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## To the International Association of Judges - IAJ-UIM

**The Romanian Magistrates' Association (AMR)**, professional and national, apolitical, non-governmental organization, stated to be a „public utility” entity, by 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 FORTH STUDY COMMISSION QUESTIONNAIRE "FRAUD AND CORRUPTION IN THE WORKPLACE: HOW DOES IT AFFECT EMPLOYEES?"

*(1) Does your country have any legislation, or rules, that deal with fraud and corruption in the workplace? If so, please briefly describe them.*

Yes, there is a vast legislation. Please find below some normative acts regulating the field of anti-corruption, including in the workplace:

- ▶▶ The National Anti-Corruption Strategy (NAS), adopted by Government decision, for periods of 4 years<sup>1</sup>. It contains sets of performance indicators, the strategy objectives and measures related risks, the check sources, the inventory of institutional transparency and corruption prevention measures, the assessment indicators, the public interest information publishing standards.

The National Anti-Corruption Strategy (NAS) answers to the requirements of articles 310 and 325 of the Treaty on the Functioning of the European Union, that is to combat fraud and any unlawful operations harming the Union's financial interests. The current Romanian NAS builds on NAS from previous periods, with the first NAS being published for the period 2001-2004.

The purpose of NAS is the promotion of integrity thorough the application of the legal and institutional framework with a view to prevent corruption in Romania.

For the implementation of the National Anti-Corruption Strategy at the level of the Judicial Authority, the Superior Council of Magistracy adopted Integrity Plans<sup>2</sup>.

- ▶▶ Standard methodology<sup>3</sup> for assessing the corruption risks within central public authorities and institutions. It also contains: indicators for assessing the probability of corruption risks materialization; indicators for assessing the impact in case of corruption risks materialization; format of corruption risks

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<sup>1</sup> For example, the National Anti-Corruption Strategy for 2016-2020 was approved by means of Government Decision no. 533/2016.

<sup>2</sup> Decision no. 161/2018 and Decision no. 941/2018 of Superior Council of Magistracy

<sup>3</sup> Approved by means of Government Decision no. 599/2018

register; assessment of integrity incidents within central public authorities and institutions; format of annual report on integrity incidents assessing.

- ▶▶ Law no. 161/2003 containing measures for: assuring transparency in case of exercising public dignities, public offices; assuring transparency within the business environment; corruption prevention and sanctioning.
- ▶▶ Law no. 144/2007 on establishing, organizing and functioning of National Integrity Agency. The goal of the Agency consists in assuring integrity in case of exercising public dignities and offices and preventing institutional corruption. For this purpose, it has liabilities with regard to assessing the personal financial statements, data and information on assets, incompatibilities and potential conflicts of interests. National Integrity Agency has prepared several guides related to: incompatibilities and conflicts of interests; filling in personal financial statements and statements of interests.
- ▶▶ Law no. 115/1996 for declaring and checking the assets. The procedures provided by this Law and the measures which may be taken relate to dignitaries, magistrates, persons holding management and control positions, public officials.
- ▶▶ Government Emergency Ordinance no. 66/2011 on prevention, establishing and sanctioning the irregularities occurred in case of obtaining and using European funds and/or their corresponding national public funds.
- ▶▶ Law no. 184/2016 on instituting a mechanism for preventing conflict of interests in case of awarding public procurement contracts. The purpose of the Law consists in preventing the conflict of interests by means of instituting an ex-ante check mechanism, from the perspective of situations which may generate conflicts of interests within procedures initiated by using the electronic system of public procurement, so that they are removed without affecting the respective procedures.
- ▶▶ Penal Code, regulating the corruption crimes and punishments.
- ▶▶ Law no. 78/2000 on preventing, finding and sanctioning corruption actions. This Law regulates corruption crimes depending on quality of the person, with regard to persons holding public offices. The punishments provided for these crimes are greater than the ones established by means of the Penal Code.

*(2) Do you have one example of fraud or corruption in the workplace and its consequences on employees?*

There have been several well-known cases in which persons holding public offices at central level have been convicted for workplace related corruption actions.

Besides the applied penal punishment (the Law provides imprisonment as punishment), there are also other consequences, the most important one being the impossibility of holding a public office that was held by the person at the time of committing the corruption crime. So, the employment relationship ends. Also, in case of elected dignitaries, their mandate ends. The situations in which these consequences apply are regulated by Law.

