appreciation of the facts and in the spirit of the law, with no external influences, suggestions, pressures, threats and with no direct or indirect interference, no matter where they come from and under what reason.

Institutional independence should be analysed at least from the following viewpoints:

- Independence to the other powers of the state;
- Independence to the parties;
- Independence to court leaders and to colleagues.

A) *Independence to the executive and legislative.* The constitutional principle of justice independence gives the magistrates the possibility to pronounce decisions according to their own convictions, independently from the executive and legislative power, supposing that the judge may impose his controlling power in relation to these powers<sup>8</sup>.

The independence of the judicial power to the executive and legislative one is indirectly consecrated in the Romanian Constitution, by instituting in art. 1, paragraph 4 the principle of powers separation<sup>9</sup>. Thus, the principle of powers separation involves the one of justice independence. This could be compromised if the magistrate's career depended on the executive power or if the rules referring to this career could be changed at any moment<sup>10</sup>. The executive and legislative power should provide the fact that judges are independent and that there were not adopted measures able to endanger this independence<sup>11</sup>. The arbitrary interference of the legislative or of the executive in the justice business would constitute an obstacle in the way of the exertion of the judicial court functions. The interferences of any kind and the "suggestions" given to judges in order to judge in one way or another would put into the shade the idea of justice, would hack, would damage or diminish judges' prestige, making them dependents on certain political forces<sup>12</sup>.

The judge has to have no kind of inadequate connections and not to be influenced by the executive and legislative power, but he should be perceived like that by any outer observer<sup>13</sup>.

a) Independence to the legislative power. The Parliament has no right to interfere in the process of accomplishing the justice because, according to art.125, paragraph 1 of the Constitution, the justice is accomplished by the High Court of Cassation and Justice and by the other judicial courts. The legislative power cannot arrogate the competence of settling no lawsuit. At the same time, the legislative cannot adopt retroactive laws able to trouble the stability of the juridical reports consecrated or constituted by a judicial decision, it cannot change a decision given by the judicial court, it cannot issue interpretative laws whose purpose is to supply the solution of a developing process. Also, the legislating authority cannot adopt normative documents in order to block the jurisdictional procedures or the execution of judicial decisions. In this sense, the Constitutional Court stated that a legal stipulation by means of which the judgement development or the execution of the

<sup>8</sup> I. Stoenescu, Gr. Porumb, *Romanian Civil Processual Law*, (Didactic and Pedagogical Press, Bucharest, 1986)

<sup>9</sup> M.-M. Pivniceru, C. Luca (coordinators), *Deontology of the Magistrate Job. Contemporary Reference Points*, (Hamangiu Press, Bucharest, 2008) p. 71-72.

<sup>10</sup> Fr. Hamon, M. Troper, *Droit constitutionnel*, 29<sup>e</sup> édition, (L.G.D.J., Paris, 2005), p. 852.

<sup>11</sup> Point 2 letter b. Of Principle I – General Principles regarding the judges' independence of Recommendation no. (94) 12 regarding the judges' independence, efficiency and role.

<sup>12</sup> V. Duculescu, C. Călinoiu, G. Duculescu, *Romanian Constitution, commented and annotated*, Bucharest, Lumina Lex Press, 1997, p. 337.

<sup>13</sup> Bangalore Principles, Value1 - Independence, point 1.3.

definitive judicial decisions referring to certain determined causes is unconstitutional when it does not result from a decision of the judicial court<sup>14</sup>, but it operated legally<sup>15</sup>. In the same sense, the Constitutional Court decided that “a legal stipulation, by means of which it would be forbidden – even only temporarily – the execution of a judicial decisions would represent an interference of the legislative power in the process of justice accomplishment, being contrary to the constitutional principle of the powers separation within the state” referring to certain determined causes, such legal stipulations being unconstitutional<sup>16</sup>.

