

N^o 185/2022

To the International Association of Judges – IAJ-UIM

The Romanian Magistrates' Association (AMR), professional and national, apolitical, non-governmental organization, stated to be of „public utility” through the Government Decision no. 530/2008 – with the headquarter in Bucharest, Regina Elisabeta Boulevard no. 53, District 5, e-mail amr@asociatia-magistratilor.ro, tax registration code 11760036 – legally represented by Judge dr. Andreea Ciucă - President, sends the following

ANSWERS TO THE FIRST STUDY COMMISSION QUESTIONNAIRE “DISCIPLINARY PROCEEDINGS AND JUDICIAL INDEPENDENCE”

1) What kind of allegation can justify disciplinary proceedings against judges in your country: an individual's behavior only in the workplace or also in his or her private life? Give some examples, please. Can the content of the decisions taken by judges also lead to disciplinary proceedings? Can judges be charged criminally for the content of their judicial decisions under any circumstances?

The regime of disciplinary offences in the Romanian law is very extended. The Law on the statute of judges and prosecutors contains 21 disciplinary offences and most of them have several legal assumptions¹. A disciplinary procedure can be initiated both in connection with the judge's behavior in the workplace and also in his or her private life. For instance, the following disciplinary offences apply to both situations: the manifestations that prejudice the honour or the professional probity or the prestige of justice, committed in the exercise or outside the exercise of the work duties; the conduct of public activities with a political character or the display of the political beliefs in the exercise of the work duties; the use of the office held to obtain favourable treatment from the authorities or the interventions for the settlement of different requests, the claim or acceptance of the settlement of the personal interests or of the members of the family or of other persons, otherwise than within the legal framework regulated for all citizens, if the offence does not present the elements of a crime.

Most offences relate to the judge's behavior in the workplace, e.g.:

- ◆ non-observance of the provisions regarding the random allocation of cases;
- ◆ the unjustified refusal to receive in the file the requests, conclusions, memories or the documents submitted by the parties to the trial;
- ◆ the unjustified refusal to fulfil a work duty;

¹ Art. 99 - Law no. 303/2004 on the statute of judges and prosecutors



- ◆ repeated non-observance and for imputable reasons of the legal provisions regarding the settlement with celerity of the cases or the repeated delay in carrying out the work, for imputable reasons;
- ◆ failure to comply with the duty to abstain when the judge or prosecutor knows that there is one of the causes provided by law for his/her abstention, as well as the formulation of repeated and unjustified requests for abstention in the same case, which has the effect of delaying the judgment;
- ◆ interference in the activity of another judge or prosecutor;
- ◆ non-observance of the secret of deliberation or confidentiality of the files that have this nature, as well as other information of the same kind which he/she became aware of in the exercise of the office, except those of public interest, under the law, if the offence does not constitute a crime;
- ◆ the unjustified non-compliance with the administrative provisions or decisions ordered in accordance with the law by the head of the court or of the prosecutor's office or with other administrative obligations provided by law or regulations;
- ◆ the exercise of the office with bad faith or serious negligence, if the offence does not meet the constituent elements of an offence – in this case, the disciplinary sanction does not remove the criminal liability.

Through the procedures provided by law, regarding the liability of judges, the legality of court decisions cannot be analysed, nor can the secrecy of deliberation be violated. If a court decision is the result of an offence committed by the judge, this decision may be reviewed in accordance with the law. That is precisely why the legislature has expressly provided for extraordinary remedies. Such a decision may be terminated even where the finding of the offence can no longer be made by a criminal ruling. In this situation, the examination of the facts is done by the civil court, in the appeal of the revision. These procedural requirements were imposed in order for a ruling given as a result of criminal acts committed by judges to be devoid of legal effects. At the same time, these procedural requirements exist so that criminal investigations cannot become a pretext for verifying the legality of final rulings, with the aim of depriving them of their effects.

