

NATIONAL AND INTERNATIONAL CONTEXT OF TRAINING FOR ROMANIAN MAGISTRATES

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Abstract

In the context in which human resources management has an international dimension, the paper briefly analyzes the process of training for magistrates, both from the perspective of general international principles, as well as from the perspective of national legislation. The importance of permanent development of training programs for magistrates is reflected in the professionalism of magistrates and assumes a certain adequacy to the specific needs of the judicial system. From this perspective, the training for magistrates has a compulsory feature not only in relation with the national or European legislation, but also is a practical need for adjustment to continuous changes that occur in the judicial relations, by legislative reforms, some radical, as a consequence of the dynamic social life.

Keywords: *judiciary organization, human resources management, training, magistrates, international principles.*

Introduction

In the present socio-technological evolution, it is natural that every category of organization to be concerned that its employees have a serious professional background, with a large cultural horizon, able to use modern techniques and technology. In this context, training and professional development are premises and essential conditions which determine the efficiency of all social work.

Training is a complex and lengthy process, preparing each person for the chosen job or occupation, using all existing methods and forms for acquiring basic scientific, technical, general and specialized knowledge and for acquiring the required job skills. In other words, training must embed learning process and work, acting in two directions, namely:

- Insuring each employee a high volume of general and specialized knowledge
- Training professional skills¹.

By training each organization aims the practical development of the strategic ability, encouragement and eases of efforts to perfect and develop the intellectual capital. The encouragement of the development of an organization can only be achieved by conception and implementation of knowledge management, using personal development plans, as a component of the performance management².

In the legal system, the quality of the staff is essential for the achievement of organizational objectives. It is expressed by the fact that the ensemble of requirements necessary for the fulfillment of attributions, jobs stated by the law set a true status of the staff working in justice, but in the same time the exercise of professional attributions shapes the idea of mission in the system³.

In this context, the present study aims the research of the means of professional training for magistrates, referring to the principles and the national and international framework.

Being an area of research provided for by the legislator, the references to the literature are minimal, prevail the analysis of the normative texts. My own contribution to this study, besides the synthetic analysis of the legislative framework, consists of the indication of the vulnerabilities of the

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¹ Cornescu Viorel, Mihăilescu I., Stanciu S, *Managementul organizației*, (Bucharest: All Beck, 2009), p. 206.

² Armstrong Michael, *Managementul resurselor umane. Manual de practică*, (Bucharest: Codecs, 2003), p. 40.

³ Barac Lidia, *Management judiciar*, (Bucharest: Hamangiu, 2009), p. 134.

presented means of in-service training for magistrates, but also of suggested means to improve the system.

1. Principles and international normative framework settling the training for magistrates

According to international documents, training for magistrates is important because each judicial system is the supreme guarantor of democratic function of national, European or international institutions.

According to *Opinion No 4 (2003) of the Consultative Council of European Judges (CCJE) on appropriate initial and in-service training for judges at national and European levels*⁴ it is essential that judges, selected after having done full legal studies, receive detailed, in-depth, diversified training so that they are able to perform their duties satisfactorily. Such training is also a guarantee of their independence and impartiality, in accordance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms. Lastly, training is a prerequisite if the judiciary is to be respected and worthy of respect. The trust citizens place in the judicial system will be strengthened if judges have a depth and diversity of knowledge which extend beyond the technical field of law to areas of important social concern, as well as courtroom and personal skills and understanding enabling them to manage cases and deal with all persons involved appropriately and sensitively.

Principles grounding the development of training for magistrates are found in the *European Charter on the statute for judges*⁵, according to which “certain precautions must be taken in preparing judges for the giving of independent and impartial decisions, whereby competence, impartiality and the requisite open-mindedness are guaranteed in both the content of the training programs and the functioning of the bodies implementing them. This is why the Charter provides that the authority/court must ensure the appropriateness of training programs and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties. The said authority must have the resources so to ensure. Accordingly, the rules set out in the statute must specify the procedure for supervision by this body in relation to the requirements in question concerning the programs and their implementation by the training bodies”.

The importance of training was also stated by Art 6 Point 3 of the *Bangalore Principles of judicial conduct*⁶ according to which “a judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges”.

The *Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union*⁷ adopted in the reunion of the Justice and Home Affairs Council on 24 October 2008 in Luxembourg, established the following:

⁴ Opinion No 4 (2003) of the Consultative Council of European Judges (CCJE) on appropriate initial and in-service training for judges at national and European levels available on-line at:

[http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/CCJE\(2003\)OP4_en.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/CCJE(2003)OP4_en.pdf)

⁵ European Charter on the statute for judges available on-line at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/European-Charter-on-Statute-of-Judges_EN.pdf

⁶ Bangalore Principles of judicial conduct Bangalore Principles of judicial conduct available on-line at: http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

⁷ Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union available on-line at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:299:0001:0004:EN:PDF>

1. To contribute to the development of a genuine European judicial culture, based on diversity of the legal and judicial systems of the Member States and unity through European law;
2. To improve the knowledge of the European Union's primary and secondary law among judges, prosecutor and judicial staff, including fostering the knowledge of the procedures before the European Court of Justice;
3. To promote, through appropriate training, the application of European law by judges, prosecutors and judicial staff, in a way which is in keeping with the fundamental rights and principles recognized in Art 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union;
4. To foster the knowledge of the legal systems and law of the other Member States, notably by promoting relevant courses of comparative law.

