

JURIDICAL EVENT

Inter-professional Charter of the Romanian Judges, Prosecutors and Counsels – a unique European model of inter-professional dialog within the judicial system in a new, global democratic society

Judge **Rodica Aida POPA**¹, PhD.

1. Throughout history humanity has been driven by new principles for systems to organize the state, institutions and mentalities, and included them in documents which in certain cases became programmatic, thus marking crucial and profound changes.

Economic, social, cultural, spiritual and political turmoil led to a consolidation of ideals around ideas which were typically written in various documents, declarations, memoranda or books, and whose value was given by the unity of those who devised them; the consequences of such ideas brought about the changing of nations, organizations, mind-sets and mobilized energies that caused profound changes.

The need for such documents arose from the inertia of society at that point, or by accumulated discontent of the population or institutions, as a result of either privileges, or taxes and duties, or autocratic government ideas, so the change came by either violent movements or illuminated ideas that defined concepts such as freedom, independence of nations, unity, responsibility, rights and obligations; organizations were devised to implement those concepts, changing the way people were thinking and building what we are currently experiencing – a democratic society that tends towards globalization but has a multi-cultural identity, defined and uniqueness in diversity.

Documentary history makes it possible for humanity to know itself, and define itself in terms of economy and culture. And the latter gives rise to identity – starting from the anthropological, spiritual patterns, moving into developing abilities, innovating concepts and ideas whose applicability contributed to creating the current, diverse personality.

Conceptualizing change as replacement of ideas, organizations, and mind-sets is currently present in contemporary society at both the immediate material level and the subtle, profound spiritual level.

The globalization process, so much discussed and debated in the world, is the strongest challenge humanity has been faced with, and it responds differently because the multicultural diversity and diverging analyses of the phenomenon makes its facets shine as a process of change leading into a new era of knowledge.

¹ Rodica Aida Popa - High Court of Cassation and Justice, Criminal Chamber; Romanian Representative at the Council of Europe's Consultative Council of European Judges, aidap@scj.ro.

In what follows we will look at only one of the document types whose contents brought change and a re-setting of economic, social, cultural and spiritual action several times in history.

This type of document is the Charter. Its historical value is given by its presence at several stages of structured humanity, and every time it was a consequence of previous ideas which generated a need for change, as well as a new start by creating new approaches to human liberty as the crucial basis of our existence.

Restricting human freedom, physically or spiritually, has generated profound movements that culminated in the expression of ideas that are fundamental for the existence of humanity and still apply today albeit enriched through contemporary realities.

Human freedom is the primary value acquired in a historical process and to whom society grants national, European and global constitutional guarantees because it is the very basis of existence.

Beyond its historical value the Charter is also an expression of the culture and spirituality of its creators, because it includes abstract ideas at the level of programmatic principles for a new stage of society, as it identifies characteristic values of humanity such as freedom, rights and liberties, principles of economic and social organization, and establishes statehood in its various forms and culture through institutions.

The Charter is acquiring a new dimension now, because it extends to the level of professions, since it is a simple type of regulation and governs through the power of ideas as the main value.

In the current stage of our existence this type of document can be found at the professional programmatic level of European bodies.

The year 2015 saw the anniversary of one of the most important Charters ever: 800 years since the adoption of Magna Charta Libertatum in England on June 15th, 1215. It is also known as the Great Charter of English Freedoms, because it guaranteed the right to individual freedom.

But that document is also the oldest manifestation of a long historical process that led to rules ensuring constitutional lawfulness in the Anglo-Saxon countries.

From a public law perspective Magna Charta was the object to various opinions, either that it was the first document that legally limits or even restricts the power of an English king, or that it is a unique document of this type.

This document, which contained 63 clauses, was subsequently amended under the Tudors and the Stuarts, and by the beginning of the 19th Century most of them had been repealed, but its influence marked the Constitution of the United States and the Universal Declaration of Human Rights.

Another significant Charter marked the 20th Century, and it was the June 26th, 1946 United Nations Charter, whose primary principles and active bodies established under it constitute the current framework of operation for international relations.

This latter document redesigned the social, cultural and political organization of humans constituted into nations, after World War II. It is characterized by unity as a fundamental principle, and naturally devolving from the trauma of war, conflicts and disunion.

The Preamble of the United Nations Charter reasserts the belief in fundamental human rights, emphasizes its goals and the need for unity of effort in attaining those goals.

