



N° 1/2022

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. 530/2008 – with the headquarter in Bucharest, Regina Elisabeta Bvd no. 53, District 5, e-mail amr@asociatia-magistrilor.ro, tax registration code 11760036, 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 Report

Country: ROMANIA

I. JUSTICE SYSTEM

A. Independence

1. Appointment and selection of judges and prosecutors and court presidents (including judicial review)

Positive developments since 1.2.2021: 1.a. On July 27, 2021, the Superior Council of Magistracy (SCM) has approved the organizing of the contest for admission into National Institute of Magistracy and the contest for (direct) admission into magistracy. These contests are organized during from July 2021 to April 2022. There was approved a total number of 458 positions, consisting in 273 for judges and 185 for prosecutors.

The Rule of Law Report of July 7, 2021 stated that *“the judgment of the Constitutional Court declaring unconstitutional the provision requiring the Superior Council of Magistracy to approve the regulation on the organisation and conduct of the competition for admission to the judiciary created a legal void, which led to no competition to recruit new magistrates being organised in 2020. In order to bridge this legislative gap, on 22 June 2020, the Ministry of Justice submitted to public debate a draft law on the admission to the National Institute of Magistracy, which was adopted by the Senate on 3 February 2021”*.

For information accuracy, it is necessary to provide you with the following notes: The decision of the Constitutional Court no. 121/2020 was published on June 9, 2020. Nevertheless, the draft law regarding the contest for admission into National Institute of Magistracy and the contest for admission into magistracy was submitted to Parliament only after more than 3 and a half months, namely on September 30, 2020.

According to the data published on the website of Chamber of Deputies, the draft was not subject of a debate within the deadline provided in Constitution. Consequently, it was tacitly adopted, as a result of exceeding the 45 days deadline.

The draft was forwarded to Senate on November 17, 2020 and two and a half months were necessary for being adopted, on February 3, 2020.

The urgency of adopting the law was maximum, for the purpose of avoiding the blocking of courts of first instance in the following years. Our professional association has insisted on this necessity and has expressed its availability of loyally collaborating with the legislative power for this purpose. However, the legislative procedure was carried out in an inexplicably slow manner.



On March 17, 2021, the Constitutional Court has declared as unconstitutional 2 articles of the 71 articles of the law (and not the entire law, as it results from Rule of Law report of July 7, 2021). The Court has retained that, in the essence, there have been infringed the exigencies regarding the law predictability and the judicial security. The law did not succeed in regulating the criteria and the possible case in which a person does not benefit from a good reputation for having the position as judge or prosecutor.

The modified law was published on July 9, 2021. Although, according to the law, the Superior Council of Magistracy had 30 days at disposal for approving the contest regulation, it was adopted in 7 days only, on July 16, 2021. Afterwards, on July 30, 2021, the Council has publicly announced the organization of the contest.

So, if the executive power (Ministry of Justice) and the legislative power would have taken all required measures, the contest could have been organized long before.

1.b. In 2021, there have been organized two sessions of the contest for promoting judges to leading positions within courts of appeal, tribunals and courts of first instance. The first session took place from March to June 2021, and the second one from September to December 2021. There was organized also a session of the contest for promoting prosecutors to leading positions within Prosecutor's Office at courts of appeal, tribunals, courts of first instance. This session took place from September to December 2021. According to the law, the appointment of judges who obtained the best result in the competition for the offices for which they applied, shall be made for a 3 years term of office, which is renewable only once.

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable): It is noteworthy, that despite pandemic, these contests, which are necessary for providing human resources for courts, have continued to be organized by the Superior Council of Magistracy, through the National Institute of Magistracy. Of course, there have been taken all protection and social distancing measures provided by law.

2. Irremovability of judges, including transfers (including as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

Positive developments since 1.2.2021: **2.a.** On June 10, 2021, the Superior Council of Magistracy adopted a decision for establishing the localities included in the districts of the courts of first instance from each county.

The changes have taken into consideration the requests formulated by the courts of appeal and had as purpose the observance of the balance between the workload of the courts within the competence area of a court of appeal. The changes had also as purpose to improve the access to justice by getting the justice closer to citizen.

Afterwards, on October 21, 2021, the Superior Council of Magistracy adopted another decision for changing the territorial competence area for 5 courts of first instance. There have been taken into consideration the requests formulated by the local public authorities from two counties of the country, motivated by the necessity of providing the easy access of citizens to the court. There have been also taken into consideration the points of view expressed by courts and prosecutor's offices.

We still cannot evaluate the effect of these decisions, as not enough time has elapsed from the date of their passing. However, we indicate that these changes, did not cause, for now, transfers of judges.



