Nº 59/2020

To

The European Association of Judges – EAJ-AEM

THE ROMANIAN MAGISTRATES' ASSOCIATION (AMR), professional and national, apolitical, non-governmental organization, stated to be of „public utility" through the Government Decision no. 530/21 May 2008, member of INTERNATIONAL ASSOCIATION OF JUDGES (IAJ-UIM) and EUROPEAN ASSOCIATION OF JUDGES (EAJ-AEM) since 1994 – with the headquarter in Bucharest, Regina Elisabeta Boulevard no. 53, District 5, tel./fax. 0214076286, e-mail amr@asociatia-magistratilor.ro, tax registration code 11760036, bank account RON IBAN RO37RNCB0090000508620001, open at the Romanian Commercial Bank (BCR) - Lipscani branch – legally represented by Judge dr. Andreea Ciucă - President,

Sends the following

ANSWERS TO THE QUESTIONNAIRE

Regarding the Stakeholder-Consultation of the EU Commission
to Prepare the Rule of Law ReportO

Country: **ROMANIA**

1. Appointment and selection of judges and prosecutors

1.1. According to Law no. 303/2004 on the statute of judges and prosecutors, admission into magistracy and the initial professional training for the office of judge and prosecutor is performed through the National Institute of Magistracy.

After completing the training courses of the National Institute of Magistracy, the auditors of justice take a graduation theoretical and practical examination. The auditors who pass the examination are appointed by the Superior Council of Magistracy as debutant judges and prosecutors. They may be appointed only at the first instance courts or, on a case by case basis, at the prosecutor's offices attached to these. Debutant judges enjoy stability.

After completing the probation period, the debutant judges and prosecutors are required to take the capacity examination which is organized annually by the Superior Council of Magistracy, through the National Institute of Magistracy.

The judges and prosecutors who pass the capacity examination *are appointed by the President of Romania, at the proposal of the Superior Council of Magistracy*. The appointment proposals are made within 30 days from the validation of the capacity examination. The President of Romania may not refuse to appoint these judges and prosecutors.

1.2. Persons who were judges or prosecutors and ceased their activity for reasons not imputable to them, judicial specialised personnel, lawyers, notaries, judiciary assistants, legal advisers, the probation personnel with higher legal education, judiciary police officers with higher legal

education, the court clerks with higher legal education, persons who have held judicial specialised offices within the apparatus of the Parliament, the Presidential Administration, the Government, the Constitutional Court, the Ombudsman, the Court of Accounts or the Legislative Council, the Juridical Research Institute within the Romanian Academy and the Romanian Institute for Human Rights, the professors at law within the accredited institutions, as well as the assistant-magistrate with the High Court of Cassation and Justice, having at least 5 years length of service within the specific field, may be appointed into magistracy, based on a competitive examination.

The examination is organised annually or any time it is required, by the Superior Council of Magistracy, through the National Institute of Magistracy, in view of filling the vacancies in the first instance courts and the prosecutor's offices attached to them.
Within 30 days from the validation of the examination, *the Superior Council of Magistracy sends to the President of Romania the proposals for appointment*, as judges or prosecutors, of the candidates who succeeded at the mentioned examination. The President of Romania may not refuse to appoint these judges and prosecutors.

1.3. Persons who have been judges, prosecutors or assistant-magistrates with the High Court of Cassation and Justice for at least 10 years, who have not been disciplinarily sanctioned, who have had only the "very good" qualification in the evaluation procedure and have ceased their activity for non-imputable reasons, can be called, without contest or examination, in vacant judge or prosecutor positions at courts or prosecutor's offices of the same rank as those at which they had been entitled to function or at courts or prosecutor's offices of lower rank.

These last provisions have been introduced in Law no 303/2004 on the statute of the judges and prosecutors by the amendments to the Laws of Justice. The Romanian Magistrates Association (AMR) has strongly supported the amending as a consequence of the effective situation of some courts in Romania from the point of view of human resources.

2. Irremovability of judges, including transfers of judges and dismissal

As specified in the Romanian Constitution, judges appointed by the President of Romania are irremovable, according to the law. The appointment proposals, as well as the promotion, transfer of, and sanctions against judges is only within the competence of the Superior Council of Magistracy, under the terms of its organic law.

The irremovable judges may not be transferred, delegated, seconded or promoted without their consent, and they may be suspended or removed from office only in accordance with the conditions provided by the Law no. 303/2004 on the statute of judges and prosecutors.

i) If a first instance court, a tribunal or a specialised tribunal cannot operate normally because of the temporary absence of certain judges, the existence of vacancies or other such causes, *the president of the court of appeal* that has jurisdiction *may, at the proposal of that court's president, delegate judges from other courts within the aforementioned jurisdiction, with their written consent*.

The delegation of judges from first instance courts, tribunals and specialised tribunals to the jurisdiction of another court of appeal is decided, with their *written consent*, by the *Section for*

Judges of the Superior Council of Magistracy at the request of the president of the court of appeal in whose jurisdiction the delegation is requested and with the endorsement of the president of the court of appeal where they actually function.

The delegation of judges within the courts of appeal is decided, *with their written consent, by the Section for Judges of the Superior Council of Magistracy*, at the request of the president of the court of appeal.

Judges may be delegated for a period not exceeding 6 months and the delegation may be extended, with their written consent, by no more than 6 months. During delegation the judges enjoy all the rights provided by the law for the office to which they are delegated. If the salary and other pecuniary rights provided for the office to which a judge is delegated are lower, they keep their initial monthly indemnity and the other pecuniary rights.

ii) The Section for Judges of the Superior Council of Magistracy decides, based on their written consent, *the secondment of judges* to other courts, the Superior Council of Magistracy, the National Institute of Magistracy, the Ministry of Justice, subordinated units or other public authorities, into any offices, including into offices of appointed public dignity, at the request of these institutions.

The length of secondment is between 6 months and 3 years. The secondment may be extended by up to 3 years, only once.

A judge may not be seconded to a higher court than the one in which he is entitled to function, according to the law.

During secondment, the judges keep their quality of judges and enjoy the rights provided by law for the seconded personnel. When the salary and the other pecuniary rights provided for the office to which a judge has been seconded are lower, they keep their initial monthly indemnity and the other pecuniary rights.

The judges may be seconded abroad for office purposes and enjoy the rights and obligations established by the special provisions of the institution where they are seconded. In the cases where the special provisions do not exist, the personnel seconded abroad enjoys the specific rights provided by the Law no. 303/2004 on the statute of judges and prosecutors.

The secondment period is recognized as judge seniority. At the end of the secondment, the judge returns to the office previously held.

iii) The *transfer* of judges from one court to another or to a public institution approved, at the *request* of those in question, by the Section for Judges of the Superior Council of Magistracy. A judge may not be seconded to a higher court than the one in which he is entitled to function, according to the law.

iv) The judges may be suspended from office only in the cases specifically provided by the Law no. 303/2004 on the statute of judges and prosecutors. The Section for Judges of the Superior Council of Magistracy has the attribution to decide the suspension of judges from office.

v) The judges are removed from office in the cases specifically provided by the Law no. 303/2004 on the statute of judges and prosecutors: resignation; retirement, according to the law;

transfer to another office, according to the law; professional incapacity; as a disciplinary sanction; final conviction of the judge for an offence that harms the prestige of the profession; violation of the provisions regarding the prohibition to be operative employees, including undercover, informers or collaborators of the intelligence services; failure to pass the expert report regarding a mental illness that prevents a judge from properly exercising his office; failure to meet the requirements concerning the Romanian citizenship, permanent residence in Romania, full legal capacity, medically and psychologically ability to exercise the office; failure to succeed at the capacity examination (see 1.1. above).