It goes as follows: “We, the Peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom; And For These Ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples; Have Resolved to Combine Our Efforts to Accomplish These Aims, Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.”

As for a professional Charter adopted by a European body we can mention the European Charter on the Status of Judges, adopted by the Council of Europe at a multilateral meeting on 8-10 July 1998.

The Charter contains general principles that define the status of judges, their selection, recruitment, basic training, appointment, tenure, career, responsibilities, pay, social protection and termination.

To strengthen the role of judges in Europe in the year 2000 the Ministerial Committee of the council of Europe created the Consultative Council of European Judges (CCEJ), the only executive body intended to emphasize the essential role of the judiciary in strengthening the notion of democracy and its rules of operation.

This European body develops Opinions for the attention of the Ministerial Committee concerning specific aspects of the situation and status of judges and the exercise of this profession.

On its 10th anniversary the Consultative Council of European Judges adopted, in its 11th Plenum Session in Strasbourg on 17 through 19 November 2010 a “Magna Charta of Judges” which contains the fundamental principles of the Opinions adopted till that point.

The 23 Articles contain the primary recommendations, structured into seven Chapters: rule of law and justice, independence of judges, guarantees of

independence, entity that has authority to guarantee independence, access to a transparent justice, ethics and responsibility, and international jurisdictions.

In a more concrete approach the principles emphasize the role of the judiciary as one of the three estates in a democratic state, whose mission is precisely to guarantee that state's existence and to ensure proper implementation of the law in an impartial, fair, equitable and effective manner.

The judges' independence and impartiality ensures the framework for their activity. The guarantees for their independence are put in place by the standards, the procedures for selection, appointment and career. Basic and continuous training is a right but also an obligation for judges. They should also receive the material, financial and human resources needed for a proper operation of justice, and they have a right to form national or international professional associations.

The Consultative Council of European Judges also recommends that each European state establish an entity that has authority to guarantee judicial independence, a "Judicial Council" or another specific body that should be independent from the executive and the legislative and will be in charge of the organization, operation and image of the judiciary.

Other principles tackle the transparency of justice and the information that needs to be released concerning the judicial system, procedural steps and court rulings, which need to be written in a language that is accessible, simple and clear, while the enforcement of such orders is a substantial component of the right to a fair trial.

Other primary rules concern judicial ethics, which should become regulations and be included in the judicial training process, as well as judicial disciplinary and criminal liability and applicability of this Charter's general principles to judges in European and international courts.

2. After the December 1989 revolution Romanian society saw an encompassing process of structural, economic, social, political, cultural, institutional and mentalities reform.

Within the short space of 25 years the Romanian constitutional rule of law state relying on the principle of separation of the legislative, executive and judicial estates had a transparent and profound evolution and created the required framework.

Successive amendments to the laws on the rule of law framework, starting from the constitutional level of primary but also secondary laws that culminated in developing the four new Civil and Criminal Codes, enacted in 2010 and 2014 respectively, then the creation of new entities of the rule of law state such as the two-chamber Romanian Parliament, with a Chamber of Deputies and a Senate, new entities such as the Constitutional Court and the Higher Council of Magistrates, new Ministries within the Executive, were significant bolsters to what we call the architecture of contemporary Romanian society.

The quarter century since Romania acquired its important European status, especially owing to its geographical location, is also marked by its joining NATO

and the European Union, which enabled it to contribute to strengthening the European space.

Moreover, in the tradition of international relations, by its fundamental role in the League of Nations, the precursor of the United Nations Organization, then by its accession after the Revolution to the Council of Europe, Romania has contributed to the reassertion of the concept of human rights in the Romanian rule of law.

In the context of celebrating twenty five years of judiciary reform since the Revolution in December 1989, a crucial historic moment for Romania's beginning a new phase, that of creating a democratic society, as a representative of Romania at the Consultative Council of European Judges, I have drafted the first Inter-professional Charter of Romanian judges, prosecutors and counsels.

According to the internal procedures of the Higher Council of Magistracy and of the National Union of Bar Associations in Romania, this document was examined and adopted and solemnly signed by the President of the Higher Council of Magistracy, the President of the National Union of Bar Associations in Romania and the representative of Romania in the Consultative Council of European Judges, at the international conference on "the Inter-professional Dialogue between Judges, Prosecutors and Counsels - a requirement to enhance the judiciary in the Romanian Democratic Society", which was held on 23 September 2015.

