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# Social Construction of the Legal System. Research in the Northeastern Region of Romania

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**Abstract**: This research pursues the social construction of the idea of justice among citizens by measuring the public opinion on the legal system in Romania. A number of aspects involved in the process of social construction of the concept of justice were considered, such as the role of the legal system in Romanian society, the level of transparency of the legal system, the implementation of ethics in Romanian legal system, the level of perceived remuneration of Romanian legal system etc. The research was conducted in the Northeastern region of Romania, based on sociological inquiry through questionnaire. The thematic axes of the questionnaire aimed: the sources of public information on the functioning of the legal system, the perceived level of professionalism of the personnel in the legal system, the public perception on integrity and the observance of ethical standards in the legal system, the level of remuneration in Romanian legal system, the respect for the state of law in Romania, the trust in the component institutions of the legal system in Romania.

**Keywords:** *Legal system; public perception; social constructionism.*

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## Introduction

Social constructionism (Gergen, 2005; Berger & Luckmann, 2008; Sandu & Caras (Frunză), 2014) starts from questioning the meanings of human action, the behavior and the events, a questioning that is not objective, but subjective, referring to these meanings in the course of human interactions (Rosenfeld, 2017; Sandu & Unguru, 2017). The meanings of human actions and behaviors are socially defined, as they are constantly adapting, depending on the evolution of society as a whole, and of the community where the interpretative processes take place in particular. In legal sociology, theories on the social construction of some socio-legal phenomena such as deviance, criminality, antisocial facts, social normality or even social norm are based on the theory of *social construction of reality*, founded by Berger and Luckmann (2008) - which became an explanatory paradigm of these types of social phenomena when it was used in analyzing social movements aiming at reforming the legal system, the system regarding incarceration and implementation of alternative sanctions to the incarceration, excessive medicalization of the social system (the sick society as a social paradigm, medicalization of deviance - approaching deviance as social pathology - the construction of the idea of risk society as a way of approaching contemporary society, where the generalized risk is perceived and there is an attempt to prevent it by insurance, either through certain insurance companies as such, either through the express and sometimes exaggerated request of contractual guarantees that reduce the risk and the unpredictability etc.) and the society's response to these phenomena (Spector & Kitsuse, 1973; Schneider, 1985; Conrad & Schneider, 1992; Loseke & Best, 2003).

## Social construction of the idea of justice

Constructivism and social constructionism both refer to how individuals operate with constructs, understood as operational definitions of institutions, or other significant part of social reality. Social constructionism places the formation of constructs at the level of interactions in the social environment, individuals assigning and reassigning them towards the social environment (Sandu, 2013). Contractualist theories propose a model of social reality resulting from vary waiver to individual own's liberty in order to obtain sociability (Sandu, 2013). Constructs are realities specific to humans that shape interpretation of reality. All visions of normative, prescriptive nature are based on such constructs: justice, freedom, ideal state. The social contract is such a construct that is rebuilt within every theory that

interprets it. The idea of the Constitution for example, is a legal artifact that puts into practice the construct of social contract, being its precise legal expression. The social contract as a pact between individuals for a civil government occurs with the decay from natural state and endless struggles resulting from this situation. The work of John Locke with ethical and political dimension has an important epistemological dimension, contributing to the social construction of the idea of justice as well as of sciences (Sandu, 2013).

The evolution of the normative-institutional framework traces the social construction of the professional identity of the lawyer, precisely by redefining some operational concepts that the professional works with and around which he builds his discourse on the practice (Sandu, 2017). Professional self-reflexivity is poled by a series of institutional and normative frameworks wherein the professional carries out his activity - the axiological and methodological benchmarks that underlie his professional activity. Social constructionism is an integral part of the postmodern perspective, wherefrom it takes the ideas of "negotiated social reality" and language consensus. Constructionism aims to understand and then explain how individuals become aware, explain and describe the world they live in (Sandu, 2017a). The meanings that individuals attribute to the world may differ from one social actor to another, but their deconstruction-reconstruction process causes individuals to identify common understandings of the terms that social reality is defined by.

The constructionist perspective on the law - the understanding of the legal system as a social construction (Priel, 2019) - shows that the system of norms governing the society is the result of continuous interpretative processes that take place at society level, the legal norms emerging from the process itself of social construction of different institutions of the society. In other words, norms are nothing but the result of interpretative agreements between different communicative actors (Habermas, 1985) - on the functioning of different segments of social life. This constructionist perspective on the emergence of the legal system from the processes of social construction of reality (of the social system itself in this case), is generally associated with legal positivism (Priel, 2019), according to which the normative act has an objective reality in itself, due to its compelling power, regardless of its effective implementation in social practice. Based on the distinction between the character of social construct of the norm - so its dependence on the context of application in the current social practice - and respectively the substantiality of the legal norm, its objective character and its relative independence from the social practice of the community where it

is implemented, one of the main distinctions between the prudential, the Anglo-Saxon and the continental law is established.

Law systems based on the codification of normativity and on the primordiality of legal norm leave the process of normative construction in the account of the political factor, keeping the interpretation of the norm as a task of the courts in charge of overseeing the conditions of the application of the norms in real social life. In the systems of jurisprudential law on the other hand, the social construction of the norm is based on the interpretation of the social fact and its recoding as legal fact by the court.

Social construction of the legal system is a process that takes place at the intersection of the political and the juridical, both in terms of institutionalized discourse and construction of institutions. To be acceptable in a democratic system, legal institutions need the legitimacy that derives from their role of controlling the democratic act and especially of controlling the democratic surplus - see the role of negative legislator of the Constitutional Court, the role of the High Court of Justice and the legal courts in the interpretation of the law, etc. The legitimacy of the legal system is guaranteed by the constructs called s*tate of law* and *rule of law*.

Public perception on the legal system, public trust in justice and in the institutions called upon to perform the act of justice is an essential component of the functioning of justice within the democratic framework as a set of legitimate institutions called upon to defend democracy through law.

The *state of law* construct arises from the need to limit the possibilities of abuse of the political or of the economic, by guaranteeing the observance of the norms of social interaction between individuals as well as between individuals and institutions. The rule of law legitimizes the social order precisely by the predictability of the norm and the universality of its applicability and respectively by the protection of the individual in front of any abuses (Cohen & Vauchez, 2011).

Most researchers believe that the transnational constitutional order at European Union level is due to the decisions of the European Court of Justice and its effort to build a united Europe on the principles of *state of law*, an effort made through a series of revolutionary decisions issued mainly in the 60's of the last century and afterwards (Cohen & Vauchez, 2011). An opposite opinion is expressed by Antonin Cohen and Antoine Vauchez (2011) - which puts this orientation of the European Union towards the principles of the state of law on the account of a legal and political struggle for the future of Europe as political and constructive suprastate entity.

### *Public trust in justice*

Studies on trust in institutions pursue a number of significant elements, first of all measuring citizens' attitudes - especially global or diffuse ones - such as "satisfaction with" or "trust in" government agencies or institutions (Staubli, 2017).

The assertion that developed society means risk society (O'Neill, 2001) does not mean that the degree of risk is higher for citizens of these societies than for citizens of traditional societies - but that the risk is perceived as such, the society referring to it while programming the sustainable development process. Trust is defined as a bi-unequivocal relationship between the two partners, where the one who trusts is willing to accept his own vulnerability to the behavior of the one in whom he invests his trust (Frunză, Medveschi, Frunză, & Grad, 2019; Mayer, Davis & Schoorman, 1995; De Wulf, Odekerken-Schröder & Iacobucci, 2001).

The act of investing trust or mistrust manages the social action from ethical point of view (Jackson, 2019). The cooperation process is based on providing a trust capital to the partner. In the absence of the ability to give confidence and treating the others *a priori* as people of mistrust generates arbitrariness in the decision process. Trust is not the result of a certainty about the moral behavior of the other, it is rather the result of uncertainty about the person's action (Cojocaru, Sandu, & Oprea, 2013).

The institutional trust takes into account the credit of the respective institution, regarding the observance of a minimum set of norms, standard rules and procedures. Public trust in institutions is often measured by opinion polls. Trust in the constituent institutions of the legal system is analyzed within this research as a determining directive of the social construction of the legal system. Public discourse on trust in justice contributes to the continuous redefinition of its role in society, the legitimacy of the legal system and, derived from this, the very legitimacy and the stability of the social and political system of a particular state is correlated with the public trust in the institutions of that state, including those which are component of the legal system.