3. Promotion of judges and prosecutors

The irremovable *judges may not be promoted without their consent*.

The *prosecutors* who are granted stability *may not be promoted without their consent*.

3.1. The *competitive examination* for the promotion of judges is held annually or at any time considered necessary, by the Section for Judges and the Section for Prosecutors of Superior Council of Magistracy, through the National Institute of Magistracy.

The judges and prosecutors who have received the rating "very good" in their last evaluation, who were not disciplinarily sanctioned within the last 3 years and who meet the minimum requirements of length of service may undergo the examination to be promoted to the immediately superior courts or prosecutor's offices.

The judges and prosecutors who meet the above requirements may take the examination, in view of *promotion on the spot*, within the limit of the number of positions approved annually by the sections of the Superior Council of Magistracy. The promotion examination consists in a written test.

The *effective promotion* of judges and prosecutors in the executing positions takes place only through a competition organized at national level within the limits of the vacancies existing in the courts and prosecutor's offices. The judges and prosecutors who have received the rating "very good" in the last evaluation, who were not disciplinarily sanctioned within the last 3 years and who have acquired the professional rank of the court or prosecutor's office to which they request the promotion may take the effective promotion examination. In addition, the judges requesting effective promotion to the court of appeal must have worked effectively for at least 2 years at the lower court. Also, the prosecutors requesting effective promotion to the prosecutor's office attached to the court of appeal or to the High Court of Cassation and Justice must have worked effectively for at least 2 years at the lower prosecutor's office.

The effective promotion competition consists of an evaluation test of the activity and the conduct of the candidates in the last 3 years.

The promotion of judges and prosecutors as a result of the above mentioned examinations is decided by the Section of Judges and the Section of Prosecutors of the Superior Council of Magistracy.

3.2. Appointment into the offices of *president and vice-president* of the first instance courts, tribunals, specialised tribunals and courts of appeal is possible only through an organised examination, any time considered necessary, by the Section of Judges of the Superior Council of Magistracy, through the National Institute of Magistracy.

The examination consists in presenting a project on the exercise of the leading position specific duties and written tests on management, communication, human resources, the candidate's ability to make decisions and assume responsibility, their performance under stress and of a psychological test.

The Section of Judges of the Superior Council of Magistracy validates the result of the examination and appoints the presidents/ vice presidents of the courts within 15 days from the date when the final results were published. The appointment in the above positions is made for a 3 years term of office, which is renewable only once.

The appointments as *general prosecutor of a prosecutor's office* attached to a court of appeal, as *prime-prosecutor of the prosecutor's office attached to a tribunal*, as *prime-prosecutor of the prosecutor's office attached to a tribunal for minors and family* or as *prime-prosecutor of the prosecutor's office attached to a first instance court* and as *deputy* to the above offices, is made only through a competitive examination organised any time considered necessary by the Superior Council of Magistracy, through the National Institute of Magistracy.

The Section of Prosecutors of the Superior Council of Magistracy validates the result of the examination and appoints the prosecutors into the above mentioned positions within 15 days from the date when the final results were published. The appointment of the prosecutors in these positions is be made for a 3 years term of office, which is renewable only once.

4. 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 is done by the ECRIS software, based on the objective criterion of order of registration with the court. We would like to note that the petitions addressed to the court can be communicated in a traditional manner (by mail), or by modern means (e-mail, fax). As a rule the random assignment of cases is done on the day they were filed in court. As a rule, for random assignment of 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, leading to observation of a reasonable duration of legal procedures. One of the main objectives of the case management is random assignment of the cases, based on an objective criterion using computer software.

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.

5. Independence (including composition and nomination of its members), **and powers of the body tasked with safeguarding the independence of the judiciary** (e.g. Council for the Judiciary)

5.1. As emphasized in the Romanian Constitution, the Superior Council of Magistracy is the guarantor of the independence of justice. The Superior Council of Magistracy consists of 19 members, of whom:

- 14 are *elected in the general meetings of the magistrates*, and validated by the Senate; they belong to two sections, one for judges and one for public prosecutors; the former section consists of 9 judges, and the latter of 5 public prosecutors;
- 2 representatives of the civil society, specialists in law, who enjoy a good professional and moral reputation, elected by the Senate; the representatives of the civil society attend (with the right to vote) only the proceedings of the Plenum of the Superior Council of Magistracy;
- the Minister of Justice, the president of the High Court of Cassation and Justice, and the general public prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice, who are *de jure* members of the Council.

The president of the Superior Council of Magistracy shall be elected for one year's term of office, which cannot be renewed, from among the magistrates. The length of the term of office of the Superior Council of Magistracy members is 6 years. The Superior Council of Magistracy shall make decisions by secret vote. The President of Romania presides over the proceedings of the Superior Council of Magistracy he takes part in.

5.2. *The Superior Council of Magistracy is independent and is submitted in its activity only to the law. The members of the Superior Council of Magistracy answer before judges and prosecutors for the activity performed during the exercise of their term of office*.

The Superior Council of Magistracy functions as a body with permanent activity. The decisions of the Superior Council of Magistracy are made in Plenum or in Sections, according to the attributions assigned to them. The period during which a judge or a prosecutor is a member of the Superior Council of Magistracy shall constitute length of service in these offices.

The president of the High Court of Cassation and Justice participate in the sessions of the section for judges, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, in the sessions of the section for prosecutors, and the Minister of Justice, in the sessions of both sections.

The president of the High Court of Cassation and Justice, the Minister of Justice and the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice do not have a right to vote in the following matters:

- when the sections are acting as law courts in matters of disciplinary liability;
- in cases where the sections fulfil the role of the court in the field of disciplinary responsibility;
- in cases regarding the good reputation of the judges and prosecutors;
- when the sections are dealing with requests concerning the approval of the search, detention, preventive arrest or house arrest regarding to judges, prosecutors or assistant-magistrates with the High Court of Cassation and Justice.

As the Romanian Magistrates Association (AMR) repeatedly emphasized, the separation of the decision making power on the career of judges and prosecutors between the two Sections of the Superior Council of Magistracy has been a goal firmly requested by magistrates. This principle was reflected in the Laws of Justice after the amending process. In this respect, we recall the Resolution adopted on May 29th, 2017 by the members of the Superior Council of Magistracy, the presidents and vice-presidents of Romanian courts, present at the "Periodical Professional Meeting of the representatives of the Superior Council of Magistracy, the Ministry of Justice, the National Institute of Magistracy, the National School of Clerks and court representatives". This Resolution called for ”the immediate separation of the powers of the Superior Council of Magistracy regarding the career of judges and prosecutors, as well as the organization and functioning of the courts and prosecutor's offices, in the sense that they belong separately to the two Sections of the Council, namely the Section for Judges responsible for judges and courts and the Section for Prosecutors which is responsible for prosecutors and prosecutors’ offices”.

The resolution adopted at the tribunal level was appropriated by the courts of appeal.

5.3. *The professional associations of judges and prosecutors may participate in the work of the Plenum and the Sections* (Section for judges and Section for Prosecutors), expressing, when they deem necessary, a point of view on the debated issues, at their own initiative or at the request of the Superior Council of Magistracy.

5.4. According to Law no. 317/2004 regarding 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 safeguard the professional reputation of judges and prosecutors. Complaints on safeguarding the independence of the authority of the judiciary are solved upon request or *ex officio* by the Plenum 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 complaint of a judge or a prosecutor, call upon the Judicial Inspection to perform verifications, in order to safeguard the independence, impartiality and professional reputation of judges and prosecutors.

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 above provisions apply accordingly.

5.5. The Superior Council of Magistrates fulfils, through its Sections (Section for Judges and Section for Prosecutors), the role of *court in the disciplinary liability* of judges and prosecutors, for the facts provided in Law no. 303/2004 on the statute of judges and prosecutors.

