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To the International Association of Judges – IAJ-UIM

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

ANSWERS TO THE FORTH STUDY COMMISSION QUESTIONNAIRE "The Judicial Workplace and the Intersection with Judicial Independence"

1. APPOINTMENT TO JUDICIAL OFFICE

A. Please describe the process by which a person is appointed to judicial office in lower courts, intermediate courts and superior courts pointing out any relevant differences between appointment in criminal civil or appellate courts.

According to Law no. 303/2022 on the statute of judges and prosecutors (and previously according to Law no. 304/2004), admission into magistracy and the initial professional training for the office of judge 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.

They may be appointed only at the first instance courts. Debutant judges enjoy stability.

After completing the probation period, the debutant judges 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.



□ 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.

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.

□ These are the two procedures by which a person can be appointed as judge. The candidate accepted in one of the two examinations mentioned above may be appointed judge only to the district court (even if they attended the training courses of the National Institute of Magistracy).

In our legislation there is no other possibility for a person to be appointed as a judge. There is also no legal possibility for a person to be appointed as a judge directly to the county court or court of appeal and, even less so, to the High Court of Cassation and Justice.

There is no difference between the procedure for appointing a judge to the civil courts or to the criminal courts. Actually, of the more than 170 district courts operating in Romania, only a few have both civil and criminal divisions. In most district courts, judges deal with both civil and criminal cases.

The two procedures for admission into magistracy are very difficult and long, comprising a series of written and oral tests. For example, the examination for admission to the National Institute of Magistracy and the examination for direct admission into magistracy started in July 2023, but will end only in March 2024.

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. 303/2022 on the statute of judges and prosecutors.

□ There is another procedure for appointment in the magistracy, but this is actually a procedure for reinstatement as a judge. Reinstating former judges released from office by retirement is done without an examination, at the courts where they have the right to work according to the professional degree they had at the time of retirement. Reinstatement is done only in courts that cannot function normally due to the large number of vacancies or other objective reasons and only if the judge was released from office by retirement in the last 3 years prior to reinstatement.

Both the appointment examinations into magistracy and the reinstatement sessions of judges are approved by decisions of the Section for judges of the Superior Council of Magistracy and are organized by the Council.

B. If applicable, please identify whether political influences of any description bear upon in any way the appointment of a particular person to judicial office.

Not only do political influences have no role in appointing a person as a judge, but, according to the law, such influences are imperatively prohibited. This legal prohibition reflects the principle of separation of powers within the state.

Therefore, neither the legislative power nor the executive power has any legal basis to influence the appointment of a person as a judge.

According to art. 2 of the Law 303/2022 on the statute of judges and prosecutors, any person, organization, authority or institution has the duty of respecting the independence of judges. They must give judgements without any restrictions, influences, pressures, threats or interventions, direct or indirect, from any person or authority.

On the other hand, in order to avoid the violation of justice independence, the law also imposed prohibitions on judges regarding any political affiliation or political activity.

Thus, in accordance with Law no. 303/2022, judges may not be part of political parties or political groups, nor perform or participate in activities of political nature. When exercising their attributions, the judges are obliged to refrain from expressing or showing their political opinions in any manner whatsoever.

The prohibition of the exercise of political influences applies, according to the law, also with regard to the promotion to the High Court of Cassation and Justice.

C. Is ethnic or gender diversity in any way relevant to appointment to judicial office, and if so, please describe why and in what respect each may be relevant.

Although gender diversity is not relevant for being appointed as a judge, the number of women judges is high. This situation was determined taking into account the results obtained at admission examinations into magistracy.

Regarding ethnic diversity the Law on the status of judges and prosecutors provides that in the circumscriptions of the courts where a national minority has a proportion of at least 50% of the number of inhabitants, on equal averages, candidates who speak the minority language have priority.

D. Describe whether and if so in what way the process of appointment to judicial office is independent of government.

See answer to question. 1.C.

2. PROMOTION WITHIN THE JUDICIARY

A. Does scope exist for promotion within the judiciary and if so, please describe how and in what circumstances a magistrate or judge may be promoted.

Judges may be promoted to the higher courts, i.e., to county court, court of appeal and to the High Court of Cassation and Justice.