Regarding the public trust in the institutions of the Romanian state, in 2019, according to the INSCOP survey conducted in March 2019, army, with a trust level of 68.1%, holds the first place, Church has a trust level of 55.1 %, gendarmery 48.1% and police 43.2% (INSCOP Research, 2015; 2016; 2019). Among the constituent institutions of the legal system, DNA (National Anti-corruption Division) enjoys a trust of 40.9%, and the Constitutional Court of 21.9%. Trust in the legal system as a whole was, in 2017 (European

Commission, 2017), at 24%, decreasing from the previous years when it was at 35% in 2016 and respectively at 48% in 2015 (DC News, 2017). The loss of trust in the legal system (Ghircuta, 2016) was put on the account of the skids from ethical and professional standards in general, and the inability of the system to effectively sanction such departures, especially when international courts or institutions such as ECHR (European Court of Human Rights) or Venice Commission sanctioned or drew attention to the respective skids. Regarding the trust of Romanians in the independence of the legal system, the Eurobarometer of 2019 places it at 40%, compared to the European average of 50% (Digi FM, 2019). Of the 40% of the Romanian respondents who showed trust in the independence of the magistrates, only 4% placed this trust at the top level, while 36% expressed a positive (almost good) opinion. The reasons why the questioned persons expressed their trust in the independence of judges and prosecutors in 2019 were the status of judges and prosecutors - their immovability and their independence (69%) and the lack of pressure from the political upon the legal system (60%) (Sirbu, 2019).

A CURS (Center for Urban and Regional Sociology) survey from 2017 placed the level of trust of Romanians in magistrates / judges and prosecutors / at 24% with a higher score for the share of distrust in the legal system at 73% (S.T., 2017).

### *Ethics and integrity in the legal system*

Integrity is one of the most important terms in today's ethics, where it is often seen as synonymous with the idea of moral conduct, but also in the applied ethics, where it denotes the ethical behavior of the professional in any field. It comes from ethics of virtues, where integrity is a fundamental virtue, that of consistency with oneself, with one's own moral convictions (Cox, La Caze, & Levine, 2017).

In contemporary deontological systems, integrity represents compliance with the rules of professional ethics, especially with those that limit unacceptable behaviors, correlated especially with abstaining from any deceptive, fraudulent, duplicitous behavior (Sandu, 2017b). The term is understood in the common language as being synonymous with that of honesty, probity and incorruptibility. For Cheshire Calhoun (1995), integrity is rather a social virtue, because it is defined by the person's relationships with the others. An integral person not only acts in a manner consistent with his or her inner moral commitments, but also explicitly affirms and defends one's own values and one's own moral judgment when necessary (Sandu, 2017b). This explanation of values is a reflective and constructive one, an integral person submitting his own ethical and value judgments to the public

deliberation and debate and finally to the consensus of the community (Habermas, 2000). The social character of integrity is, for Calhoun (1995), a problem of the correct understanding by the person of his own moral judgment. Another approach to integrity as ethical practice is the one that asks the individual for a concrete dedication to a set of values, represented by an institution, a belief, tradition, individuals, profession, cause, ideal, principles, projects, etc (Cox, La Caze & Levine, 2014). This dedication is conscious and voluntary. In this situation, there is no longer question of hierarchizing values, but of manifesting integrity as lack of any prejudice brought to the devotion for the respective institution, person, cause etc.

## Research methodology

The purpose of this research is to investigate the social construction of the idea of justice among citizens by measuring the public opinion on the legal system in Romania. A number of aspects involved in the process of social construction of the conception of justice were considered, such as, among them, the role of the legal system in Romanian society, the level of transparency of the legal system, the implementation of ethics in Romanian legal system, the perceived level of remuneration in Romanian legal system etc.

The research was conducted in the Northeastern region of Romania, based on sociological inquiry through questionnaire. The questionnaire was applied during November-December 2019 in the Northeastern region of Romania, taking into account the counties of Botosani (26 persons - representing 6.53% of the sample), Suceava (351 persons - representing 88.19% of the sample), Iasi (8 persons - representing 2.01% of the sample) and Neamt (13 persons - representing 3.27% of the sample).

The research has used a convenience sampling, the questionnaires being applied through snowball method by field operators, to a number of 10 persons each, at their own choice, resulting a total of 390 respondents, whose answers to the questionnaire were validated and interpreted. A number of 30 questionnaires were canceled, due to the extremely large number of non-answers they included. The sample is statistically representative for the investigated population, the margin of error being of +/ - 5%.

| **Geographical representativity of respondents** | |
|---|---|
| Botosani | 26 |
| Iasi | 8 |
| Suceava | 351 |
| Neamt | 13 |

266 female respondents (66.83% of the respondents) and 127 male respondents (33.17% of the respondents) were included in the sample.

| **Gender of respondents** | |
|---|---|
| Feminine | 266 |
| Masculine | 127 |
| Total | 393 |

Regarding the age of the respondents: 236 persons are between 18 and 25 years old, 93 persons are between 25 and 35 years old, 15 persons are between 35 and 55 years old, 15 persons are over 55 years old.

| **Age of respondents** | |
|---|---|
| a) Between 18-25 | 236 |
| b) Between 25-35 | 54 |
| c) Between 35-55 | 93 |
| d) Over 55 | 15 |

The structure of the sample according to the level of education of the questioned persons is: no studies 4 persons (1% of the respondents), average studies 218 persons (54.77% of the respondents), higher studies 144 persons (36.18% of respondents), postgraduate studies 27 people (6.8% of respondents), and 5 (1.25% of respondents among respondents) chose not to answer.

| **Level of education of the respondents** | |
|---|---|
| a) No education | 4 |
| b) Secondary education | 218 |
| c) University studies | 144 |
| d) Postgraduate studies | 27 |
| e) DN/DA | 5 |

Regarding the living area of the respondents: 173 persons (43.47% of the respondents) are from the rural area, 215 (56.53% of the respondents) are from the urban area and a number of 10 people chose not to answer this question.

| **Living area of the respondents** | |
|---|---|
| **a) Rural** | 173 |
| **b) Urban** | 215 |
| **d) DN/DA** | 10 |

The sample included 221 respondents who are pupils/students (55.53%), 66 persons (16.58% of the respondents) who are part of a public institution, 66 persons (16.58% of the respondents ) belonging to a private

company, 31 persons (7.8% of the respondents) who are unemployed and 14 persons who are retirees (3.51% of the respondents).

| **Working area of the respondents** | |
|---|---|
| **a) Pupil/Student** | 221 |
| **b) Public institution** | 66 |
| **c) Private institution** | 66 |
| **d) Unemployed** | 31 |
| **e) Retired** | 14 |

The thematic axes of the questionnaire aimed: the sources of public information on the functioning of the legal system, the perceived level of professionalism of the personnel in the legal system, the public perception on integrity and respect of the ethical standards in the legal system, the respect for the State of law in Romania, the trust in the component institutions of the legal system in Romania.

### *Limits of research*

The field survey operators had the possibility to choose the persons they wanted to administer the questionnaire to, preferring persons they knew, from the social environment close to theirs. They preferred to include members of their families and colleagues from work or study colleagues in the sample, due to easy access to these persons. This justifies the massive presence in the sample of the respondents from age group of 18-25 years, who were particularly selected by the student field operators, among their university colleagues or roommates. These limits do not, in our opinion, affect in a major way the credibility of the research, due to the level of homogeneity of the population investigated with regard to the opinion on justice, and the inclusion in the sample of a great diversity of categories of people, whose opinion may differ depending on the information channels used, the previous experience in communicating with various institutions and with people who are part of the legal system.