2. Training for judges in the Romanian judicial system

In the light of the international principles, the training for Romanian judges was settled by Law 303/2004 modified and amended on the statute of judges and prosecutors⁸, the methodological norms being established by the Regulation on in-service training for judges and prosecutors and certification of results, approved by the Superior Council of Magistracy Decision No 322/2005 modified and amended.

There are two ways of training stated by the Romanian legislation, namely:

- Initial training for future judges and prosecutors
- In-service training for judges and prosecutors⁹

Initial training for future judges and prosecutors is settled by Art 16 of the law, stating that it is performed “by the National Institute of Magistracy and consists of theoretical and practical training of future judges and prosecutors”. The duration of training for future judges and prosecutors is 2 years.

Also, during courses, the future judges and prosecutors perform an internship in the courts and prosecutor’s offices, assist in courtrooms and in criminal prosecutions to directly familiarize with the activities of judges, prosecutors and judicial staff.

Training for future judges and prosecutors is approved by the Superior Council of Magistracy, at the proposal of the National Institute for Magistracy.

In-service training must consider the dynamics of the legislative process and consists mainly in the knowledge of national legislation, of European and international documents to which Romania is part, of the jurisprudence of courts and Constitutional Court, European Court of Human Rights and of the Court of Justice of the European Union, of compared law, of deontological norms, in the multi-disciplinary approach of novelty institutions, as well as in the knowledge of foreign languages and computer skills (Art 35).

The National Institute for Magistracy is responsible for in-service training for judges, prosecutors, presidents of courts or prosecutor’s offices where the first perform their duties, namely for judicial managers and for each judge or prosecutor by individual training.

Regarding the in-service training of judges and prosecutors, it is performed by two ways:

⁸ Law 303/2004 modified and amended on the statute of judges and prosecutors published in the Official Gazette, Part 1, No 576/29 June 2004, amended by Government Emergency Ordinance no.124 of 24/11/2004, published in the Official Gazette, Part 1, No 300/1168/9 December 2004, approved by Law No 71/2005, published in the Official Gazette, Part 1, No300/11 April 2005. It was republished based on Art 12 of Title XVII of the Law No 247/2005 on reform in fields like property and justice, as well as on some adjacent measures, published in the Official Gazette, Part 1, No 653/22 July 2005, renumbering the texts,

⁹ Regulation on in-service training for judges and prosecutors and certification of results, approved by the Superior Council of Magistracy Decision No 322/2005, published in the Official Gazette No 816/8 September 2005 and amended by Decision No 2223/17 December 2009 of the Superior Council of Magistracy, published in the Official Gazette No 12/8 January 2010.

I. Organizing regular activities within each court of appeal and prosecutor's office attached to a court of appeal consisting of consultations, debates, seminars, sessions or round tables, with the participation of the National Institute of Magistracy, their agenda being approved by the Superior Council of Magistracy. Within this form of training a special role belongs to judicial managers of the courts of appeal or, of prosecutor's offices attached to a court of appeal, who have the obligation to name judges or prosecutors responsible with in-service training. The responsible for decentralized in-service training in courts and prosecutor's offices have the possibility to use as staff for training university teachers from the superior legal education system, judges and prosecutors, specialized judicial staff or other national or international specialists. Using the staff for training who is not qualified as trainer of the National Institute of Magistracy it is necessary the approval of the leading board of the court or prosecutor's office.

II. Participating, at least every 3 years, on in-service training organized by the National Institute for Magistracy, by national or foreign superior education institutions or on other forms of professional training.

In 2009, proposed by the National Institute of Magistracy, the plenum of the Superior Council of Magistracy has approved three new strategies of NIM on initial and in-service training for magistrates, as well as on the recruitment, training and evaluation of NIM's trainers for 2009-2012. Also, the Strategy of the Superior Council of Magistracy in the area of human resources, adopted in the plenum of SCM by Decision No 1320/27 November 2008, included objectives on the initial and in-service training for judges and prosecutors.

