

“PRINCIPLES OF BUDGET CONSTRUCTION AND EXECUTION FOR THE COURTS”

WELCOMING SPEECH AT THE OPENING OF THE “PRINCIPLES OF BUDGET CONSTRUCTION AND EXECUTION FOR THE COURTS” CONFERENCE ORGANIZED IN COOPERATION WITH THE CENTER FOR INSTITUTIONAL ANALYSIS AND DEVELOPMENT- CADI ELEUTHERIA (BUCHAREST, 5 DECEMBER 2011)

It is a great pleasure for me to welcome you to today's conference on behalf of the Rule of Law Program South East Europe of the Konrad Adenauer Foundation. [...]

I am very happy that we could co-organize this event together with the Centre for Institutional Analysis and Development which has been a partner of our foundation for many years.

It is a great honour for all of us that Minister Predoiu is with us today. We all know that Justice Reform is your top and key priority and we are more than pleased that you attend this conference.

But let me also thank all the other experts that will take the floor today and let me thank you who are attending this event thus showing your interest in

the subject that we are discussing today.

It will surprise nobody in this room that budget issues are a hot topic in Germany, too, also in regard of the judiciary. Also in my country many people complain that courts are undermanned, underfunded and proceedings take too long. In times of tight budgets every Minister has to fight for money, so what does a German Minister of Justice -and we as a federal state have seventeen of them - do to convince the Council of Ministers and Parliament that they have to allocate sufficient money to his ministry?

He will definitely always use two arguments. Firstly like in Romania the German Constitution, the Basic Law, commits the state to respect the principles of the rule of law. And this does not only

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mean free recourse to the courts but it implies that you have the right to get a judgment from a court within reasonable time. Without such a law enforcement guarantee there is no rule of law. So the state cannot grant or deny jurisdiction according to the overall budget situation, there are constitutional limits that oblige the state to uphold a working court system.

The second argument is an economic one. Whether you are a big entrepreneur or a craftsman you will sometimes have to fight for your rights and very often for your money in the courtroom. If you cannot expect to get a judgment within reasonable time you will probably not chose that land or court district if you plan to invest. A court system that does not work properly means less investment, less jobs, less revenue for the state and more personal tragedies.

Integrity, professionalism and good organization are the prerequisites of a well working court system - this is true for any country. If I am talking about the situation in Germany -which you will probably expect me to do as someone who works for a German NGO-I am not doing so because I think you should do everything the way we are doing it in Germany. One solution does not fit all. But it is always beneficial for both sides to share some experience and information.

In Germany we do not have a self-governing judiciary. The Basic Law does not guarantee an independent judiciary, it guarantees that judges shall be independent and subject only to the law. So the administration of the Justice budget is always under the supervision of the respective Ministry of Justice. However, over the past years, the system has become more and more decentralized and more flexible. Courts and other justice

institutions do not only contribute to the drafting of a budget by informing the ministry in detail what they think they will need next year they also have got more freedom in the administration of the budget once it has been allocated to them, of course within the limits of the budget laws. So the court president and the presidencies of a court -that is a body elected by the judges of the court- now have more powers.

This implies more responsibility but also an obligation to consider future development. Flexibility must have its limits if you want to have a systematic development of the judiciary. Expenditure above a certain limit will only become part of a budget if it has previously become part of what we call „Mittelfristige Finanzplanung“, medium-term budget planning and medium-term means five years.

Increasing the efficiency of the courts is a major challenge in Germany, too. E-Justice is a magic word in this context but it will take another few years until it will becomes reality. If you in Romania want to change administrative practices that are contrary to jurisdiction you are from my point of view taking a big step in the right direction. You have already taken another big step in the right direction by adopting four important new codes. Of course this means more work for everybody for a while but once everybody has got used to the new provisions it will mean less friction, more clarity and hopefully less litigation in the civil courts.

Court fees that are likely to encourage the abuse of procedure are definitely a problem. On the other hand court fees that are so high that they rather discourage people from fighting for their rights in the court room would be considered unconstitutional in Germany as they would inadmissibly limit the con-

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stitutional warranty of free recourse to the courts. If put into practice -which is not possible as I explained- they would soon become a middle class problem, a problem for those who have neither unlimited financial means nor are entitled to Legal Aid. However, already today more than 50 % of the budgets of civil courts come from court and bailiff fees. Of course we have controversial discussions about the right balance in Germany, too and the fact that there are no court fees at all in the social courts where citizens fight against their social insurances is such a controversial point.

I think we all agree – and this is also the recommendation of the report that we are discussing today - that we should ease the workload of judges by enabling them to focus what their core business should be and that is jurisdiction. So purely administrative functions should be carried out by civil servants or court managers. This makes sense because firstly a good judge is not necessarily a good administrative officer and secondly a judge is too expensive for administrative work. Of course court managers must be subject to directives from the court president or the individual judge they are assigned to.

I am confident that Romania will make further progress in reforming its justice. I am grateful for the recommendations that have been submitted and I hope that they will be discussed both controversially and in a spirit of cooperation that allows necessary decisions to be made in the foreseeable future. Such decisions and their implementation would increase the satisfaction of Romanians with their judiciary which is a key pillar of a democratic state and they would definitely increase the attractiveness of Romania as a place for investment.