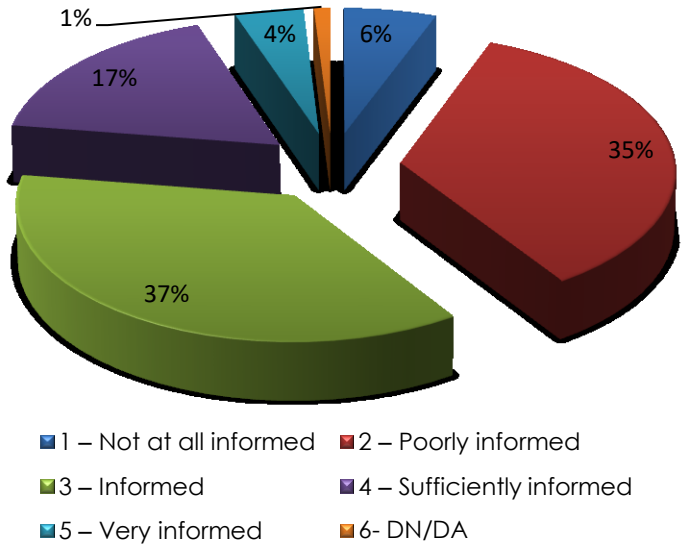
## Results of the research

### *Sources of public information on the functioning of the legal system*

| **# 1. How well informed do you consider yourself to be regarding the activity of the legal system (courts, prosecutor's offices)?** | |
|---|---|
| *1 – Not at all informed* | 23 |
| *2 – Poorly informed* | 139 |
| *3 – Informed* | 146 |

| | |
|---|---|
| *4 – Sufficiently informed* | 69 |
| *5 – Very informed* | 17 |
| *6- DN/DA* | 4 |

Concerning the information regarding the activity of the legal system (courts, prosecutors' offices), 23 respondents (5.78%) are not at all informed; 139 of them (34.92%) are poorly informed, while 146 persons (36.68%) are informed, and 69 persons (17.35% of the total) are sufficiently informed. A number of 17 persons (4.27% of the total) consider that they are very well informed, and 4 (representing 1% of the total) chose not to answer this question.




Although a small number of respondents declare to be completely uninformed about the activity of the legal system in Romania, which can be attributed to their disinterest in the subject and the refusal to get informed, the fact that an amount of 42% of the persons who answered the questionnaire declare themselves little or not at all informed show a rather negative perception about the importance of the legal system in the functioning of the Romanian society, but also a lack of transparency of the system that fails to make known its activity among the public opinion.

From the perspective of the social construction of justice, the lack of information of the citizens on its activity can be a signal of erosion of public trust in the legal system, which makes its activity little interesting for the public, or interesting in the negative way, when the media highlights system malfunctions, deviations from ethical standards, judicial errors - possibly

sanctioned by ECHR - or questionable relationships between representatives of the legal system and political actors who enjoy more or less the public trust.

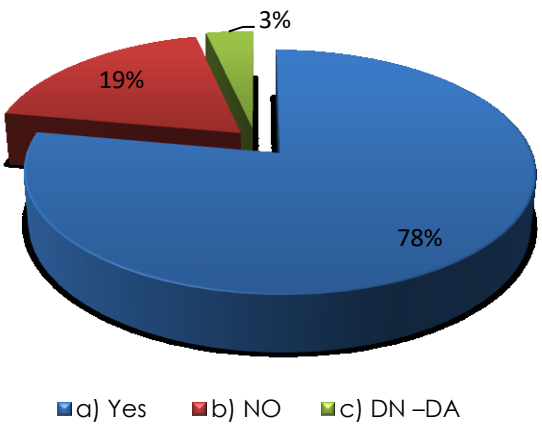
The relatively low public awareness of the effective activity of the legal system as well as of its functioning is a limitation of the very functioning of the state of law, as trust in justice is the central element of ensuring ”the rule of law" and the democracy by law.

The lack of information regarding the activity of the legal system, whether or not wanted by the interested parties, opens the way for the masses to accept some misinformation or fake news regarding the activity of the courts and prosecutor's offices.

Regarding the involvement in a civil, criminal, administrative litigation process etc., 310 respondents (78%) answered affirmatively to this question, 74 of the respondents (19%) answered negatively, while 14 persons (3% out of the total number of respondents), chose not to answer this question.

**# 2. Have you ever been involved in a civil, criminal, administrative litigation process etc.?**

| | |
|---|---|
| **a) Yes** | 310 |
| **b) No** | 74 |
| **c) DN –DA** | 14 |




The fact that 78% of the respondents had to deal directly with the Romanian legal system (courts or prosecutor's offices) is a particular feature of the sample that included persons with legal studies or law students.

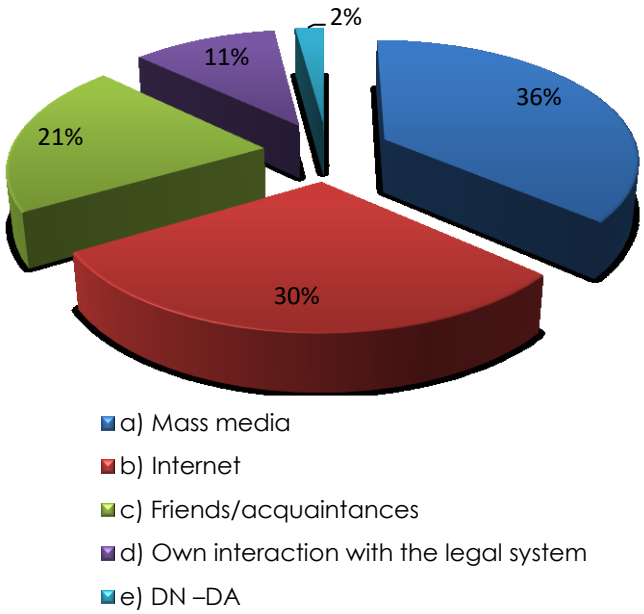
Although the questioned persons declare that they have had direct contacts with the Romanian legal system, however, a significant number

declare themselves to be little informed about the functioning of this system, which shows the difficulty of understanding the functioning of justice in Romania, even for the relatively well-informed public who have had the experience of direct contact with the courts and the prosecutor's offices.

Regarding the sources of information that they used to form their opinion on the activity of the courts in Romania, 188 respondents (36%) said that the media is their source of information, 156 of the respondents (30%) replied that the Internet is the source of information, 106 respondents (21%) replied that their friends and acquaintances are their source of information, while 56 persons (11% of the total number of respondents) replied that they have as source of information their own interaction with the legal system, and 11 respondents (2%) opted not to answer this question.

**# 3. What are the sources of information based on which you formed your opinion regarding the activity of the Romanian courts?**

| | |
|---|---|
| **a) Mass media** | **188** |
| **b) Internet** | **156** |
| **c) Friends/acquaintances** | **106** |
| **d) Own interaction with the legal system** | **56** |
| **e) DN –DA** | 11 |




The role of the media, written, audio-visual and online one (Bicen, & Taspolat, 2019; Dechev, Galabov, & Georgieva-Trifonova, 2019), is evident in the construction of the public image of the legal system. The public

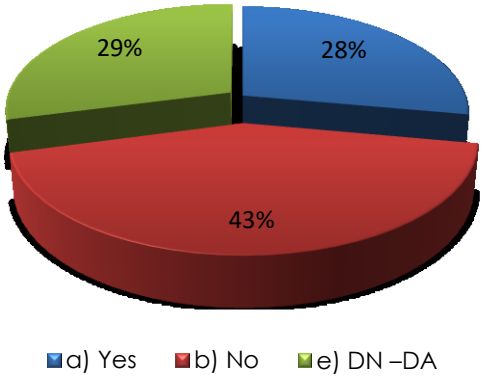
communication made by the prosecutor's offices and courts should therefore counteract the fake news about justice as well as the distorted information coming from individuals or interest groups that seek to diminish the public trust in justice and thereby to counteract the political/ economic/ social interferences in the activity of the legal system.

Starting from the answers to the three previous questions we can state the necessity of elaboration, by the Ministry of Justice (Budevici-Puiu, 2020; Chaikovska, Holovach, Melnyk, & Kuzo, 2020; Gila, 2019; Lazorenko, Zabolotna, & Magas, 2019; Zamfir, 2019), of a comprehensive program of informing citizens about the structure and functioning of the legal system in our country or, more extensively, of a juridical education program that will inform citizens on the role of justice in democratic society but also on citizens' rights in relation to the legal system.

As for the information regarding the debates in the public space upon the existence of some secret protocols between the legal system and S.R.I. (Romanian Intelligence Service) regarding the use as evidence in criminal cases - other than those related to national security - of telephone and environmental records made by S.R.I., for 110 respondents (28% of the total) the answer was positive, 170 respondents (43% out of the total) answered negatively and 115 persons (representing 29% of the total respondents) preferred not to answer.