Unfortunately, there have been cases in which, in the investigations carried out by the National Anticorruption Directorate, the legality of some court decisions has been analysed. These cases were brought to the attention of the public opinion, and our association had a clear position, showing that, no matter how important the fight against corruption is, it cannot be carried out by non-observance of the law.

As a result of such cases, in Decision No. 54/2018², the Constitutional Court established the following relevant aspects: "(...) *The Court holds that the criminal investigation body is not exempt from responsibility, but, on the contrary, it must take into account that any action of its*

² Decision no. 54/2018, published in the Official Gazette of Romania, Part I, no. 683 of 6 August 2018, para. 45

own in this sphere may have the effect of violating the independence of justice and trust in justice. Legal regulations on the liability of judges cannot be misused to put pressure on judges when examining cases and, therefore, to undermine their independence and impartiality."

Since 2014, the cases of judges and prosecutors who were investigated by the National Anti-corruption Directorate (NAD) for the decisions they adopted were publicly discussed and debated, evidence being presented in this regard, investigations by which the NAD prosecutors analysed, blatantly violating the independence of justice, the alleged illegality and unfoundedness of the judgments pronounced by judges or of the orders/measures adopted by the prosecutors. These grave abuses were reported by judges, prosecutors and professional associations, repeatedly and in a reasoned manner.

The National Anticorruption Directorate (NAD) allowed itself to turn into a “super-court”, above the courts of judicial review, for some decisions adopted by the magistrates, sending them for trial on the ground that, according to the evaluation of the NAD prosecutors, they were illegal and unfounded.

Sending a magistrate for trial for his decisions does not have consequences only on his or her career, but creates an enormous potential for pressure and influence on fellow judges and prosecutors, having as a result a justice devoid of independence, namely a justice that can no longer serve the purpose for which it was created.

The existence of systematic abuses against judges and prosecutors follows clearly from the content of the Judicial Inspection’s Report no. 5488/IJ/2510/DIJ/1365/DIP/2018 concerning "the conformation to the general principles governing the activity of the judicial authority in cases entering the competence of the National Anti-corruption Directorate regarding magistrates or in relation to them", report which was approved by the Decision no. 255/15.10.2019 of the Plenum of the Superior Council of Magistracy (SCM).

The SCM decision was confirmed by a final court decision issued by the High Court of Cassation and Justice on December 7, 2021 (Decision No. 6144/2021)³.

The conclusions of the Decision no. 255/15.10.2019 of the Superior Council of Magistracy (SCM)⁴, as guarantor of the independence of justice, are devastating and should be followed by concrete measures for the defence of the independence of justice and of judges, beyond formal and principled statements:

“The practices of the National Anticorruption Directorate prosecutors who handled cases involving judges in the manners described below represented forms of pressure on them, with direct consequences on the administration of justice.

³ <https://www.scj.ro/1093/Detailii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=190009#highlight=##>

⁴ <http://old.csm1909.ro/csm/index.php?cmd=0301&tc=s>



Thus, the technique of acting ex officio against judges and investigating them for the decisions pronounced in cases is an unacceptable fact, of an unprecedented seriousness, which undoubtedly represents a factor of pressure not only on the targeted judges, but on the whole professional body of judges.

The suspicions regarding the manner of working practiced by the prosecutors from the National Anticorruption Directorate are also amplified by the fact that files that have been left inactive for a long period of time, after technical surveillance measures had been ordered previously for significant periods of time, were solved en masse by not sending them to trial, just before the Section for the Investigation of Offences Committed by Magistrates started to operate.

Such a practice raises serious questions about the reasons that justified maintaining cases pending for periods of time amounting to years and causes legitimate suspicions regarding the creation, in this manner also, of a pressure factor on the activity of the magistrates and, finally, on the right to a fair trial of the parties.