The Section for judges acts as a disciplinary court also for the assistant magistrates of the High Court of Cassation and Justice. The provisions of the present law apply accordingly to assistant-magistrates within the High court of Cassation and Justice.

The disciplinary action for the offences committed by a judge may be exercised by the Judicial Inspection, through the judicial inspector.

The Minister of Justice may notify the Judicial Inspection to determine if there are indications of a disciplinary misconduct by the prosecutors, but the disciplinary action for the offences committed by a prosecutor may be exercised only by the Judicial Inspection, through the judicial inspector.

The amendments to the law on 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, the Minister of Justice (a representative of the executive) was the holder of disciplinary action against judges and prosecutors.

The decisions of the Sections of the Superior Council of Magistracy solving the disciplinary actions are drafted within 20 days from the ruling and are communicated at once, in writing, to the judge or prosecutor in question and to the Judicial Inspection. These decisions 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, where appropriate, by the Judicial Inspection. The competence to deal with such appeals belongs to the Panel of 5 judges of the High Court of Cassation and Justice. The Panel of 5 judges may not include the voting members of the Superior Council of Magistracy or the judge who was disciplinarily sanctioned. The decision settling the appeal is final.

5.6. A recent testimony of the independence of the Superior Council of Magistracy (SCM) was the adoption of Decision no. 225 dated October 15th 2019 for the approval of the detailed *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"* (see 10.1.5. and 10.1.6. bellow). Also, see in paragraph 13.2. bellow another attestation of the independence of SCM fulfilling its constitutional attributions as guarantor of the independence of the judiciary.

The president of the Romanian Magistrates Association (AMR) participated in the debates of the Plenum of SCM in October 15, 2019 – prerogative granted by art. 29 par (2) of Law no. 303/2004 on the statue of judges and prosecutors – by videoconference.

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.

The judges and prosecutors are disciplinarily liable for the non-observance of their office duties and the provision of the Deontological Code for Judges and Prosecutors, as well as for the actions that affect the prestige of justice.

The Romanian legislation contains harsh provision on the subject of the disciplinary and material accountability of judges and prosecutors.

The disciplinary offences are specifically established by law through a long list which includes 20 offences (*e.g.* deeds affecting the honour, professional probity or the reputation of justice, committed during or outside the exercise of their office duties; breach of the legal provisions on the interdictions of incompatibilities of judges and prosecutors; un-dignifying attitudes towards colleagues, the other personnel of the court or prosecutor office where they work, judicial inspectors, lawyers, experts, witnesses, litigants or representatives of other institutions, while exercising the office duties; carrying out public activities having a political nature or expressing their political opinions while exercising the office duties; unjustified refusal to receive applications, conclusions, memorandums or documents submitted by the parties of a trial; repeated un-observance and from imputable reasons of the legal provisions on celerity in solving cases, or repeated delays in elaborating the works, from imputable reasons; breaching the duty to abstain when the judge or the prosecutor knows that there is one of the cases provided by the law for his abstaining, as well as making repeated and unjustified requests of abstention in the same case, which has the effect of delaying trial; breaching the confidentiality of deliberations or of the works, as well as of other information of a similar nature that has knowledge of while exercising the office duties, except of those being of public interest, according to the law; unjustified absence from work, repeated or which affects directly the activity of the court or prosecutor office; interfering within the activity of another judge or prosecutor; use of inappropriate expressions within the judgments or within the judicial documents of the prosecutor or grounding manifestly contrary to the legal reasoning, able to affect the prestige of justice or the dignity of the office of magistrate; un-observance of the decisions of the Constitutional Court or of those rendered by the High Court of Cassation and Justice in the appeal in the interest of law).

The law also contains the definition of "bad-faith" and "serious negligence".

In order to exercise the disciplinary action, it is mandatory for the Judicial Inspection to carry out the preliminary disciplinary inquiry.

The entire disciplinary procedure is specifically established by Law no. 317/2004 regarding the Superior Council of Magistracy. The Judicial Inspection and the Sections of the Superior Council of Magistracy must carry out this procedure in respect of the right of defence.

The disciplinary sanctions provided by law are decided by the Sections of the Superior Council of Magistracy (see above 5.5.).

According to the State of the Judiciary Report presented by the Superior Council of Magistracy, 15 magistrates have been disciplinarily sanctioned in 2018. The data for 2019 is not yet available. The debates on the Plenum of the Superior Council of Magistracy on the State of the Judiciary Report have been postponed because of the pandemic.

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).

7. Remuneration/bonuses for judges and prosecutors

The revenues of judges and prosecutors are established by Annex no. 5 to the Law no. 153/2017 regarding the remuneration from public funds. The annex contains the salary plan of judges and prosecutors set by hierarchy and seniority.

Judges and prosecutors do not benefit from bonuses.

For several years, the chief authorizing officer for the courts, who is the Minister of Justice, has not complied with the salary provisions regarding the granting of all the rights owed to judges and prosecutors. Under such circumstances, judges and prosecutors had no other choice but to sue the Ministry of Justice. Some of the salary rights that they have sued for have been granted by the Ministry of Justice by order of the Minister of Justice. Unfortunately, these considerable amounts have been paid only partially, until now.

8. Independence/autonomy of the prosecution service

The principle of independence is not applicable to prosecutors to the same extent as judges. Prosecutors, unlike judges, perform their activity according to the hierarchical control principle and under the authority of the Minister of Justice. According to art. 132 par. (1) of the Romanian Constitution, "Prosecutors carry out their activity according to the principles of legality, impartiality and hierarchical control under the authority of the Minister of Justice". A similar provision exists in Art. 62 par. (2) of the Law no. 304/2004 on the organisation of the judiciary.

As mentioned in the doctrine, according to art. 69 of Law no 304/2004 on the organisation of the judiciary, the relationship of authority gives the Minister of Justice the right to exercise control over prosecutors, to ask the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, where appropriate, the Chief Prosecutor of the National Anticorruption Directorate, for information on the work of the prosecutor's offices and to provide written guidance on the measures to be taken to prevent and combat crime

effectively. This prerogative of the Minister of Justice does not mean that prosecutors are subordinated to him in the exercise of their duties. However, being constitutionally established, the authority of the minister lays out his competence of making binding provisions, which leads to a limitation of the prosecutors' independence.

The independence of prosecutors in the exercise of their duties is expressly found in the amended Laws of Justice. The Romanian Magistrates Association (AMR) supported the debate on the Joint Special Committee of the Chamber of Deputies and the Senate on the necessity of stipulating the independence of prosecutors in organic law.

In particular, the independence of prosecutors is provided by the following laws:

- Article 3, par (11^1) of Law no 303/2004 on the status of judges and prosecutors. This new paragraph was part of the amending process of Laws of Justice and has the following content: *Prosecutors are independent in ordering solutions, under the conditions provided by Law no. 304/2004 on judicial organization, republished, with subsequent amendments and completions*;

- Article 64 par (2) of Law no 304/2004 on the status of judges and prosecutors: *In the solutions reached, the prosecutor shall be independent, pursuant to law. The prosecutor may appeal against the intervention in the prosecution or decision-making processes of the hierarchically superior prosecutor, regardless its nature, with the Section for prosecutors of the Superior Council of Magistracy, under the procedure for the verification of judges' and prosecutors' conduct.*

- Art. 64 par (5) of Law no 304/2004 on judicial organisation: *The prosecutor may appeal to the Section for Prosecutors of the Superior Council of Magistracy, in the procedure for verifying the conduct of the prosecutors, a measure ordered by the hierarchically superior prosecutor.*

- Art. 67 par (2) of Law no 304/2004 on the organisation of the judiciary: *The prosecutor is free to present before the court the conclusions that seem grounded, pursuant to law, considering the evidences. The prosecutor may appeal against the intervention of the hierarchically superior prosecutor for influencing in any way the conclusions, with the Section for prosecutors of the Superior Council of Magistracy.*

- 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.*

9. Independence of the Bar (chamber/association of lawyers)

As provided by Law no 51/1995 on the organisation and practice of the profession of lawyer, this profession is free and independent, based on an autonomous organisation and functioning, under the terms of the law and the by-law of the profession.