2.b. With regard to transfers, the Constitutional Court established on June 24, 2020, that the provision on the transfers is not constitutional. In essence, the Court has retained that the law does not indicate the conditions of transferring the judges, generating a state of unpredictability. Consequently, the Constitution is infringed as, from case to case, in an arbitrary mode, may be subjectively decided on the career of the judges.

Consequently, on December 28, 2021 there was published the law amending the law on statute of judges and prosecutors.

Negative developments since 1.2.2021: The Rule of Law report of July 7, 2021 stated: *"Although the early retirement scheme for magistrates introduced in 2018, which allowed the possibility of retirement after 20 years of service, was repealed by Parliament in March 2021 following recommendations from both the Venice Commission and GRECO, close to 300 magistrates retired in 2020 44 and close to 150 during the first quarter of 2021 45, further increasing this deficit"*.

The negative aspect is that, unfortunately, this statement does not correspond to reality.

The possibility of retiring magistrates having a length of service between 20 and 25 years exists in the law from 2007, in the following form: *Judges and prosecutors with a length of service between 20 and 25 years, when reaching the age of 60 years, shall enjoy the service pension, in this case the pension amount being reduced by 1% for each year missing from the whole length of service of 25 years.*

The text was only modified in 2018, in the sense that the pension may be granted without the requirement of reaching the age of 60: *Judges and prosecutors with seniority between 20 and 25 years only in these offices also benefit upon request, before reaching the age of 60, of the service pension. In this case the amount of the pension is reduced by 1% from the calculation base, for each year that lacks from the complete seniority in these offices.*

However, Rule of Law report does not indicate the fact that the text modified in 2018 never entered into force!

Its applying was postponed (by Government's Emergency Ordinance no. 92/2018) by motivating that this retiring system would have a major impact on functioning of courts and prosecutor's offices, generating the risk of considerable decrease of number of active magistrates. Afterwards, its applying was again postponed by means of Law no. 239/2019. By means of Law no. 86/2021, the legal provision was repealed.

So, without entering into force not even for a day, the amendment from 2018 could not be the cause of retirement of magistrates!

The retirement of magistrates was determined by other causes. One of the main reasons was the huge workload caused by the absence of organizing contests for admission into magistracy (the cause of this situation being presented in *answer 1.a.*). Another reason of retirement was the statements of the Minister of Justice, made at the beginning of year 2021. He publicly stated that the retirement regime for magistrates would change, and the retirement conditions he referred to were to the detriment of judges and prosecutors.

Impact of Covid-19 on these issues (where applicable):



3. Promotion of judges and prosecutors (incl. judicial review)

Positive developments since 1.2.2021: **3.a.** The Superior Council of Magistracy has approved the organization (from July to December 2021) of the contest for promoting to position as judge with High Court of Cassation and Justice, for occupying 12 vacancies.

The Superior Council of Magistracy has approved also the organizing of 2 contests for effective promotion of magistrates to execution positions, up to the limit of vacancies:

a) promotion of judges from courts of first instance to tribunals / from tribunals to courts of appeal (April – August 2021);

b) promotion of prosecutors from prosecutor's offices at courts of first instance to prosecutor's offices at tribunals / from prosecutor's offices at tribunals to prosecutor's offices at courts of appeal / from prosecutor's offices at courts of appeals to prosecutor's offices at High Court of Cassation and Justice (February – June 2021).

Other 2 contests were organized by the Superior Council of Magistracy for promoting magistrates. The contest for promoting judges is organized in December 2021 – April 2022 and the contest for promoting prosecutors was organized in July – September 2021.

3.b. The Rule of Law Report mentioned the following: “*By Decision of 14 July 2021, the Constitutional Court declared unconstitutional the provisions of that law which would have decreased from ten to seven years the seniority required for taking part in the competitions for the appointment of DNA and DIICOT prosecutors*”.

Nevertheless, the Report does not present any explanation with regard to this situation. We consider that a correct and complete information requires the following mention: the complaint was filed by the High Court of Cassation and Justice.

The Romanian Magistrates Association (AMR), together with 2 professional association of judges and 1 professional association of prosecutors have sent an *amicus curiae* memorandum. In essence, we argued that the National Anticorruption Directorate (DNA) and the Directorate for Investigating Organized Crime and Terrorism (DIICOT) function as structure within the Prosecutor's Office at High Court of Cassation and Justice. But they benefit from an obvious favourable treatment, with concrete effects on the career of prosecutors who are part of the 2 structures. More exactly, there is an unjustified positive discrimination, in relation to prosecutors who are part of the other structures of prosecutor office provided by law.