*The same approach can be seen in the practice of requesting files that are pending before various courts in order to evaluate the measures/decisions pronounced by judges from a possible criminal perspective. **In fact, this manner of investigating represented a real intrusion in the discretionary power of the judge**".*

2) Which body is responsible for disciplinary proceedings against judges in your country? Is the body that carries out the disciplinary procedure the same one that imposes the penalties? What is the composition of the body responsible for disciplinary proceedings (as well as the one who must apply penalties to judges, when it is not the same)? Is it composed only by judges, does it have a mixed composition, or is it composed only by professionals outside the of the Judiciary Branch? Kindly describe the composition of that body (those bodies).

According to the Law on the Superior Council of Magistracy (SCM)⁵, the SCM fulfils, through its sections (the Section for Judges and the Section for Prosecutors), the role of court in the disciplinary liability of judges and prosecutors, for the violations stated in the Law on the statute of judges and prosecutors as well as for the violations regarding the provisions of the Code of Ethics.

The disciplinary action for the offences committed by a judge may be exercised by the Judicial Inspection, through the judicial inspector. The Judicial Inspection is established as a legal entity within the Superior Council of Magistracy.

The Judicial Institution comprises the Inspection Directorate for Judges and the Inspection Directorate for Prosecutors. The posts of judicial inspector are filled by competition. The judicial

⁵ Art. 44 para 1 – Law no. 317/2004 on the Superior Council of Magistracy

inspectors who are part of the Inspection Directorate for Judges are judges, and those who are part of the Inspection Directorate for Prosecutors are prosecutors. The Chief Inspector of the Judicial Inspection is a judge and the Deputy Chief Inspector is a prosecutor.

The amendments to the Law on the Superior Council of the Magistracy, regarding the organization and functioning of the Judicial Inspection, have added a feature that obviously demonstrates the strengthening of judiciary independence. The adding of this feature has been highly supported by the Romanian Magistrates' Association (AMR). We refer to the fact that, under the legal provisions that were in force before amending the Laws of Justice in 2017, the Minister of Justice (a representative of the executive) was the holder of disciplinary action against judges.

Regarding the amendments to the provisions concerning the organization and functioning of the Judicial Inspection, the Romanian Magistrates' Association (AMR) had a clear objective: to increase the functional independence and autonomy of the Judicial Inspection, as a necessary component for respecting the independence of the judiciary and the independence of the judge.

AMR has explicitly opposed the transition of the Judicial Inspection under the authority of the Minister of Justice. AMR has firmly argued that the proposals that relate to such an idea are in contradiction with the principles that should govern the judiciary. Taking the Judicial Inspection from the judiciary, respectively from the Superior Council of Magistracy, which is the guarantor of the independence of the judiciary, according to art. 133 par. (1) of the Constitution of Romania, and its establishment at the Ministry of Justice, could give authority to the executive over the judicial power, with consequences that violate the principle of "check and balance".

3) Which disciplinary penalties can be imposed on judges in your country? Is the disciplinary penalty of removal from office among them? Can a judicial conviction for a crime lead to a penalty of removal from office?

The disciplinary sanctions that may be applied to judges, according to the seriousness of the offences, are:

- a) warning;
- b) decreasing the gross monthly indemnity by up to 25% for a period from one to 3 months;
- c) disciplinary transfer for a period from one to 3 years to another court or prosecutor's office, even lower in rank;
- d) suspension from office for a period of up to 6 months;
- e) demotion in professional rank;
- f) exclusion from the magistracy.



According to the Law on the statute of the judges and prosecutors, the judges shall be removed from office in case of conviction, postponement of the sentence and renunciation to the sentence, ordered by a final decision, as well as renunciation to the criminal prosecution, confirmed by the preliminary chamber judge, for an offense harming the prestige of the profession.

4) In the disciplinary proceedings against judges in your country, is a fair trial granted? Is there an appeal against the decision imposing a disciplinary penalty on judges? During the disciplinary proceedings, can the judge be suspended from office? Does the judge who is suspended during disciplinary proceedings continue to earn a salary normally or does the judge suffer any reduction in income?