► The promotion can only be performed after an examination. The promotion procedure is established in detail by Law no. 303/2022 on the status of judges and prosecutors (previously Law no. 303/2004) and by the two examination regulations issued for the application of this law: Regulation on promotion examinations of judges, approved by Decision no. 1343/2023 of the Section for judges of the Superior Council of Magistracy (applicable for the promotion from the district court to the county court and from the county court to the court of appeal); Regulation on the promotion examination as judge at the High Court of Cassation and Justice, approved by Decision no. 1057/2023 of the Judge Section of the Superior Council of Magistracy.

The judges who meet the minimum seniority requirements, had the "very good" rating at the last evaluation, have not been disciplinary sanctioned in the last 3 years, except for the cases in which the disciplinary sanction was removed, have worked effectively for at least 1 year in the hierarchically lower court can participate in the contest of effective promotion in the courts immediately superior.

The contest consists in passing a test having as object the evaluation of the activity and of the conduct of the candidates in the past 3 years.

For the evaluation of the activity, the court decisions drawn up by the candidates during the period under assessment are taken into account. In addition, the Selection Commission shall also verify that the candidates comply with the reasonable time limits for settling cases and drafting decisions or carrying out other work. To that end, the commission shall request statistical data or any necessary documents on the work of each candidate and the work of the court where he or she has carried out his or her work.

In addition, in order to assess the conduct of candidates, the commission shall request the necessary information from: the courts where the candidates have carried out their activity during the period under assessment; the Human Resources and Organization Directorate of the Superior Council of Magistracy; Judicial Inspection (information on possible disciplinary deviations and violations of the Code of Ethics of Judges and Prosecutors during the period under assessment).

►► We also mention that the law and the regulation provide for the possibility of promoting judges “on the spot”, through an examination. In this case, the judge obtains the immediate superior professional degree, but does not effectively promote to the higher court, but continues to carry out his/her activity at the court where they were operating before the promotion of the examination. The examination consists of written tests containing theoretical and practical topics.

►► In order to participate in the promotion examination at the High Court of Cassation and Justice, judges must meet the conditions expressly established by law and regulation, namely: seniority (at least 18 years of seniority as a judge); a "very good" rating at the last 3 assessments; not to have had a disciplined sanction in the last 3 years, except in cases where the disciplinary sanction has been removed; effectively work for at least 5 years at the court of appeal.

The law and regulation provide that the examination is organized based on objective criteria for assessing the professional performance of judges and their conduct and consists of: a test for the evaluation of judicial decisions drawn up by candidates; an interview before the Section for judges of the Superior Council of Magistracy.

►► Judges also have the legal possibility to be promoted to leadership positions (president, vice-president, section president). The appointment to the position of president at the court of appeal, county court and district court is made by examination, and the appointment to the other positions is made without an examination, at the proposal of the president of the court, according to the procedure provided by Law no. 303/2022 on the status of judges and prosecutors, as well as by the Regulation on the appointment to management positions of judges, approved by Decision no. 266/2023 of the Section for Judges of the Superior Council of Magistracy.

All these examinations are organized by the Superior Council of Magistracy in a transparent procedure (see answer to question 2.C).

B. To what extent is political affiliation of political partisanship relevant to promotion within the judiciary.

As stated in the answer to question 1.C., judges may not be part of political parties or formations, nor may they engage in or participate in political activities. Judges are also obliged to refrain from expressing or manifesting in any way their political beliefs in the exercise of their duties. Judges are also not allowed to participate in audio-visual political shows.

They may express their opinion on public policies or legislative initiatives in the field of justice or in other areas of public interest that are not of a political nature.

The pursuit of political activities or the manifestation of political beliefs in public or during service constitutes disciplinary misconduct.

C. Describe the transparency involved in the process of promotion within the judiciary.

As we have detailed in the answer to question 2.A, the conditions that a judge must meet in order to be able to enter in the promotion examination are expressly and clearly provided by law and regulation. Therefore, they can be known to any judge.

The information on the date, place of the examination, the positions available, the way in which the examination is being held, the calendar of the examination, the topics and bibliography for the examination shall be established by decision of the Section for judges of the Superior Council of Magistracy. All such information shall be published on the websites of the Superior Council of Magistracy and the National Institute of Magistracy, within the time limit set by law and regulation. Within the same time limit, the information shall be communicated to all courts of appeal, which shall transmit it immediately to the courts within their jurisdiction.