**# 4. Are you informed about the debates in the public space regarding the existence of secret protocols between the legal system and the S.R.I. regarding the use as evidence in criminal cases - other than those regarding national security - of telephone and environmental recordings made by S.R.I.?**

| | |
|---|---|
| **a) Yes** | **110** |
| **b) No** | **170** |
| **e) DN –DA** | **115** |



In order to be able to verify *in concreto* the degree of information of the respondents regarding the activity of the legal system, as well as the importance of the sources of information, we formulated a question on a broadly public disputed topic during 2019 which had caused pro and against reactions both in the media and in the civil society and had a reverberation at court decision level - including the constitutional litigation court - namely the existence of secret protocols between S.R.I. (the Romanian Intelligence Service) and the prosecutors' offices, including the one attached to the High Court of Cassation and Justice, which allowed the use of S.R.I. interceptions, at the request of prosecutor's offices, in ordinary criminal proceedings. In Romania, the prosecutor's offices did not have their own interception systems and appealed, according to the law, to the interceptions made by S.R.I. based on the mandates issued by the courts.

The question of validity of these interceptions was raised regarding the respect of the civil rights/liberties of the intercepted persons but also of the possible illegitimate extension of the interception warrant - issued on the suspicion of a certain criminal fact and subsequently extended on any possible fact of the perpetrator, without the documentation of the criminal fact on the basis of a legal interception warrant. In the opinion of those who criticize these protocols, this illegitimately extends the power of S.R.I. over the legal system, but also the control of S.R.I. on the privacy of citizens through illegal interceptions.

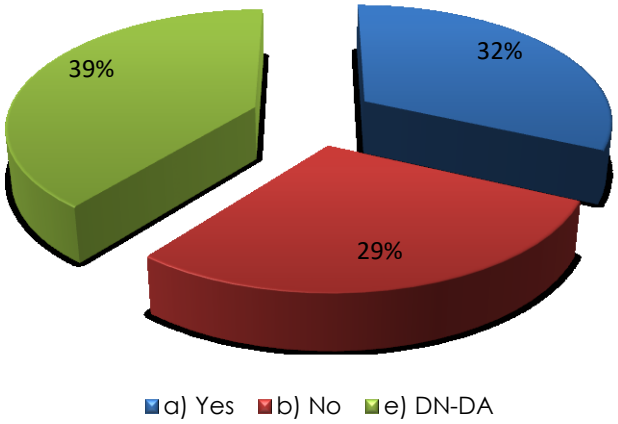
Only a small percentage of the respondents stated that they are up to date with these protocols and have their own opinion on them (28%), while 43% of the respondents have no knowledge about them. The number of people who have declared themselves uninformed can be correlated with the number of those who declare that they have little or no knowledge about the functioning of the legal system, which allows us to consider that there is an internal consistency of the answers offered to the questionnaire and, therefore, to trust the validity of the research tool. It is worth noting that 25% of the total respondents preferred not to answer, which shows a strong reservation to this topic amongst the public.

Regarding the opinion on the secret protocols between the different courts and the S.R.I., the respondents were asked whether or not they consider that these protocols led to the violation of the right of defense of some defendants who were convicted based on the evidences (telephone and environmental interceptions) provided by S.R.I. 64 respondents (representing 32% of the total), answered positively, 58 respondents (representing 29% of the total), answered negatively, 79 respondents

(representing 39% of the total) chose not to answer this question, but there were also people who did not fill any field on this question.

**# 5. If the answer to the above question is YES, do you think that the secret protocols between the different courts and the S.R.I. led to the violation of the right of defense of some defendants who were convicted based on the evidences (telephone and environmental interceptions) provided by S.R.I.?**

| | |
|---|---|
| **a) Yes** | **64** |
| **b) No** | **58** |
| **e) DN-DA** | **79** |



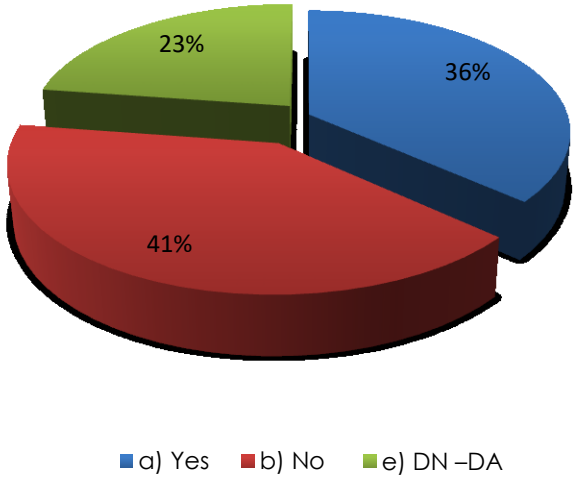

### *Respect for the state of law in Romania*

In modern society, the concept of justice is closely linked to the rule of law. The procedural guarantees restrict the arbitrariness of the court judgments and allow the concrete exercise of the right of defense, ultimately of the right to a fair trial.

Regarding the respect in full of the right to defense of the persons judged for criminal acts, in Romania, 143 persons (36% of the total respondents) considered that in Romania the right to defense of the persons judged for criminal acts is respected and, respectively, 160 persons (41% of the total respondents) answered negatively, while 89 persons (23% of the total respondents) did not answer this question.

**# 6. Do you consider that in Romania the right to defense of persons prosecuted for criminal acts is fully respected?**

| | |
|---|---|
| **a) Yes** | **143** |
| **b) No** | **160** |
| **e) DN –DA** | **89** |

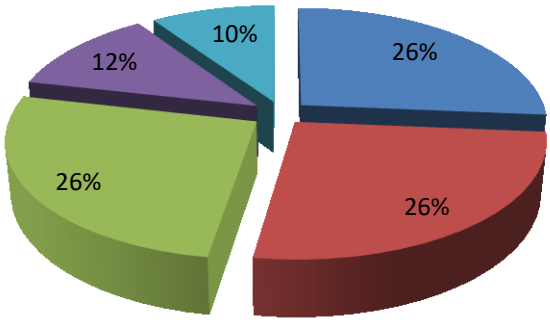



It is found that a larger number of respondents considered that the right to defense and implicitly to a fair trial is rather not respected. The negative answers, together with the non-answers indicate a high degree of mistrust in the legal system.

108 respondents (representing 26% of the total) agree with the assertion that the presumption of innocence consists in the assumption that any person is not guilty (innocent) until the sentence has been delivered, 107 people (26% of the total) agree with the statement as that every person is considered not guilty until his guilt is established by a final criminal decision, also 107 people (26% of the total) agree with the assertion that the presumption of innocence is directly linked to the principles of finding the truth, of fairness of the criminal trial and of guaranteeing human dignity and freedom, 49 persons (12% of the total) agree with the statement that the non-observance of the presumption of innocence of the person violates his dignity and can be considered an abuse of the person, and 39 persons (10% of the total) did not answer this question. To be noted that the answers to this question were multiple-choice, with one respondent being able to choose one or more variants of the answer.

**# 7. Which of the following statements regarding the presumption of innocence do you agree with?**

| | |
|---|---|
| ***a) The presumption of innocence consists in the assumption that any person is not guilty (innocent) until a sentence is given*** | **108** |
| ***b) Any person is considered innocent until his guilt is established by a final criminal decision*** | **107** |
| ***c) The presumption of innocence is directly linked to the principles of finding the truth, of fairness of the criminal process and of guaranteeing human dignity and freedom*** | **107** |
| ***d) Failure to respect the presumption of innocence of the person violates his dignity and can be considered an abuse on the person*** | **49** |
| ***e)DN/DA*** | **39** |




- a) The presumption of innocence consists in the assumption that any person is not guilty (innocent) until a sentence is given
- b) Any person is considered innocent until his guilt is established by a final criminal decision
- c) The presumption of innocence is directly linked to the principles of finding the truth, of fairness of the criminal process and of guaranteeing human dignity and freedom
- d) Failure to respect the presumption of innocence of the person violates his dignity and can be considered an abuse on the person
- e)DN/DA

In order to see how familiar the respondents are with a series of concepts specific to the legal system, a series of statements regarding the meaning attributed to the presumption of innocence were formulated, asking the respondents to express their agreement to the statement enounced in the questionnaire and its concordance with the definition that

the subject operates with, when considering the concept of presumption of innocence.

The presumption of innocence is understood by more than half of the respondents as the assumption that a person is innocent or should be considered innocent until a court makes a final judgment on his/her innocence. About one third of the respondents consider the presumption of innocence important for finding the truth but also for the fairness of the criminal process and for guaranteeing human freedom and dignity.