Yes, the right to a fair trial is guaranteed by law.

Law no. 317/2004 on the Superior Council of Magistracy (SCM) contains the following guarantees of the right to a fair trial applicable to disciplinary proceedings against judges:

- Where the prior verification reveals that there is no indication of a disciplinary offence, the referral is dismissed and the result communicated directly to the person submitting the referral and to the person concerned by the referral. The dismissal resolution is subject to confirmation of the chief inspector. The resolution may be refuted, only once, by the chief inspector, who may order through written and reasoned resolution the completion of the verifications.
- If evidence of disciplinary misconduct is found, the judicial inspector shall, by resolution, initiate the disciplinary investigation.
- The disciplinary investigation establishes the offences and their consequences, the circumstances in which they were committed, as well as any other conclusive data that may lead to a decision upon the existence or inexistence of guilt.
- The hearing of the person concerned and the verification of the defences of the judge under investigation is compulsory. The refusal of the judge under investigation to make statements or to be present for the investigation is recorded in the minutes and shall not preclude the completion of the investigation. The judge under investigation is entitled to learn about all the acts of the investigation and to request evidence in his/her defence. The disciplinary procedure shall uphold the right to a fair trial as stipulated in the Civil Procedure Code.
- The disciplinary investigation is carried out in accordance with the legal provisions relating to classified information and the protection of personal data.



- The disciplinary investigation shall be carried out within 60 days from the date on which it was decided, unless suspension occurs. The disciplinary investigation may be extended for up to 30 days, if there are reasonable grounds that justify this measure. The disciplinary action may be exercised within 30 days since the completion of the disciplinary investigation, but no later than two years after the date when the offence was committed.
- In the disciplinary proceedings before the sections of the Superior Council of Magistracy, the summoning of the judge against whom the disciplinary action is exercised and of the Judicial Inspection is mandatory. The judge may be represented by another judge or he/she may be assisted or represented by a lawyer. The absence of the investigated judge from the trial shall not prevent the further prosecution.
- The judge has the right to be aware of all the documents of the file and they may request the administration of evidence.
- Against the decisions of the Section for Judges within the Superior Council of Magistracy an appeal may be exercised by the sanctioned judge or, as applicable, by the Judicial Inspection within 15 days since the communication. The competence to settle the appeal shall lie with the Panel of 5 judges of the High Court of Cassation and Justice. The members with the right to vote of the Superior Council of Magistracy or the disciplinary sanctioned judge may not be part of the Panel of 5 judges.
- During the disciplinary proceedings, the Section for judges within the Superior Council of Magistracy, ex officio or at the proposal of the judicial inspector, may order for the judge to be suspended from office, until the disciplinary action has been definitively settled, if the continued performance of the duties could affect the impartial conduct of the disciplinary proceedings or if the disciplinary proceedings are likely to seriously undermine the prestige of justice. The measure of suspension may be re-assessed at any time during the disciplinary proceedings, until the judgment of the relevant section will be rendered.
- The judgment ordering the suspension from office may be objected by the judge suspended from office within 5 days since the notification. The competence to settle the appeal shall lie with the Panel of 5 judges of the High Court of Cassation and Justice of which the voting members of the Superior Council of Magistracy may not be part of. The objection shall be settled urgently and with priority and shall not suspend the enforcement of the decision of the Section of Judges within the Superior Council of Magistracy. The decision of the court shall be final. Until the settlement of the objection, the court may order, upon request, the enforcement of the decision to be suspended.
- During the period of suspension from office ordered by the Section for Judges within the Superior Council of Magistracy, the provisions regarding the prohibitions and

incompatibilities do not apply to the judge and him / her is not paid the salary rights, but him / her is paid the social health insurance. This period does not constitute seniority in work and magistracy.