The parliament may exert the controlling right on the way of judicial authority bodies’ operating, establishing in this purpose rules of judicial organization of competence and of procedure, namely the ones according to which the judicial activity develops. This right may be exerted only by respecting the authority of the judged thing, art. 15, paragraph 2 of the Constitution, stipulating that laws, except for the criminal or the contravention ones that are more favourable cannot have a retroactive feature. Thus, the legislative cannot approve laws that retroactively change certain judicial decisions. Regarding this problem, the European Court of the Human Rights showed that the judge is prevented from applying a retroactive law of a litigation he is noticed about, this fact has incidence on the independence in accomplishing his mission<sup>17</sup>.

In case of this control, the Parliament cannot stop the judicial courts from exerting their mission of accomplishing justice, any interference of the legislative power that could put the judicial authority in the impossibility to work, having as a consequence the breach of the constitutional balance between these authorities. In this sense, it was shown in jurisprudence that the principle of law pre-eminence and the notion of equitable lawsuit are opposable to any interferences of the legislative power in the justice administration in order to influence the judicial ending of litigation<sup>18</sup>.

The judicial courts cannot refuse the application of a law emitted by the legislative power, prevailing their independence. The only exception is constituted by the refuse to apply legal stipulations against the stipulations of the Basic Laws, and the judge has the possibility to lift ex officio the unconstitutionality exception of the stipulations of a law or of an emergent ordinance, interfering thus in the control of the law constitutionality accomplished by the Constitutional Court<sup>19</sup>.

b) Independence to the executive. Regarding the relations between the executive power and the judicial one, the first one can mainly settle no lawsuit, cannot stop the judging development, cannot oppose to the execution of the judicial decisions. To the executive power, the judicial one depends by the fact that judges’ appointment is made by the Romanian President, but this dependence is apparent because the President can assign judges only at the suggestion at the High Magistracy Council. The Constitutional Court stated<sup>20</sup> that the Romanian President is the only exponent of the people’s will in the reports to the judicial authority; the appointment of a judge involves a juridical responsibility and that is why it is explainable the possibility to refuse the

<sup>14</sup> Only the judicial authority is competent to suspend the execution of a judicial decision. According to the stipulations of art. 403, paragraph (1) of the Civil Procedure Code until settling the complaint at execution or of other demand regarding the forced execution, the competent court may suspend the execution, if there is a bail in the quantum established by the court, beside the case when the law stipulates differently.

<sup>15</sup> The Constitutional Court of Romania, Decision no. 6/1992, published in the “Official Gazette of Romania” no. 48/March, 4<sup>th</sup> 1993; Decision no. 388/2003 published in the “Official Gazette of Romania” no. 789/November, 10<sup>th</sup> 2003; Decision no. 1055/2008 published in the “Official Gazette of Romania” no. 737 from October, 30<sup>th</sup> 2008.

<sup>16</sup> The Constitutional Court of Romania, Decision no. 50/2000 published in the “Official Gazette of Romania” no.277 from June, 20<sup>th</sup> 2000.

<sup>17</sup> CEDO, Pressos Cause, Naval company and others c. Belgia, Decision from November, 20<sup>th</sup> 1995.

<sup>18</sup> Decision from December, 9<sup>th</sup> 1994, V. Berger, *Jurisprudence of the European Court of Human Rights*, Bucharest, 1997, p. 208-209.

<sup>19</sup> C. Danilet, *Justice Independence in Legal State (I). Structural Independence Standards*, Themis Magazine no. 1/2010, p. 77.

<sup>20</sup> Romanian Constitutional Court, Decision no. 375/2005 published in the “Official Gazette of Romania”, Part I, no. 591/2005.

suggestion made; since the second refusal is not allowed, it means that the final word belongs to the High Magistracy Council.