In the practice of their profession, the lawyer is independent and subject only to the law, the by-law of the profession, and the code of conduct.

The lawyer promotes and defends human rights, freedoms, and legitimate interests of the individual. Anyone is entitled to freely choose their lawyer.

The practice of the profession of lawyer is incompatible with occupations damaging the dignity and independence of the lawyer's profession or good morals.

Any public communication or any publicity made by a lawyer or a form of practicing the profession is permitted, subject to compliance with the professional regulations and those regarding the independence, dignity, integrity of the profession, client confidentiality, to being objective and to correspond to the truth.

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

10.1. Systematic errors in the CVM Reports

10.1.1. As a preliminary note, we underline that the Romanian Magistrates Association (AMR) have never stated that the Cooperation and Verification Mechanism is only optional or that the recommendations contained in the reports drawn up in this framework would not have effects. On the contrary, the Romanian Magistrates Association (AMR) has repeatedly underlined that CVM directly concerns the justice system, with recommendations aimed at strengthening the independence of the judiciary.

In such a context, we have emphasized the importance of the accuracy of the premises on which the recommendations are based precisely because they concern the system and magistrates with both important effects on the act of justice and on citizens.

As magistrates, we cannot close our eyes on the existence of repeatedly incorrect, unrealistic, factual and legal statements in CVM reports that some of the recommendations have been built. Informing about these errors/ unrealities does not mean denying CVM character for the

Romanian State as an EU member, but rather the need for magistrates, the justice system, institutions and citizens to benefit from recommendations with accuracy, precisely, strictness. In the last years, our professional association have publicly showed and argued that the way the data collection for CVM reports has made it possible to shatter errors/ inaccuracies/ incomplete statements that can only affect the independence of justice because it does not reflect the correct premise.

The European Commission's report on progress in Romania under the Cooperation and Verification Mechanism published on the 22nd of October 2019 includes systematic errors of a gravity which should lead to its invalidation, as we have proved point-by-point.

10.1.2. In the last two years, a series of European institutions – GRECO, the Venice Commission, the European Commission – have published reports regarding the state of the Romanian justice system, especially in relation to the amendments brought to the justice laws in the period 2018-2019. A comparative analysis of their content reveals fundamental common errors, which can be found in all these reports. *At least part of them used as a source the erroneous information transmitted by the Romanian authorities*.

The clearest example of this is related to *the issue of invalidating the solutions adopted by the prosecutor for reasons of unfoundedness also, not only of illegality*.

Introduced in the amendments to the justice laws to correlate the provisions from the law on judicial organization with the ones already in force from the Criminal Procedure Code, the provision in question has long been exploited as an example of the legislator's intention to eliminate the independence of prosecutors.

This position was officially adopted, through press releases of the National Anti-corruption Directorate and the Public Ministry, the prosecutors maintaining that the invalidation of the solutions adopted by prosecutors for reasons of unfoundedness, not only of illegality, "will limit the functional independence of prosecutors".

Despite the evidence furnished by the criminal procedural law in force, which regulated this procedure since a long time ago, the subject was revisited insistently with the consequence that in the first report on the new laws of justice – the initial legal opinion of the Venice Commission – the modification of the legal norm in question was included as a recommendation. Only later, as a result of the observations transmitted, the Venice Commission eliminated this recommendation from the final version of the report.

The error in question – even though it was obvious and admitted by the Venice Commission's experts – was however transplanted in other reports, such as the GRECO report, which proves that, at least partially, the information received by experts from the authorities are taken as such, without a minimum verification of the primary source.

Consequently, in July 2019, having proof that at least some information was transmitted erroneously to the European experts, we required the Ministry of Justice to communicate to us copies of all the reports, briefings and observations sent to the European experts in order to verify their accuracy. We received no answer, the authorities demonstrating a complete lack of transparency regarding this subject.

These reports, which represent the third category of sources that underlay the CVM report, are characterized by the same subjectivism, given the fact that the sources used are similar. Thus, a circular argument is created, the reports quoting each other, given the fact that the primary

information is false or flawed. In conclusion, the CVM report is based on information obtained from unilateral and subjective sources, which is why they have an evidently subjective and partisan character, which vitiates the entire content of the report and its conclusions.

10.1.3. *The cooperation between the secret services and the judicial system, organized and carried out illegally*, as it ensues from the provisions of the declassified protocols and as it was established in a well-argued manner by the Constitutional Court, was not denounced neither by these CVM reports, nor by the previous ones.

On the contrary, the report reiterated the specification from the CVM report 2018, trying to avoid discussing the essence of this fundamental subject for a European justice system, which gives a central place to the ″rule of law". Thus, in the technical report it is mentioned that "the operation of intelligence services is not a matter for the EU and falls outside the CVM benchmarks" and that „it is the role of the courts to establish whether or not specific allegations of abuses are substantiated and an open and impartial investigation would be needed to establish whether there were systemic failures."

On one hand, we observe a false shift of the analysis, since the subject of the violations does not regard the manner in which the secret services operate, but the proved fact, by the content of the declassified protocols, that they have interfered illegally with the administration of justice (with the collaboration of some persons belonging to the justice system), as the Constitutional Court ascertained by Decision no. 26/2019. On the other hand, the manner in which the justice system operates is the main objective of the CVM. At the same time, the conclusion cited above does not make sense, since the Romanian courts lack the competence to order "investigations" regarding ″systemic failures" concerning the activity of courts and prosecutor's offices.

The reference to the secret protocols concluded between the main judicial institutions and the Romanian Intelligence Service (RIS) as a mere source of disagreement for the public opinion, without any minimum reference to their impact, and the lack of any assessment of the consequences of the conclusion of these protocols on the rule of law, reflect a shocking superficiality in addressing an issue of a major importance for the independence of the judicial system, which calls into question its very role in defending fundamental rights and freedoms.

In conclusion, the European Commission was not concerned about the gravity of the conclusion and of the application, in an illegal manner, of secret protocols between institutions from the top of the judicial system and the secret services, or about the serious violation of fundamental rights generated by the said protocols, but is concerned about the fact that the decision of the Constitutional Court which declared these protocols illegal will negatively impact the fight against corruption. In other words, taking into account that this was the main concern regarding the effects of the protocols, the Commission seems to have accepted, in an unacceptable manner, abuses in the name of the fight against corruption!

10.1.4. In the Report was also mentioned: "The Commission recalls its previous suggestion that expertise from other Member States could be valuable in *building a stronger system for technical surveillance measures* used by the prosecution and for the collaboration between the intelligence services and the prosecution essential for pursuing serious crime such as terrorism and cybercrime", the CVM report stated.

What the European Commission recommends is the re-implementation of something that has been declared unconstitutional, since exactly under the pretext of fighting terrorism, cybercrimes and under the pretext of defending national security, the secret services in Romania were illegally involved in the administration of justice, as the Constitutional Court has ruled.

In the context in which Romania has tens of thousands of technical surveillance mandates, requested by prosecutors, and thousands of national security surveillance mandates, requested by the intelligence services, requests which are almost entirely approved by judges (which proves that the judicial control by the courts is not effective), the recommendation of the European Commission to create an even more robust system of mass surveillance of Romanians, in fact an even more brutal violation of the citizens' private life of, demonstrates the disdain of this European institution for the rights and freedoms of Romanians.