5) *Were there any recent changes regarding disciplinary proceedings that maybe considered to infringe upon judicial independence in your country? If so, were those changes introduced by legislation, or were existing laws applied differently? Please specify.*

1. Amendments to the Disciplinary Liability of Judges Through the Government Emergency Ordinance No. 23/2020

Article IV, point 26 of the Government Emergency Ordinance No. 23/2020 introduced Article 68¹ in Law No. 101/2016, with the following content: *“The failure to comply with the time-limits provided for in this law or with the provisions contained in this law concerning the remedies or measures that may be ordered by the court constitutes a disciplinary offense and is sanctioned by law”*.

By the same emergency ordinance, new procedural rules were also introduced, as well as rules directly concerning the activity of the judiciary.

Despite the fact that this ordinance included rules directly affecting the status of judges, it was adopted not only without any consultation of the magistrates, but also without the Government asking for at least the opinion of the Superior Council of Magistracy, even though this was compulsory according to law.

The seriousness of establishing a new disciplinary offense by an emergency ordinance, without the opinion of the Superior Council of Magistracy, was unprecedented.

By adopting Article 68¹ of the Emergency Ordinance No. 23/2020, the Government imposed a disciplinary offense derogating from the sanctioning regime applicable to judges and prosecutors, as defined by Article 99 of Law No. 303/2004. **This offense has an objective nature and, more gravely, applies exclusively to judges in public procurement cases.**

By imposing adherence to the time-limits stipulated by the normative act under threat of a disciplinary offense (consisting in the failure of respecting the time-limits stipulated by this normative act), the judge was obliged to make an impossible choice between his or her being disciplinarily sanctioned and respect for the requirements of a fair trial and for the rights of defence belonging to citizens.

Practically, if the judge were to approve evidence which cannot be administered within the short time- limits laid down by law, thus respecting the fundamental right to a fair trial and the rights

of defence, his or her disciplinary liability would still be incurred, as it is regulated as an objective liability, independent of the absence of any fault.

It is also important to stress that although the results of the referendum from the 25th of May 2019 promoted by President of Romania banned the adoption by emergency ordinances of any laws regarding the justice system, after his party came to power, it promoted the Government Emergency Ordinance no. 23/2020.

This proves once again that justice was simply being used cynically as a weapon in electoral battles, a reality regarding which we have repeatedly issued warnings.

The Romanian Magistrates' Association (AMR) together with the National Union of the Romanian Judges (UNJR) and the Association of Judges for the Defence of Human Rights (AJADO) have asked the Romanian Ombudsman to request the Constitutional Court to verify the Emergency Ordinance No. 23/2020, and it **was declared entirely unconstitutional⁶ as a result of this undertaking.**

2. Given the fact that there have been or are public debates regarding 2 situations of disciplinary investigation of judges, we consider that for the accuracy of the answer to the questionnaire it is necessary to bring concrete information (which may be verified).

This objective information is all the more needed as the respective judges appealed to international bodies as well, claiming that the independence of judges is jeopardized, but they presented the facts only in a selective way, keeping quite important information.

2.a. On May, 13, 2021, the Romanian Magistrates' Association (AMR), the National Union of Romanian Judges (UNJR), the Association of Judges for the Defence of Human Rights (AJADO) and the Romanian Prosecutors' Association (APR) wrote an open letter by which invited all foreign colleagues and institutions to holistically analyse the facts and facets of the issue regarding the disciplinary procedures launched against a few judges previously presented by themselves as a “*sanction for their opinions and for their courage to address the European Union Court of Justice*” and to express restraint towards qualifying the due disciplinary proceedings as an outright abuse.

The open letter highlighted the following important issues:

While we strongly oppose sanctioning the crime of opinion and believe that the freedom of expression of judges should be preserved and should cover a large palette of ways of expression, we find it very difficult to accept that the stated freedom of expression of judges

⁶ Decision no. 221/2020, published in the Official Gazette of Romania, Part I, No. 594 of 7 July 2020



includes offending and body-shaming fellow judges in discussions on social media platforms such as Facebook groups that include a large number of judges and prosecutors.