In the practice of the European court of human rights contentious it was considered in several causes that the Government appointment of the members of a court is not compatible with the notion of court independence<sup>21</sup>. But, in another cause, the Court considered that a disrespect of art. 6 paragraph 1 of the Convention is represented by the fact that the members of the sea chamber (the president and the vice-president) who should have judged the cause referring to the establishment of the guilt of the crew members regarding the wreck of a ferry were also called revoked from their job by the minister of justice with the notice of the minister of transports, appreciating that they cannot be considered as irremovable and that there is a hierarchical subordination between them and the ministers<sup>22</sup>.

*B) Independence to the parties.* Magistrates' independence should equally be expressed to the litigants. In this sense, at point 1.2. of Value 1-Independence of the content of Bangalore Principles it is shown that the judge will be independent in the relations with the society, in general, and in the relations with the parties placed in a litigation it is called to judge.

Regarding the court independence to the parties, the Romanian Constitutional Court decided that the judicial assistants assigned in composing the panels settling the work litigations in the first place as representatives of the association, respectively to the syndicates, did not accomplish sufficient guarantees of independence and impartiality as long as the representatives of the parties were in litigation, given the fact that they participated to the decisional process next to the judge, the decisions being taken together with most of the complete members<sup>23</sup>. The solution of the Romanian constitutional court agrees with the practice of the European court that decided that, since in a court there is a person who is subordinated, the litigants may legally doubt that person's independence<sup>24</sup>.

In order to provide justice independence, the distribution of the causes should not be influenced by the desire of any party in lawsuit or of any other persons interested in the result of the decision. Regarding this distribution, point 2 letter e of Principle I of Recommendation no. (94) 12 shows, as an example, that it cannot be made by lot or by a system of automatic distribution based on the alphabetical order or by other similar criterion.

In the Romanian law, one of the principles that should be respected in the development of the judging activity is, according to art. 11 of Law no. 304/2004 republished, as further amended and completed, the principle of the random distribution of the files. The rule governing the random repartition of the causes on panels is that they are distributed in a computerised system (art 53 paragraph 1 of Law no. 304/2004), by ECRIS programme (art. 95, paragraph 2 of the Internal Regulation of the judicial courts). As an exception from this rule, art. 95, paragraph 3 of the Regulation stipulates that, when the computerised repartition cannot be applied because of objective reasons, the causes repartition is accomplished by the method of the cyclic system. By this last method, the files are taken over by the person or the persons yearly assigned by the court president, with the notice of the leading college that distributes a file, in order, to the judicial panels that are constituted at the beginning of every year and that are numbered according to the court or, depending on the case, to sections. The same rule is applied at the causes repartition to the specialized panels (art. 96 of the Regulation).

*C) Independence to the court leaders and to colleagues.* As it is shown at point 1.4. Value 1 – Independence contained in Bangalore principles, in exerting his juridical function, the judge will

<sup>21</sup> CEDO, Clarke cause vs. Great Britain, Decision from August, 25<sup>th</sup> 2005; CEDO, Lithgow cause etc. vs. Great Britain, Decision from July, 8<sup>th</sup> 1986; CEDO, Sramek cause vs. Austria, Decision from October, 22<sup>nd</sup> 1984.

<sup>22</sup> CEDO, Brudnika cause etc. vs. Poland, Decision from March, 3<sup>rd</sup> 2005.

<sup>23</sup> The Romanian Constitutional Court, Decision no. 322 from November, 20<sup>th</sup> 2001, published in the "Official Gazette of Romania", no. 66/November, 20<sup>th</sup> 2001.

<sup>24</sup> CEDO, Sramek cause vs. Austria, Decision from October, 22<sup>nd</sup> 1984; Pantea cause vs. Romania, Decision from May, 22<sup>nd</sup> 1998, published in the "Official Gazette of Romania" no. 251 from April, 16<sup>th</sup> 2007.

have to be independent to his magistrate colleagues regarding those decisions he has to take independently. The independence must be manifested both to the leaders of the higher courts or of the active courts that does not have to interfere with directives, and also to the other colleagues.