At each stage of the examination, significant information is published on the websites of the Superior Council of Magistracy and the National Institute of Magistracy. For example: results of the verification of candidates' fulfilment of the conditions for participation in the examination (see answer to question 2.A); assignment of candidates by dates and hours for the interview; date and time of the written test; correction criteria for written tests; results obtained for each test; final results of the examination.

Candidates have the legal possibility to appeal the results obtained in the examination. The term of appeal is provided for by law and regulation.

In order to comply with the rules on the protection of personal data, candidates are given examination codes that appear in the information published on the websites of the Superior Council of Magistracy and the National Institute of Magistracy



3. WORKLOAD WITHIN THE JUDICIARY

A. In broad terms, what are the requirements for magistrates and judges in relation to the number of sitting days per year or other measurement of judicial workload requirements?

➤ The StatisECRIS app, used at national level, contains statistical data on the activity volumes of each court and the activity volume of each judge. Thus, the reports generated by this application contain information on: the number of court hearings in which the judge participated in a year; the number of cases processed; the number of cases solved; the efficiency, the average duration for solving cases; the number of decisions drafted; the number of decisions drawn up later than the legal term.

These statistical data are used in the evaluation procedure of judges, which takes place at certain time intervals provided for by Law no. 303/2022 on the status of judges and prosecutors (previously Law no. 303/2004).

The evaluation of judges is carried out by evaluation commissions whose members are determined by law. The evaluation takes place on the basis of the following indicators provided by the law: activity efficiency, quality of activity, integrity and the obligation on continuing professional training. The rating is given according to the final score. Through the evaluation report of the professional activity of the judge, drawn up by the evaluation commission one of the following ratings may be awarded: "very good", "good", "satisfactory" or "unsatisfactory".

However, judges have a large or very large workload, and this situation has worsened with the wave of retirements in recent years.

➤ The registration with the Senate of the draft law on the modification of service pensions was an element of instability, by reference to the "legitimate hope", materialized in the principle specific to any state governed by the rule of law, regarding the supremacy of the law. This instability has led to a wave of retirements that are seriously affecting the judiciary. The seriousness of the situation is proved by the fact that, if between July 2019 and January 2023, i.e. during 43 months, 654 magistrates retired, in just 3 months after the registration of the bill in the Senate, 335 magistrates submitted applications for retirement.

The Romanian Magistrates' Association (AMR) has taken a series of concrete, repeated and punctually substantiated steps in order to obtain the respect of the status of magistrates and the independence of the judiciary – including financial independence.

The courts are depopulated, with 1,050 judge positions currently vacant (of the total number of 4,946 posts of judge existing in the structure of Romanian courts) – with some of the courts operating with more than half of the staff missing. All the surplus cases are managed through additional efforts by the judges who are still in activity.



➔ In 2009, the Superior Council of Magistracy launched the Program for establishing the optimal volume of work and ensuring the quality of activity. The Council stressed that the judge can perform a quality act of justice to the extent that they have the time to study the case thoroughly and the applicable law. Also, for a quality act of justice, it is necessary for the judge to have the time to listen sufficiently to the parties and to investigate their defences, as well as to draft the ruling in optimal conditions.

One of the main objectives of the program was to establish a maximum number of cases per court hearing, depending on their complexity. Thus, an annual score was fixed per panel of judges. However, this score was increased year by year by the Superior Council of Magistracy. Even so, the courts had to exceed the annual score in order not to lead to a noticeable increase in the average duration of cases.

Therefore, the determination of the optimal workload remained at the trial stage, and in the years that followed, the initial scores were exceeded year by year. The actual workload of the judges has clearly increased, resulting in them being overloaded.

At the same time, the increasing complexity of the cases was a reality in the courts. This led to an increase in the time that had to be allocated to the drafting of court decisions that would meet the quality criterion. At the same time, the judges had to allocate the necessary time to study the court hearings, doctrine and jurisprudence.