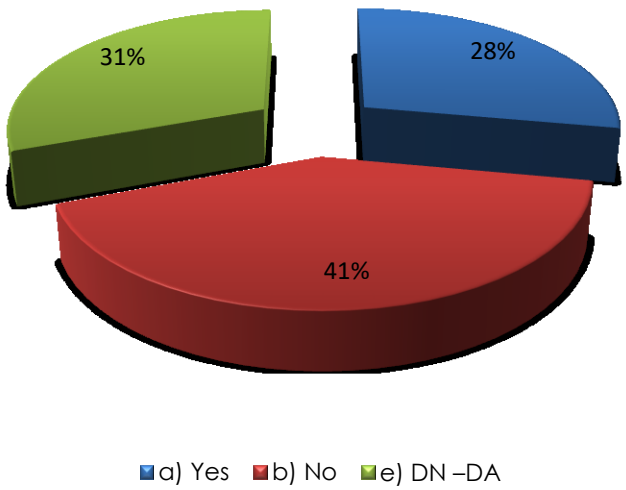
It is important to note the small number of respondents who have shown that violating the presumption of innocence is an abuse, being a detriment to the person's dignity. We explain the small number of respondents who chose this variant by the fact that, although the question was multiple answers, having the possibility to opt for several answers considered valid, most of the respondents opted for only one answer - the one that in their opinion was the most suitable to their operational definition of the presumption of innocence. Thus we can consider that although the subjects know the implications of the non-observance of the presumption of innocence, these implications are not directly integrated into their own definition that they operate with when they take into consideration the concept of presumption of innocence. This is explained by the fact that the non-observance of the presumption of innocence is not seen as a striking situation in the Romanian legal system and that, although this situation may arise, it does not affect the integrity of the justice system to a great extent.

This assumption is not consistent with the answers to the following question, 41% of the respondents disagreeing with the fact that this principle is fully respected in Romania, while 31% of the respondents did not know what to answer or avoided the answer.

Regarding the total respect in Romania of the presumption of innocence of the persons judged for criminal acts, 110 respondents (28% of the total respondents) consider that this presumption is respected, while 164 respondents (41% of the total respondents) consider that the presumption is not respected. A particularly large number of non-responses was recorded – 121, accounting for 31% of the answers.

**# 8. Do you consider that, in Romania, the presumption of innocence of the persons judged for criminal acts is fully respected?**

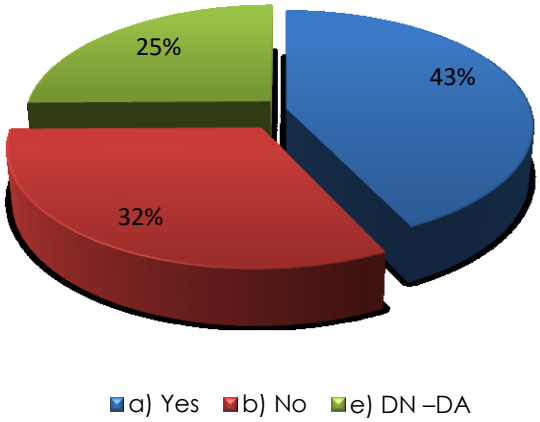
| | |
|---|---|
| **a) Yes** | **110** |
| **b) No** | **164** |
| **e) DN –DA** | **121** |




We can therefore consider that, in the respondents' opinion, although the principle of presumption of innocence is not respected in most cases, however, the violations are not so serious as to alter the subjective definition of the concept of presumption of innocence itself. The respondents thus make a distinction between the presumption of innocence as an abstract concept, on which the modern legal system is based as well as its application in the concrete situation of the Romanian society, which is a deficient one (in the application of the concept). As such, the relative lack of confidence in the legal system expressed in the answers to the above questions, refers rather to the compliance to the legislation of the representatives of the legal system, than to the system itself or to the normative framework that regulates it. Regarding the opinion on the fact that the legal system in Romania acts in the service of the citizen and the community, 168 respondents (representing 43% of the total), reckoned affirmatively, 126 respondents (representing 32% of the total), answered negatively, and "DN (Don't Know) / DA (Don't Answer)" was the choice of 99 respondents (representing 25% of the total), but there were also respondents who did not fill any field on this question.

**# 9. Do you consider that the legal system in Romania acts in the service of the citizen and the community?**

| | |
|---|---|
| **a) Yes** | **168** |
| **b) No** | **126** |
| **e) DN –DA** | **99** |




The legitimacy of the legal system occurs, for the citizen, when he has the subjective perception that justice defends his rights and those of the community he is part of. The perception of a justice detached from the needs of the citizen, which is concerned only with the legality, without taking into account the subjectivity and the particularities of each situation deduced to the court judgement (presented in court) makes the citizen to distance himself from the idea of a legal system, which does not derive directly from the needs of the community but from a legal fiction called law. When, on the other hand, citizens believe that the law, even if in a certain situation unfavorable to them, defends their interests in a real way, citizens have the tendency to voluntarily comply with the law and to increase the acceptance of the court judgments that are seen to be in conformity with the law.

When citizens consider that the legal system creates inequities, favoring a certain social category or a certain group of people, whether they are representatives of the political system, of the economical, or the juridical itself, the legal system is partially delegitimated, appearing various forms of public disproof of the system or of his representatives.

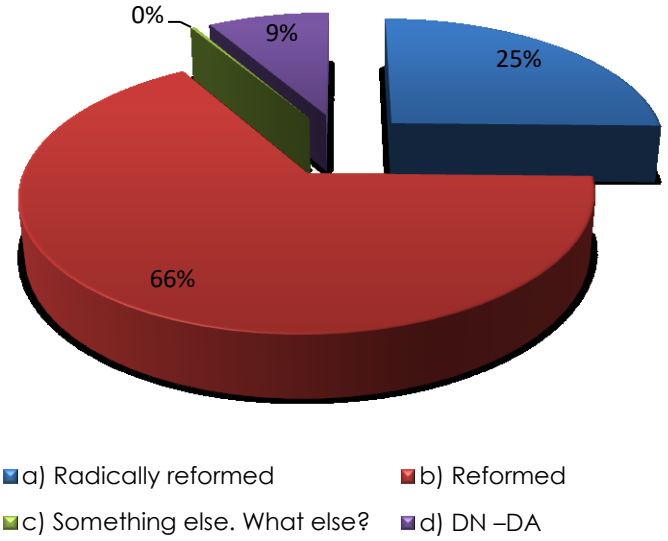
Although most of the respondents of our inquiry argued that justice in Romania acts on behalf of the citizen, however, combining the persons who answered negatively with those who avoided or did not know the answer, it results a 57% who do not have a firm belief in the activity of justice serving the citizen or have a contrary opinion. Of course, when it is

considered *in abstracto* that justice serves only the law, distrust in justice on the basis of its functioning in the service of citizen is devoid of purpose. When, on the other hand, mistrust stems from suspicions - maintained more or less by various media channels – such as justice is actually acting in the interest of groups of citizens who thus become above the law, the mistrust expressed can be correlated with the perception of existence of corruption at different levels of the system.

Regarding the opinion on what should happen to the legal system in Romania, 100 respondents (representing 25% of the total), replied that it should be radically reformed, 261 respondents (66% of the total) answered that the system should be strengthened, 1 respondent replied that the system should be reformed, but without special pensions, and 33 respondents (9% of the total) chose not to answer this question, but there were also respondents who did not fill any field to this question.

**# 10. You consider that the Romanian legal system should be:**

| | |
|---|---|
| **a) Radically reformed** | **100** |
| **b) Reformed** | **261** |
| **c) Something else. What else?** | **1** |
| **d) DN –DA** | **33** |




The fact that most of the respondents, over 66% of them, consider that the system must be strengthened - in the sense of strengthening its credibility, regarding the system's ability to ensure rule of law in Romania - makes us consider that public opinion is favorable to a credible and

powerful legal system and not to a permanent reform of the frameworks of functioning of justice, especially in the context where the politic questions the correctness of justice in our country.