The judges against whom the disciplinary actions were initiated argued that they were being sanctioned for the crime of opinion and consider themselves victims of a so-called rotten system, but we recommend not to take for granted such a position and take into account all the facts, including the position of the offended colleagues and the message that your institution / organization is willing to underline:

- ◆ is freedom of expression of judges a free-card for outright insults and body-shaming colleagues?
- ◆ is freedom of expression of judges a means to express not a different opinion, but verbalize bullying, in order to diminish the influence and public position / career of fellow judges or public persons, politicians, only because they are of a different opinion than the judges who feel free to express themselves this way?

Difference of opinions and debate on such different opinions is of the essence of democracy and all fellow judges have the right to express an opinion without the concern that they would be publicly (in a group with hundreds of members) bullied and offended by their own colleagues for simply expressing a different opinion. Therefore, our professional associations express solidarity with the judges that have been offended and hope that the language used by their colleagues will not dissuade the targeted judges from continuing to express their opinions, with consideration for their status and professional obligations.

We are convinced that you are fully aware of the importance of preserving freedom of expression of judges and that is why we kindly invite you to analyse the messages that were leaked from the Facebook group and from a WhatsApp group before deciding to uphold either side of the scandal.

In this context, we consider it very important to refer to the conclusions of the 1st Study Commission - Social Media and the Judiciary (IAJ-UIM Meeting, Nur-Sultan, 2019):

- i.* Judges should be free to use social media in their private lives. When making such use, they should exercise caution and adhere to any existing or generally accepted ethical guidelines or codes of judicial conduct.
- ii.* A careful line should be drawn between unfair comments about judges, on the one hand, and legitimate criticism of judicial decisions or the judiciary, on the other.
- iii.* Reactions to unfair comments concerning judges made on social media may be appropriate, or even necessary, when such comments risk danger to the judge or risk endangering public trust in the judiciary.



iv. It is important that a judicial body or association responds to unfair comments made on social media on behalf of an individual judge if those comments have the potential to threaten public trust in the judiciary.

v. In general, judges should consider refraining from responding in person to unfair comments made on social media. This could diminish the public perception of judges. A direct response from a judge could also infringe upon judicial ethics and principles of judicial conduct, such as neutrality and self-restraint.

In the conversations that were leaked, **the President of the Superior Council of Magistracy** was called “*a lackey who performs what his masters draw*”, the leadership of the Public Ministry is called “*the invertebrates at the head of the Public Ministry*”.

Regarding the Minister of Justice, Cătălin Predoiu, who included in the draft amendment of the justice laws in 2020 all the requests of the Romanian Judges’ Forum Association (FJR), although many of them were not supported by other professional associations, one of the messages wrote: “*The comedy with Predoiu must end ... he must go "on the belt" of the policy where he came from*” (“on the belt” is an expression used to define a place where prostitutes can be found, sort of a red-light district).

Regarding a lady judge (a member of the Superior Council of Magistracy and former president of The Romanian Magistrates' Association – AMR), who has opinions that do not suit the colleagues in the Romanian Judges’ Forum Association (FJR), they posted a picture of this judge and wrote: *Is this picture from the period when she was a colleague of Burebista?* (Burebista was a local leader who lived around 2000 years ago and the picture of the lady was from years ago).

About the same lady judge who is an elected member of the Superior Council of Magistracy, these comments were made: “*She seems to have a ton less (in reference to a picture made years ago). Could it be from the fire?*”

(The period when the comments were made was when the stated judge went through a particularly tragic episode: she was hospitalized with her husband, suffering from COVID-19, and the hospital caught fire and they both had to be moved in other medical facilities together with other patients in order to be saved from the extending flames).

Referring to the same lady judge, the following comments are particularly disturbing: “*While in the same room with her, it's hard not to touch her ... even the ceiling light is a touch ... it's in the nature of things. The "great lady of justice" tends to fill any room she enters*”.



