

QUALITY AND ETHICS IN THE ROMANIAN JUDICIAL SYSTEM. REGARDS ON THE CORRUPTION ISSUE

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Abstract,

The current demands require an increased responsibility of the judicial institutions that must meet quality requirements in accordance with European standards, legislative progress and not least the expectations and needs of the customer of justice. In this context, the quality of courts should include the guiding principles of justice among which ethical behavior is paramount. The research aims to demonstrate the role of ethics in the current context, to highlight the link between quality and ethics, and formulate proposals on corruption regarded as unethical behavior. Besides analyzing the definitions and legislation on corruption, the article emphasizes the role of managers in the fight against this scourge. Stressing that coercive measures are not enough to eradicate corruption, we try to highlight the important role of the leadership of courts in quality planning by promoting ethical values, in creating and maintaining an organizational culture based on quality and ethics, in identifying preventive measures in the fight against corruption. Without the involvement of management and adopting a proactive behavior without constant communication with staff on ethical and unethical, legal regulations in the field will have a limited effect.

Key words: *ethics, quality, corruption, Romanian Judiciary, judicial management*

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1.Introductive considerations regarding ethics in the public sector

The problem of ethics remains one of the most controversial and difficult areas of the public sector management. The society, in solidarity with itself and its own interest, organizes a set of rules to defend against any actions that could disturb or jeopardize its existence or progress. We must note that the Romanian public sector has perhaps one of the most complex ethical regulations, from the rules of the Code of Conduct to the special provision contained by other legal acts.

What the doctrine remarks is that despite the regulation, the management based on ethics may not be related only to legislation, on the black letter law included in special laws and codes of conduct. [1].

It should be emphasized that moral values are relative and no one can claim being the owner of what is really just. Therefore, a legislation may conform to a moral system and contrary to another system or even to the public interest.

Unlike the US, UK, France or Sweden, officials from countries such Romania do not have the authority to interpret the regulatory of the code of conduct, establishing legal reasoning - or doctrine - for ethical decision making and can not be exempted from responsibility for misconduct even when they can prove that they acted in accordance with certain administrative precedent or clearly in the public interest.

This also applies to judicial organizations. Ethics must exceed obeying rules of conduct stipulated by legal acts and avoid sanctions, but to relate to a profound system of values and principles without which the system loses its essence, values like dignity, fairness, respect for the human being. The staff should be encouraged to exhibit behavior that reflects the value system of awareness of each and consistent with the values of justice, fostering feelings of pride and ownership to the structures of justice should reinforce the ethical conduct.

2. Issues related to the ethics subject to the judges behaviour

Regarding the conduct of judges, we can easily notice that their reluctance to embrace other ethical and quality landmarks than those provided strictly by the law, their concern to give legal decisions without regard to the expectations and values of citizens, had serious repercussions on the credibility of the act of justice. For this reason, there is a justified concern to establish other elements that can provide quality and are not based directly on the law, reference points that must be taken into account in order to limit the large diversity of understanding and expression of the role every judge plays when accomplishing justice.

Ethics has a dominant role in the work of the magistrate. For example, when a legal norm speaks of "reasonable rate" or "necessary care", it is deliberately vague regarding the meanings of words, because it is wanted that the judge to have the necessary freedom to adapt to each case carefully exercised, that duration. In the "due care" is involved ethical judgment of the judge, magistrate granted the freedom to decide how or action and understand their role primarily involves consciousness. Also the incorporation into the act of judgment to other moral principles such as dignity, respect shown to the citizen concern the essence of justice and the way judges perceive their role.

In conclusion, judgment always contains a moral issue because it involves people and its outcome has the potential to influence beliefs, attitudes, values and public actions of those who interact with the court.

3. The court and the culture of values

From the point of view of the link between quality and ethics, the court viewed as a whole will not achieve a quality service if it does not value quality. A quality system primarily involves training effort, because it requires a shift in mindset, a lift to another level, that of "culture of quality" of the entire court staff.

In this effort we must take into account the skills of all staff that became heritage, criteria and guidelines that motivate the implementation of total quality management and human skills with high determination power, ease of use and speed in learning. [9]

Even if the management activities if viewed through the prism of the management of values is costly for court, we expect results that are desirable and have sustainable advantage and the potential to increase the credibility of the act of justice.

Factors that act directly on improving quality in courts are those swayed by building an organizational culture oriented towards achieving excellence. The more the leaders obtain the involvement of their staff more obvious the degree of desirability of the court quality is. The right way to excellence of a court, begins when judges and clerks feel favoured and consistently motivated towards increasing their value and this is visibly embedded in business processes they are involved in.