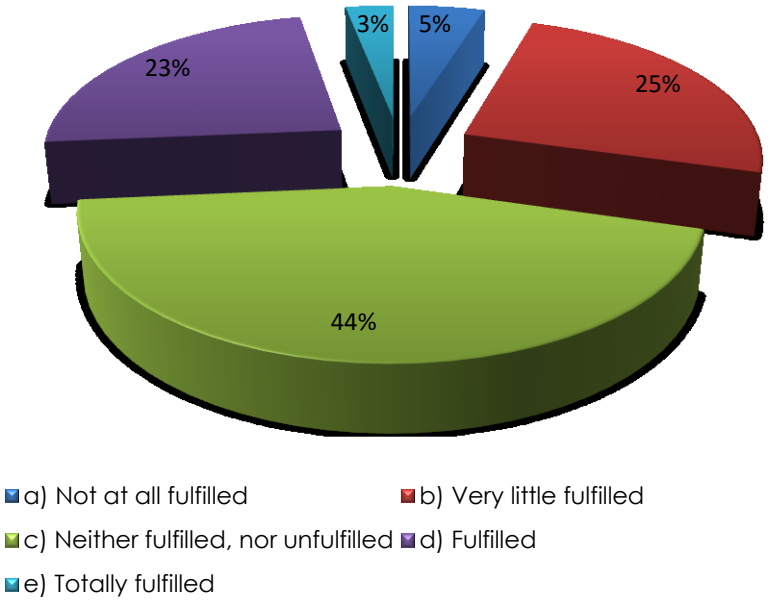
The issue of special pensions is raised by a single person, but this topic, although common on the public agenda lately, was formulated expressly by the respondent, which is not an option per se included in the content of the questionnaire. The fact that only 25% of the respondents consider that the legal system should be radically reformed shows that the problems perceived as existing in the system concern its effective functioning rather than the normative frameworks that constitute it. This percentage of people who see the radical reform of the system as necessary can be understood as a reaction to the particularly frequent changes of legislation that have taken place in recent years in Romania, both at the level of civil and especially criminal law, changes that make difficult to predict the functioning and the application of rules. Also, the lack of uniformity in the application of law that appears between similar courts in different areas of the country raises for the interested parties incertitudes regarding the correct approach of the social practice regulated by legal norms.

Strengthening the system, but also changing it, could first of all be aimed at a normative continuity at least with regard to fundamental civil or criminal law, as well as at simplifying the procedures so that they are accessible to the common litigator.

Regarding the assessment of the degree of fulfillment by Romania of the criteria that make it to be considered state of law (where the rule of law is ensured), 19 respondents (that is 5% of the total respondents) consider that these criteria are not met at all, a number of 97 respondents (25% of the total respondents) state that these criteria are poorly fulfilled, 174 of the respondents (44% of the total respondents) consider that they are neither fulfilled nor unfulfilled, while 92 persons (23% of the total respondents) consider that the criteria are fulfilled and only 12 respondents (3% of the total) consider that they are very fulfilled. Only 4 non-responses were recorded.

**# 11. On a scale from 1 to 5, where 1 means not at all, and 5 means totally, how do you assess the degree of fulfillment by Romania of the criteria for being considered state of law (where the rule of law is ensured)?**

| | |
|---|---|
| ***a) Not at all fulfilled*** | **19** |
| ***b) Very little fulfilled*** | **97** |
| ***c) Neither fulfilled, nor unfulfilled*** | **174** |
| ***d) Fulfilled*** | **92** |
| ***e) Totally fulfilled*** | **12** |




We note that most of the respondents consider that in Romania the criteria for being a functional state of law are met only partially. We observe the relative symmetry between those who consider that these criteria are totally fulfilled and not at all fulfilled, respectively partially fulfilled or little fulfilled, having here a Gaussian distribution of confidence in Romania's ability to be a functional state of law.

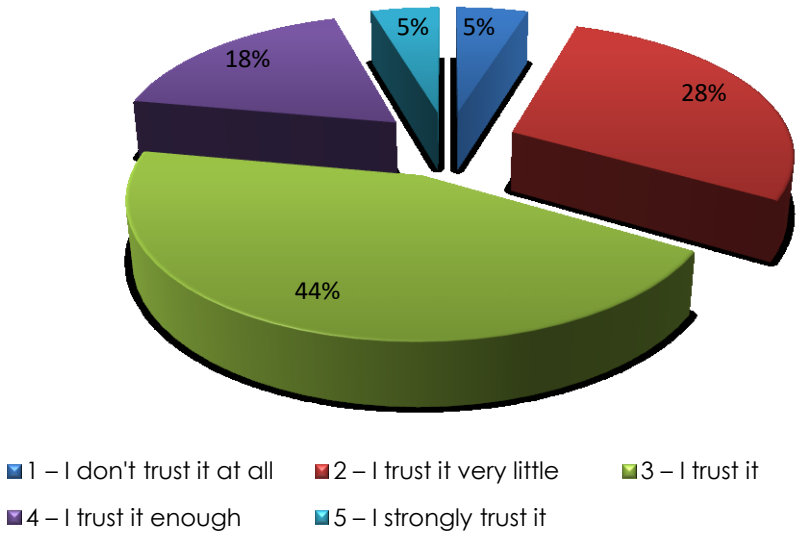
### *Trust in the component institutions of the legal system in Romania*

An important component of trust in the national legal system is trust in the component institutions of this system. During this work we measured, together with the general trust in the legal system, also the trust in the Constitutional Court as negative legislator. According to the media, public confidence in this institution could be weakened by a series of controversial decisions, more precisely by the way these decisions were presented in the public space and commented on by the media.

Regarding the trust in the Constitutional Court as court invested with the control of the constitutionality of laws, 19 persons (representing 5% of the respondents), replied that they don't trust it at all, 112 persons (representing 28% of the respondents) replied that they trust it very little, 175 persons (representing 44% of the respondents) replied that they trust it, 69 persons (representing 18% of the respondents) replied that they trust it enough , 18 persons (representing 5% of the respondents) replied that they trust it strongly, and 5 persons did not respond.

**# 12. How much trust do you have in the Constitutional Court as court invested with the control of the constitutionality of laws?**

| | |
|---|---|
| ***1 – I don't trust it at all*** | **19** |
| ***2 – I trust it very little*** | **112** |
| ***3 – I trust it*** | **175** |
| ***4 – I trust it enough*** | **69** |
| ***5 – I strongly trust it*** | **18** |

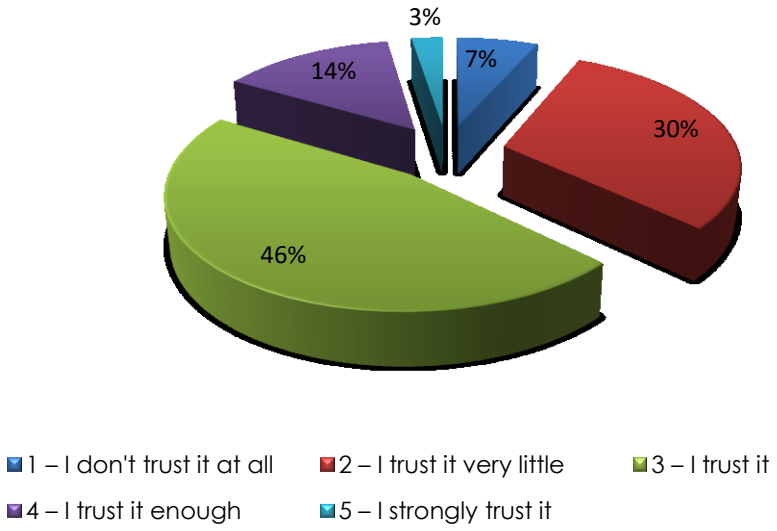



The Constitutional Court enjoys the trust of 62% of the respondents, the others expressing different degrees of mistrust. This percentage is similar to that of the questioned persons who have expressed their trust - on different degrees - in the Romanian legal system as a whole.

Regarding the trust in justice in Romania 26 persons (representing 7% of the respondents), answered that they don't trust it at all, 120 persons (30% of the respondents) replied that they trust it very little, 183 persons (46% of the respondents) answered that they trust it, 55 persons (14% of the respondents) replied that they trust it enough, 10 persons (3% of the

respondents) replied that they strongly trust it, and 5 respondents did not express an answer.

| # 13. How much do you trust the legal system in Romania? | |
|---|---|
| *1 – I don't trust it at all* | 26 |
| *2 – I trust it very little* | 120 |
| *3 – I trust it* | 183 |
| *4 – I trust it enough* | 55 |
| *5 – I strongly trust it* | 10 |

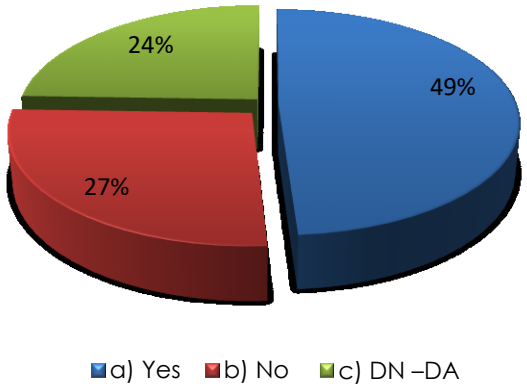



### *Level of professionalism / including the observance of professional ethical standards - perceived by the personnel of the legal system*

Trust in the professionals of the legal system has as starting point the perception of professional integrity and exemplary morality that must be manifested by magistrates. Regarding the integrity of magistrates in Romania 194 persons (representing 49% of the respondents) consider that the magistrates are morally and professionally integral persons, 105 persons (27% of the respondents) answered that the magistrates are not integral persons, 97 people (24% of the respondents) opted for the DN / DA answer, and 3 persons did not express any answer.