*(3) Do you have any specific laws protecting whistleblowing by employees, and, if so, what are they? Do these laws cover wrongdoing, fraud and corruption by third parties (who are not employers)? What remedies are available to whistleblowers.*

Yes, Law no. 571/2004 on protecting the staff belonging to public authorities, public institutions and other units signalling violations of the Law.

Pursuant to this Law:

- ◆ the persons directly or indirectly claiming or notifying violations of the Law cannot be sanctioned; in case of warning in public interest, the deontological or professional norms likely to prevent the warning in public interest do not apply;
- ◆ the act of warning in public interest with regard to aspects of public integrity and proper administration, with the purpose of increasing the administrative capacity and the prestige of public authorities is protected and encouraged;
- ◆ the person working for a public authority and who files a complaint, being convinced that the reality of the state of things or that the fact constitutes an infringement upon the Law is protected;
- ◆ any person signalling infringements upon the Law must provide data or hints regarding the committed crime;
- ◆ neither person may make use of the provisions of this Law for the purpose of diminishing the administrative or disciplinary sanction for a more serious crime committed by the respective person;
- ◆ the whistleblowers in public interest get the benefit of good-faith, until proven otherwise;
- ◆ upon the request of the whistleblower, subject of a disciplinary procedure as a result of a warning act, the discipline commissions within public authorities must invite the press and a representative of the trade union or professional association;
- ◆ in case of whistleblowing in public interest on corruption crimes, crimes directly connected with corruption crimes, office crimes or crimes related to office, crimes against the financial interests of European Communities, protections measures, such as the ones provided by Law no. 682/2002 on protection of witnesses apply ex officio;
- ◆ in case of occupational litigations or in case of litigations regarding the employment relationships, the Court may order the annulment of the disciplinary or administrative sanction applied to a whistleblower, provided that the sanction was applied as a result of a whistleblowing in public interest, made in good-faith.

*(4) Do non-government agencies, such as civil society organizations, play any part in fighting corruption in the workplace, and if so, how do they interact with the administrative agencies or courts in your country?*

The NGOs have developed a variety of initiatives intended to fight corruption. The types of activity in which they get involved are: advocacy, public sensibilization, increase of organizational capacity, research, watchdog type activities.

The NGOs get involved in all phases of policies decision-making process and work with other organizations for increasing the impact of their intervention. The majority of large NGOs, specialized in anti-corruption, include in their activity advocacy components, based both on collaboration as well as on confronting the ones in charge.

The capacity of NGOs of influencing public policies was facilitated by establishing some structures for cooperation and dialog with the Government, especially Ministry of Justice.

The Government of Romania has cooperated with NGOs for establishing public services. For example, the authorities signed a Cooperation Agreement with a NGO, allowing the organization to provide technical assistance for drafting anti-corruption bills and for establishing Anti-corruption Assistance Centres for Citizens. The NGOs have also contributed in programs for developing and consolidating the institutional capacity of some bodies, such as National Integrity Agency and have supported the public sphere by means of some actors, such as Anti-Corruption General Directorate and Permanent Electoral Authority.

An important example of cooperation with a higher institutionalization degree between NGOs, Government and other public sectors is the development of National Anti-corruption Strategies, coordinated by Ministry of Justice having the NGOs as participants in all phases of the policies development process: drafting, implementation and monitoring<sup>4</sup>.

The NGOs also contribute in practice, as they are part of the thematic evaluations that are organized within the institutions that adhere to the Strategy. Mixed teams (public institutions, business and CSOs) evaluate the implementation of the sectorial plans by organizing interviews and writing reports.

NGOs also pin-point projects that can contribute to the implementation of the National Anti-Corruption Strategy (NAS) and they organize events under its umbrella. Events related to public integrity, integrity in the business sector or instruments for fighting corruption, as well as educational initiatives, publications on public procurement, conflicts of interests and incompatibilities or the policy making process contributed to the implementation<sup>5</sup>.

NGOs have no role in judicial proceedings.

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<sup>4</sup> Civil society involvement in drafting, implementing and assessing anti-corruption policies in Romania, 2013, p. 42-44, [https://expertforum.ro/wp-content/uploads/2014/10/Raport-de-evaluare\\_ro.pdf](https://expertforum.ro/wp-content/uploads/2014/10/Raport-de-evaluare_ro.pdf)

<sup>5</sup> Civil society involvement in drafting, implementing and assessing anti-corruption policies - Best Practices Manual 2014, p. 48, <https://www.files.ethz.ch/isn/185875/Best-practice-manual-civil-society-involvement.pdf>



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