The large workload of judges is reflected by the figures contained in the reports on the state of justice, drawn up annually by the Superior Council of Magistracy:

- ❖ in 2019, the volume of activity of the courts was over 2,919,000 cases, and the total number of judges was 4,600. At the courts of appeal, the average load per judge was 544 cases, at the tribunals it was 654 casefiles, and at the judges it was 1,159 cases;
- ❖ more than 2,100,000 cases were solved in 2019, more precisely a percentage of 72%; 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;
- ❖ in 2020, the volume of activity of the courts was over 2,722,000 cases, and the total number of judges was 4,570. At the courts of appeal, the average load per judge was 523 cases, at the tribunals it was 640 cases, and at the judges it was 1,029 cases;
- ❖ the total workload of the Romanian courts in 2021 was almost 2,900,000 files and the total number of judges was 4,260. More than 2,000,000 cases were solved, more precisely a

percentage of 71%. In 2021, the level of stocks decreased compared to 2020 with 42,840 files, which represents a decrease of 50.24%.

Taking into consideration that the number of cases newly registered in 2021 increased compared to 2020 by 142,030 cases, but the stock of files decreased in 2021 compared to 2020, a reduction of the lengths of the proceedings can be observed.

According to the Eurobarometer published by the European Commission in May 2021, the trust of Romanian citizens in justice system increased by 12% compared to July 2016.

➔ Each court is annually subjected to an assessment of its degree of performance, having regard to efficiency indicators of the activity, which include the length of the proceedings. These indicators were established by the decision of the Superior Council of Magistracy and are based on the statistical data contained in the ECRIS computer program managed by each court and applied at a national level.

In order to obtain the qualification "very efficient" for the indicator "length of proceedings", it is necessary not to exceed a period of 11 months in non-criminal cases (civil, administrative) and a period of 5 months in criminal cases. The period runs from the date when the case is filed in court, ending on the date when the final document (the court decision) is closed in the ECRIS computer program. We mention that, for example, in 2022, the average length of proceedings as far as courts of appeal are concerned was usually short (between 3.2 month and 4 month).

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.

B. If a judge is encountering trouble keeping up with the workload, describe the regime that applies by which –

(i) that judge's workload is allocated to other judges;

(ii) the overloaded judge can recover from workload arrears and from any other disabling factor that led to overload.

(iii) there are other mechanisms to address judicial delinquency.

► First of all, we must mention that we are obliged to comply with the principle of continuity, both in criminal cases and in civil cases.

The principle of continuity (immediacy) is laid down imperatively in Article 351 of the Code of Criminal Procedure.

In the Case of *Beraru v. Romania* (judgment adopted on 18 March 2014), the European Court of Human Rights stated: "*The Court considers that an important aspect of fair criminal proceedings is the ability for the accused to be confronted with the witnesses in the presence of the judge who ultimately decides the case. The principle of immediacy is an important guarantee in criminal proceedings in which the observations made by the court about the demeanour and credibility of a witness may have important consequences for the accused. Therefore, a change in the composition of the trial court after the hearing of an important witness should normally lead to the rehearing of that witness (see P.K. v. Finland (dec.), no. 37442/97, 9 July 2002)*" – para 64.

Also, in the Case of *Cutean v. Romania* (judgment adopted on 2 December 2014), the European Court of Human Rights emphasized: "*The Court recalls that according to the principle of immediacy, in a criminal case the decision should be reached by judges who have been present throughout the proceedings and evidence-gathering process (see Mellors v. the United Kingdom (dec.), no 57836/00, 30 January 2003). However, this cannot be deemed to constitute a prohibition of any change in the composition of a court during the course of a case (see P.K. v. Finland, cited above) (...)*" – para 61.

"(...) *the Court also notes that the applicant's and the witnesses' statements constituted relevant evidence for his conviction which was not directly heard by the District Court single judge. Consequently, the Court considers that the availability of statement transcripts cannot compensate for the lack of immediacy in the proceedings*" – para 70.

According to Article 19 of the Code of Civil Procedure, the judge entrusted with the settlement of the case cannot be replaced during the trial unless it is for good reasons, according to the law.

The obligation to comply with the principle of continuity in the judicial activity is also provided by Article 13 of Law no. 304/2022 on judicial organization.



Therefore, there is no legal basis for a judge not to attend the planned court hearings on the grounds that they have a large workload.