ASOCIAȚIA
MAGISTRAȚILOR DIN
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(Fellow judges and prosecutors mock a lady judge because of her weight in an era when fat-shaming should be extinct, the last comment underlining the double – sense of the word “great” – meaning large, on one hand, and also grand, on the other, because of the fact that some members of the press used to call some of the ladies in the Superior Council of Magistracy “the great ladies” as a form of respect).

Regarding the presidents of the courts of appeal (there are 16 courts of appeal in Romania, therefore 16 presidents) were **compared with criminals and apparently scored worse** in the view of one member of the group, in a message that said: *“Wouldn’t it be better (to have) a Superior Council of Magistracy composed of representatives of crime gangs (?) ... compared to most presidents of courts of appeal. It’s hard for me to say what the least evil would be”*.

Regarding the **online participation of the president of The Romanian Magistrates’ Association – (AMR)** and the president of the Association of Judges for the Defence of Human Rights (AJADO) **in the Chamber of Deputies**, in March 2021, because they supported arguments that disagreed with the views of colleagues in the Romanian Judges’ Forum Association (FJR), they wrote in the same group: *“Hysteria has reached its maximum in ladies, slum in action. They have little left ‘till they explode”*.

Regarding a disciplinary sanction applied to a judge by the Superior Council of Magistracy, one of the messages wrote: *“Damn Council, disciplinary sanctioning judges with problems “in the attic” (i.e., psychiatric problems), instead of releasing them from the office”*.

About a memorable moment in the history of Romania about which a battle song was written during the First World War, they wrote: *What an evil genius was the one who came up with the idea to cross the Romanian troops the Carpathian Mountains, and not only that, but also compose a rhythmic song so that over the years it can fill with national pride the breasts of some ticket payers in cold performance halls.*

It is about the emblematic patriotic Romanian song called “Romanian Troops, Cross the Carpathian Mountains”!

These quotes represent a small selection of the conversations leaked to the press and **it is important to underline the fact that such conversations were not carried by members of the public, but by judges and prosecutors, highly trained professionals whose statute would have required them to observe decency and never insult their fellow colleagues** in a Facebook / WhatsApp group with hundreds of members.

Having such content of the conversations in mind, we are compelled to express solidarity with our colleagues that were offended, body-shamed and outright insulted by their own colleagues on such groups under the umbrella of “privacy” between hundreds of members of the same



profession. We are concerned that the colleagues who were the targets of such remarks right now feel dispirited simply because they did not express the same opinion as the members of the group. Whether the conversations on the Facebook group were intended to be accessible to the general public or not we feel is irrelevant, since the groups have hundreds of members.

We have been aware of the language used by our colleagues in the Romanian Judges' Forum Association (FJR) for some time, but we felt compelled not to publicly ignite a debate to the lowest standards in the hope that things will change and that the dignity of the profession will prevail.

As we have often pointed out, the problem is not the existence of different or even divergent opinions, but the fact that such language and attitude simply reject any different point of view regarding the same issues.

We are compelled to inform you of the risks of inaccurate approach implied by taking into consideration only one side of the problem, that ignores the discourse very connected to political life, the mockery of some magistrates for reasons related to their appearance, the silencing of voices that express different opinions.

The Romanian Magistrates' Association (AMR), the National Union of Romanian Judges (UNJR), the Association of Judges for The Defence of Human Rights (AJADO) and the Romanian Prosecutors' Association (APR) invite all institutions / professional organisations to dialogue and respectful debate of differing opinions, promoting free speech and freedom of opinion and the obligations that bound judges and prosecutors in expressing their views. We kindly ask you to consider all the facts and carefully examine all sides of the matter before expressing public stances, having in mind that **freedom of speech is of the essence of democracy, but especially for judges and prosecutors this freedom and great power come with great responsibility, responsibility to uphold the difference of opinion, the rights of others and the Statute of judges and prosecutors.**

2.b. Disciplinary sanctioning of a very active judge on social networks and in the media.

