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Summary

THE RIGHT TO A FAIR CIVIL TRIAL IN THE LIGHT OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND OF THE JURISPRUDENCE IN THE DOMAIN

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Motto:

"Injustice anywhere is a threat to justice everywhere"

Martin Luther King (1929-1968)

The paper is structured in four main parts, from the point of view of the thematic object it includes.

The first part is focused on the international dimension of the right to a fair trial – given by the set of the instruments which consecrate, protect and promote it[1].

The second part is based on the analysis of the national[2] juridical framework in the domain – with the exposure of the standards stated by the text of article 6 paragraph (1) of the Convention, respectively established by the jurisprudence of the European court in Strasbourg – that "living instrument" for the adaptation of the existing social realities in the member states of the Council of Europe (and parts to the Convention) to the «conventional» demands. The contents of this part is given by the examination of the first-rate component «significance» of the fair trial, concretely of the "right to a tribunal (with its essential facet presented by the right to access to justice/to a judge) established by law, independent and impartial."

[1] Within chapter I entitled "The international juridical framework regarding the right to a fair trial" there is undertaken a review of the universal and regional sources and systems, regarding the protection of human rights. Moreover, there are analyzed the main legal instruments which contain *in terminis* the demands necessary for obtaining the framework favorable for exerting the right to a fair trial. Also, there are emphasized the importance and the purpose of the right to a fair trial, especially by relating to the guarantees generally applicable in this domain stated by the International Covenant on Civil and Political Rights (I.C.C.P.R., U.N.O.). In the same context, there is brought to the fore the document with «juridical valences» (from December 1st 2009, the moment when the Treaty of Lisbon was ratified by the member states of the European Union) of the E.U. which contains a catalogue of fundamental human rights and freedoms – in which there are also included guarantees specific to the fair trial – namely the Charter of Fundamental Rights.

[2] The contents of chapter II entitled "The national juridical framework regarding the right to a fair trial" is circumscribed to the juridical definition and nature of the right to a fair trial, respectively to its analysis from a triple point of view, namely: the right to a fair trial – fundamental right of the human being; premise of the preeminence of the right in a democratic society; principle of justice organization and operation. The «essence» of this chapter is represented by the examination – in the light of the European Convention of Fundamental Rights and Freedoms and of the national legislation – of the essential premise of the «fair trial», namely the «right to a tribunal (with its attributes) established by law, independent and impartial." A first-rate component of this premise is represented by the "right to free access to justice", or, as the European Court itself asserts, "to a judge". In the same chapter there are briefly presented the notion and the «characteristics» of the "initial decisions" pronounced by the European contentious court of human rights in different «domains of incidence» (amongst which the «fair trial») protected by the dispositions of the European Convention and of its additional Protocols. Regarding this last specification, I have to mention the fact that I considered as useful the presentation of the «aspects» – considered to be important – relative to the "initial decisions" pronounced as a "consequence of the systematic breach by a state which is part to the Convention of one or more conventional rights-guarantees" – because the conclusions and the recommendations of the court in Strasbourg, from the contents of such decisions, are presented as an effective indirect remedy for breaching the fundamental human rights and freedoms by the member states of the Council of Europe (and "High" parties, contracting to the European Convention).

The third part[3] deals with the demand of the "reasonable duration" which has to characterize a civil (fair) trial and the estimation criteria of such duration, respectively the importance of the right to an effective appeal provided by article 13 of the European Convention.

The last part approaches the main «legislative measures» undertaken by the Romanian state, through the Law no. 202/2010 and through the New Code of Civil Procedure, in order to accelerate the settlement of the civil trials. Also, some aspects are briefly emphasized, relative to the reform of the Romanian judicial system – a way towards the consolidation of the rule of law and conditionality (necessary to be fulfilled) within the Mechanism of Cooperation and Verification in the Justice domain (CVM) established by the European Commission[4] (E.U.).

Concretely, through the present study I wished to bring to the fore – in objective limits – the national and international juridical framework in the domain of the right to a fair trial, by intercepting the procedural demands of article 6 paragraph (1) propagated by the European conventional instrument for the protection of human rights.

It is true that I can be "accused" of the fact that I insisted too much on the international (universal and regional) dimension and less on the issues specific to the national juridical order, but we do not have to disregard the aspect according to which, in the light of article 11 paragraph (2) of the Constitution of Romania (republished), the international juridical acts ratified by the Parliament "are part of the national right", even having precedence (priority), according to paragraph (2) of article 20 of the same fundamental law – in the case of the existence of certain adverse (inconsistent) dispositions amongst them and the national legislation (of course, in the domain of human rights). Not to mention the fact that the inconsistence of the Romanian legislator belongs to the domain of the evidence (either as a legislative rule or as an exception/emergency situation – in our case, unfortunately, defalcated from its juridical and constitutional purpose – the government through the emergency ordinances) in the domain of the regulation from the domain of the civil procedural right, operating modifications, reviewing

[3] Chapter III is «dedicated» to the examination of article 13 from the European instrument for the protection of human rights which consecrates the "right to an effective (national) appeal". In this respect, there are analyzed the «juridical nature», «the contents of the right to an effective appeal» and the types of «appeal» in the national juridical order of the states which are part to the Convention in case of noncompliance with the "reasonable time". The estimation of the «reasonable duration», the significance, the conditions under which it is guaranteed and the jurisprudential criteria of its analysis, are also included as integral part of this chapter. Also, there is presented a series of provisions from the new Code of Civil Procedure meant to insure the fair trial in a "reasonable time" ("optimum and foreseeable").

[4] Decision of the European Commission, of 13. XII. 2006, establishing a "*mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption*", *http://ec.europa.eu/enlargement/pdf/romania/ro_accompanying_measures_1206_en.pdf.*

them, delaying the application of the New Code of Civil Procedure – up to the moment in which the European Commission (E.U.) «recommended» us to implement as fast as possible the respective Code (and not only) – thus, this consideration represented the decisive element for considering my resolution in the sense of examining the international standards, of universal and regional level, within the paper, but of course by presenting the existing regulation, in the domain, in the national right[5].

Knowing and acquiring, first of all, the contents of article 6 paragraph (1) are presented as an essential element for the correct estimation of the national legal dispositions in the light of the «conventional» and «jurisprudential» European spirit. Also, as a member state of the organization of the Council of Europe, it is imperative to adapt ourselves continuously to the recommendations of the European Commission (E.Co.) specialized in the domain of the Efficiency of Justice (The European Commission for the Efficiency of Justice, Commission européenne pour l'efficacité de la justice). Currently, this fact can be easily noticed through the recent legal provision regarding the right to a fair trial, in "optimum and foreseeable timeframe', of the New Code of Civil Procedure[6].

