

Fair trial

Law



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Fair trial If the prosecutor, while working out a file, appreciates that a criminal lawsuit must be initiated, then he/she shall send a copy after the resolution for the initiation of the criminal lawsuit to the suspect person involved in the precursory criminal investigation, a person who, under the circumstances, becomes a defendant. The resolution shall be motivated. Also, when a person is summoned before a criminal investigation body or a court of law, a summoning notice is issued where, in addition to a number of data, the capacity of the summoned person and the object of the case should be laid down. For the accusation to be completed, the indictment should be issued by the prosecutor and the court of law should be intimated, once the criminal investigation is established to have been accomplished, the case should be sustained by all necessary and legally administrated evidence, observance of the legal provisions guaranteeing the finding of the truth should be checked, and the criminal investigation documentation should be presented to the defendant. If, during the trial, it is appreciated that the legal framework governing the respective crime by the intimation document is to be changed, the court is bound to discuss the new legal framework and inform the defendant that he/she is entitled to request that his/her case should be discussed later or possibly even postponed, so that the defendant might be able to prepare the defence. Also, if during the trial the defendant is found to have committed new deeds pertaining to the same crime for which he/she has been brought before the court, the latter shall order, by conclusion of law, extension of the lawsuit such as to include the new data as well and proceeds to judge the crime as a whole. According to the Romanian legislation, the defendant is not entitled to take the initiative to bring his case before an impartial and independent tribunal. As mentioned <https://assignbuster.com/fair-trial/>

before, the status of defendant is acquired, as a rule, as a result of the initiation of a criminal lawsuit, by the prosecutor, by means of an indictment document. There is an exception to this rule, namely, that of crimes for which the previous complaint by the victim is needed, the initiation of the criminal lawsuit depending on such complaint. The Romanian legal system does not provide for the possibility that the defendant gave up the right to have his/her case brought before an independent and impartial tribunal. Judges of probation are appointed by the Superior Council of Magistracy, on the basis of the general academic achievement level, obtained by summing up the three academic year achievement levels and the achievement level with the National Institute of Magistracy graduation examination. After completing the probation period, the judges and prosecutors of probation are bound to stand for a qualification examination. Judges and prosecutors who pass the qualification examination are appointed by The President of Romania, on proposal by the Superior Council of Magistracy. The Superior Council of Magistracy is the guarantor for the independence of justice. By virtue of its powers, the Council is entitled and bound to take action *ex officio* to defend judges and prosecutors against any undertaking that may afflict their independence or impartiality or create suspicions related to them. A judge who considers that his/her independence, impartiality or professional reputation is jeopardized, no matter in what way, can intimate the Superior Council of Magistracy which, as the case may be, may order checking of the signaled irregularities, and publication of the results; it may also intimate the corresponding body to decide upon the measures to be taken or may order any other adequate measure, in compliance with the law. Judges appointed by The President of Romania are immovable, as provided by the law. Judges

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shall be held accountable for the following instances of misconduct: violation of the legal provisions referring to the declaration of fortune, the declarations of interest, incompatibilities and interdictions for judges and prosecutors; interventions for the resolution of certain applications, requests or acceptance of having their personal interests resolved, or the interests of family members or other persons, beyond the limits of the legal framework, equally provided for all citizens, as well as interference with the activity of another judge or prosecutor; involvement with public activities of political nature or manifestation of their political beliefs in the exercise of their official powers; violation of the secret nature of the deliberations or of the confidentiality of the sessions having such secret nature; repeated violation, for imputable reasons, of the legal provisions related to the celerity that should characterize the resolution of cases; unjustified refusal to attach to the file the applications, the conclusions, the complaints or the documents submitted by the parties involved in the trial; the unjustified refusal to fulfill a formal obligation; accomplishment of their duties with delays, for imputable reasons; unjustified repeated non-attendance; undignified attitude in the exercise of their official powers in their relationship with colleagues, lawyers, experts, witnesses or the citizens; violation of the obligation to transfer their basic work quota to the parquet where they work; violation of the provisions referring to the random distribution of cases; direct or indirect participation in pyramid schemes, gambling or investments where transparency of the funds is not ensured in compliance with the law. The disciplinary sanctions applicable to judges and prosecutors are: warning; diminution of the monthly gross indemnity with up to 15% for a period of 1 to 3 months; disciplinary displacement for a period of 1 to 3 months to a court

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or parquet situated in the constituency of the same court of appeal or in the constituency of the same parquet beside the latter; exclusion from magistracy. These sanctions shall be applied by the sections of the Superior Council of Magistracy, as provided by its organic law. A judge can be recused both in the course of the criminal investigation and in the course of the trial, by any of the parties, as soon as the party found there is a case of incompatibility. A judge is incompatible when: he/she initiated the criminal lawsuit or ordered initiation of the criminal lawsuit or formulated conclusions in the capacity as prosecutor with the respective court, solved the proposal for preventive arrest or extension of the preventive arrest, during the criminal lawsuit; he/she was the representative or the defender of one of the parties; he/she was an expert or a witness with the respective case; there are circumstances indicating that he/she, his/her spouse or a close relative has certain interests related to the case, whichever such interests may be; his/her spouse, relative or in-law, down to the fourth rank, conducted criminal investigations, supervised the criminal investigation, solved the proposal for preventive arrest or extension of preventive arrest, in the course of the criminal lawsuit; he/she is the spouse, a relative or an in-law, down to the fourth rank, of one of the parties or with the latter's lawyer or authorized agent; there is animosity between himself/herself, his/her spouse or relative, down to the fourth rank, and one of the parties, its spouse or relatives, down to the fourth rank; he/she is tutor or curator to one of the parties; he/she accepted liberalities from one of the parties or the latter's lawyer or authorized agent. A judge who sat on a court that tried a case cannot sit on a higher court judging the same case or on a court that judges the case after cancellation of the decision to appeal or cassation of the decision to

recourse. Also, a judge who previously expressed his/her opinion on the solution to a case can no longer sit on the court judging the respective case.