According to the law, the prosecutors appointed within DNA and DIICOT get, while exercising the function, the professional degree as prosecutor within the Prosecutor's Office at the High Court of Cassation and Justice. Thus, they obtain a status at the top of the prosecution system, with all the rights resulting from it, including the vocation to occupy functions in international structures to which one of the conditions of access is to be active at the highest level in the internal system. The DNA and DIICOT prosecutors benefit also from significantly higher salary rights compared to the prosecutors working within the other hierarchical level of prosecutor's offices.

Or, the condition provided by law for the prosecutors to be able to act at the level of the Prosecutor's Office at the High Court of Cassation and Justice consists in a minimum length of service of 10 years as prosecutor or judge. The same condition related to the length in service was required also for activating as prosecutor to DNA and DIICOT, prior to amending the law, in 2021.

The draft law challenged by the High Court of Cassation and Justice regulated the significant decrease of the seniority to 5 years of effective length in service because for these prosecutors there was taken into consideration also the length of service as auditors of justice. Such a legal provision created an obvious



preferential treatment for getting to DNA and DIICOT compared to getting to departments of Prosecutor's Office at the High Court of Cassation and Justice. The decrease of seniority as prosecutor to only 5 years of effective length in service meant precisely the infringement of substance and reason of DNA and DIICOT.

Such a reduced length of service made it impossible a minimum specialization within the fields of fight against corruption, organized crime and terrorism. The prosecutors having an effective length of service lower than 7 years may function only at the level of prosecutor's offices at courts of first instance and do not have the competence of investigating such crimes.

On July 14, 2021, the Constitutional Court admitted the exception of unconstitutionality.

In Rule of Law report, the decision of the Constitutional Court is reminded in connection with “*the deficit of human resources in the justice system*”.

On the date of initiating the law declared as being unconstitutional, the situation was as follows:

i) The National Anticorruption Directorate (DNA) had a degree of occupying vacancies almost 3% larger than the one of the Prosecutor's Office at the High Court of Cassation and Justice; the DNA occupation degree is close to the one of the prosecutor's offices at courts of appeal and significantly larger than of numerous other prosecutor's offices at tribunals and courts of first instance;

ii) The Directorate for Investigating Organized Crime and Terrorism (DIICOT) had a degree of occupying vacancies 17% larger than the one of the Prosecutor's Office at the High Court of Cassation and Justice; the DIICOT occupation degree was larger than the average at the level of the prosecutor's offices at courts of appeal and obviously larger than the occupation average of prosecutor's offices tribunals and courts of first instance.

Consequently, for the large decrease of the length in service to be considered necessary and justified, the legislator should have applied the same regime in all similar situations. Namely, to regulated the decrease of the seniority for promoting both at the level of Prosecutor's Office at the High Court of Cassation and Justice as well as at the level of prosecutor's offices at courts of appeal, tribunals and courts of first instance.

However, by applying this criterion for DNA and DIICOT only, it resulted obviously that we did not find ourselves in a situation justifying different measures, but on the classical case of a privilege based on some pretexts without having an objective basis.

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

4. Allocation of cases in courts

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

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

Positive developments since 1.2.2021:

Negative developments since 1.2.2021: The draft bill on the Superior Council of Magistracy proposes important amendments, which will seriously affect the representativeness and the efficiency of this body that is essential to the independence of justice.

One of the first amendments refers to the way in which the Superior Council of Magistracy's (SCM) members are elected.

According to the current law, the SCM Section for Judges consists of 2 judges from the High Court of Cassation and Justice, 3 judges from the courts of appeal, 2 judges from the county courts (tribunals) and 2 judges from the district courts.

The proposed bill intends that the SCM members will no longer be elected depending on the jurisdiction degrees; instead, they will be voted by all the judges. As such, within a procedure as the one proposed through the draft bill concerning Law no. 317/2004, the judges at district courts level, which are the most but the one with less experience, will always have a decisive role in choosing all the SCM members, including the High Court of Cassation and Justice ones.

The proposal has been outright rejected by the SCM, as well as within most of the courts.

In the assessment sent to the Ministry of Justice, the Romanian Magistrates' Association (AMR) argued that the proposal will transform the vote of the judges from the other hierarchical levels than the district courts into a formality with no effect. As long as the judges from the first hierarchical level have a number of votes that far exceeds the number of votes of the county courts, the courts of appeal and the supreme courts, they will be the ones actually deciding the entire composition of the Judge Department within the Superior Council of Magistracy.

It seems that this negative situation has also a positive component.

On the occasion of meeting the new Minister of Justice, on December 16, 2021, our association approached also this important issued for the judiciary. The Minister answered us that draft law is not final and that the proposals contained in this draft may be discussed, debated, so that we find the best solutions. Let us hope that this positive approach will have concrete effects.

Impact of Covid-19 on these issues (where applicable):

6. Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review).