Instead of expressing concerns about the violation of the fundamental rights of the Romanians or the lack of independence of the courts in relation to the prosecutors or the intelligence services – since the judges admit almost 100% of the requests for surveillance mandates –, the European Commission recommends setting up an even more robust surveillance system than the current one.

We recall that, in the case of *Iordachi and others against Moldova*, the European Court of Human Rights stated the following: "51. The Court notes further that in 2007 the Moldovan courts authorised virtually all the requests for interception made by the prosecuting authorities (see paragraph 13 above). Since this is an uncommonly high number of authorisations, the Court considers it necessary to stress that telephone tapping is a very serious interference with a person's rights and that only very serious reasons based on a reasonable suspicion that the person is involved in serious criminal activity should be taken as a basis for authorising it. […] In the Court's opinion, is a matter of concern when looked at against the very high percentage of authorisations issued by investigating judges. For the Court, this could reasonably be taken to indicate that the investigating judges do not address themselves to the existence of compelling justification for authorising measures of secret surveillance."

The situation is similar in Romania, which has tens of thousands of authorizations for technical surveillance requested by prosecutors and approved by the courts, to which are added thousands of authorizations for national security mandates issued, under state secrecy, at the request of intelligence services.

10.1.5. In the technical Report was mentioned: „The *public criticism* of the DNA – National Anticorruption Directorate (A/N) - continued in 2019. Examples are the allegations of abuses in relation to cases of corruption involving magistrates, the collaboration with the Intelligence Services or general criticism on the cost of DNA."

It is unacceptable for a report of the European Commission to consider as invalid just and proven criticism regarding the prosecutorial structure which deals with combating corruption.

If it had done proper research, if it had also sought other opinions than those which unconditionally support their theses, the rapporteurs would have found out that the National Anticorruption Directorate (DNA) orchestrated abuses against prosecutors and judges – *see the Judicial Inspection's Report (256 pages), approved by Decision no. 225/15.10.2019 of the*

Plenum of the Superior Council of Magistracy – and collaborated illegally with the secret services, as stated by the Constitutional Court in its Decision no. 51/2016.

In the Report it was shown that ”there are various examples where the Special Section exercised its powers to change the course of criminal investigations in a manner which raises serious doubts about its objectivity”. In the footnotes (footnote 21) there is a reference to the investigation by the Section for the Investigation of Offences Committed by Magistrates (SIIJ) of the former National Anticorruption Directorate (DNA) Chief Prosecutor, investigation which, in the opinion of the Commission, ”seemed specifically designed to frustrate this candidacy”.

In an objective approach, which should characterize a report of the European Commission, it would be required that expressions such as ”seemed specifically designed” be accompanied by point-by-point strong arguments (to use a term from the report) and not by speculative arguments regarding the date on which the criminal case was “opened” or by generalizations without explanations (the fact that another case was registered involving the Prosecutor General “seemed to confirm the pattern of steps taken against senior magistrates – that is two - who were critical of the Section”.

We reiterate that no CVM report has noted that in 2016, the National Anticorruption Department (DNA) indicted the former Prosecutor General of Romania, investigation which negatively affected his career in a serious manner, as it led to his resignation, after which, in 2018, DNA ordered the closing of the case, ultimately being proved that the actions imputed to the former Prosecutor General did not exist. Therefore, the highest representative of the Public Ministry was removed from office because of an investigation carried out under the hierarchical authority of the Chief Prosecutor of DNA, but no one answered for this failure; moreover, the European Commission praised unreservedly the activity of this structure. Instead, the Commission is concerned about “a pattern of steps” taken by the Section for the Investigation of Offences Committed by Magistrates (SIIJ), without detailing it or bringing any proof in this regard.

In the Report it was also mentioned that ”these examples include cases where the Special Section launched investigations against judges and prosecutors who had opposed the current changes to the judicial system, as well as abrupt changes in the approach followed in pending cases, such as the withdrawal of appeals previously lodged by the DNA in high-level corruption cases.”

However, since 2014, the *cases of judges and prosecutors who were investigated by the 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 not mentioned in the CVM reports after 2014, even though they were reported by judges, prosecutors and professional associations, repeatedly and in a reasoned manner.

We underline, in this context, that SIIJ did not send for trial any judge or prosecutor for ”crimes” resulting from the decisions pronounced in the cases they were invested with or for publicly expressing critical views regarding some of the amendments to the justice laws.

On the other hand, 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*.

10.1.6. In the technical Report it is mentioned that „proponents of the creation of the special section, including some in the judges section of the SCM, cited in particular a need to take corruption crimes involving magistrates outside the competence of the National Anti-Corruption Directorate (DNA). The argument was that the DNA had abused this competence by opening ex-officio investigations, with the intention of putting pressure on judges in DNA-prosecuted trials to obtain high conviction rates. These claims of systematic abuses by the DNA have been strongly disputed by the DNA and by the Public Ministry.”

Without presenting and analysing the submissions of the representatives of the judges of the Superior Council of Magistracy (SCM), which are referred to in a general manner, the reports have limited themselves to launching the conclusion that these ”claims of systematic abuses (…) have been strongly disputed by the DNA and by the Public Ministry”, *ignoring the notorious cases of investigations followed by the closing of the cases and by acquittals, some of which were presented above*.

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, before the Section for the Investigation of Offences Committed by Magistrates (SIIJ) started to operate. 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 (from Timiș Tribunal), registered in 2006, was closed in 2018, after 12 years. Other cases were in the same situation.

And 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.
Thus, the most crushing plea for the creation of the Section for the Investigation of Offences Committed by Magistrates (SIIJ) can be found in the conclusions of the SCM decision:

"The practices of the NAD 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".

10.2. The campaign for the drastic reduction of magistrates' retirement pensions. Financial independence of Justice

10.2.1. As the Romanian Magistrates Association (AMR) emphasized in the open letter addressed to the President of the European Association of Judges in September 2019, at the end of July 2019, the Government launched a draft ordinance regarding the regulation of fiscal-budgetary measures which concern the activity of the judicial authority. The project contained a series of measures to drastically reduce the incomes of active and retired magistrates.

The Romanian Magistrates Association (AMR), together with the Association of Romanian Prosecutors Association (APR), who are the oldest professional associations of magistrates in Romania, sent an open letter to the Superior Council of Magistracy and to the Prime Minister in July 2019 at the time when the Minister of Public Finance declared that he will launch the draft ordinance regarding the magistrates' income.

AMR and APR have argued for the unjustified nature of such measures which would bring a serious prejudice to the status of magistrates. The open letter emphasized that the establishment of the magistrates' pensions, by Law no. 92/1992 and their consolidation by Law no. 303/2004 regarding the statute of judges and prosecutors, responded to a European concept regarding the necessity of ensuring the financial independence of the magistrates. Therefore, the amount of magistrates' pensions was not and is not a "fashion" with local inflections or a "gift", a privilege, but a necessary element for respecting the principle of their independence. Incorporating financial independence into the essential concept of independence of justice was a principle for which AMR has struggled for many years.

AMR and APR also underlined that, as established by art. 8.1. of The Universal Charter of the Judge, adopted by the International Association of Judges in November, 1999 and updated in November, 2017, the judges must receive sufficient remuneration to secure true economic independence, and, through this, their dignity, impartiality and independence. The remuneration must not depend on the results of the judge’s work or on his/her performances, and must not be reduced during his or her judicial service. Therefore, both the salary and the pension pertain to the dignity of the magistrates.

By Decision no. 115/2.08.2019, the Plenum of the Superior Council of Magistracy issued a negative opinion on the draft Government ordinance.