Judges are only administratively subordinated to the court leader who cannot exert on them a control regarding the proper development of the judging activity. In this sense, art. 46, paragraph 2 of Law no. 304/2004 establishes that the checking personally made by the presidents or the vice-presidents of the judicial courts or by assigned judges should respect the principles of the judges' independence and of their submission to the law, and also the authority of judged thing and art. 16, paragraph 2 of the Judges and Prosecutors Deontological Code shows that the magistrates with leading functions cannot use the prerogative they have in order to influence the process development and the causes settling.

On the other side, even if a higher court has the possibility to censure the decision of an inferior one, the judge of the inferior court is not hierarchically subordinated to the one of the higher court in exerting his function. The Constitutional Court decided that the background judges' independence is not hacked by the fact that, re-judging the cause, it adopts the legal settling established by the cassation court, because this is why they are not submitted to the will of an authority different from the judged cause, but they obey to the judicial decision given in the exertion of the legal competence of judicial control. The judges of the court of sending to re-judgement, after the admission of the attack way, have the processual obligation to obey the juridical viewpoints solved by the decision that admitted the attack way, but this obligation does not reach the independence of the judges who, in the shown limits, keep the right to decide according to their consciousness.

The European court established that the judges' obligation to obey a jurisprudence established in sections united by the supreme court of a country is not contrary to the independent feature of a court since the reunion in chambers or sections of a high jurisdiction has as a purpose the offering of a special authority of certain principle decisions in important fields of the judicial activity, without reaching the law and the obligations of the inferior courts to examine totally the concrete causes deducted to settling, in a total independence<sup>25</sup>.

**2) Personal independence.** Before everything, magistrates' independence represents a temper problem. Under this aspect, Bangalore Principles trace, as a behaviour reference point, the target for the judge to manifest and to support a qualitative judicial behaviour in order to reinforce the public confidence in justice, without which we cannot keep the independence of the judicial power. (Value 1 – Independence, point 1.6.). Therefore, judges, as well as the prosecutors, should be equidistant to their own tendencies, passions, ideological affinities that could influence them, to have consciousness, balance, courage, objectivity, understanding in order to provide the correct application of the law and the equitable, efficient and quick instrumentation of the causes.

The magistracy independence does not represent a personal prerogative of each judge, but rather their responsibility.

Internationally, this responsibility is established in the target of the judges of Principle V of Recommendation no. (94) 12 where, since the judicial responsibilities are treated, it is shown that the judges should especially assume their responsibility to act independently in all the cases and with no outer influence.

In the Romanian law, the responsibility to provide the justice independence belongs both to judges and to prosecutors. In this sense, there are the stipulations of art. 3 of the Judges and Prosecutors' Deontological Code instituting in the target of both of the magistrate categories, the obligation to protect justice independence. Also, this responsibility of judges and prosecutors results from the stipulations of art. 107 of Book I of Law no. 161/2003 regarding certain measures in order

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<sup>25</sup> CEDO Ciobanu cause vs. Romania, Decision from July, 16<sup>th</sup> 2002, unpublished, quoted by C. Bârsan, *European Convention of Human Rights. Comment on articles*, vol. I, C. H. Beck Press, Bucharest, 2005, p. 493.

to provide the transparency in exerting the public dignities, the public functions in the business environment and the corruption prevention as it was changed and completed<sup>26</sup> that stipulates that the magistrates have the obligation to announce immediately the court president or, depending on the case, the general prosecutor in whose suborder it works any interference in the judicial, political or economical document, from a natural person or legal entity or from a group of persons. Also, the stipulations of the same law establish that the contracting of stipulation of art. 107 constitute a disciplinary deviation sanctioned according to the report of its seriousness to the job suspension of maximum 6 months or even the removal from magistracy.

### 3. Appreciating the independence

In the European jurisprudence, there were considered criteria of appreciating the independence of a court: the assigning way and the mandates time of the court members, the existence of an adequate protection against the outer pressures, and also the independence appearance<sup>27</sup>.