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

Given the fact that there have been or are public debates regarding 2 situations of disciplinary investigation of judges, we consider that for the accuracy of the answer to this question it is necessary to bring concrete information (which may be verified). This objective information is all the more needed as the respective judges appealed to international bodies as well, but they presented the facts only in a selective way, keeping quite important information.

6.a. The Romanian Magistrates' Association (AMR), the National Union of Romanian Judges (UNJR), the Association of Judges for the Defense of Human Rights (AJADO) and the Romanian Prosecutors' Association (APR) wrote an open letter by which invited all foreign colleagues and institutions to holistically analyse the facts and facets of the issue regarding the disciplinary procedures launched against a few judges previously presented by themselves as a "sanction for their opinions and for their courage



to address the European Union Court of Justice” and to express restraint towards qualifying the due disciplinary proceedings as an outright abuse.

The open letter highlighted the following important issues:

While we strongly oppose sanctioning the crime of opinion and believe that the freedom of expression of judges should be preserved and should cover a large palette of ways of expression, we find it very difficult to accept that the stated freedom of expression of judges includes offending and body-shaming fellow judges in discussions on social media platforms such as Facebook groups that include a large number of judges and prosecutors.

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

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

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

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

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

- i. Judges should be free to use social media in their private lives. When making such use, they should exercise caution and adhere to any existing or generally accepted ethical guidelines or codes of judicial conduct.
- ii. A careful line should be drawn between unfair comments about judges, on the one hand, and legitimate criticism of judicial decisions or the judiciary, on the other.
- iii. Reactions to unfair comments concerning judges made on social media may be appropriate, or even necessary, when such comments risk danger to the judge or risk endangering public trust in the judiciary.
- iv. It is important that a judicial body or association responds to unfair comments made on social media on behalf of an individual judge if those comments have the potential to threaten public trust in the judiciary.
- v. In general, judges should consider refraining from responding in person to unfair comments made on social media. This could diminish the public perception of judges. A direct response from a judge could also infringe upon judicial ethics and principles of judicial conduct, such as neutrality and self-restraint.

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



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

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

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

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

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

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

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

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

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

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

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



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

Having such content of the conversations in mind, we are compelled to express solidarity with our colleagues that were offended, body-shamed and outright insulted by their own colleagues on such groups under the umbrella of “privacy” between hundreds of members of the same profession. We are concerned that the colleagues who were the targets of such remarks right now feel dispirited simply because they did not express the same opinion as the members of the group. Whether the conversations on the Facebook group were intended to be accessible to the general public or not we feel is irrelevant, since the groups have hundreds of members.

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

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

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

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

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

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

This judge was one of the participants in the discussions presented in the letter indicated in answer **6.a.**, but the sanction was not applied for the (insulting) way in which those discussions were held.

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



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

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

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

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

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

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

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

The question asked by many colleagues is not if he voted for certain political actions. The seriousness of the problem lies in the fact these actions were carried out under his leadership, in the organization having him as co-founder and vice-president.

7. Remuneration/bonuses/rewards for judges and prosecutors including changes (significant increase or decrease over the past year), transparency on the system and access to the information:

Positive developments since 1.2.2021:

Negative developments since 1.2.2021: There was publicly announced that within the Ministry of Labour a working group was constituted with regard to remuneration of the staff of the budgetary institutions. The Minister of Labour has made statements during 2021, referring to “correcting the law of non-unitary remuneration in the public system”, the announced reason consisting in the existence of inequalities.

However, the procedure is not transparent. We have information on the fact that also the salaries of magistrates are in discussion and we fear that they will be reduced. We know that the work group met



several times, having as participants representatives of High Court of Cassation and Justice, Superior Council of Magistracy, Prosecutor's Office at the High Court of Cassation and Justice, Ministry of Justice.

It is important to underline, as negative situation, the fact that from the financial point of view the Courts are represented by the executive power, i.e. Ministry of Justice! This anomaly is caused by the fact that the budget of courts is administered by the executive power and the main authorizing officer is the Ministry of Justice.

The High Court of Cassation and Justice, the Superior Council of Magistracy, the Judicial Inspection directly administer their own budgets. Even the prosecutor's offices administer their own budget, by means of the Prosecutor's Office at the High Court of Cassation and Justice

The Courts are the only ones financially depending on executive.

*As regards the measures taken for correcting this situation, see **answer 13**.*

The Courts have not been invited to participate to the working group within Ministry of Labour and have not been informed on the discussed subjects or the measures which the Government intends to take with regard to the income of magistrates. We indicate the fact that the system of interdictions and incompatibilities related to magistrates is very severe within Romanian legislation and the salary is their only one existence source.

Unofficially we have found out that until now there have not been taken concrete measures within the working group and only principle matters have been discussed. Nevertheless, not inviting the representatives of Courts and professional associations of judges and prosecutors in this working group is not justified.