Regarding the proposals to amend Law no. 227/2015 (The Fiscal Code), in the sense of imposing a consistent additional tax on the pension of the judges and prosecutors, the Plenum found that at the moment these pensions exceed 10,000 lei. Thus, they stand to be charged a 30% tax for the part between 7,000 lei and 10,000 lei and a tax of 900 lei + 50% for the part that exceeds 10,000 lei, respectively. The enforcement of these taxes will lead to a substantial reduction which no doubt will greatly affect the retirement pensions of the magistrates.

The retirement pension for magistrates was established to encourage stability in the service and the formation of a career in the judiciary. Its stimulating character consists in the fact that the amount is determined in relation to the income received at the date of retirement. The different legal treatment of the magistrates regarding the retirement system is justified also because of

the risks involved in exercising their profession, with an essential role in defending human rights, public order and the values of the rule of law.

Therefore, the retirement pension of judges is not a privilege, but is objectively justified, constituting a partial compensation for the inconveniences that result from the rigor of the special status to which the magistrates must submit. The judges are prohibited from activities that could bring them additional income, which would ensure them the effective possibility of creating a material situation that would provide them at retirement with a quality of life as close as possible to the one they had during their activity.

The Plenum of the Superior Council of Magistracy also held that the draft Government Ordinance violates the constant jurisprudence of the Constitutional Court who established unequivocally that the independence of justice, as a constitutional guarantee, includes the financial security of magistrates, which also implies the provision of a social guarantee as is the retirement pension. Moreover, there is no economic justification for such an approach that would come at a time when the Government argues that the economy is on an ascending trend and even took measures to increase contributory pensions, adopted fiscal amnesty measures and provided for the benefit of ”special pensions” for other professional categories, facts proving the existence of sufficient budgetary funds.

The Romanian Magistrates Association (AMR) has also invoked the following international documents:

The Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, which expressly provided in art. 11 that "The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law";

The Recommendation no R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges has established that „Proper conditions should be provided to enable judges to work efficiently and, in particular, by: […] ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities”;

Art. 6.4 of the European Charter on the status for judges states that "In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge".

Regarding the proposal from the draft of the Government Ordinance on the modification of the legal provisions concerning the delegation or secondment allowances that are granted to magistrates, the Plenum of the Superior Council of Magistracy found first of all that the project proposes to reduce the amount of these allowances. Secondly, the Government was not empowered by Parliament to regulate in the field of salary rights of judges and prosecutors. Third, although derogations from the common law in the matter of delegation and secondment allowances also exist for senators, deputies or advisers of the Court of Accounts, the draft

Government Ordinance has proposed, without any reasonable justification, to modify only the status of the incomes of the magistrates.

Such an approach is profoundly discriminatory and manifestly unconstitutional.

The draft was not put on the agenda of the Government, so we thought we had avoided the above measures that would seriously harm magistrates. However, we were informed that a new project of a law in the same sense was submitted to Parliament this time. As we are in an election year, politicians, both those in power and those in the opposition, are trying to win the will of the voters by presenting to the public in a false manner the incomes of active and retired magistrates. They only bring up our incomes, failing to mention the risks, prohibitions, incompatibilities, enormous workload etc.

The Romanian Magistrates 'Association (AMR) emphasizes that the drastic reduction of the magistrates' retirement pensions by almost 30% cannot constitute a bargaining chip for election purposes and contravenes the European principles regarding the status of judges.

10.2.2. The open letter was presented at the meeting of the European Association of Judges, in September 2019 (Astana). We are truly grateful for the support we have received from the EAJ and from the President, Mr. José Igreja Matos. In an open letter to the Romanian government, the Parliament and the Prime Minister, the President of EAJ invoked international and European standards laid down in:

- The Universal Charter of the Judge (article 8-3 – Retirement)

"the judge has a right to retirement with an annuity or pension in accordance with his or her professional category."

-The European Charter on the Statute for Judges (article 6.4)

"In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge."

- Magna Carta of Judges (CCJE)

"judges shall receive appropriate remuneration and be provided with an adequate pension scheme, to be established by law."

- Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe on Judges: Independence, Efficiency and Responsibilities, in particular para. 42/43, which states that "guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges."

Also, in the letter has been underlined that in the past the European Association of Judges already stated "a general cause of concern is the situation of judges after retirement…… Often

it is argued that after retirement judges should be treated in the same manner as all other citizens in a particular country. This argument overlooks the important point that a guarantee of a financially safe future in retirement will be a powerful incentive to independence during a judge's period in office."

Therefore, EAJ expressed its profound concern that the above-mentioned cuts in the retirement pensions system of Romania infringe the principles stated in these international documents whose aim is to establish common European standards for the independence of judiciary.

10.2.3. Unfortunately, the campaign against magistrates' pensions has continued. The public has been presented with a distorted image and the idea has been induced that the drastic reduction of magistrates' pensions would solve the problems of the national economy. A number of politicians have made insistent statements and have presented draft laws regarding the necessity of cutting the pensions of the magistrates (which in June 2019 were 3,800). But they continued to support the payment of over 167,000 special pensions that exist in Romania, paid to former employees of the Ministry of Interior, Ministry of National Defence, Romanian Intelligence Service.

The campaign culminated in the law adopted on January 28th, 2020, by which the Parliament repealed the public service pension for magistrates. The High Court of Cassation and Justice and the People's Advocate have challenged this law in the Constitutional Court. The Romanian Magistrates Association (AMR) have sent an amicus curiae intervention. The case has not yet been settled by the Constitutional Court because of the effects of the pandemic.

12. Accessibility of courts (e.g. court fees, legal aid)

12.1. According to the Romanian legislation there are two categories of judicial expenses of civil litigation: *i)* costs incurred by the State; this category of expenses includes expenditure of notifications and summons sent by the court to the parties, lawyers, experts, witnesses; *ii)* judicial expenses incurred by the parties; this category includes: court stamp duty, lawyer's fees, expert's fees, costs of witnesses' appearance, costs of transport and accommodation of parties and lawyers.

These expenses are subject to the principle, according to which the losing party is ordered to bear the judicial expenses incurred by the party winning the trial.

The obligation to pay the judicial expenses and the amount of the expenses to be paid by the losing party are determined by the judgement.

The expenses incurred by the state are paid from the budget of the court of appeal. The necessary amounts are allocated by the Ministry of Justice on the basis of the Court's annual and monthly applications. Although there have been delays in allocating funds, they have not been blocking the judicial activity or the court.

In principle, the amounts to be paid by the plaintiff as stamp duty do not hamper the right of access to justice.

These amounts are set by law for each category of civil actions. They start from 20 lei (about 4 €) and grow progressively, depending on the value of the object of the demand. Tranches are expressly set by law. For example, if the plaintiff requests the defendant to pay him the sum of 5,000 lei (about 1,050 €), the stamp duty is 355 lei (about 75 €), and if the plaintiff requests the sum of 250,000 lei (about 53,000 €), the stamp duty is 6,105 lei (about 1,290 €).

The amount of stamp duty is reduced by 50% for appeal.

There are categories of civil actions exempt from stamp duty by law. For example, employment and social security disputes, cases concerning the establishment and payment of unemployment benefits, cases of legal and contractual maintenance obligations, proceedings for damages resulting from unfair criminal convictions, cases of adoption, protection of minors, guardianship, assistance to people with mental disorders, protection of consumer rights, cases concerning the rights of the National Red Cross, proceedings for damages for alleged violations of the rights under art. 2 and 3 of the ECHR, the rights and legitimate interests claimed by former detainees and persecuted for political reasons during the communist regime in Romania.