By way of exception, the Internal Rules of the courts provide for the following possibility: upon a reasoned request of the panel entrusted with the settlement of a case which constantly requires working time covering the normal duration of a hearing, the President of the Court, after consulting with the section president, may order, until the case is settled, until the judgment is drawn up or until another time of the trial, that the panel be no longer assigned other cases or that the load be reduced.

►► If, for example, a judge has arrears in drafting decisions, the usual way to recover them is to work overtime, on weekends, and on public holidays. This situation has been perpetuated for a long time, given that the judges workload has been high or very high, year by year, and the personnel schemes of the courts are undersized.

If the judge, for imputable reasons, fails to eliminate the arrears in the drafting of the decisions, and their number and delay periods are large, they may face disciplinary investigation for the following disciplinary offense: failure to draft or to sign judicial decisions, for imputable reasons, within the time limits provided by law.

C. Are judges expected or required to assist other judges who may be adversely affected from overload so as to ensure that the business of the court is discharged in a timely manner.

As we have pointed out above, the principle of continuity precludes the replacement of judges in the panel of judges, unless there are objective reasons (a situation which, however, cannot apply in criminal proceedings where the principle of immediacy must be complied with).

The large or very large workload of the judge is not treated as an objective reason, given that the overwhelming majority of judges have such a workload.

However, if a judge is overcrowded, they may be free from the exercise of duties other than those relating to the judicial activity, for example: a judge in charge with the activity of civil enforcement or the activity of criminal enforcement; a judge in charge of the analysis of the practice of the courts of judicial review and the unification of practice; a judge in charge of the activity of notification or communication in the member states of judicial and extrajudicial documents in civil or commercial matters, etc.



4. REMOVAL FROM JUDICIAL OFFICE

A. Does a regime currently exist in your country pursuant to which a sitting judge may be removed from office. If so, please describe any such regime, giving all relevant details including-

- (i) who decides that the judge is to be removed from office;**
- (ii) does the judge have a right of audience on any such motion or otherwise possess a right to be heard against the removal and is there an appeal process if removed;**
- (iii) what are the grounds for seeking the removal of a sitting judge;**
- (iv) what is the relationship between violation of the ethics code/principles and removal; and**
- (v) describe the transparency in the process.**

The Law no. 303/2022 on the statute of judges and prosecutors stipulates that judges are removed from office in the following cases:

- a) resignation;
- b) retirement, according to the law;
- c) transfer to another office, according to the law;
- d) professional incapacity;
- e) as a disciplinary sanction;
- f) conviction of the judge ordered by final decision;
- g) the postponement of the sentence and the renunciation to the sentence, ordered by a final decision, as well as the renunciation to the criminal prosecution, confirmed by the preliminary chamber judge, except in cases where these solutions were ordered for crimes committed by fault in respect of which the Section for judges of the Superior Council of Magistracy considers that it does not affect the prestige of justice;
- h) at the expiry of the one-year period for which the judge was suspended because, unjustifiably, they did not come to the specialized medical expertise, ordered because there are indications that the judge suffers from a mental illness;
- i) if the judge no longer meets the following conditions: they no longer have Romanian citizenship, domicile in Romania and full capacity to exercise; they are no longer medically and psychologically fit for the exercise of the office.

The removal from office of the judges is ordered by decree of the President of Romania, at the proposal of the Section for judges of the Superior Council of Magistracy.

The Section for judges has the obligation to immediately communicate the decision regarding the removal from office to the judge and to the management of the court where he / she operates.

☐ If the judge exercises the appeal provided by the law against the decision of release from office or against the decision proposing the release from office, he / she will be suspended from office until the case is finally settled by the competent court. During the suspension period, the provisions regarding the prohibitions and incompatibilities are not applicable to the judge concerned and he / she will not benefit from the salary rights. During the same period, the social insurance contributions are paid for the judge, as the case may be, according to the law.

☐ In case of exclusion from the magistracy for professional incapacity or for committing a disciplinary offense, the procedure is expressly provided by law, both in respect of the cases/reasons for which it can be triggered, and in respect of the stages of the procedure, respectively of the rights of defence of the judge concerned by such a procedure.

Exclusion from the magistracy for professional incapacity is related to the judge's assessment procedure. Thus, if a judge receives the final rating "unsatisfactory" at two consecutive assessments, the Superior Council of Magistracy proposes to the President of Romania the release from office for professional incapacity.