Impact of Covid-19 on these issues (where applicable):

8. Independence/autonomy of the prosecution service

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

As the Romanian Magistrates' Association (AMR) mentioned in the answers to the previous Questionnaire, the law in force contains provisions that expressly states “the independence of the prosecutors in ordering the solutions”. The prosecutor can challenge, at the Section for Prosecutors from the Superior Council of Magistracy, through the verification procedure regarding the conduct of judges and prosecutors, “the intervention of the hierarchically superior prosecutor, in any form, in performing the prosecution or in making a decision”, the hierarchically superior prosecutor’s ordering, respectively, of the measure to transfer the cases from a prosecutor to another prosecutor.

Likewise, “the prosecutor has the freedom to present in court the conclusions he/she finds well-founded, according to the law, taking into consideration the evidence adduced in the case. The prosecutor may challenge, at the Prosecutor Department within the Superior Council of Magistracy, the intervention of the hierarchically superior prosecutor, regarding the potential influence, in any form, upon the conclusions.”

The Public Prosecution Service also enjoys financial independence, having its own budget, which it manages directly, through the General Prosecutor. By comparison, the courts of appeal and the assigned courts don't have financial independence, being included in the budget of the Ministry of Justice.



However, as we have argued many times, it is not enough for independence to be provided by law. Prosecutors must assume their independence.

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

Positive developments since 1.2.2021: A recent case of a lawyer's conviction has led to unprecedented protest of the lawyers and has triggered harsh reactions of both the National Association of the Romanian Bars (UNBR) and of several international lawyer associations.

In a notice issued on December, 2020, the UNBR has restated „the decision to fight for defending the principle according to which the lawyer cannot be subject to criminal repressions for the claims and the consultation based on the interpretation of the law and of the factual situation, regardless of the correct or incorrect nature of the sentences developed. When such a guarantee is missing, the defense right is intimidated and it lacks any substance by subjecting the lawyer to threats such as his/her criminal accountability by associating him/her with the deeds imputed to the one he/she represents”.

The stance of the UNBR has been massively supported by the bars around the country, who have sent public notices in this regard.

The case has also triggered the reaction of the International Association of Lawyers, as well as that of the UIA Institute for the Rule of Law, the latter stating that it: “fully supports the National Association of the Romanian Bars (UNBR) and Romanian lawyers in denouncing the case of Robert Roșu. We also stand with our Romanian colleagues in defense of the rule of law, the right to due process, the freedom of lawyers to practice law independently and the independence of the judiciary, all of which are threatened in Romania.”

On November 23, 2021, the High Court of Cassation and Justice admitted the appeal in cassation filed by the attorney-at-law and acquitted him. It also ruled his release after being arrested for 11 months.

On November 23, 2021, the National Union of Bar Association of Romania (UNBR) presented a press release entitled “UNBR salutes the decision of the High Court of Cassation and Justice regarding the acquitting of an attorney-at-law convicted for the allegations made while normally exercising his profession”.

The press release mentioned: “*The National Union of Bar Associations of Romania considers as welcomed this solution of the supreme court, representing a victory of the attorney-at-law profession and proving the righteous character of the positions constantly expressed by UNBR, according to which **the criminal sanctioning of an attorney-in-law for allegations and consulting while defending and representing the client is unacceptable and illegal***”.

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

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

Positive developments since 1.2.2021:

Negative developments since 1.2.2021: In 2016, the Government adopted the Emergency Ordinance no. 6 granting the Romanian Intelligent Service the statute as “special body for criminal investigation”, therefore granting to an intelligent service an active role in the criminal trial. **This fact affected the fundamental rights of the citizen, including the right to a fair trial.**

For 5 years, the Parliament did not follow the constitutional procedure, meaning that it did not adopt a law for approving or rejecting the emergency ordinance. However, on November 16, 2021, the law for approving the controversial Government's Emergency Ordinance no. 6/2016 was suddenly adopted.

The adopting of the Government's Emergency Ordinance no. 6/2016 was heavily criticized by the professional associations of the judges and prosecutors in 2016. The professional associations have invoked serious problems of unconstitutionality and asked the Parliament to reject the emergency ordinance. Moreover, the Romanian Magistrates Associations (AMR) and the National Union of Judges from Romania (UNJR) launched the Memorandum regarding the Justice, voted by more than 80% of Courts, in general assemblies. One request contained by Memorandum consisted in creating by law of an interception authority allowing the full observance of ECHR standards as regards the technical and legal safeguards.

Far from solving this problem, the law of November 16, 2021 has legitimized a structure created by means of an act classified as state secrete, in a manner that defies the principles of the rule of law and democracy.