As it was judiciously noticed in the specialty literature of the domain, the notion of "fair trial" is almost impossible to define because of the "special conditions under which it appeared between the constants of the fundamental rights and freedoms in the contemporary juridical systems". For lack of a possible definition, the notion of "fair trial" has been frequently used for designating the set of procedural rights-guarantees, offered to the litigants through article 6 of the European Convention on Human Rights, which allow the improvement of the rights protected through the European instrument.

Like the operation of defining the juridical institution of the "fair trial", the determination of its juridical nature involves valences which are difficult to establish, in the sense that "it is so complex in its contents and it involves so many obligations for the states, that it is impossible to

[5] In the «registry» of improving the juridical and procedural (legislative) framework for settling the litigations in the civil matter, chapter IV «talks» about the main legislative measures undertaken by the Romanian state – especially by the Law no. 202/2010 (published in the Official Gazette no. 714 of October 26th 2010).

[6] The last chapter (V) entitled "The reform of the Romanian judicial system – a way towards the consolidation of the rule of law" approaches, in synthesis, the Cooperation and Verification Mechanism in the domain of justice established by the European Commission (E.U.), the Strategy for the development of justice as a public service (2010-2014) of the Romanian Ministry of Justice, the «recommendation» of the European Commission for the Efficiency of Justice (CEPEJ, Co.E.) in order to remedy the excessive duration of the trials and the accreditation of the phrase "optimum and foreseeable timeframe" for settling the trials. At the same time, there is highlighted the importance of justice – specific to a democratic society – and of the reform of the Romanian judicial system towards the consolidation of the rule of law.

say whether the person with a private right, holder of this right, benefits by a right or a freedom, whether it is an absolute right or a relative right, whether the obligation is a negative or a positive one or whether the obligation of the state is a negative or a positive one or whether the obligation imposed to the state is an obligation of result or an obligation of means". Of course, regarded in their individuality, the right to access to justice, the right to an independent and impartial court, the right to a contradictory procedure, the right to juridical assistance and the others which are included in the very large notion of "the right to a fair trial" can represent the object of such valences, but a general specification regarding its entire contents cannot be formulated. This last observation is also consolidated by Loucaides – one of the judges of the European Court of Human Rights, in one of his dissident opinions, in which he pointed out the aspect according to which "there is no definition of the term of fairness with the purpose of applying the Convention. It is not a term previously defined in the juridical life and also there is no need for us to give it a strictly technical meaning".

The difficulties which were previously mentioned have their origin in the evolution of the procedural guarantees, from the work of the British and American courts (*common law* system) to the interpretation subsequently given by the European Court (by the Commission, until 1998) – tangentially related to the specificities of the continental system – through its jurisprudence in the domain. In truth, "the notion of «fair trial» entered in the juridical and procedural patrimony of the states of the continental Europe only through article 6 of the European Convention on Human Rights. We are talking about a contribution of the *common law* in which the notion has its origin".

Despite this difficulty resulted from the confluence of two quite different juridical systems – the continental system and the Anglo-Saxon system –, the situation of the litigants, from the practical point of view, is not affected, on the contrary, it is favored, and this fact is due primarily to the principle – constantly applied by the Court in its jurisprudence – of insuring the rights through an "effective and concrete" manner, but not an "illusory and purely theoretical" one. Thus, as it was judiciously expressed in the specialty juridical literature by professor Dragos Bogdan, from the point of view of a litigant, it is less important that he won the lawsuit against the state for breaching the "equality of arms" or the "contradictoriality" or both, because regardless of the angle according to which the alleged situation is analyzed, the Court finally finds the correct solution for breaching an aspect of fairness. *In concreto*, the ambiguity of the notion of "fair trial" does not represent an essentially negative characteristic, given the fact that it allows the European court to discover, within the *stricto sensu* fairness, a series of guarantees which are not expressly mentioned in the text of article 6, such as the "equality of arms" or the "contradictoriality".

Through its power to synthesize the various aspects which evoke what is and what must be "fair" and through the relative easiness the common language can be approached with, the concept of "fair trial" or that of "fair judgment" became – especially under the "impulse" of the European court in Strasbourg – one of the most frequented motifs from the arsenal of the juridical, substantial and procedural concepts. Thus – as the honorable professor Ion Deleanu estimated – we implicitly get to the situation in which a layman uses the word "unfair", in order to express everything about the juridical relations he is part of, about the regulation which governs those relations or, at last, about the way in which that regulation was, finally, "re-consecrated" under the sign of the authority of the judged fact.

Nevertheless, there is no normative text which offers (due to the initially mentioned difficulties) a definition of the "fair trial" or of the "fair judgment". But, according to the opinion of the famous professor Ion Deleanu, "no definition could be provided, because the *fair trial* or the *fair judgment* involves, on segments and overall, various and numerous demands, substantial and procedural, insusceptible of an exhaustive enumeration. Briefly, in order for the judgment to be fair, it has to be equitable. That and only that. But what does «that» mean? Very «much» and impossible to specify."

The "margin of appreciation" of the practical modalities for «fulfilling» the conventional rights, that the parties to the Convention have, is not just an inevitable obstacle for the configuration of certain juridical, national and conventional "unitary" concepts, but also a means necessary for maintaining the "diversity" in contents of certain concepts. This "diversity" is not a deficiency of the conventional normative ambiance, because the unitary character of the conventional juridical concepts is highlighted not through their concrete "contents", but through their "functions", and the margin of appreciation is connected to the "means", not to the "results" of their application, results which must always be according to the objectives of the Convention. As an application of this instrument-theory of the margin of appreciation, we can bring to the fore the situation of the phrase "fair trial", whose contents is expressed in the international documents (Universal Declaration of Human Rights, 1948, through article 10; the International Covenant on Civil and Political Rights, 1966, through article 14; the European Convention on Human Rights, 1950, through article 6, the Charter of Fundamental Rights of the European Union, 2009) which consecrate it either through the *idem per idem* method, meaning it explains its contents by using the same terminological construction of "fair trial", or by reference to the phrase "fair judgment" (*exempli gratia*, The Charter of Fundamental Rights of the European Union).

Thus, out of these two (interpretations), we choose one: *either the term of "trial" is synonymous with the term of "judgment" and then the alternation of the terms within the same*

formulation is a simple issue of stylistics, in order to avoid the tautology, or, in other words, the term of "trial" and the term of "judgment" cover, through different words, the same meaning, "judgment" not being more than the "trial"; or "judgment" means more than the term of "trial", evoking not only the "formal", strictly "procedural" aspects of the alleged dispute, but also the background of the dispute and then the juridical nature of the right to a "fair trial" must be reconsidered, this being both a "procedural right" and a "substantial right".