**#14. Do you consider that magistrates in Romania are moral and professional persons?**

| | |
|---|---|
| **a) Yes** | **194** |
| **b) No** | **105** |
| **c) DN –DA** | **97** |




Magistrates are seen as morally integral persons and this leads to the construction of an independent and fair justice. The magistrate's independence is a particular form of exercising his own autonomy by the subject invested with the function of magistrate. He must have the ability to make decisions in accordance with his own conscience and with his own interpretation of the law and of the case he is invested with. The application of law is therefore a rational fact, and the magistrate is called to exercise his practical rationality towards the concerned case (Sandu & Căbălău, 2014).

The same independence principle understood in the sense of autonomy made the Romanian legislator prohibit judges to belong to trade unions, political parties, or to conduct economic activities other than didactic one (Luca & Bulancea, 2008, p. 68). The common understanding of the term independence refers to "the situation of a person who judges things and acts independently, not being influenced by the others" (Popa, 2007). Literature in the field defines independence as "attribute of the function that allows the judge to act in the accomplishment of the legal act and, above all, to decide, only on the basis of law and his own conscience, without any subordination or influence" (Pivniceru & Luca, 2008).

The magistrate's independence is not reflected only in the relations with other powers of the state, or with other subjects of the economic and social life, but also in a relation with parts of his own judicial system and democratic mechanisms of organizing the magistracy and, at the same time, towards parties involved in the procedures.

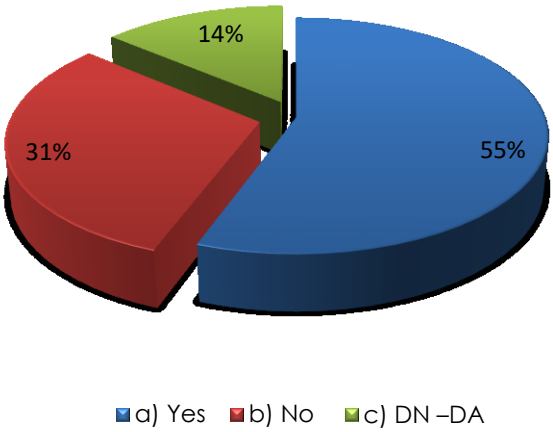
Another dimension of the magistrate's independence is the obligation of professional competence and sound practice. The principle of impartiality is seen in close correlation with that of independence of justice, independence being a value related to the context of making justice, while impartiality is related to the attitude of the magistrate during the process of justice and his relation to the parties involved. The term impartiality - viewed in the sense of constituting a fair trial - is regarded as a guarantee of litigators' trust in magistrates and in state institutions involved in the act of justice. Impartiality is the subjectivized form of independence, it describes an attitude that the magistrate must manifest in the course of performing his professional duties while independence represents the framework within which the judge can effectively and impartially exercise his professional duties (Sandu, & Căbălău, 2014).

Impartiality is a requirement derived from the right to a fair trial as part of fundamental human rights. The European Convention on Human Rights shows the need for impartiality of the court in order to respect the right to a fair trial (cf. Article 6 of the Convention). The distinction is made between subjective and objective impartiality. Integrity is a moral virtue of being incorruptible and manifesting in all situations one's honesty and probity. In professional ethics, integrity is mainly correlated with incorruptibility. Integrity is a component of the dignity of the magistrate, who has a moral obligation and a professional responsibility towards the trust in the legal system that the public must show. By the obligation of the magistrate to have a faultless conduct, the author understands both the public and the private lives of the judge (Sandu, & Căbălău, 2014).

Regarding the non-observance of the integrity standards within the magistrates' activity, 221 persons (representing 55% of the respondents) replied that they have heard of such cases, 122 persons (31% of the respondents) replied that they have not heard of such cases, 55 people (14% of the respondents) opted for the DN / DA answer.

**# 15. Have you heard of cases of magistrates who performed their activity with non-observance of the integrity standards specific to the profession? (bribery, favoring the offender, refusal to act etc.)?**

| | |
|---|---|
| **a) Yes** | **221** |
| **b) No** | **122** |
| **c) DN –DA** | **55** |

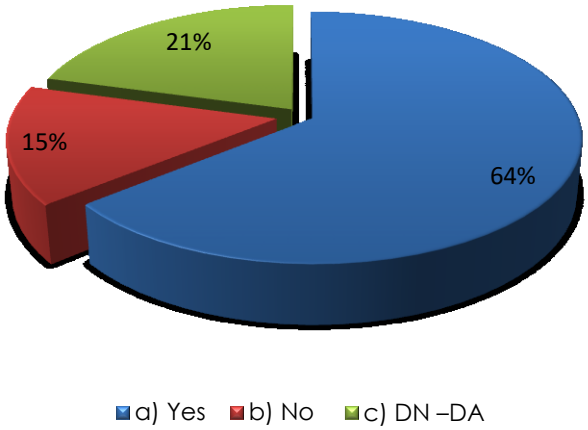



A series of debates have arisen on public agenda regarding the necessity of prosecuting magistrates who commit acts of corruption. One of the most controversial normative projects concerns the establishment of a special section - prosecutor's office - to deal with the investigation of crimes committed by magistrates. The existence of this prosecutor's office has been contested by many magistrates, being considered that it undermines the magistrates' independence and it subordinates the justice act to the political decision-makers.

Regarding the establishment of a special section for investigating the magistrates (suspected of committing criminal offenses) that could reduce the risk of corruption occurring among magistrates, 198 respondents (64% of the total respondents) stated that they considered necessary the establishment of such a section, while 47 respondents (15% of the total) said they do not consider it necessary and 64 respondents (21% of the total) chose the answer option NS / NR. 89 persons didn't opt for any of the answer variants.

**#16. If you answered YES to the previous question, do you consider that setting up a special investigative section for magistrates (suspected of committing criminal offenses) could reduce the risk of corruption occurring among magistrates?**

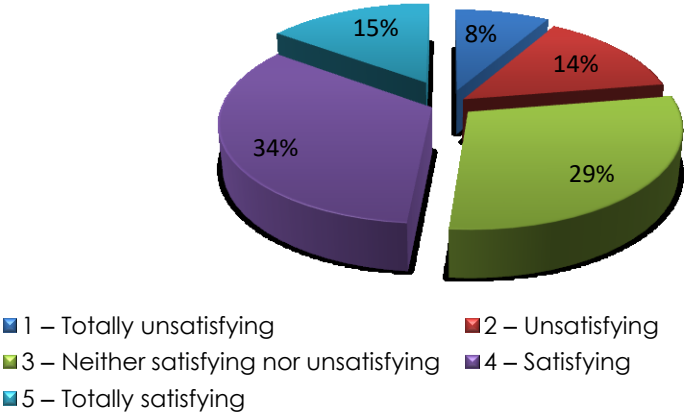
| | |
|---|---|
| **a) Yes** | **198** |
| **b) No** | **47** |
| **c) DN –DA** | **64** |




Regarding the level of professionalism of the lawyers who represented the respondents, 9 respondents (8% of the total) are totally dissatisfied with the professionalism level of the lawyer who represented them, 15 respondents (14% of the total) are dissatisfied with the professionalism level of the lawyer who represented them, while 31 persons (29% of the total number of respondents) declared themselves neither satisfied nor dissatisfied with the level of professionalism of the lawyer who represented them and 36 persons (34% of the total ) are satisfied by the level of professionalism of the lawyer who represented them. A total of 16 persons (15% of the total) are completely satisfied with the level of professionalism of the lawyer who represented them.