The Romanian Intelligence Service acquires powers of criminal investigation, which means disconnecting Romania from European values and returning to the communist past.

The Romanian Magistrates Association (AMR), together with the National Union of Judges from Romania (UNJR), with the Association of Judges for Human Rights Protection (AJADO) and with the Romanian Prosecutors' Association (APR) have asked the Office of the Ombudsman and the High Court of Cassation and Justice to challenge the law to the Constitutional Court.

Impact of Covid-19 on these issues (where applicable):

11. Other developments since 1.2.2021, which may have an impact on the independence - please specify

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

B. Quality of Justice

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

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

13. Resources of the judiciary (human/financial/material)

*Positive developments since 1.2.2021: As regards the actions taken for providing human resources to courts and prosecutor's offices, see **answers to questions 1, 2, 3.***

With regard to the management of the budget of the courts, there was submitted to Parliament a draft law on September 21, 2021. It provides for the transfer of the budget from Ministry of Justice to the High Court of Cassation and Justice.

The Romanian Magistrates Association (AMR), together with the National Union of Judges from Romania (UNJR), with the Association of Judges for Human Rights Protection (AJADO) and with the Romanian Prosecutors' Association (APR) have sent to Parliament a broadly argued point of view which supports the need for the management of the budget of the courts by the judiciary.

In view of the principle of independence of the judiciary, AMR has taken a number of steps, including public ones, regarding the taking over of the court budget by the High Court of Cassation and Justice.

As a result of these actions a provision was introduced in the Law on Judicial Organization regarding the takeover of the budget of the courts by the Supreme Court starting with 1.01.2008. Unfortunately, this deadline has been extended successively.

The Memorandum launched by AMR and UNJR in 2016 and voted by more than 80% of the courts clearly called for adequate funding for the proper functioning of justice as a public service. It was also requested that the High Court of Cassation and Justice take over the effective management of the budget of the courts, as required by law.

Regrettably, despite our actions and despite the firm requests from the inside of the judiciary, the legal provision related to the taking over of the budget of the courts by the supreme court was repealed in December 2018.

Nevertheless, by the draft laws dated September 21, 2021, this major subject was re-opened.

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

14. Training of Justice professionals (including judges, prosecutors, lawyers, court staff)

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable): For one month, during October – November 2021, some activities of professional training, have been postponed, rescheduled or cancelled, both at the level of the National Institute of Magistracy as well as at the level of the courts of appeal and prosecutor's offices. There was taken into consideration the very large number of cases of SARS-CoV 2 infections. In this context, the organizing of activities of professional training with physical presence was a real risk for an even more spreading of the disease.

Consequently, the activities have been carried out online.

In December, some activities requiring physical presence have been re-started, under the observance of protection and social distancing measures provided by law. These measures have taken into consideration the maximum number of persons, the time frame, the assuring of an area of minim 2 sqm per person, the mask wearing, the observance of the sanitary protection norms. The participation was allowed only for persons vaccinated against SARS-CoV-2 virus and for persons finding themselves between 15th and 180th day after confirmation of SARS-CoV-2 virus infection.

15. Digitalisation (e.g. use of digital technology, particularly electronic communication tools within the justice system and with court users, including resilience of justice systems in Covid-19 pandemic)

Positive developments since 1.2.2021: 15.a. The Superior Council of Magistracy carries out a project regarding professional training and consolidating the capacity at the level of the judiciary, financed within the Norwegian Financial Mechanism 2014-2021, intended for consolidating the administrative capacity and the efficiency of the judiciary by developing the technical and IT infrastructure. Within this project, the courts benefited from 100 videoconference integrated systems in 2021.

15.b. A significant development is that more and more courts have implemented and use the electronic file. This software allows the parties and lawyers to access the file using the password granted by the

court for this purpose. Therefore, the parties and lawyers no longer have to go to court to study the files. The software offers also the possibility of quickly communicating the notifications and others documents by the court, via e-mail, with receipt acknowledgement.

However, there is a problem with the fact that the prosecutor's offices do not send electronic files to the courts, but on paper. As the volume of criminal prosecution documents is usually large, the courts do not have the staff to scan these documents on a daily basis so that they can be uploaded to the electronic file. Therefore, the documents in the criminal investigation files must be studied in the court archives.

The problem was solved only at the level of the High Court of Cassation and Justice as the Prosecutor's Office at the High Court sends the criminal prosecution files in electronic format.

However, despite the steps taken by AMR, the issue has not yet been resolved at the level of the other courts, given that the prosecutor's offices do not proceed in the same way as the Prosecutor's Office attached to the High Court of Cassation and Justice.

Negative developments since 1.2.2021: On the occasion of the meetings held with the leadership of the Ministry of Justice and with the representatives of the legislative power, the Association of Romanian Magistrates (AMR) requested the taking of the necessary measures for the national extension of the electronic file software.