Regarding the assigning way, the European court of human rights contentious showed that judges' appointment should not be let at the discretion of the executive power<sup>28</sup> and that their independence is provided if they are assigned in order to pronounce individually and they cannot receive instructions from the public powers<sup>29</sup>. Regarding the mandate time, the European Court considered that it was not necessary to assign the judges for life<sup>30</sup>, since they may be assigned also for a shorter term, for example 2 years<sup>31</sup> or 5 years<sup>32</sup> as long as they enjoy being irremovable during their mandate<sup>33</sup>.

Referring to the protection against the outer pressures, the Court specified that they are related to the protection of the court members against their replacement during the mandate<sup>34</sup>.

Regarding the independence appearance, it represents the confidence the courts must inspire to the litigants<sup>35</sup>.

### 4. Conclusions

Justice independence is a fundamental guarantee for exercising human rights. It creates the conditions for the objectivity necessary for thorough and legal settlement of matters which results in the consolidation of parties' trust in the activity of judicial courts.

This constitutional principle of justice gives the magistrates the possibility to sentence resolutions in accordance with their beliefs and independently both from the legislative and executive power and from their colleagues and parties.

<sup>26</sup> Published in the "Official Gazette of Romania", part I no. 279 from April, 21<sup>st</sup> 2003, changed by O.U.G. no. 40/2003, approved by Law no. 171/2004 and by O.U.G. no. 14/2005 ("Official Gazette of Romania", part I, no. 200 from March, 9<sup>th</sup> 2005).

<sup>27</sup> CEDO, Campbell cause and Fell vs. Great Britain, Decision from June, 28<sup>th</sup> 1984; CEDO, Langborger cause vs. Sweden, Decision from June, 22<sup>nd</sup> 1989; CEDO, Procola cause vs. Luxembourg, Decision from September, 28<sup>th</sup> 1995; CEDO, Bryan cause vs. Great Britain, Decision from November, 22<sup>nd</sup> 1995; CEDO, Findlay cause vs. Great Britain, Decision from February, 25<sup>th</sup> 1997; CEDO, Forum Maritime S.A. cause vs. Romania, Decision from October, 4<sup>th</sup> 2007.

<sup>28</sup> CEDO, Brudnika cause vs. Poland, Decision from March, 3<sup>rd</sup> 2005, quoted by J.-Fr. Renucci, *op. cit.*, p.434.

<sup>29</sup> CEDO, Sramek cause vs. Belgium, Decision from October, 22<sup>nd</sup> 1984.

<sup>30</sup> CEDO, Le Compte, Van Leuven and De Meyere cause vs. Belgium, Decision from June, 23<sup>rd</sup> 1981.

<sup>31</sup> CEDO, Sramek cause vs. Belgium, Decision from October, 22<sup>nd</sup> 1984; CEDO, Campbell and Fell cause vs. Great Britain, Decision from June, 28<sup>th</sup> 1984.

<sup>32</sup> CEDO, Ringeisen cause vs. Austria, Decision from July, 16<sup>th</sup> 1971.

<sup>33</sup> CEDO, Campbell and Fell cause vs. Great Britain, Decision from June, 28<sup>th</sup> 1984.

<sup>34</sup> CEDO, Sramek cause vs. Belgium, Decision from October, 22<sup>nd</sup> 1984.

<sup>35</sup> C. Bârsan, *op. cit.*, p. 490.

Independence is first of all a matter of character. Magistrates have to protect justice independence not as a privilege that belongs to them, but rather as a guarantee for the society without which there would be no democratic society organized on the principle of law supremacy. Within the development of any activity magistrates have to display a conduct that does not jeopardise the trust in their independence.

Judges have to make all the efforts possible in order for their sentence to be in accordance with the reality. The force of the lawful state is in the promotion of truth in the work of carrying out the justice.

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