From the preparatory works for the elaboration of the European Convention and from the frequent specifications of the court in Strasbourg, there appears, even with certainty, that the right to a "fair trial" or to the "fair judgment of the cause" was conceived and is valorized as "procedural right", synthesizing the "procedural" guarantees in order for the material rights consecrated by the Convention to be "effectively" fulfilled. In conclusion, the first interpretation is the judicious one (*s.n.*).

The phrase "fair trial" was consecrated (enshrined) by the provisions of article 10 of the Universal Declaration of Human Rights, in 1948, by the provisions of article 14 of the International Covenant on Civil and Political Rights, in 1966, as well as by the provisions of article 6 paragraph 1 of the European Convention on Human Rights, thus acquiring a universal juridical value in the articulations of the administration and distribution of justice, without losing its moral value. Article 47 within Title VI of the Charter of Fundamental Rights of the European Union – the updated version of 2007, which entered in force in 2009 along with the Treaty of Lisbon, consecrates explicitly the right to an effective appeal and to a fair trial, partially taking over the provisions of article 13 of the European Convention, as well as those of article 6 paragraph 1, through paragraphs (1) and (2) which state the fact that "Everyone is entitled to a fair and public hearing". We have to mention the fact that, unlike its main source, namely the European Convention, the right to a fair trial and its components (the right to a fair, public hearing, the right to juridical assistance in special situations, provided in paragraph 3 of article 47) benefit in the community juridical order by a larger contents from the terminological point of view than the one in article 6 paragraph 1 due to the fact that it is not limited to litigations which have as object "the appeals regarding the civil rights and obligations" (of course, as it is well known, certain principles referring to the notion of «fair trial» in the civil litigations appear implicitly from the jurisprudence of the European court, thus the contents of the right to a fair trial stated in article 6 paragraph 1 acquires specific valences totally according to the rule of law, as it is asserted in the case *Les Verts v. European Parliament*).

Currently, in the light of the Charter of Fundamental Rights, the rights provided in its contents which have a correspondent in the dispositions of the European Convention will be interpreted according to the demands dictated by the European instrument in the domain of the

protection of human rights in order to avoid the eventual «discrepancies» between the two acts. On the same line of thinking, article 21 paragraph (3) of the Constitution of Romania consecrates "the right of the parties to a fair trial", and article 10 of the Law no. 304/2004, republished, almost philologically takes over the first part of the text of article 6 paragraph 1 of the European Convention: "Everyone is entitled to a fair and public hearing within a reasonable time, by an independent and impartial tribunal, established by law".

Through these conventional, community and national regulations there were established the "fairness juridification – originally constituted as moral value – and its postulation in an essential criterion of the rule of law, providing a universal model or with a universal vocation of the way of fulfilling the justice and, also, contributing to the foundation of establishing a common procedural background".

Thus, fairness reunites "in an organic unit all the components of a good administration of justice", governing all the phases of the civil procedure, beginning with the writ of summons and finishing with the effective execution of the obtained court order, regardless of the nature or degree of jurisdiction, or of the nature of the litigation deduced to the judgment. Evaluated in this manner, fairness means "more than a «fair proportion» between the parties of the trial, but it also means correctness, impartiality, objectivity, loyalty, judicial activism – moderate and impartial, the inducement of the parties regarding the legality and the reliability of the judgment, the cultivation of the faith in justice, briefly, an authentic «procedural democracy»".

The right to a fair trial is a right of a considerable importance, occupying a special place in a democratic society and in a rule of law. The «fair trial» is a fundamental right, "an ideal of real justice, made by complying with the human rights". This right is, at the same time, "a guarantee for exerting the other rights provided in the Convention, and the guarantee of this right is consubstantial with its spirit". In the jurisprudence of the Court the notion of «fair trial» was frequently used in order to designate the set of rights-guarantees, provided to the litigants by article 6, which allow the emphasis of the rights protected by the Convention. On the national plan, the fair trial, by complying with the scientific strictness of the term, can be defined as the activity established on legal foundations, unfolded by the judicial authorities with the other participants (*lato sensu*) to the judicial trial, in which the procedural guarantees necessary for a fair and judicious solution of the cause deduced to the judgment are concretely insured and fulfilled.

In the system of the European Convention the right to a fair trial can be seen in two ways, namely in a broad sense (*lato sensu*) and in a strict sense (*stricto sensu*).

Lato sensu includes all the guarantees established by article 6, more precisely in the determination of his civil rights and obligations or of any criminal charge against him, everyone

is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (paragraph 1); everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law (through a court order which is final, the 2nd paragraph); everyone charged with a criminal offence has the right to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him (point a), the right to have adequate time and the facilities for the preparation of his defense (point b); the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require (point c); the right to examine or to have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him (point d); the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court (point e), the 3rd paragraph;"

Stricto sensu, the contents of article 6 is primarily made of the *general guarantees presented in paragraph 1, which give substance to the general right to a fair trial in the civil and criminal matter*. These guarantees are of two kind: explicit, the ones targeting the legality, independence and impartiality of the tribunal, respectively the request for the judgment to be undertaken within a reasonable time, to be public and fair, and implicit, the ones regarding the good unfolding of the trial based on the judicial procedure, such as the right to a fair hearing with its aspect – the presence to the hearing and the contradictoriality of the procedure; the access to a tribunal; the equality of arms; the motivation of the court orders; the control of full jurisdiction; the right not to accuse himself; the right to juridical security.

By referring to an «initial» order of the European court, namely the one pronounced in the case *Golder v. United Kingdom*, we can consider that "«the right to a fair trial»", in the sense of article 6 of the Convention, involves *grosso modo* the following components: the access to justice, as one of the aspects of the right to a tribunal; the organization and the structure of the court and the unfolding of the judgment, briefly, the good administration of justice; the effective execution of the court order. In truth, as it was judiciously observed in our case in the specialty juridical literature by the honorable professor Ioan Les, the principle of the right to a fair trial can be defined as being "a rule of application regarding the organization of justice, especially taking into consideration the demand of the independence of judges, and regarding its operation, by insuring the free access, the publicity, the contradictoriality and the double jurisdictional degree".

The express regulation of the principle of the right to a fair trial, within article 21 paragraph (3), took place in 2003, on the occasion of the trial for reviewing the Constitution, completed

through the Law no. 429/2003 and the «validation» referendum. As we well know, related to the European Convention on Human Rights, the central text which refers to the "right to a fair trial" is article 6.