The document was handed to the member state representatives and to the guests of the sixteenth Plenary Session of the Consultative Council of European Judges in the Council of Europe, held in London this year during 14-16 October, and marking 800 years since the adoption of the Magna Charta.

The attendants to the meeting manifested great interest in the Inter-professional Charter of Romanian judges, prosecutors and counsels, as this is the only European charter to enshrine as the most important principle the interprofessional dialogue between the main stakeholders of the judicial system, divided by three professions, the judge, the prosecutor and the counsel, so that it represents a European landmark.

3. The need for such a programmatic document in the Romanian judicial system. Apart from its anniversary, historic significance, the initiation of such a programmatic document in the Romanian judicial system, which is also the only interprofessional charter, is required by the need to enhance the judicial system by reasserting the general principles of the professions in magistracy and the profession of counsel is included for the first time in the same vision of judicial dialogue between the main professions which aim to inspire the trust of the beneficiary of the judicial system, the Romanian litigant.

The need for interprofessional dialogue implies more than a genuine and efficient openness, it implies an enhancement of the fundamental principles of the independence and impartiality of judges, the professional stability of prosecutors, the significant role of counsels in ensuring the protection of the fundamental rights and freedoms of citizens, by diversifying the professional training component, which is sometimes common to the professions in the judicial system in certain

areas of interest, related to the integrity of the professional bodies of judges, prosecutors and counsels, ensuring mutual respect.

The principle that the judicial dialogue is based upon is the observance of the law, by maintaining the specific features of each profession: judge, prosecutor and counsel. However, there are principles shared by all of these professions, generated by the purpose of the regulations, such as the uniform interpretation and application of the law, by interpreting some judicial institutions the same way, according to procedures in the current codification.

The component of judicial dialogue between judges, prosecutors and counsels is part of the judicial process, but it also takes place beyond it, in the framework of professional training, thus enhancing trust in the judiciary.

Inter-professional judicial dialogue between Romanian judges, prosecutors and counsels also means a new overall vision of the enhancement of the uniform Romanian judicial system, from the point of view of concrete ways to streamline judicial activity without affecting the specificities of professions.

Actually, judicial dialogue is highlighted at present as the golden key of a desirable future of human rights protection in Europe, as President of the European Court of Human Rights Dean Spielman recently said in his "Sir Thomas Moore" speech on 12 October 2015 at Lincoln's Inn.

Thus, the Inter-professional Charter of Romanian judges, prosecutors and counsels is at present the only national model and it has been proposed as a European communication model, but also as a model to ensure interprofessional unity in order to help raise the trust of litigants in the judiciary, which protects litigants by guaranteeing the observance of the law and the protection of their fundamental rights from the point of view of the European Convention for the Protection of Fundamental Human Rights and Freedoms.

4. The Inter-professional Charter of Romanian judges, prosecutors and counsels, as the sole national document having the value of principle in the national judicial system and the first document on European judicial dialogue, has twenty four articles divided on five notion areas.

The first notion area refers to the rule of law and the judiciary, whose significance aims to contribute to reasserting the principles of judicial authority in Romania, as one of the three constitutional authorities in the process of enhancing the state system in our contemporary society, based on the principles of observing the rule of law and of its application by showing independence, impartiality, accountability and efficiency in all procedural stages.

Then there are the principles specific to judges, prosecutors and to counsels' role, the latter being a new element in the interprofessional dialogue component, from the point of view of the effects of the counsels' activities in protecting the litigants' fundamental rights and guarantees.

It has been underlined ever since the beginning that in Romania there are distinct, specific and complementary tasks in each of the three professions - judge, prosecutor, counsel - in the judicial proceedings, and that these professions play an important role in guaranteeing a fair, impartial and efficient judicial system.

The key component represented by the continuous interprofessional dialogue between Romanian judges, prosecutors and counsels is based on the common ethical principles and values and by the deontological component, materialized through the observance of the law, the trade secret, integrity and the respect of litigants, professional efficiency, equitability, and mutual respect.

The second notion area is based on the specific features of each profession, underlining the role of Romanian judges, of prosecutors and of counsels in the judicial proceedings and the need to set the aim to exercise the profession-specific tasks, thus enhancing the protection of the litigants, by guaranteeing the protection of their fundamental rights and freedoms, both through national laws, and through the European Convention on the Protection of Fundamental Human Rights and Freedoms and the Treaties of the European Union, through the acts and the conduct of Romanian judges, prosecutors and counsels, through the lack of any doubt of intervention between these three professions and the lack of any confusion between the three professions, their status being guaranteed by law and the recruitment, training and career development processes having their own strict requirements and guarantees.