AMR presented the existing factual situation in the courts and pointed out that the electronic file software was created and implemented exclusively through the efforts of the courts, given that the Ministry of Justice did not provide support in this regard. Many courts of appeal use this software. In fact, 2 such software have been created and developed across the country.

However, as AMR pointed out a unified approach is needed at the national level and the Ministry of Justice must take action as soon as possible. Such an approach is both in the interest of the judiciary as well as in the interest of the citizens. The mission of the Ministry of Justice is largely simplified thanks to the effort and dedication of the staff of the courts of appeal who created and implemented the electronic file.

Although at the beginning of 2021, the Ministry of Justice announced that until the end of the year we will have the electronic file at national level, the measure remained a statement only.

Impact of Covid-19 on these issues (where applicable): Among the effects of working from home there is also the acceleration of the measures regarding the providing of the courts with IT equipment (laptops, computers, printers, videoconference systems etc.). This IT equipment was required for carrying out the specific activities of the courts adapted to the new social reality. For example, we refer to the access of judges to the electronic file for preparing the hearings and for writing the reasoning of the decisions. We also refer to the possibility of organizing the court hearings using videoconference systems or to the possibility organizing professional training activities using videoconference system or online system etc.

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

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):



17. Geographical distribution and number of courts jurisdictions (“judicial map”) and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

Positive developments since 1.2.2021: Although it is not about a progress in 2021, we must provide some information on the judge panels solving corruption cases. Law no. 78/2000 for preventing, discovering and punishing the acts of corruption provides that for first instance judging the crimes of corruption, specialized judge panels must be formed. These panels carry out their activity at the criminal sections of the courts and are established by the decision of the president of the court, at the proposal of the management board.

With regard to judicial map, see answer to question 2.

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

18. Other developments, which may have an impact on the quality of justice - please specify

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

C. Efficiency of the justice system

19. Length of proceedings

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable): In 2021 the courts carried out normally their activity. We refer to the fact that the activity was not only limited to emergency cases as during the period of time March – May 2020 (due to the emergency state).

Additionally, in 2021, the courts have used many times the videoconference systems for court hearings. In penal cases, this possibility is provided by law. In civil cases it is also possible with the approval of the parties or of their representatives. There have been also used fast means of communication, through the electronic file.

All these steps had an effect, in the sense that there were no significant negative changes regarding the length of proceedings.

20. Other developments, which may have an impact on the efficiency of the justice system (like enforcement of judgements etc.) - please specify

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

II. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

A. The process for preparing and enacting laws

21. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency of the legislative process

Positive developments since 1.2.2021: 21.a. The Ministry of Justice consulted the courts, through courts of appeal, regarding the draft amendment of the 3 laws of justice, launched in 2020. We refer to: Law on the status of judges and prosecutors; Law on organization of the judiciary; Law on the Superior Council of Magistracy. The consultation result was forwarded to the Ministry of Justice by each court of appeal in February, 2021.

Discussions with the presidents of the courts of appeal showed that most of these courts have expressed their disapproval regarding the respective draft law considering that contains amendments affecting the status of magistrates, their independence and the organization of courts.

The professional associations have been consulted by the Ministry of Justice with regard to this draft law. In February 2021, the Romanian Magistrates' Association (AMR) together with the National Union of Judges from Romania (UNJR), with the Association of Judges for Human Rights Protection (AJADO) and with the Romanian Prosecutors' Association (APR) have sent to the Ministry of Justice observations and proposals with regard to the draft law. On March 12, 2021 our professional associations have participated in an online discussion with the Minister of Justice regarding the theme of the amendments to the laws of justice.

21.b. In 2021, the Romanian Magistrates' Association (AMR) was invited to the Parliament on the occasion of debating bills aimed at amending provisions of the law regarding judicial organization, the status of judges and prosecutors, the independence of the judiciary. For example, the most recent participation in such a debate was in December 2018. It referred to two legislative initiatives on measures to reduce the bureaucracy in courts.

Also, during 2021, AMR has sent points of view to Chamber of Deputies and Senate with regard to draft law on criminal liability of magistrates and draft law of the transfer of the budget of courts to the High Court of Cassation and Justice.

As it did during its activity, AMR was also open to dialogue in 2021, when it came to judicial organization, the status of judges and prosecutors, the rule of law and the quality of justice.

Negative developments since 1.2.2021: The Ministry of Justice did not take into consideration the observations and proposals made with regard to the draft law amending the laws of justice. Therefore, the consultation was purely formal.