Nevertheless, from the moment in which Romania ratified the European Convention on Human Rights, in 1994, its provisions regarding the demands of the fair trial were able to be invoked within the judicial procedures in our country, in the virtue of the effect of assimilation with the norms of the national right of the international documents ratified by the legislative power, consecrated in article 11 paragraph (2) of the Constitution ("*The treaties ratified by the Parliament are part of the national right*"). Also, the analysis of the principle regulations existing in article 6 of the European Convention on Human Rights proved that, mostly, the demands of the international instrument could be invoked (even in a not so rigorously elaborated form) and before (*illo tempore*) the moment of its ratification by the Romanian Parliament, as national procedural norms.

In the system of the Convention, the right to a fair trial (and its implicit component, "the right to access to justice") is circumscribed only in the applicability domain of article 6: "the determination of the civil rights and obligations" and "any criminal charge". Unlike the European norm, article 21 of the fundamental Romanian law consecrates a general provision, without excluding, at the principle level, a domain from its applicability field. The apparent contradiction between these dispositions is easy to solve, under the conditions when the Convention allows the states to adopt measures which provide an increased degree of protection of the fundamental rights unlike the ones included in its text. Consequently, regarding "any criminal charge" and the litigations regarding the "civil rights and obligations", the right to a fair trial is protected in Romania by article 6 of the Convention and by article 21 of the Constitution, and regarding the domains which are excluded from the incidence of article 6 of the Convention, the guarantee of the right to a fair trial in insured by article 21 of the Constitution.

In the specialty literature (juridical doctrine) regarding the right to a fair trial, there was considered (by the honorable professor Radu Chirita) that "when a law or an ordinance of the government contains certain limitations of the access to justice (essential, indispensable component of the fair trial), the situation is different, just like the procedure in cause is or is not also covered by the provisions of article 6 of the Convention, because the verification of the compatibility of a law or of an ordinance with the Constitution is the exclusive attribute of the Constitutional Court, while the verification of the compatibility of a legal norm with the Convention can belong also to a court integrated in the judicial system, *based on article 20 of the Constitution*". And, as a consequence of this approach there was stated that "in the domains which are part of the criminal and civil matter the invocation of an exception of

unconstitutionality is not necessary anymore in order to decide the non-applicability of a legal norm, but it is enough for the ordinary court to remove the application of any law text which is in contradiction with article 6 of the Convention. Only in the other domains, which are not included in the incidence domain of article 6, the interference in the access to justice has to be developed only with an unconstitutionality exception". From my point of view the approach of the professor in not partially correct, given the fact that according to article 20 of the Constitution the *constitutional dispositions regarding the human rights will be interpreted* in the light of the international documents in the domain of the affirmation and the protection of human rights (according to paragraph 1 of article 20) and only if an inferior standard is signaled in the domain of the protection of the fundamental citizen rights of the one established in the international documents in the domain of human rights, the international instruments will have priority. Or, in our hypothesis, that of the free access to justice, the constitutional disposition does not even allow, of course at the terminological level (!), the limitations in its exertion, through ways and forms procedurally consecrated. Especially because of this, the Constitutional Court considered (according to the jurisprudence of the European court), in its decisions, that, related to this right, certain limitations have to be allowed – limitations whose means have to be proportional to the followed purpose – necessary in a democratic society for a good administration and fulfillment of the justice. In conclusion, I consider that, in the future, the clear, accessible and predictable regulation of the right to access to justice will be much more beneficial, both in the Constitution and in the organic laws, not because the magistrate judge would not be capable to use the primary application of the international instruments in the domain, which, as we well know, propagate a more advanced standard regarding the protection of the human rights and freedoms than many Constitutions of the states (by taking into consideration the fact that each has a different dimension of protection, namely a universal one, respectively a national one; I take here into consideration the monistic and the dualist conception regarding the juridical order in a certain state, respectively a single national and international juridical order, or two juridical orders, a national one and an international one perfectly harmonized), but because there is the possibility not to make a unitary application of these provisions from the international documents, thus creating a non-unitary practice, and why not, let's admit, the theoretical possibility of requesting the conviction of the Romanian state at the European Court of human rights, if the magistrate judge does not apply the dispositions considered by the litigant (and hypothetically, other courts from the national order) «superior» to the national ones. The compliance with the demands established in the international treaties, to which the Romanian state participates, through a national legislation – clear, predictable and accessible – of the discussed domain, represents the judicious solution. In the same context, in my opinion, taking

into consideration the political and juridical arrangement of our power state system, *only* the Constitutional Court is entitled to pronounce itself regarding the issue of unconstitutionality of a legal disposition, and regarding the eventual inconsistency between the provisions of a national normative act and the demands conventionally consecrated (in the present situation, those of article 6 of the European Convention on Human Rights), which is finally analyzed as a constitutionality issue (*lato sensu*).

The first-rate rule according to which a court must be established by the law and have its own action coordinates prescribed by a normative act, is inscribed with clarity, in almost all the states, in the legislations which govern the domain of organizing and operating the judicial systems, both at the constitutional level and at the level of the legislation which develops the general principles, as well as in the most important international instruments with a role in guaranteeing and promoting the human rights. Undoubtedly it is presented as a particular application of the general principle of right which consecrates the necessity of legality in all the «activity domains» of the state, as well as the most essential procedural guarantee of the litigant from the total of those inherent to the right to a fair trial – because without the legality of the judgment court there would be no other demands which have to characterize it, namely the independence and the impartiality, whose foundations are also provided through the law.

The main purpose of this demand is to guarantee that the «judicial disputes» are solved by the courts whose existence, organization and operation are previously established, irrespective of a certain case. Only after this purpose was fulfilled, the jurisdictional functions of the court for receiving the causes which must be solved within its competence – based on the substantial rules of right and on the procedural ones which establish a series of adequate «mechanisms» (procedures) pre-established to the domain we discuss -, respectively for solving them effectively will be totally fulfilled.