The third notion area of principles is based on the ethics and deontology of Romanian judges, prosecutors and counsels, as integrity and professional efficiency are the key elements helping enhance trust in the professional bodies that ensure the trust of litigants that the judiciary is firmly based on deep values.

Therefore, the need for integrity and professional efficiency standards in the three professions must include a common, stable component through legal rules and legislative rules in accordance with the requirements of the contemporary democratic society.

Moreover, litigants trust the judicial system due to the conduct of the three professional bodies which do not make any public statements regarding their ongoing cases, and which observe the principles governing each of the three professions in order to observe all the principles and guarantees of a fair trial.

Each of the professional bodies is also obliged to be aware of the ethical rules governing the other's professions, which enhances mutual understanding and respect for the other's responsibilities, thus contributing to guaranteeing an appropriate interprofessional dialogue between the three professions.

The fourth notion area of principles refers to the training of Romanian judges, prosecutors and counsels, by emphasizing the need for continuous development of professional skills in the three professions in order to enhance the overall quality of the judicial proceedings, to improve profession-specific features and to ensure constant professional training all throughout the Romanian judges' prosecutors' and counsels' career.

The need to organize and carry out common training for Romanian judges, prosecutors and counsels on topics of common interest contributes to providing high quality services in the judicial system.

Examples were presented of concrete ways to organize the continuous professional training of Romanian judges, prosecutors and counsels, all of these examples aiming to create a sound common foundation for a common legal culture in the spirit of the democratic values of the European judiciary, enabling interprofessional dialogue.

The fifth notion area of principles refers to continuous interprofessional dialogue between Romanian judges, prosecutors and counsels and to international cooperation.

The need for dialogue between the three professional bodies has been reasserted in relation to one of the most important fields - the drafting and amendment of laws on the judiciary, the consultation procedure on legal provisions, the drafting of legal provisions, the representation ratio before the national lawmaking authority, in national parliamentary debates, and in international meetings of international bodies and organizations, in the judicial field, thus providing consistency to the enhancement of the judicial system.

Furthermore, the role of judges in judicial proceedings in relation to prosecutors and counsels was underlined, as well as in organizing and carrying out national joint interprofessional projects and also in participating in the projects of European regional and community bodies.

Diversifying communication methods between Romanian judges, prosecutors and counsels and the national and international mass-media on an institutional level and through appointed representatives, drafting common practice guidelines, observing, both by the Romanian judges, prosecutors and counsels and the mass-media, of the fundamental principles, such as the benefit of the doubt, the right to a fair trial, the right to a private life of the people involved.

The Inter-professional Charter underlines in its final part that the continuous interprofessional dialogue between Romanian judges, prosecutors and counsels and the representatives of other international judicial systems will only take place if the fundamental principles of democracy are observed, and if human rights are observed, in order to enhance respect of the three professions and of universal values.

5. The scope of this unique interprofessional document in the Romanian judicial system related to Romanian judges, prosecutors and counsels primarily includes the national judicial system, but it also has a European and international reference, based on references to this document in creating partnerships related to judicial-specific programs, which observe the principles and guarantees of fundamental human rights and freedoms.

Moreover, the Inter-professional Charter may be a model of inter-institutional dialogue and of dialogue with the other authorities in the rule of law, such as the executive and the legislature on topics that are related to the judges' authority, focused on the laws on the judiciary and on aspects related to human resource management and financial management in the profession of judges.

In addition, the Inter-professional Charter may be cited in the creation of judicial cooperation networks with European jurisdictions, such as the European Court of Human Rights, the EU Court of Justice, the First Instance Court of the European Union, the Civil Service Court, and other judicial bodies focused on European and international cooperation.

The Inter-professional Charter of Romanian judges, prosecutors and counsels may be the basis of drafting best practices in judicial activities, and of a common deontological Code.

The unique and original nature of the Inter-professional Charter of Romanian judges, prosecutors and counsels, in a time when the globalized contemporary society is changing, aims to be the first landmark of judicial interprofessional dialogue in the European and international context, being a written document that ensures trust, competence, integrity and safety to the values of the global judicial system, in order to enable it to protect humanity.