**#17. If you answered YES to the previous question, what was the level of professionalism of the lawyer who represented you?**

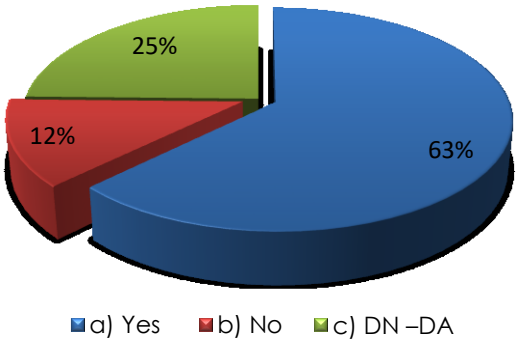
| | |
|---|---|
| ***1 – Totally unsatisfying*** | **9** |
| ***2 – Unsatisfying*** | **15** |
| ***3 – Neither satisfying nor unsatisfying*** | **31** |
| ***4 – Satisfying*** | **36** |
| ***5 – Totally satisfying*** | **16** |




Regarding the level of professional training of the persons in the legal system, 249 respondents (63% of the total) consider that these persons are well trained, 50 respondents (12% of the total) consider that they are not well trained, while 98 respondents (25% of the total) opted for the answer version DN / DA.

**#18. Do you consider that the persons who carry out their activity in the legal system (magistrates, lawyers, clerks etc.) are professionally well trained?**

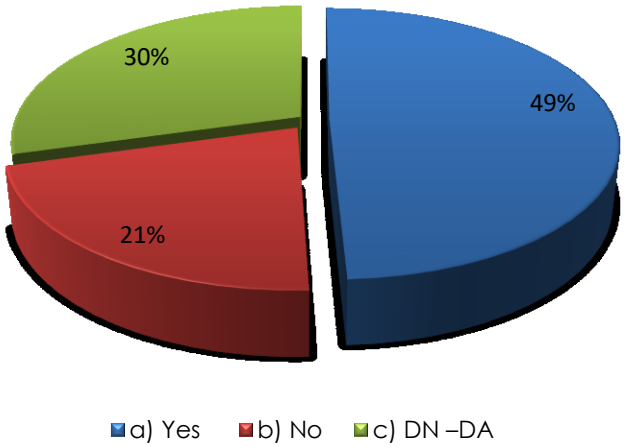
| | |
|---|---|
| **a) Yes** | **249** |
| **b) No** | **50** |
| **c) DN –DA** | **98** |



Regarding the occurrence of discrimination in the professional activity of magistrates, 193 respondents (49% of the total) consider that such situations appear, 83 respondents (21% of the total) consider that no such situations appear, and 115 respondents (30 % of the total number) chose the answer option DN / DA, while 7 persons didn't fill any field to this question.

**#19. Do you consider that in the professional activity of magistrates are there situations of discrimination which occur?**

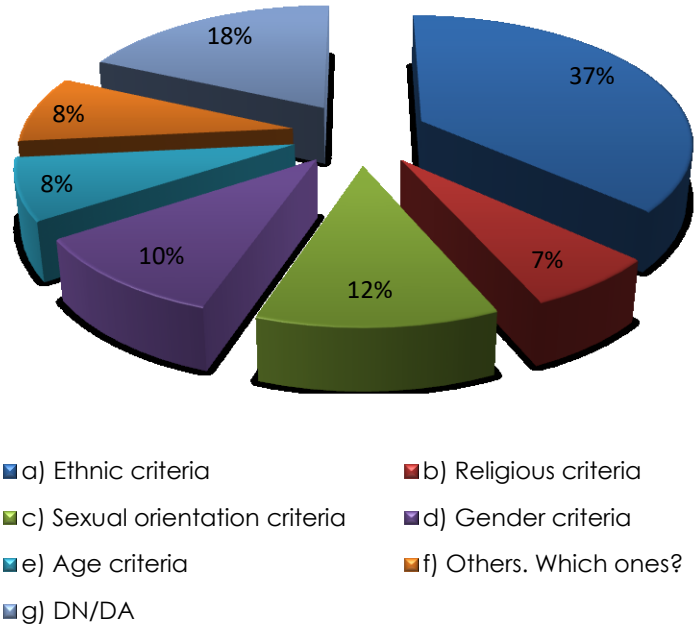
| | |
|---|---|
| **a) Yes** | **193** |
| **b) No** | **83** |
| **c) DN –DA** | **115** |




Regarding the most frequent form of discrimination occurred in the activity of Romanian courts, 105 persons (representing 37% of the respondents) stated that the ethnic criterion belongs to the category of the most common forms of discrimination, 19 persons (7% from the respondents) consider that the religious criterion is part of the most common forms of discrimination, 34 persons (12% of the respondents) stated that the criterion of sexual orientation belongs to the category of the most common forms of discrimination, followed by the gender criterion chosen by 30 persons (representing 10% of the respondents), while 22 persons (representing 8% of the respondents) consider that the age criterion is part of the most common forms of discrimination, 24 persons (8% of the respondents) chose other criteria such as social status, political criterion, bribery, kinship, friendship, influence area, positive discrimination, and 52 persons (representing 18% of the respondents) opted for the answer variant DN / DA.

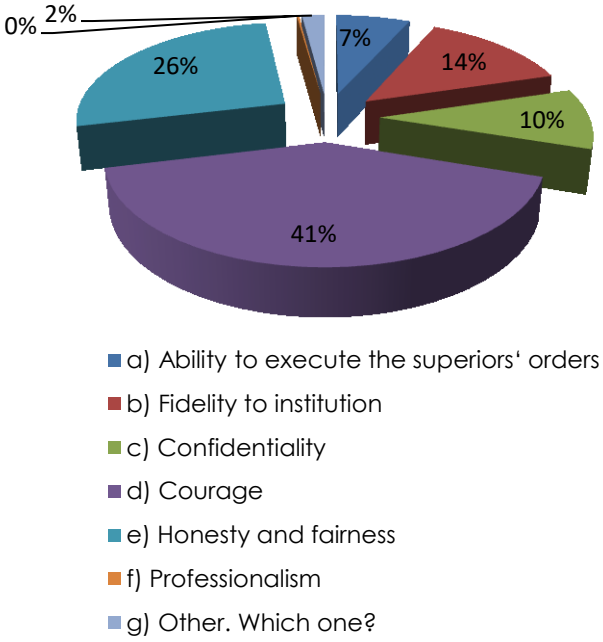
**#20. If you answered YES to the previous question, please state which you consider to be the most common form of discrimination in the activity of Romanian courts**

| | |
|---|---|
| ***a) Ethnic criteria*** | **105** |
| ***b) Religious criteria*** | **19** |
| ***c) Sexual orientation criteria*** | **34** |
| ***d) Gender criteria*** | **30** |
| ***e) Age criteria*** | **22** |
| ***f) Other. Which one?*** | **24** |
| ***g) DN/DA*** | **52** |




Regarding the question on the most important quality of a professional in the law field, 36 persons (representing 7% of the respondents) stated that the most important quality of a professional in this field is the ability to execute the orders of his superiors, 73 persons (14% of respondents) believe that fidelity to institution is the most important quality, 52 persons (10% of respondents), stated that the most important quality of a professional in the law field is confidentiality, courage was chosen by 221 persons (representing 41% of the respondents) as the most important quality, followed by honesty and fairness which were chosen by 142 persons (26% of the respondents) , 11 persons (2% of the total) chose "other qualities" variant but did not express an answer and 1 respondent had the opinion that professionalism is the most important quality of a professional in the law field. We also specify that the question had multiple answers.

| #21. In your opinion, the most important quality of a professional in the law field is: | |
|---|---|
| *a) Ability to execute the superiors' orders* | 36 |
| *b) Fidelity to institution* | 73 |
| *c) Confidentiality* | 52 |
| *d) Courage* | 221 |
| *e) Honesty and fairness* | 142 |
| *f) Professionalism* | 1 |
| *g) Other. Which one?* | 11 |




## Conclusions

The discourse on justice is profoundly influenced by a series of controversies that exist on public agenda, which all come to undermine public trust in justice.

As a result of the research, we consider that in the investigated population there is a high degree of trust in justice, but this is strongly eroded by the perception of the occurrence of corruption inside the legal system. Functioning of justice is particularly important for functioning of the state of law, the respondents perceiving a direct correlation between the two dimensions of public life.

It was emphasized that the expectations of the interested parties from the legal system are primarily concerned with the ethical component of magistrates' activity but also the activity of other professionals in the field of

justice. Also, the litigators are waiting for justice to act in the interest of the citizen, whose rights it should defend.

**Acknowledgement**

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