The foundation, organization and operation of the judgment/jurisdictional courts, in Romania, are rigorously subsumed to a set of specific legal provision. In this way, the legal character of the establishment of the judgment courts represents an important level of the legality principle, basic rule which establishes the general framework in which the judicial procedure unfolds. In this respect, the national framework of this domain is supported, primarily, through constitutional provisions. Thus, according to article 1 paragraph (5) of the Constitution, *in Romania, the compliance with the Constitution, with its supremacy and its laws is mandatory*, and based on article 124 paragraph (1) corroborated with article 126 paragraphs (1) and (2), *justice is made in the name of the law, fulfilled through the High Court of Cassation and Justice and through the other judgment courts established by law, whose competence and judgment procedure are provided only by the law.*

Also, the Law 304/2004 regarding the judicial organization, republished, includes a series of main dispositions (Chapter I "Principles of the judicial organization" or Chapter III "General dispositions regarding the judicial procedure" within Title I entitled "General dispositions") which impose the necessity of complying with the law in the domain of founding, organizing and operating the judgment courts. As *exempli gratia* we can mention those from: article 1 in which there is highlighted the aspect according to which the *judiciary power is exerted by the High Court of Cassation and Justice and by the other judiciary courts established by the law*, article 2 where there is mentioned the fact that *the justice, as a social supreme value, is fulfilled in the name of the law through the category of courts provided in the law*, article 3 according to which *the competence of the judicial authorities and the judicial procedure are established by the law*, article 10 in which there is provided that *the judgment court is structured with a number of judges, according to the law*, article 16 which states that *the court orders must be complied with and fulfilled.*

On the same line of thinking, according to article 1 of the Regulation regarding the organization and the administrative operation of the High Court of Justice and Cassation, it is organized and it operates according to article 126 of the Constitution of Romania, republished, according to articles 18-34 of the Law no. 304/2004 regarding the judicial organization, republished, and according to the present regulation. Also, related to article 2 paragraph (1) of the Internal order regulation of the judiciary courts, *the courts, the tribunals, the specialized tribunals, the courts of appeal and the military courts are organized and they operate according to the dispositions of the Law no. 304/2004 regarding the judicial organization, republished, and according to the dispositions of the present regulation.*

Article 6 paragraph (1) of the 2nd Chapter, which consecrates the fundamental Principles of the civil trial, of the New Code of Civil Procedure, states "the right to a fair trial, within an optimum and foreseeable timeframe", in the sense that: "Everyone is entitled to a fair and public hearing, *within an optimum and foreseeable timeframe*, by an *independent and impartial tribunal, established by law.* In this respect, the court has to decide all the measures allowed by the law and to insure the unfolding with celerity of the judgment. The second paragraph specifies the fact that the dispositions within the previous paragraph apply in the phase of the forced execution". In this domain, we mention the fact that the first highlight of the text only represents a gradation of the legality principle, being obvious that such obligation – to decide all the legal measures – applies firstly to the judge. A special highlight, that the text makes, targets the obligation of the judge to insure "the unfolding with celerity of the judgment". Without a doubt, the meaning of such normative specification within article 6, 2nd thesis, of the New Code of Civil Procedure, is that the legislator wished to highlight the aspect that the requirements (demands)

regarding the settlement of the cause within an "optimum and foreseeable timeframe" do not exclude the essential obligation of the judge to decide the corresponding measures for solving it with celerity.

As we can easily notice, the New Code of civil procedure preferred the formula "*optimum and foreseeable timeframe"* instead of the constitutional formula "reasonable time" (article 21 paragraph 3), also consecrated in article 6 of the European Convention on Human Rights. Beyond the qualification assigned by the legislator, it is undeniable that amongst the most founded frequent critiques of justice, not only in Romania, but everywhere and from all times, there is that of the "slowness" the trials are solved with. The procedure involves, by definition, a set of rights and obligations, as well as rules for unfolding the trial. Or, their accomplishment and the compliance with the rules cannot be made within a judgment meeting or within a fixed timeframe. This is why article 6 of the European instrument of protection for human rights consecrated the necessity for settling the trial in a "reasonable time" – "phrase which tends to express the necessity of finding an indispensable balance between the imperative of the celerity settlement of the trial and the pronouncement of a decision according to the truth".

In order to present the meaning of the formulation established by article 6 of the new Code of civil procedure, the latter has to be corroborated with article 233 of the same Code, which states the fact that "at the first judgment timeframe the parties are summoned to, the judge, after hearing the parties, will estimate the duration necessary for the research of the trial, taking into consideration the circumstances of the cause, in order for the trial to be settled within an *optimum and foreseeable timeframe*, the duration that was estimated being consigned in the end and being reconsidered only for solid reasons and by hearing the parties". In the light of these last regulations, we can thus assert that the «responsibility» of the judge for establishing the duration of the procedural phase of the judicial research – phase in which there are fulfilled the acts of procedure necessary for the preparation of the trial debate – is highlighted (brought to the fore) in order to insure the demand of the «*fair trial, within an optimum and foreseeable timeframe*», of the pending litigation. This insurance of one of the basic components of the fair trial, namely celerity, is evoked, with the title of guideline, by article 6 of the new Code, in the 2nd thesis of paragraph (1), in the sense that "the judge has to insure the prompt settlement of each trial – for recognizing and establishing in due time the legitimate rights and interests deduced to the judgment – and no to allow any attempt of the parties to delay the judgment. In this respect, the judge will take the necessary measures, provided by the law, without involving the right to defense or other procedural rights of the parties (*lato sensu*) and, of course, without damaging the legal and solid settlement of the trial".

From my point of view, the express establishment of "the right to a fair trial, within an optimum and foreseeable timeframe", within the New Code of civil procedure, will be able to contribute to the purpose of the Strategy for the development of the Romanian Justice as a Public Service "*an efficient and effective justice, able to generate a correct and transparent justice act, unfolded within reasonable time and with a cost accessible to the citizens and the state*", but provided that it is effectively and concretely fulfilled, under the guidance of the magistrate judge and with the active and in good faith participation (*bona fidae*) of the parties and of the other procedural participants. Otherwise, this right, as well as other components of the «fair trial», will lack substance, having only a "theoretical and illusory" consecration, incompatible with the principle of the law supremacy and of the rule of law.

The European Commission for the Efficiency of Justice (Council of Europe) considered that the "reasonable time", referred to by article 6 point 1 of the European Convention on Human Rights and Fundamental Freedoms, is only a "limit base", recommending the accreditation of another phrase, namely "optimum and foreseeable timeframe" – in order to solve (as much as possible, *s.n.*) "the endemic evil", consisting of the "slowness of justice", through adequate national mechanisms. Under the title "A new objective for the juridical systems: the judgment of each cause within an optimum and foreseeable timeframe", the Commission presented at Strasbourg, on June 11th 2004, its framework-program. The amplitude of the phenomenon – it is mentioned in the introduction to the respective framework program – is meant to justify "a vigorous reaction", the jurisprudence of the Court in Strasbourg being the proof of the exponential character of this "slowness syndrome". "The stake – said the European Commission (ECo) – is crucial for the member states, directly responsible for a good operation of their own juridical system: beyond a certain critical threshold, a greater slowness has as consequence a crisis of general faith in justice, both for citizens and for the economic world, especially that the justice represents one of the pillars of democracy". In the attempt to identify certain causes of the slowness in the process of fulfilling the act of justice, the Commission focuses on the necessity of the involvement of the parties, as active actors, in the organization and the effective unfolding of the trial. For a quite long period of time – as the Commission was estimating – there was considered that "regarding the quality of justice, it depends on the distance it managed to create between those who make it and those it is made for, this distance being the only one allowing the occurrence of impartiality and independence of the court in the judicial procedure". Currently, on the contrary, this attitude is perceived as the "incapacity of the judicial system to make itself clearer and more accessible for the citizens". Concretely, "the quality of justice could be improved only by bringing the justice near to the citizens and facilitating their association to its operation", identifying – as the honorable professor Ion Deleanu judiciously states – the