Courts need to adhere to a system of corporate values that are geared to maintaining and continuously improving quality. This system combines the values, traditions, procedures and expectations that promote value, and the whole knowledge on quality acquired by members of a court determines their mentality, the way they work and act. The strongest motivation in any organization incorporates desire for perfection and proper recognition of its achievements.

4. Corruption. Provision. Causes and effects

Referring to ethics, we need to bring to the forefront the issue of fighting corruption in the legal system as a priority in reforming the system.

Corruption in the judiciary must be seen in the broader context of the struggle at the national level against this phenomenon, the effect being more severely felt due to social values violation and disregard of the very reason of judiciary existence, namely to ensure respect for the rule of law, which means even taking proceedings against corruption.

The most common definition of corruption belongs to the World Bank: " *Corruption is the illegal use of public resources for the purpose of personal gain.*" (World Bank, 1997).

In a similar way and the association Transparency International defines corruption: *corruption is the abuse of entrusted power for personal gain benefits.*[12]

U Myint, in his public function defines corruption as *the use for private gain, using official position, rank or status to his advantage.*[7]

Following this definition, examples of corrupt behavior would include: a) bribery, b) extortion, c) fraud d) embezzlement, e) nepotism, f) use of public goods and public property for private use, and g) traffic of influence.

National Anticorruption Strategy for 2005-2007 defines corruption as those actions that hinder universal and equitable distribution of goods in order to favor certain persons or groups.[11]

In the Criminal Code there is no definition of corruption, but some offenses in this field are incriminated in the chapter explaining offenses within the job or connected with the job: conflict of interest, bribery, receiving undue benefits and trafficking influence (art. 253 -257). Cristi Danilet draws our attention to the need of accordance with the international standards in this chapter that also include other offenses such as unjust repression, illegal arrest and abusive investigation, trying to determine perjury, to favour the offender .[2]

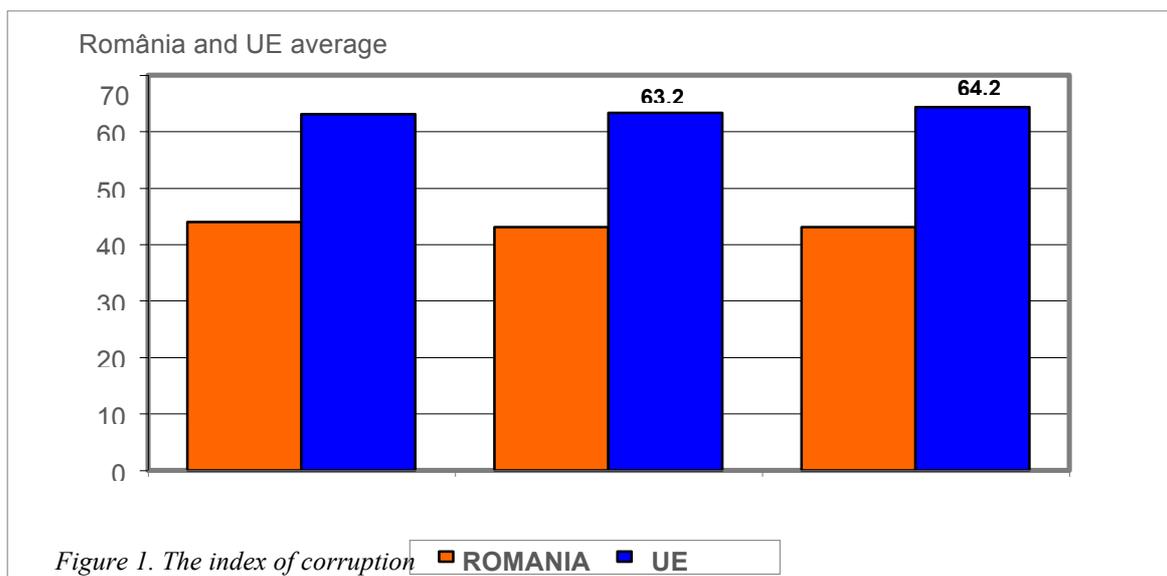
Another internal regulation related to corruption is the Law no. 78/2000 on preventing, detecting and punishing corruption which defines this offence as the use of function, duties or tasks assigned to acquire money, goods or other undue advantages for himself or for another.

Whatever form of corruption, the World Bank draws attention to cataloging its "as among the greatest obstacles to economic and social development. It undermines development by weakening the rule of law and institutional basis on which economic growth depends." [13]

Studying the report *Functional analysis of the justice sector*, a study conducted at the initiative of the Ministry of Justice we notice that in its conception the quality of justice is strictly associated to corruption. Without fully embracing this statement and considering that the quality of justice is a vast and more complex concept we find very important to be aware of citizens' perception about the phenomenon of corruption. Thus, the study highlights the existence of perception in the eyes of a significant part of the population that the judiciary is not fully capable nor willing to fight corruption within the system itself and in the public sector in general. Such a perception undermines the credibility of the judiciary.

