



No. 112/2020

THE ROMANIAN MAGISTRATES' ASSOCIATION (AMR), a professional, national and apolitical non-governmental organization, stated to be of "public utility" by way of Government Decision no. 530/21 May 2008, member of the INTERNATIONAL ASSOCIATION OF JUDGES (IAJ-UIJ) and the EUROPEAN ASSOCIATION OF JUDGES (EAJ-AEM) since 1994 – with its headquarters in Bucharest, Regina Elisabeta Boulevard no. 53, District 5, tel./fax. 0214076286, e-mail amr@asociatia-magistratilor.ro, tax registration code 11760036 –, legally represented by Judge dr. Andreea Ciucă - President,

Sends the following

ANSWERS TO THE QUESTIONNAIRE
regarding the disciplinary proceedings against judges

1. Please provide detailed information, including disaggregated data, on the number of judges that have been subject to disciplinary proceedings in the last ten years. How many of them were found guilty of a disciplinary misconduct? How many of them were removed from office?

1.1. According to Law no. 317/2004 on the Superior Council of Magistracy (SCM), 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 Law no. 303/2004 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 decisions of the sections of the Superior Council of Magistracy (SCM) solving the disciplinary actions may be appealed on points of law within 15 days from the moment they were communicated by the judge or the prosecutor in question or by the Judicial Inspection. The competence to deal with such appeals belongs to the Panel of five judges of the High Court of Cassation and Justice. The Panel of five judges may not include the voting members of the SCM or the judge who was disciplinary sanctioned. The decision settling the appeal is final.

1.2. During 2014-2019, the Judicial Inspection exercised 181 disciplinary actions against judges (28 actions in 2014, 40 actions in 2015, 37 actions in 2016, 27 actions in 2017, 27 actions in 2018 and 22 actions in 2019) of which 102 were admitted by the Section for Judges of the SCM (15 actions in 2014, 25 actions in 2015, 23 actions in 2016, 12 actions in 2017, 11 actions in 2018 and 16 actions in 2019). Of the 102 sanctioning decisions rendered by the Section for Judges of the SCM 15 are not yet final.

During 2014-2019, 15 judges were removed from office by decisions of the Section for Judges of the SCM but only 6 sanctions remained final as a result of settling the appeals by decisions of the High Court of Cassation and Justice.



2. Has any judge belonging to your association been subjected to any form of sanctions that were not previously established by law or that were imposed through a procedure that did not meet the procedural requirements established by the law? If yes, please provide information on the case(s).

2.1. *The former president of the Romanian Magistrates' Association (AMR) was sanctioned in February 2016 by the Section for Judges for violating a provision of the Code of Ethics. Unfortunately, the procedure was abusive and an attack on the basic principles on which the Association exists, that of defending the rights of magistrates and the independence of the judiciary - which is the guarantee of a fair trial. The former president of our association was sanctioned by the Section for Judges of the SCM because she publicly demanded the resignation of the former president of the High Court of Cassation and Justice.*

The Romanian Magistrates' Association (AMR) filed a request for intervention in favor of its President in the disciplinary procedure carried out by the Judicial Inspection and by the Section for Judges of the SCM. Also, AMR filed a request for intervention in favor of our colleague in the appeal procedure.

In December 2019, the High Court of Cassation and Justice settled the appeal and annulled the sanctioning decision. The decision of the High Court results in the abuses committed in the sanctioning procedure of the former president of the Romanian Magistrates' Association (AMR).

2.2. *Also, the Romanian Magistrates' Association (AMR) filed requests for intervention in favor of other judges in the disciplinary procedure carried out by the Judicial Inspection and by the Section for Judges of the SCM.*

An example is that of a judge, a member of our Association, who was the subject of a disciplinary procedure in 2015, based on a judgement she rendered. The Romanian Magistrates' Association (AMR) filed a request for intervention in favor of the judge. The Section for Judges of the Superior Council of Magistracy rejected the disciplinary action. The Judicial Inspection lodged an appeal which was rejected by the final decision of the High Court of Cassation and Justice in December 2017.