adequate means for distinguishing between the “usage time” and the “wasted time” within the trials which were effectively solved – in order to avoid, through significant improvements of the «procedural rules/norms», the future delays which have their origin (primarily) in the (disturbing, abusive) «behavior» of the participants (*lato sensu*) during the judicial trial.

The «energetic» and «protective» jurisprudence of the European jurisdictional court changed, to some extent, the structure of the guarantees system established by article 6 of the Convention, in the sense that if it were to analyze the «construction» of the article referring to the guarantee of the «fair trial», relating strictly literal to it, and subsequently identifying its meaning from the point of view of the jurisprudence of the European Court, then we will observe the existence of a different fundamental image. On this line of thinking, the Court itself highlighted the fact that *the protection provided by article 6 had a considerable evolution on the «land» of its casuistry.*

In the great complexity of article 6, the procedural component of the *right to an independent and impartial tribunal established by law,* can be considered to be an «island» of relative clarity and constancy, aspect which is usual because it signifies a guarantee with a static character, unlike the others which have a certain dynamism, through their nature. In other words, it represents a set of procedural demands regarding the: *notion of tribunal* (judicial court), *its establishment on legal bases*, *its independence*, respectively *its impartiality.* Out of these, the second demand implies two relatively distinct aspects, namely: 1. *the existence of a «law», more precisely of a legal framework, which establishes the court* and 2. *establishing the contents of the «jurisdiction» of the court by the law.*

Regarding the first aspect, the European court judiciously estimated the fact that: *the judicial organization in a democratic society does not have to be at the discretion of the executive, but it is necessary to be regulated by a law which emanates from the legislative (this inter alia has to provide the general organization of the judicial system, by stating the category of courts capable to accomplish justice, respectively of their material and territorial competence). But this does not mean that the legislative delegation is unacceptable in certain issues which regard the judicial organization because article 6 paragraph (1) does not impose a total positive obligation to the legislative in order to regulate each «element» and «detail» in this domain through a «formal act of the Parliament», if it previously established an adequate general legislative framework, relative to the judicial organization.* As a consequence, the standards established in a jurisprudential way regarding the significance of the concept of *«law» which establishes a certain judicial court,* are: a). the main role in stating the «guidelines» and the legal framework regarding a judicial court belong to the Legislative; b). certain issues of the judicial organization can be delegated by the legislative in order to be regulated by the executive; c). it is

«undesirable» that the executive estimates the "essential" «aspects» referring to the establishment of the existence of a certain judicial court, because it represents the basic pillar of a judicial system. Also, the European court considered that the term «law» of the phrase *established by law* is possible to be also interpreted regarding the jurisprudence relative to the existing phrase *provided by law* within paragraphs (2) of articles 8-11 of the Convention, respectively in paragraph (3) of article 2 within the Protocol no. 4. *Mutatis mutandis,* the characters of *accessibility* and *foreseeability* become applicable also to the concept of «law» which exists within article 6. Thus, «the law» which establishes the concept of judicial court will be considered to fulfill the condition of *accessibility*, if any person (its addressee) is capable, reasonably, to know the legal assignments and the rules which prescribe the manner in which the respective «responsibilities» are exerted by the judicial court. As it will be estimated as *foreseeable*, if it is clear enough in its content in order to determine any person to comply with the behavior model it prescribed.

Regarding the second aspect, namely *establishing the contents of the «jurisdiction» of the court by the law*, the jurisprudence of the Court evolved in the sense that it regards both the *«structure» of the judgment formation* for each cause, and the *proper contents of the competence of the court.* Thus, regarding the case *Lavents v. Latvia* (Decision of November 28th 2002), where the ensemble of the Regional Court was not structured according to the Latvian law of judicial organization (because it consisted of two incompatible judges as a consequence of the fact that they participated *illo tempore* to the judgment of the same case), the European jurisdictional court observed the breach of article 6 paragraph 1 of the Convention, and regarding the case *Posokhov v. Russia* (Decision of March 4th 2003 paragraphs 38-44), due to the fact that during the trial two judges were not «authorized» by the law (compromising the procedure of selection, of their designation, which should have taken place on the day of the trail) to judge the respective litigation, the European court judiciously estimated the transgression of article 6 paragraph 1 of the Convention. In the same way, in the case *Coëme v. Belgium*, (Decision of June 22nd 2000, paragraph 99), the Court observed that according to the constitutional dispositions applicable to the era of the facts, the capacity of minister attracted the judgment of the case by the Court of Cassation, but also that no other legal disposition provided the possibility of extending the jurisdiction of the supreme court to other persons (other defendants) than ministers, fact for which the extension it undertook regarding the judgment of other persons means breaching article 6 paragraph 1 of the Convention, because the contents of its competence did not imply such extension (thus the well known rule of law *exceptio est strictissimae interpretationis* is incident). Thus, it results that it is not enough for the court to be legally

established, but it is necessary for the applicable procedure rules to be, on their turn, clearly provided by the law.

From the jurisprudence of the European court appeared the rule according to which a jurisdictional authority, in order to be considered a court (tribunal), does not imperatively have to unfold only judicial activities, without the possibility of undertaking certain activities which are not strictly included in the judicial domain. Thus, it refused to ignore the membership of a jurisdictional authority to the category of *«tribunal»* or *«court»*, for the reason that it fulfills, along with the judicial function, a multitude of other «functions» (in the administrative and disciplinary matter, consultative matter, quasi-legislative matter). In the same way, the Court considered that, unlike the executive power, the legislative one is not necessarily to be considered incompatible with the notion of court (tribunal in the sense of the Convention), in the particular situations in which the demands stated by article 6 paragraph (1) of the Convention are complied with. Even though, regarding this last aspect, we can invoke as counterargument the fact that, in this case, the principle of separation and balance of state powers is breached (*trias politica*), we have to mention that, for instance, a parliamentary commission of inquiry "with legal bases" which impose the compliance with the demands of independence and impartiality, respectively of insuring certain specific procedural guarantees (the right to defense, the right to contradictory debates), is to be considered to fulfill *a part* of the guarantees of article 6 paragraph (1) of the European Convention; but, it cannot be included in the category of the jurisdictional authorities called *court* or *tribunal* (in the sense of the European instrument of protection of human rights), not necessarily due to the fact that the *trias politica* principle is breached, but rather due to the political affiliation of its members, who can be determined by the political beliefs to vote in a sense or another, even without solid arguments concerning a certain decision.