On March 26, 2021, the Minister of Justice announced that he has sent the draft law amending the laws of justice to Superior Council of Magistracy (CSM), for opinion. In early April 2021, the CSM sent an address to the Ministry of Justice stating that the minister had not complied with the legal procedure. According to the legal provisions, the draft law had to be sent to the CSM accompanied by all the opinions issued by the other ministries. Therefore, an incipient form cannot be sent to the CSM for opinion, but a final form must be sent, accompanied by all the opinions provided by law.

In a public statement on April 8, 2021, the Minister of Justice acknowledged that he made a mistake and he said that he will send again to the CSM the draft law because initially it did not have the required endorsements.

During the online discussion we had with the new Minister of Justice, on December 16, 2021, there was also approached the subject of the amendments to the laws of justice. AMR, together with the other 3 above mentioned professional associations pointed out the amendments in the draft law which have an obvious negative impact on the independence of the judiciary.

Impact of Covid-19 on these issues (where applicable):

22. 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).

Positive developments since 1.2.2021: In 2021, the Government adopted 145 emergency ordinances. Their number significantly decreased compared to year 2020, when 227 emergency ordinances have been adopted.

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

23. Regime for constitutional review of laws.

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

24. Covid-19 provide update on significant developments with regard to emergency regimes in the context of the Covid-19 pandemic.

- Judicial review (including constitutional review) of emergency regimes and measures in the context of Covid 19 pandemic
- Oversight by Parliament of emergency regimes and measures in the context of Covid 19 pandemic
- Measures taken to ensure the continued activity of Parliament (including possible best practice)

24.a. By Decision no. 392/8.06.2021, the Constitutional Court declared as unconstitutional two provisions of Law no. 55/2020 regarding some measures for preventing and fighting against the effects of COVID-19 pandemic. The Court has underlines as follows: for the purpose of assuring a clear regulation, which effectively and efficiently guarantee the access to justice of the persons whose rights or interests have been infringed upon, the legislator is asked to regulate a procedure whose contents is easily identifiable, clear and predictable, under the aspect of consequences; this procedure must assure the possibility of urgently solving the cases within a very short period of time, so that the ruled decisions are capable of concretely and efficiently eliminate the consequences of the contested administrative acts, during the period of time in which they cause effects.

The Court has ruled that the legal provisions which have been found unconstitutional do not provide an effective access to justice, as the persons interested in contesting a decision of the Government relating to declaring or extending the state of alert do not have the possibility of getting a judicial decision during the period of time in which the respective decision of the Government applies, so that the illegal effects and their consequences for the rights of the person addressing to justice may be efficiently eliminated.

By Decision no. 416/10.06.2021, the Constitutional Court stated: the concrete regulation of the elements that determine the effectiveness of access to justice in case of contesting Government decisions establishing, prolonging or terminating the state of alert, as well as in case of contesting subsequent acts is a positive obligation that falls within the competence of the legislator who is obliged to intervene by adopting a legislative framework that respects the principle of proportionality as regards the restriction of the exercise of fundamental rights or freedoms.



24.b. It should also be noted that in April, 2021 a separate law was adopted for the judiciary on some measures in the field of justice in the context of the COVID-19 pandemic. It is about Law no. 114 which regulates the possibility of taking / disposing of measures necessary for the functioning of justice as a public service in order to prevent and combat the effects of the COVID-19 pandemic.

B. Independent authorities

25. Independence, resources, capacity and powers of national human rights institutions (NHRIs), ombudsman institutions, if different from NHRIs, of equality bodies, if different from NHRIs and of supreme audit institutions.

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

25a. Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years.

C. Accessibility and judicial review of administrative decisions

26. Transparency of administrative decisions and sanctions (including their publication and rules on collection of related data) and judicial review (incl. scope. suspension effect)

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

27. Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation.

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

D. The enabling framework for civil society

28. Measures regarding the framework for civil society organisations (e.g. access to funding, legal framework incl. registration rules, measures related to dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations etc.)

E. Initiatives to foster a rule of law culture

29. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues etc.

Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

30. Other issues, which may have an impact on institutional aspects related to checks and balances, - please specify



Positive developments since 1.2.2021:

Negative developments since 1.2.2021:

Impact of Covid-19 on these issues (where applicable):

To make the work of the working party easier it would be helpful if you could examine the country chapter of the rule of law report of last year [2021 Rule of law report - Communication and country chapters | European Commission \(europa.eu\)](#) and identify the problems of the judiciary (and only these) which had been taken up by the commission and make a very short table like:

| <i>Problem addressed in last Rule of Law Report</i> | <i>Development</i> |
|---|--|
| Keyword of problem e.g. lack of staff | solved or still the same or even worse |
| Attacks of judiciary by media | Better now |
| No involvement of judiciary in judicial policy | Improved (new forum of exchange) |

Judge dr. Andreea Ciucă, AMR