The decision of the Section for judges of the Superior Council of Magistracy ordering exclusion from the magistracy for professional incapacity can be appealed to the court.

Before the final rating is established, the judge has the possibility to appeal the rating given by the evaluation committee. The appeal is settled by the Section for judges of the Superior Council of Magistracy. The summons of the judge is mandatory. The hearing of the present judge is mandatory. Failure of the legally summoned judge to participate does not prevent the settlement of the appeal. The decision of the Section for judges may be appealed to the Court of Appeal.

In the circumstances where the judge is removed from office for committing a disciplinary offense, the stages of the procedure are provided by Law no. 305/2022 on the Superior Council of Magistracy (previously Law no. 317/2004). Thus, in a first stage the Judicial Inspection carries out a preliminary disciplinary investigation which must be carried out in accordance with the legal provisions relating to classified information and the protection of personal data.

The hearing of the person concerned and the verification of the defences of the judge under investigation are compulsory. The refusal of the judge under investigation to make statements or to be present for the investigation must be recorded in the minutes and will not preclude the completion of the investigation. The judge under investigation is entitled to learn about all the acts of the investigation and to request evidence in his / her defence.



If the judicial inspector orders the admission of the referral, by performing the disciplinary action and by referring to the Section for judges of the Superior Council of Magistracy, the disciplinary proceeding takes place before this section. The summoning of the judge against whom the disciplinary action is exercised is mandatory. The judge may be represented by another judge or he / she may be assisted or represented by a lawyer. The absence of the investigated judge from the trial will not prevent the further prosecution.

The Judge Section is obliged to bring into discussion with the parties all requests, exceptions, factual circumstances or legal grounds submitted by them, according to the law, or invoked ex officio. The judge has the right to become aware of all the documents of the file and may request the administration of evidence.

The decisions of the sections of the Superior Council of Magistracy settling the disciplinary action are edited, mandatorily, at the moment the judgment has been delivered and they have to be communicated immediately in writing to the judge subject of the disciplinary action, as well as to the Judicial Inspection. Until the date of communication of the decision to the judge, it shall have no effect as regards his/her career and rights.

The decision of the Judge Section of the Superior Council of Magistracy may be appealed to the High Court of Cassation and Justice. The appeal suspends the execution of the decision by which the Section for judges applied the disciplinary sanction.

It should be noted that the system of disciplinary misconduct is a vast one. Law no. 303/2022 on the status of judges and prosecutors (previously Law no. 303/2004) provides for 19 disciplinary offenses, most of them having several legal hypotheses. In addition, judges may also be subject to sanctions for non-compliance with the Code of Ethics.

As we have pointed out, disciplinary sanctions are applied by decision of the Judge Section of the Superior Council of Magistracy.

The disciplinary sanctions that may be applied to judges and prosecutors, according to the seriousness of their violations, are:

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

Disciplinary sanctions shall be removed by law within 3 years from the date of enforcement, if a new disciplinary sanction is not imposed on the judge within this period.



B. If removed from office, describe the adverse consequences that may affect the removed judge including -

- (a) financial (especially pension) consequences;**
- (b) future employment consequences following removal;**
- (c) societal consequences including loss of title or civic decorations; and**
- (d) disciplinary steps that may be taken against the removed judge.**

The judges who, even after the release from office, received a final conviction or it was ordered the postponement for the application of the penalty for a corruption offense, a crime assimilated to corruption offenses or a crime in connection with them, as well as an offense against the execution of justice committed before the release from office, do not benefit from the service pension. These persons receive a pension in the public system, according to the law.

Also, the judges disciplinary sanctioned with exclusion from the judiciary do not benefit from the service pension. These persons benefit from a pension in the public system, according to the law.

The judge who was removed from office for reasons not imputable to him/her shall keep his/her professional rank acquired in the hierarchy of the courts or of the prosecutor's offices.

According to the law, are considered to be released from office for non-imputable reasons judges that have been relieved from office by resignation, retirement and transfer, unless, after resignation, retirement or transfer, the disciplinary sanction of exclusion from the magistracy has been applied.

Judge Andreea Ciucă, PhD
Romanian Magistrates' Association (AMR)