Regarding the «independence», it implies a separation of powers in which the judicial one is protected from the institutional point of view from any influence or interference (immixture, intrusion) especially by the executive power, but also by the legislative one. This institutional protection is a component part of the positive obligation (preferably of result and not of means; it is true that if hypothetically this obligation were considered to be an obligation of result, once it is reached, it will still have to be readapted at a certain moment, because as we well know, the dynamics of the social life will impose, always, whenever and wherever, taking measures which are according to the new reality, but, nevertheless, considering this obligation as one of result, I think that it is beneficial at least from the perspective of avoiding the conception and the appliance of certain measures which are meant only to provide inefficient solutions) of a rule of

law for undertaking all the measures considered to be necessary for insuring the efficient and effective unfolding of the judicial functions by the judicial body within a democratic society.
Related to the concrete circumstances of a cause, the independence of the judicial power can be also estimated from the point of view of its specific relation with a series of prominent social groups in the juridical circuit of a society, namely with mass-media, political parties or different interest groups (*lobby*). *In concreto,* the justice independence – founded on the theory of the separation of state powers, means that both the justice as institution, as system and the individual judges who decide in specific cases, have to be capable to exert their professional responsibilities without being influenced by the executive power, legislative power or by economic groups or interest groups.

As it has been mentioned before, the national regulations which consecrate the principle of the judicial power are found, mainly, in the fundamental law of the state, being also taken by the law regarding the judicial organization, respectively regarding the status of the judges and of the prosecutors. Thus, according to article 1 paragraph (4) of the Constitution of Romania, the state is organized according to the principle of the separation and balance of powers – legislative, executive and judicial – within the constitutional democracy. This principle, founded by Charles Louis Secondat de Montesquieu before the French Revolution in 1789, has as purpose "*avoiding the abuses in the damage of the rights and freedoms of citizens, the separation of legislative, executive and judicial power, in order for the power to stop the power, due to the separation regime*". Because the separation is related to *the three main functions through which the power is exerted in the state* (legislative function, executive function and judicial function), they "*have to be fulfilled by different authorities, which collaborate with one another, in order to avoid the breakage of the state power itself, which, through its nature, it can only be unique, even if it is manifested in different forms and modalities.*"

The demand regarding the independence of the magistrate judges benefits also by other constitutional guarantees. We take into consideration article 124 paragraph (3) of the Constitution of Romania, republished, according to which *the judges are independent and they obey only to the law,* article 125 paragraphs (1) and (3) which mention that *the judges assigned by the President of Romania are irremovable under the conditions of the law,* and *the function of judge is incompatible with any other public or private function, with the exception of the didactic functions of the higher education,* respectively article 133 paragraph (1) which states the fact that *the guarantor of the independence of justice is the Superior Council of Magistracy* and article 134 in which there are mentioned the assignments of the Superior Council of Magistracy exerted in order to accomplish its most important function, namely that of establishing itself in a veritable guarantor of independence of justice with a supreme social value – in the spirit of the

democratic traditions of the Romanian people and of the ideals of the Revolution of December 1989 – in a rule of law. In the same manner, article 2 paragraphs (3) and (4) of the Law no. 303/2004 regarding the status of the judges and prosecutors, republished, states that the judges are independent (…), any individual, organization, authority or institution having to comply with this aspect, and article 75 of the same law consecrates the right and the obligation of the Superior Council of Magistracy to defend the magistrates against any act which could affect their independence or impartiality or which could create suspicions regarding them (as the magistrates who consider that the independence and the impartiality are affected in any way through acts of immixture in the professional activity which can refer to the Superior Council of Magistracy, in order to decide the necessary measures, according to the law).

The legal guarantees of the independence of judges are also included in the Law no. 304/2004 regarding the judicial organization, republished. Thus, in the light of article 46 paragraph (2) *the verifications made personally by the presidents or vice-presidents of the judicial courts or by judges specially assigned by them have to comply with the principles of the independence of judges and of their commitment only to the law, as well as the authority of the judged issue.*

"The independence of justice and judges is neither a purpose, nor sufficient for fulfilling the act of justice in a fair way. Impartiality is also needed. The two notions are not to be confused though. Thus, the independence of justice is a «state of mind», which has to be replenished at the level of judges through an adequate «status», and at the institutional level by establishing the relations with the executive and legislative power, while the judicial impartiality also concerns the «state of mind», the attitude of the court towards the issues and the parts of a certain case (non-discrimination, tolerance etc.) but also the manner in which a trial is conducted". It implies that the involved judges "decide objectively based on their own evaluations of the relevant facts and of the applicable right, without having prejudices regarding the case they investigate and without acting in ways which support the interests of one of the parties".

In the domain of justice (more exactly in all the matters regarding this domain, especially in the civil procedural one), the «historic transit» unfolded after 2000 highlighted the fact that, for almost a decade, it was ruled by indecision – damaging – for the entire judicial system. In this period, the much wanted reform of justice "was made chaotically, without a national lasting strategy and which always has to be useful for the justice and the litigants". The fact that the Romanian state obtained the capacity of member of the North Atlantic Organization (2004) and more importantly that of part of the European Union family (2007) implied, respectively imposed, within the process of pre-accession, but especially within the process of post-accession,

fulfilling certain conditions – circumscribed, *lato sensu*, to the compliance of our state system with the standards of the European and international community. Within the «commitment» of Romania to comply with the demands dictated by the membership of the two international organizations (the first one with universal vocation, the second one with regional vocation) the reformation of the national judicial system is presented as the priority no. 1 of the decisional state factors, being a guideline within the National Security Strategy of the Romanian state.