However, the Judicial Inspection again initiated disciplinary proceedings against our colleague for the same action (which the Judicial Inspection classified as a different professional misconduct to give the impression that it was a new offense). The Romanian Magistrates' Association (AMR) filed a new request for intervention in favor of the judge. In June 2018, the Section for Judges declared the absolute nullity of the second disciplinary action. The Judicial Inspection lodged an appeal which was rejected by the High Court of Cassation and Justice in February 2019.

As a result of the deficient way in which the Judicial Inspection understood to exercise its attributions, our colleague was harassed for almost 4 years.

3. Apart from disciplinary proceedings, are there any other measures that may be used to interfere with the capacity of a judge to adjudicate cases before him or her in full independence? Are you aware of any case in which a judge has been promoted, transferred to another court, forced to take a training course, a vacation or medical leave, or coerced or pressured in similar ways in order to abandon a case pending before him or her? If yes, please provide information on the case(s).



Since 2014, the *cases of judges and prosecutors who were investigated by the National Anti-corruption Directorate (DNA) for the decisions they adopted* were publicly discussed and debated, evidence being presented in this regard, investigations by which the DNA 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 (DNA) 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 DNA 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.

The control covered by the Judicial Inspection’s Report refers to the period 01.01.2014 - 31.07.2018, and from the Superior Council of Magistracy decision regarding its approval the following key conclusions arise:

- In total, at the level of the central structure and at the level of the territorial structures of the National Anticorruption Directorate (DNA), 1962 judges were targeted (351 in criminal matters and 1590 in civil matters – among which a judge of the Constitutional Court, 13 judges members or former members of the SCM and 16 judicial inspectors).
- In 113 cases regarding judges and in 163 cases regarding prosecutors, the investigations were opened ex officio by DNA.
- In numerous cases, the duration of the investigations was manifestly excessive, reaching periods which frequently exceeded 3-5 years, and in one case the duration was of 12 years and 6 months!
- Officers of the Romanian Intelligence Service carried out acts specific to the criminal investigation activity in cases involving magistrates.
- DNA prosecutors acted ex officio especially against judges and investigated them for the decisions pronounced in different cases.
- Many cases were solved en masse, which were inactive, some of them for a long period of time. For example, a case opened ex officio in 2013 regarding prosecutors and judges from the Superior Council of Magistracy, in which technical surveillance measures were ordered, including regarding family members of the investigated magistrates, was closed in 2018. A case regarding a judge, registered in 2006, was closed in 2018, after 12 years. Other cases were in the same situation.



The conclusions of the Decision no. 255/15.10.2019 of the Superior Council of Magistracy (SCM), 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 DNA 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.

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”.

4. What measures have been put in place in your country to enable judges to decide matters before them impartially and without any pressure or interference?

4.1. As mentioned before, the disciplinary action for the offences committed by a judge may be exercised by the Judicial Inspection, through the judicial inspector.

The amendments to the Law no. 317/2004 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".

As a result of the arguments supported by AMR, in the debates in the Joint Special Committee of the Chamber of Deputies and the Senate, these amendments have been dropped. Therefore, according to art. 65 par. (1) of the Law amending and completing the Law no 317/2004 on the Superior Council of Magistracy, the Judicial Inspection continues to function as a legal person within the Superior Council of Magistracy (SCM).

4.2. Allocation of cases in courts. The *principle of the random assignment of cases* is specifically provided in Law no. 304/2004 on judicial organisation (Article 11) and must be observed at the level of each court. Among the management prerogatives of the presidents of the courts are the organisation and coordination of the activity of random assignment of cases [Article 7 par 1 (g) of the Interior Regulation of the Courts, approved by Decision of the Superior Council of Magistracy].

The random assignment of cases is performed by the ECRIS software, based on the objective criterion of order of registration with the court. As a rule, for random assignment of a case in the ECRIS software one or more persons are designated in each court, depending on the volume of activity, to oversee the randomization process. These persons are designated at the beginning of each year by decision of the president of the court. They are the only ones that have access to the random assignment module, using their own password.

The legal provisions regarding the use of the ECRIS software at a national level have uncontested advantages because they take into consideration objective criteria regarding case management.

The Judicial Inspection has the legal attribution to verify compliance with the provisions regarding the random assignment of cases by courts. In accordance with Law no. 303/2004 on the statute of judges and prosecutors, serious or repeated breaches of the provisions on random assignment of cases represent a disciplinary offense.