12.2. There are express legal provisions regarding public judicial aid, both for legal persons and for individuals.

In article 42 para 2 of the Government Emergency Ordinance no. 80/2013 it is stipulated that the court grants to the legal persons, upon request, facilities in the form of reductions, staggered payments or postponements for the payment of stamp court fees due for actions and requests introduced in the courts. These facilities are granted in two situations, expressly provided by law: *a)* when the amount of the tax represents more than 10% of the average of the net income for the last 3 months of activity; *b)* the full payment of the tax is not possible because the legal person is in the process of liquidation or dissolution or its assets are, under the law, unavailable.

It is also provided the possibility of granting facilities for the payment of court stamp fees for legal persons, exceptionally, in other cases where the court considers, compared to the data regarding the economic-financial situation of the legal person, that the payment of the stamp fee, at the amount due, would be likely to significantly affect the current activity of the legal person (art. 42 para 3).

The stamp duty reduction can be granted separately or, as the case may be, along with the payment scheduling or deferral.

In order to rule on the request for the granting of facilities for the payment of the stamp duty, the court may request any clarification and evidence to the party or written information to the competent authorities.

If the facilities to pay the stamp court fee are granted, the court determine, as the case may be, the reduction fee or the reduced amount of the fee, the payment term or terms and the amount of the rates. The payment of stamp court fees can be staggered for a maximum of 24 months and for a maximum of 12 deadlines.

If the applicant has benefited from the reduction of the stamp duty, the amount for which the reduction was granted will be paid by the defendant who loses the trial.

The individuals can benefit from exemptions, reductions, staggered payments or postponements for the payment of the stamp court fees, according to the Government Emergency Ordinance no. 51/2008 regarding public judicial aid in civil matters. The article 1 of the Emergency Ordinance stipulates that public judicial aid is that form of assistance provided by the state which aims to ensure the right to a fair trial and to guarantee equal access to justice, for the realization of legitimate rights or interests through the trial, including the execution of the judgements or other enforceable titles.

The provisions of the Emergency Ordinance are applicable in all cases where public judicial aid is requested before the courts or other authorities with Romanian jurisdictional powers by any natural person having his habitual residence or residence in Romania or in another Member State of the European Union.

The Emergency Ordinance also applies to requests made by individuals who do not have their residence in the territory of Romania or of another Member State of the European Union, insofar as between Romania and the state of which the applicant is the citizen or on whose territory the applicant has his/her residence there is an agreement which contains provisions regarding international access to justice. For states with which Romania has no agreements, international access to justice can be granted on the basis of international courtesy, subject to the principle of reciprocity.

The public judicial aid can be requested by any natural person, in case he/she cannot face the costs of a trial or those involved in obtaining legal consultations in order to defend a legitimate right or interest in justice, without jeopardizing his/her maintenance or the maintenance of the members of the family.

Public judicial aid can be granted in the following forms: *1)* payment of the fee for ensuring representation, legal assistance and, as the case may be, for defence, through a lawyer, for the protection or realization of a legitimate right or interest in justice and also to prevent litigation; *2)* payment of the expert, the translator or the interpreter used during the trial, with the approval of the court or the authority with jurisdictional attributions, if this payment is due, according to the law, by the person requesting the public judicial aid; *3)* payment of the bailiff's fee; *4)* exemptions, reductions, staggered payments or deferrals from the payment of the legal fees provided by law, including those due in foreclosure proceedings.

Public judicial aid may be granted, separately or cumulatively, in any of the above forms. The amount of public judicial aid granted, separately or cumulatively, in any of these forms may not exceed, during a period of one year, the maximum amount equivalent to 10 minimum wages at the level of the year in which the request was made.

The public judicial aid can be granted to persons whose net monthly average income per family member, in the last two months prior to the request, is below the level of 300 lei (the minimum wage in 2019 is between 1,280 lei and 1,500 lei). If the average monthly net income per family member, in the last two months prior to the request, is below the level of 600 lei, the public judicial aid is 50%.

Public judicial aid may also be granted in other situations, in proportion to the needs of the applicant, if the estimated costs of the trial are likely to limit his effective access to justice,

including because of the cost differences of life between the Member State where it has its usual residence and Romania.

The public judicial aid is granted independently of the material status of the applicant, if by special law the right to public judicial aid or the right to free legal assistance is provided, as a protection measure, considering special situations (minority, disability, a certain status, etc.). In this case, the public judicial aid is granted without meeting the criteria listed above, but only for the defence or recognition of rights or interests arising or related to the special situation that justified the recognition, by law, of the right to judicial assistance or free judicial assistance.

Public judicial aid may be refused when it is abusively requested, when its estimated cost is disproportionate to the value of subject-matter of the litigation, and when the granting of public judicial aid is not required for the defence of a legitimate interest or is requested for an action that contravenes public order or the constitutional order.

Expenses for which the party has benefited from exemptions or reductions through public judicial aid will be charged to the other party if it has lost the trial. If the party receiving public judicial aid loses the lawsuit, the costs incurred by the state remain its responsibility.

The court can compel the party that has received public judicial aid to reimburse, in whole or in part, the expenses advanced by the state, if by the negligent behaviour during the trial it caused the loss of the trial or if by court decision it was found that the complaint was abusive.

Public judicial aid in the form of legal assistance through a lawyer is granted according to the provisions contained in Law no. 51/1995 for the organization and exercise of the profession of lawyer. In the cases provided by the law, the bars shall provide judicial assistance in any other than criminal cases, as a means of granting public judicial assistance, under the law. If, according to the Government Emergency Ordinance no. 51/2008, the request for public judicial assistance was approved in the form of legal assistance, the request together with the judgment of a court shall be sent immediately to the dean of the bar in the district of that court.

The Dean of the Bar or the lawyer to whom the Dean delegated this assignment shall appoint, within 3 days, a lawyer registered with the Register of Judicial Assistance, to whom he shall transmit, upon notification of the appointment, the court judgement. The Dean of the Bar has the obligation to communicate to the beneficiary of public judicial assistance the name of the appointed lawyer. The beneficiary of public judicial assistance may request the appointment of a particular lawyer, with his consent, under the law.

The lawyer appointed to provide public judicial assistance cannot refuse this professional task except in case of conflict of interest or for other justified reasons. The unjustified refusal to take over the case or to continue its performance represents a disciplinary offense, under the law. The unjustified refusal of the beneficiary or his/her unilateral and unjustified renunciation of the assistance provided by the designated lawyer shall result in the cessation of the public judicial assistance in the form of public judicial aid.

The amount of the fees due to the lawyers for the judicial assistance services within the system of public judicial aid and the method of payment of these fees are established by a protocol

concluded between the National Union of Bars in Romania, the Ministry of Justice and the Public Ministry.

13. Resources of the judiciary (human/financial)

13.1. Judges and prosecutors are recruited trough the proceedings presented above (see 1.1.).

At the beginning of 2019, over 4,500 judge positions and over 2,500 prosecutor positions were filled. During the year 2019, almost 300 vacant judge positions and 200 vacant prosecutor positions were filled.

However, there are still several courts and prosecutor's offices where the number of judges and prosecutors is insufficient in relation to the workload.

Insufficient human resources have been a problem of the judiciary for many years. Even if the situation has started to improve, we are still in short supply of human resources in courts and prosecutor's offices.

13.2. As mentioned above, the Minister of Justice is the chief authorizing officer for all the Romanian courts. The presidents of the courts have only the quality of secondary credit officers.

It is important to mention that the prosecutor's offices have their own chief authorizing officer, namely the General Prosecutor of Romania. Also, the High Court of Cassation and Justice has its own chief authorizing officer, namely the president of the court. The Superior Council of Magistracy has its own chief authorizing officer, namely the president of the council. The Judicial Inspection has its own chief authorizing officer, namely the Chief Inspector.