In establishing the strategic objectives were considered: the analysis of trainings organized/coordinated by the National Institute for Magistracy in previous years, the necessities for training in the judicial system resulted from the structure of judicial staff, the obligation to provide training stated by national laws and strategic documents containing Romania's commitments assumed in the adhesion document, mainly the obligations resulted from the Action plan for the fulfillment of the terms within the cooperation and verification mechanism of the progress registered by Romania in the area of the reform of the judiciary and of the fight against corruption, adopted by the Romanian Government according to the Decision no. 1346 of October 31, 2007, especially the priorities in the area of training resulted from the European Commission's monitoring reports; the obligations for training for judges and prosecutors resulted from the analysis of international documents, studies or reports on the judicial system or on the statute of judges and prosecutors.

3. Vulnerabilities of the training process for Romanian magistrates

Nevertheless, despite the fact that the process of training for magistrates has a solid legal basis, in practice was noticed that it presents a series of vulnerabilities, such as:

- The absence of evaluation of the socio-professional profile of the future magistrate;
- The centralized emphasized feature of training, found both in the curricula of seminars, as well as in the way they are carried out;
- The lack of practical feature of the initial training within NIM;
- The lack of the formative feature which aims the development of abilities and skills specific to magistracy, the appropriation of deontological norms, awareness on the professional role and membership in the judicial system.
- Regarding in-service training, the number of places for training offered for magistrates varies from a year to another, depending on the budget received by NIM, access to European funds subsequent to pre-adhesion period being an insignificant moment. In addition, the normative framework regarding budget, old and inflexible, significantly heavies the development of decentralized in-service training process.
- The presence of a large number of theoreticians among trainers, inexperienced in legal practice, limits the development of practical skills of future magistrates.

- The lack of balance among NIM teachers between the number of judges-trainers and the number of prosecutors-trainers.
- The participation of Romanian magistrates to stages, trainings or study visits in courts, prosecutor's offices or other judicial institutions in EU Member States, though it has increased from year to year, it is still insufficient in relation to the needs of the legal system. The main obstacles are the budgetary and organizational limitations, as well as the level of linguistic competences of judges.

4. Implementing measures to improve the training process for magistrates

In order to overcome the above-mentioned issues, we propose the following solutions for the improvement of the initial and in-service training process:

- Creation of an uniform and homogenous program for initial training, which will alternate modules of training in the Institute with internships in courts and prosecutor's offices attached to them, and internships in other institutions, from the first stage of the training program, common for judges and prosecutors, as well as in the stage of specialized training for the role of judge or prosecutor;
 - Congestion of the initial training program;
 - Modularization of the training program based on specific competences, by regrouping disciplines adjacent to civil and criminal law, so that interdisciplinary transfer becomes possible, useful in the assimilation and connection of different law institutions;
 - A higher responsibility of internship judges, by their participation in courts, as well as the obligation to draft court decisions/procedural documents for prosecutors etc;
 - Emphasis on the extracurricular component of training;
 - On-line seminars held either by national authorities, or by international organisms, represent efficient methods for training, both from the perspective of results, as well as from the perspective of costs;
 - Attracting specialists from other judicial areas to participate on in-service training;
 - Expanding the capacity of NIM to organize in-service seminars, which will allow the participation in seminars of a large number of magistrates;
 - Regularly access European funds for training for magistrates, in order to complete the budgetary resources and to annually provide a sufficient number of seats in trainings, including the contribution of Romanian magistrates to build an European area of freedom, security and justice;
 - Insuring a coherent management of NIM, as well as regarding the budget for training for magistrates;
 - Strengthening the capacity of NIM to access and manage European funds assigned to training for magistrates, assumes some measures such as: training for the NIM's Department of Public Policies staff in the management of European funds, adjusting the budget as to insure co-financing from the national budget, including by an increased budgetary autonomy of NIM in relation with the Superior Council of Magistracy etc.

Also, budgets of the Superior Court of Magistracy, Ministry of Justice and National Institute of Magistracy should insure the necessary funds:

- For the participation of Romanian judges and prosecutors in European training sessions (internships, conferences, exchanges between judicial organisms based on European exchange programs, such as the European Judicial Training Network - EJTN);
- For the adoption of modern solutions for training and professional motivation (for instance, supporting the change in specialization for magistrates by granting scholarships for 6-12 months);
- In order to unfold projects proposed to by the professional associations of judges.

To achieve these objectives it is necessary the promotion of some legislative changes in order to:

- Adjust the management of funds for training
- Insure an appropriate level of the initial training, regardless the recruitment methods;
- Insure the coherence of management of NIM.

Conclusions

Training magistrates as professionals of law has acquired new meanings and values, national training institutions, along with their supra-national structures, being called to identify proper answers, but also to share expertise, resources and training actions to achieve the objective, represented by the training, in the next few years, for judges and prosecutors in order to fulfill the act of justice, the desiderate of every civil society.

A common European jurisdiction ideally assumes at least a relative uniformity in judicial training; this is why Romania must permanently adjust not only its legislation, but also its jurisprudence in training for magistrates, by permanently staying connected to the changes that occur in the large area of human resources management.

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