Regarding corruption, punctual surveys, public opinion and interviews show that there is corruption in the justice sector. The Study Life in Transition from 2011, conducted by the European Bank for Reconstruction and Development in 39 countries in the region, shows a downward trend, but comparatively high prevalence perception of informal payments / informal civil courts (10% versus 18 % in 2006 and 1% in Western media). At the same time, the number of magistrates charged and convicted of a disciplinary nature and ethics violations during the period 2006 - 2011 is low. [2]

Very relevant is also the index of corruption in comparison with the UE average.



The study also reveals a growing trend in the level of satisfaction with the quality of the civil courts, although it remains low (33% compared with 27% in 2006 vs. 40% on average in Western Europe). However, confidence in the courts has decreased (only 14% of respondents trust partially or completely in the courts, compared with 28% in 2006 and to more than 50% of respondents in Western Europe) because public perception of the limited capacity of the justice system to solve the problem of corruption at the public sector.

Statistically, in the last decade, public confidence in the judiciary in Romania is between 20% and 28%. [3]

Robert Klitgaard, a recognized expert in the field of corruption, compiled the following equation highlighting the causes of corruption: C (Corruption) = M (Monopoly) + P_d (Discretionary power) - R (Responsibility).

This means that where a public or private agent has the authority to take certain decisions exclusively, when these decisions are not justified in fact or in law or are subject to certain conditions and requirements, and when the

whole process of decision making is not visible to other authorities or to the public, optimal conditions for corruption are produced.

We conclude that corruption has not only economic and political causes, but lies in human nature itself. For this reason in Romania, in the context of rallying to EU requirements and the financial and economic crisis, combating corruption takes on special value being vital to protect public resources to associated risks of corruption and to increase the credibility of the public domain, and mostly the Romanian judiciary.

5. Corruption and the fight against corruption. The role of the judicial manager to implement the ethical values in order to eradicate corruption

In the fight against corruption a system of legal norms that incriminate acts of corruption is very important as it should be paying attention to proactive measures; simple penalty is not sufficient without the existence of measures to prevent such acts. It should be noticed continuously the complexity and seriousness of this phenomenon, which once produced will trigger a chain reaction .

In a review of the literature in the field of corruption, professor C. Ogorean identifies three lines of the fight against corruption seen as unethical behaviour: it can be combated through the criminal law, which makes corrupt practices are punishable as crimes; through civil law that allows victims to collect damages for harm suffered; and very important by a self-regulatory framework, left to the organizations to deal with this problem by setting codes and practices. [8]

According to our view, an important aspect of eradicating corruption is precisely the way each organization and especially every public institution understands to fight this scourge, the special attention to moral values and clearly an organizational culture based on ethics as an expression of quality.

This involves several steps which must start with planning quality and the inclusion of ethical values in the mission and vision itself of the courts. Also a strategy based on quality should include in its strategic objectives the encouragement of ethical behavior and concrete measures to discourage corruption.

The role of managers is particularly important, they must work continuously to create a climate that promotes ethical behavior, to communicate with the staff and to instill them the values considered ethical, to reveal the danger of corruption and to identify specific measures of prevention. In this field too the advantages of a proactive management based on identifying problems and taking appropriate measures at the expense of using sanctions is obvious.

A. Puiu, in a quantitative study conducted in the public sector to determine how to implement ethics within management, notes the lack of planning on ethics issues, the small number of trainings and work meetings for ethics (17%). Ethical issues are dealt with in the context of regular meeting work in 60% of cases and are brought to the attention of employees by e-mail, internal publications or other methods and some of the respondents (17%) claimed a total lack of information on ethics. [9]

Without generalizing these data, we must note the lack of an ethical policy as part of quality. I believe that the issue of ethics and implicit corruption can not be viewed only through the written rules and codes of conduct, there must be organization-wide policy on ethical issues, a permanent information and communication of the leadership regarding this issue, a practice of the organization to be used as concrete reference. Also, we need to underline that the achievement of aspirations of quality relative to ethics and the eradication of corruption are not possible based only on sanctions and coercive means. Organizations must have equally an appropriate policy, guidance and especially a set of preventive measures.

Conclusions:

Without a quality-based motivation a significant progress is not possible for courts nor for the society that uses its services. The heads of courts must assume a role in fostering values and attitudes, not only in principle but also explicit in the management plan applicable to everyday life in court. As for courts, the values are vital to the quality of leadership and it is essential that the magistrates selected in leading functions to prove their ability to embed in the life of the court a vision of ethics on quality when assumeing the objectives of performance that justify the very existence of a court.

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