Therefore, only the courts depend financially on the executive, namely on the Minister of Justice. This is an obvious violation of financial independence, as the Romanian Magistrates Association (AMR) has repeatedly emphasized.

By Decision no. 227/2019, the Plenary of the Superior Council of Magistracy (SCM) decided to notify the Ministry of Justice in order to initiate the legislative measures for taking over the budget of the courts by SCM - except the budget of the High Court of Cassation and Justice. This decision was an expression of the SCM's independence in fulfilling its constitutional attributions as guarantor of the independence of the judiciary.

14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals). **16. Length of proceedings**

a) Case management is an important tool in the activity of the courts at all levels, a series of programs and measures being implemented to insure the effectiveness of the management. The objectives of the case management are the followings:

- reasonable length of the proceedings;
- monitoring the length of the proceedings;

- reduction of the length of the proceedings by concrete measures;
- monitoring the workload of the courts, of the panels of judges and of every judge;
- random assignment of the cases, based on an objective criterion using a computer software; issuing and communicating to the parties and/or lawyers of notifications and other documents in respect of the right to defence and the principle of adversarial process;
- computerised data base of cases trough a national computer software, starting on the date of filing the case in court until the final decision;
- the possibility of parties to access their own files electronically, in order to take note of the documents of the file without making a trip to the court;
- the possibility to identify a case file by the name of a party, by accessing the court's portal.

b) Using the rules and the computer software for the case management is no longer a possibility left to the decision of the courts, but is 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 as tasks of the management of the courts. The manner in which these attributions are fulfilled is verified by the Judicial Inspection. The Boards of the courts must communicate to the Judicial Inspection the data needed to make evaluation structured on three domains: monitoring the cases pending with a span of more than 10 years, monitoring the pending high level corruption cases and monitoring the compliance with legal deadlines into writing court decisions.

According to Article 46 par (2) of Law no 304/2004 on judicial organisation, the verifications 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 court decision and the reasons for judgement cannot make the object of these verifications.

c) The ECRIS software is implemented at national level, since 2007, to handle the cases from a statistic point of view. More precisely, this software allows the verification of the registration date with the court of each case, 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 connected to 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, 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 appeals which have been filed.

From the ECRIS software the statistical data are automatically extracted, by means of another software named StatisECRIS, implemented at a national level. This allows recognition and monitoring of more markers at the level of each court on efficiency of the activity such as:

- the workload of a court in relation to the number of judges who are effectively active at that court;
- the workload of each panel of judges and of each judge;
- the rate of settlement (efficiency), calculated exclusively in relation to the newly entered files and those finalised, in the reference period, expressed in percentage;
- the stockpile of files, calculated as the sum of the cases pending at the end of the reference period and which are not finalised, older than one and a half years;
- the number of the cases finalised in less than 1 year since registration, divided by the total number of cases settled in the reference period, expressed in percentage;
- the average length of procedures;
- non-compliance with the deadline due to a delay in writing the reasons for judgement.

d) In order to ease access of parties to the case file, many courts have implemented a software named "Info dosar" (File Info). The software has had positive effects on the efficiency of case management, granting parties the possibility to access documents in their case files. Parties can access it by logging onto court's address with a confidential password issued to them at the beginning of the procedure. After selecting the court and the case file number and after authentication of the confidential password received, the documents of the file may be viewed, including court drafts, witness statements etc.

In order to use the software in an efficient manner, the court scans the documents which are not received in digital format, uploading them to the electronic file which can be seen by the parties. For the scanning activity employees of the court are designated by the decision of the president of the court.

e) The possibility to send documents to and from the court via email or fax is provided by law (Civil Procedure Code and Criminal Procedure Code) under the name "fast means of communication". The courts constantly use these tools of communication (even more now, in time of a pandemic).

f) The New Civil Procedure Code, which has been effective since February 15th, 2013, introduced a procedure prior to the judgement stage, in order to reduce the lengths of the proceedings. During this procedure, the panel of judges assigned with the case verifies, immediately after the case is filed, its competence to deal with the respective case. Also, the panel verifies if the complaint meets the formal requirements provided by law. If the complaint does not meet the legal requirements, the plaintiff is notified about the inadequacies and about the obligation to make the amendments/ supplements ordered by court, under sanction of annulment of the complaint. The plaintiff is informed of the term in which they must fulfil these obligations.

In addition, the Civil Procedure Code establishes the term in which the defendant must file the statement of defence (25 days from communication of the summons), as well as the term in which the plaintiff must file the reply to the statement of defence (10 days since communication

of the statement of defence). Also, in 3 days' time from the date the statement of defence is filed, the judge must set the first hearing to be within 60 days from finalisation of the ”prior procedure” mentioned above. If the defendant lives abroad, the judge will set a term further in time, a more reasonable term depending on the circumstances of the case.

In case of urgent procedures, the terms mentioned above may be reduced by the judge according to the circumstances of the case.

The law placed at the disposal of parties an instrument to avoid excessive lengths of proceedings. Any of the parties may file an appeal invoking infringement of the right to settle the case in an optimum and foreseeable term. By means of this appeal it can be requested that effective legal measures be ordered. The Civil Procedure Code states the situations when such an appeal may be filed, as well as urgent terms for its settlement.

The total workload of the Romanian courts in 2019 was over 2,900,000 files. More than 2,100,000 cases were solved, more precisely a percentage of 72%. In 2019, the level of stocks decreased compared to 2018 with 55,033 files, which represents a decrease of 6.29%, and compared with the year 2015 it decreased by 184,658 files which represents a decrease with 18.39%.

Taking into consideration that the number of cases newly registered in 2019 increased compared to 2018 by 28,475 cases, but the stock of files decreased in 2019 compared to 2018, a reduction of the lengths of the proceedings can be observed. For example, there are courts of appeal where the average lengths of proceedings has been between 3.5 and 4 months in 2019.

18. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), **transparency of the legislative process, rules and use of fast-track procedures and emergency procedures** (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

According to Law no. 304/2004 on judicial organization, two of the attributions of the general assemblies of judges within each court are to analyse the draft of the laws, upon request from the minister of justice or the Superior Council of the Magistracy and to express points of view upon request from the Superior Council of the Magistracy.

Both the courts and prosecutor's offices and the professional associations of judges and prosecutors have been consulted on amendments to the Laws of Justice. The consultations took place through the Superior Council of Magistracy. Also, in the two years prior to the adoption of the amendments, consultations of the professional associations of judges and clerks have been held within working groups organized by the Senate of Romania and the Ministry of Justice.

The Romanian Magistrates Association (AMR) points out that, as it has firmly stated in an open letter addressed to the Prime Minister and the Minister of Justice, the opening of the dialogue

did not involve a "blind" agreement with the proposals made for amending the Laws of Justice, a "yes-man" reaction.

There were also situations during 2019 in which the courts and prosecutors' offices were consulted on issues related to the amendment of the law on judicial organization.

The practice of amending the provisions on judicial organization by emergency ordinances has been strongly criticized by the professional associations of judges and prosecutors.

However, the practice continued in 2019 and 2020. A final example in this regard is the Government Emergency Ordinance no. 23/2020 by which a new disciplinary offence for judges was instituted, even though the list of disciplinary offenses and disciplinary sanctions has been expressly established by Law no. 303/2004 on the statute of judges and prosecutors. The Romanian Magistrates Association (AMR) asked the People's Advocate to invoke the exception of unconstitutionality of the provisions of the emergency ordinance regarding the new disciplinary offense. In March 11th, 2020, the People's Advocate replied that she decided to invoke the exception of unconstitutionality.

Judge dr. Andreea Ciucă

Romanian Magistrates Association (AMR)