Using the ECRIS software for case management is no longer a decision of the courts, but an obligation. The Internal Regulation of the Courts approved by Decision of the Plenum of the Superior Council of Magistracy no 1375/2015 provides a series of attributions and tasks concerning the management of the courts including the ECRIS software usage.

The ECRIS software has been implemented at national level since 2007 to handle cases from a statistic point of view. More precisely, this software allows for each case: the verification of the registration date with the court, its object, stage of the procedure, the measures ordered by the court at each hearing, the date the decision is pronounced, the appeals filed, the date the file has been sent to the hierarchical superior court to deal with the appeal, the date the decision is pronounced, the date the file has been returned to be kept in the archives (in the first degree court).

The courts, the Superior Council of Magistracy, the Judicial Inspection and the Ministry of Justice are all registered on the ECRIS software.



The data from the ECRIS software placed at the public's disposal are automatically displayed on the portal of each court. By accessing the portal (www.portal.just.ro) the public may obtain information on number of the case file, date of registration with the court, date of last modification of the recorded data in the ECRIS software, the section of the court where the case was assigned, the stage of the procedure, the hearings that took place and measures ordered by the court (in short), the decision of the court (in short), the appeals which have been filed.

4.3. In particular, the independence of judges is provided in the Laws of Justice, as amended in 2017:

♦ Art. 2 par. (3), (4) of Law 303/2004 on the statute of judges and prosecutors: *Judges are independent and subject only to the law. Judges must be impartial, having full freedom to settle cases brought before the court, in accordance with the law and impartially, respecting the equality of arms and the procedural rights of the parties. Judges must make decisions without any restrictions, influences, pressures, threats or interventions, direct or indirect, from any authority, even judicial authorities. Judgments in appeals do not fall within the scope of these restrictions. The purpose of the independence of judges also consists in guaranteeing to each person the fundamental right to have his case examined fairly, based only on the exercising of the law. Any person, organisation, authority or institution has the duty of respecting the independence of judges.*

♦ Art. 46 par. (2) of Law no 304/2004 on judicial organisation: *The presidents and vice-presidents of the courts ensure and verify the compliance of judges to statutory and regulatory requirements. The verification must observe the principles of the independence of judges and of their subjection only to the law, as well as the authority of res judicata. As a result, the decision of the court and the judgement reasoning cannot make the object of these verifications.*

♦ Art. 30 par (1) of Law no 317/2004 on the organisation and functioning of the Superior Council of Magistracy: *The appropriate sections of the Superior Council of Magistracy have the right, and the correlative obligation to take action ex officio to defend judges and prosecutors against any interference with their professional activity or in relation to it, which might affect the independence and impartiality of judges, and the independence and impartiality of prosecutors in ruling solutions, pursuant to Law no. 304/2004 on the organisation of the judiciary, and against any action which might give rise to suspicion with regard to these. Also, the sections of the Superior Council of Magistracy shall safeguard the professional reputation of judges and prosecutors. Complaints on safeguarding the independence of the authority of the judiciary shall be solved upon request or ex officio by the Plenum of the Superior Council of Magistracy.*

♦ Art. 30 par (2) of Law no 317/2004 on the organisation and functioning of the Superior Council of Magistracy: *The Plenum of the Superior Council of Magistracy, the Sections, the president and the vice-president of the Superior Council of Magistracy, either ex officio or upon complain of a judge or a prosecutor, shall call upon the Judicial Inspection to perform verifications, in order to safeguard the independence, impartiality and professional reputation of judges and prosecutors.*

♦ Art. 30 par (4) of Law no 317/2004 on the organisation and functioning of the Superior Council of Magistracy: *A judge or a prosecutor who considers that his or her independence, impartiality or professional reputation are being affected in any manner may*



notify the Superior Council of Magistracy, and the provisions of paragraph (2) shall apply accordingly.

4.4. However necessary and generous the above-mentioned measures may be, they cannot fully and without exception guarantee respect for the independence of the judge.

In this respect, as our association has repeatedly pointed out, independence must be provided by law, but also must be assumed by every judge.

Judge dr. Andreea Ciucă

Romanian Magistrates' Association (AMR)