In December 2021, the Superior Council of Magistracy (SCM) sanctioned him by exclusion from magistracy, for disciplinary offence consisting in manifestations that prejudice the honour or the professional probity or the prestige of justice, committed in the exercise or outside the exercise of the work duties. From the information offered in public space, the sanctioning of the judge was caused by his posts on TikTok. The specific arguments will be known after the Superior Council of Magistracy motivates its decision.

This judge was one of the participants in the discussions presented in the letter indicated in section 2.a., but the sanction was not applied for the (insulting) way in which those discussions were held.

The judge made public a series of comments regarding his sanctioning. Also supporting opinions were expressed by some politicians as well as positive or negative reactions of other persons, from inside and outside the judiciary. Under these conditions, we appreciate that it is necessary to inform you on some relevant aspects.

The judge was a member of the Superior Council of Magistracy (SCM), during 2011-2016. He represented the judges from courts of first instance. As a result of the faulty way in which he fulfilled his tasks, the colleagues from courts of first instance asked by vote his revocation from the position as member of SCM. From the information made public it resulted that the number of judges who voted for his revocation was larger than the number of the ones who have chosen him as member of SCM.

Because the law did not clearly provide with full predictability certain aspects of the revocation procedure, as considered by the Constitutional Court at that time, the judge remained member of SCM. Although the colleagues voted for his revocation, he did not consider to resign.

This judge was disciplinary sanctioned in 2019 also for manifestations that prejudice the honour or the professional probity or the prestige of justice, committed in the exercise or outside the exercise of the work duties. It was about a Facebook posting. The disciplinary sanction applied by the Superior Council of Magistracy (SCM) was maintained by the High Court of Cassation and Justice.

The same judge was disciplinary investigated in another case and sanctioned in May, 2022. The reason for the investigation was that he is a member of two organizations (VeDEM Just and ICDE) which have political activity. The informing of the Judicial Inspection was made by a citizen. **The judge did not deny that he is a member of the two organizations. He could not deny as he is vice-president of ICDE. This association published a series of articles for supporting politicians, supported the former governmental coalition, brought reasons why coalition should remain in power, but with another prime-minister (in opinion of ICDE). ICDE publicly campaigned also for common candidacies of the political governmental coalition on the occasion of local elections in June 2020, etc.**

The judge we refer to was con-founding member of ICDE and is also the vice-president of this association which expresses political opinions and carries out political actions.

According to art. 99 para 1 of the Law 303/2004 on the statute of judges and prosecutors, *it constitutes a disciplinary offence: the conduct of public activities with a political character or*

the display of the political beliefs in the exercise of the work duties. Also, in accordance with art. 9, judges may not be part of political parties or political groups, nor perform or participate in activities of political nature. Art. 11 stipulates as follows judges may participate in the elaboration of publications, may elaborate articles, specialized studies, literary or scientific works and may participate in audio-visual broadcasts, except those having a political nature.

The defence posted by the judge on a social network consisted in the fact that he never participated in a political action with the two organizations and that he always absented from vote in case of a press release involving the political spectrum. So, he acknowledged that the two organizations carried out political actions. In fact, this reality is confirmed by the documents posted on the websites of the two organizations.

An interpretation like the one posted by the judge would mean that the magistrate may infringe upon the law, i.e., to run an organization carrying out political actions, and then say that he / she has no responsibility for what happens in the entity he / she runs and represents. And also, to pretend that the interdiction expressly provided by law does not apply to him / her.

On May 25, 2022, the Superior Council of the Magistracy (SCM) sanctioned again the judge by exclusion from magistracy. This time for disciplinary offence consisting in violation of the legal provisions regarding incompatibilities and prohibitions regarding judges and prosecutors and also for disciplinary offence consisting in conduct of public activities with a political character or the display of the political beliefs in the exercise of the work duties.

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