The Mechanism of Cooperation and Verification (MCV), established when Romania acceded to the E.U., has – as we well know – as objective supporting Romania for "*creating an impartial, independent and efficient judicial and administrative system*". As a consequence, the modification of the juridical framework and of the Romanian judicial system in order to continue their compliance with the existing systems in the other member states represents a "national responsibility". Amongst the critical observations towards the Romanian judicial system included in the reports submitted within the Cooperation and Verification Mechanism there was always mentioned, in the last years, that of the "lack of a unified and clear jurisprudence" – situation which has affected and still affects the credibility, foreseeability, stability and certitude of the judicial act – as well as "certain procedural abuses which unjustifiably prolong the solution of the pending cases of the judicial courts". In the same context, the unfolding of the judicial trial within an "optimum and foreseeable timeframe", represents a pressing preoccupation for the «national authorities». In this regard, the European Court of Human Rights created a rich jurisprudence in the domain of the "reasonable time", asserting even a "doctrine" which highlighted the aspect according to which *«a justice which does not solve the cases within a "reasonable (optimum) time" is, actually, a failed justice»* (idea highlighted through the British adage *justice delayed is justice denied*, or through the French dictum *justice rétive, justice fautive*).

In the context of the conditionality conformation within the Cooperation and Verification Mechanism (in the Justice domain), the Strategy for the Development of Justice as Public Service (2010-2014) undertaken by the Romanian Ministry of Justice has brought and presently brings into our attention the following aspect, namely that according to which the "modernization of the judicial system and the increase of the quality of justice require an intervention through technical measures, in the institutional domain, and an approach of proactive undertaking of a construction agenda (…)" by all the responsible factors (*s.n.*).

This Strategy (more precisely the action directions undertaken within it) is «governed» by the following principles: "*the consolidation of the rule of law and of the law supremacy*"; "*the guarantee of a real separation and balance of state powers, by consolidating the independence of the judicial power*"; "*complying with the human rights*" (!); "adopting the best European

practices related to the operation of the judicial system"; "insuring the transparency of the justice act"; "consolidating the dialogue with the civil society and its involvement in the reform process"; "creating the premises of the judicial cooperation in the European space of freedom, security and justice"; "insuring the full institutional and legislative compatibility with the European judicial systems"; "financial sustainability of the action objectives and directions". The main declared purpose of the Strategy is that of having in Romania "an efficient and effective justice, capable to generate an act of justice which is fair, transparent, unfolded in a reasonable time and at an accessible cost for the citizens and the state". The complete fulfillment of this purpose "*will allow the fulfillment of the public service valences of justice and, implicitly, the re-establishment of the citizens' trust in the act of justice, by transmitting a coherent vision of the judicial system to the society*".

Currently, it is – more than ever – the domain of evidence that "in the complex and continuous movement of juridification of the social and political life, the tendency of the society is to search for an arbitrator which is capable to limit the power abuse and the regulation of the social behaviors, transposed by the political and the executive, and also by the social connections which are more and more complicated, to the judicial." As a consequence, we can assert that "to talk about the judicial power («justice») means to reflect upon its capacity to adapt to the new social contexts, given the persistence of the need of arbitrating the neglected conflicts or the conflicts deliberately given to its responsibility by the other powers". Concretely, this thing implies noticing the fact that the justice interferes more and more in all the domains of the social life in order to "create, interpret, apply" them. This is why "the role of the law institutions, the preponderance of the European right, the progressive emergence of the constitutionality control, the immixture of the tribunals in the public policies, the penalization of the negligence of the state representatives and of those who decide publicly are (consequence of the movement of integration in the larger spaces) forms of judicial activism of a contentious democracy and of internationalization of the issues".

The role of the court/tribunal - «justice» as supreme social value – in the rule of law is extremely important, at the national and international level existing numerous undertakings having as finality the establishment of an adequate framework – consisting of the norms dictated by the national legislators, by the international organizations (United Nations, Council of Europe, European Union), by magistrate associations, non-governmental organizations – for the unfolding under optimum conditions of its jurisdictional activities. All this impressive set of «efforts» has as objective the highlight of the well defined and determined role that the judicial power has in the existence of a democratic society, based on obeying the law.

The reform process of the Romanian judicial system started “effectively” in the period of Romania’s pre-accession to the European Union and continued in the post-accession period and it is presented as a strategic objective of national importance necessary to be completed – successfully - , not only in order to «respond» to the commitments undertaken in the virtue of the quality as a part of the international community and of the conditionality established through the Cooperation and Verification Mechanism (CVM), but (especially) for the improvement/modernization of the Romanian state system – which represents on its turn the first-rate public policy of the decisional governmental (responsible) factors.

In concreto, the «justice» (as we well know) represents in a democratic society from an “authentic” rule of law the main guarantee for complying with the civil rights and freedoms – the unfolding of its jurisdictional activity being possibly undertaken only if the legislator, the executive, the civil society, the citizens in general contribute (in good faith/*bone fidae* and in a supported manner) to the creation (and, subsequently, to the compliance) of the conditions optimum for the fulfillment of the necessary act of justice. If the objectives undertaken by the Romanian state within the reform of the Romanian judicial system (or more correctly said in the juridical one, because it includes a larger range of official subjects with a role in justice fulfillment) will acquire full contour, then we will be able to assert that Romania is really a rule of law efficiently and sufficiently consolidated, in which the human fundamental rights and freedoms (amongst which the right to a fair trial) are not only propagated (“theoretically and illusorily”), but (most importantly) “concretely and effectively” complied with/applied.

From the previous considerations – from my point of view – appears the fact that the right to a fair civil trial represents the indispensable foundation of a good administration of justice in a “democratic society” and in a “rule of law”. The numerous international instruments in which it is consecrated – amongst which the Universal Declaration of Human and Civil Rights (U.N.O, 1948), the European Convention on Human Rights (ECo, 1950), The International Covenant on Civil and Political Rights (U.N.O., 1966), have an overwhelming role – are proof in the sense of its special importance in the set of the procedural guarantees meant to insure for the litigant a civil trial in front of “an independent and impartial tribunal established by law”. The contents of these juridical acts establish a standard in the domain which is necessary to be respected by the «national authorities» of the contracting states (of the Convention) not only from the area of the judicial power, but also from that of the executive and legislative power.

Key words: «Fair trial»; «article 6»; «European Convention on Human Rights»; «court in Strasbourg (the Court)»; «procedural right»; «Tribunal»; «legality»; «independence»; «impartiality»; «reasonable time»; «optimum and foreseeable timeframe»; «Council of Europe»; «European Commission for the Efficiency of Justice » (CEPEJ); «European Union (E.U.)»; «Charter of Fundamental Rights of the European Union»; «Universal Declaration of Human Rights (U.N.O.)»; «International Covenant on Civil and Political Rights (ICCPR – U.N.O.)»; «Constitution of Romania»; «free access to justice»; «democratic society»; «rule of law»; «theoretical and illusory guarantee»; «concrete and effective protection»; «compliance with the fundamental human rights».

Summary