N^0 189/2022

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 FOURTH STUDY COMMISSION QUESTIONNAIRE "JUDICIAL WORKPLACE AND JUDICIAL INDEPENDENCE"

What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision making, governance, assignments, fund and other resources)?

Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

1. Independence of the judiciary

In particular, the independence of judges is provided in the Laws of Justice, as amended in 2017-2018:

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

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

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

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

- Art. 30 par (4) of Law no 317/2004 on the organisation and functioning of the Superior Council of Magistracy: *A judge or a prosecutor who considers that his or her independence, impartiality or professional reputation are being affected in any manner may notify the Superior Council of Magistracy, and the provisions of paragraph (2) shall apply accordingly.*

However necessary and generous the measures to strengthening the independence of judge may be, they cannot fully and without exception guarantee respect for the independence of the judge.

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

2. Appointment, selection and transfer of judges

2.1. According to Law no. 303/2004 on the statute of judges and prosecutors, admission into magistracy and the initial professional training for the office of judge 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 (SCM) 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 (SCM), through the National Institute of Magistracy.

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

Persons who were judges 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 (SCM), through the National Institute of Magistracy, in view of filling the vacancies in the first instance courts and the prosecutor's offices attached to them.

Within 30 days from the validation of the examination, the Superior Council of Magistracy (SCM) 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.

2.2. 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 on 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 (SCM) 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.

The contest lasted until April 5, 2022.

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**.

In Romania, the competitions for admission to the judiciary, the competitions for occupying leadership positions at the courts (president and vice-president) and the competitions for promotion to higher professional ranks are difficult, complex and take a considerable amount of time.

2.3. 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.

It took 18 months for the legislator to amend the law in accordance with the decision of the Constitutional Court. Due to the slowness of the legislative process, transfer sessions for judges could not be organized in the second part of 2020 and in 2021.

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

The randomness of the computerized case allocation represents the guarantees related to the court's objective impartiality, part of the right to a fair trial (para 188, Decision no. 685/ 2017 of the Constitutional Court), and breaching it leads to the absolute nullity of the proceedings in the case concerned

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

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

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

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

The ECRIS software has been implemented at national level since 2007 to handle cases from a statistic point of view.

More precisely, this software allows for each case:

- the verification of the registration date with the court,
- its object,
- stage of the procedure,
- the measures ordered by the court at each hearing,
- the date the decision is pronounced, the appeals filed,
- the date the file has been sent to the hierarchical superior court to deal with the appeal,
- the date the decision is pronounced,
- the date the file has been returned to be kept in the archives (in the first-degree court).

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

The data from the ECRIS software placed at the public's disposal are automatically displayed on the portal of each court.

By accessing the portal (www.portal.just.ro) the public may obtain information on:

- number of the case file,
- date of registration with the court,
- date of last modification of the recorded data in the ECRIS software,
- the section of the court where the case was assigned,
- the stage of the procedure,
- the hearings that took place and measures ordered by the court (in short),
- the decision of the court (in short),
- the appeals which have been filed.

In order to preserve people's trust in justice and to ensure the fairness of the case allocation computerized system, by means of the amendments to the laws of justice made in 2018, the obligation for the system to be audited by the Ministry of Justice has been included: *"The random case allocation system per panel is externally audited, every 2 years, under the direction of the Ministry of Justice and by involving the civil society and the professional magistrates' organizations. The conclusions of the audit are public"*- Law no. 303/2004 on the statute of judges and prosecutors, art. 53 para 3.

Although in 2020 the 2 years from the entry into force of the law have passed, such a report concerning the case allocation system has not been published.

4. Court management

According to the law[1], every court is run by a president who exercises the management competences in view of effective organization of the court's activity. The presidents of the courts of appeal and of the tribunals exercise also competences of co-ordination and control of the administration of the court where they exercise their office, as well as of the courts in their jurisdiction. The presidents of the first instance courts and of the specialized tribunals shall also exercise competences of court administration.

The presidents of the court of appeal are secondary authorizing officers, and the presidents of the tribunals are tertiary authorizing officers.

According to the workload and to the complexity of the cases, the president can be assisted by 1-2 vice-presidents.

In every court operates a Management Board, which decides upon the general issues relating to running the court. At the proposal of the Management Board of each court, by decision of the Section for Judges of the Superior Council of Magistracy, the sections of the courts of appeal and of the courts from their constituency are established. The specialized panels of the sections of the courts of appeal and of the courts in their constituency are set up by the president of the court, at the proposal of the Management Board of each court.

The composition of the sections and of the specialized panels shall be established by the Management Board of the court, according to the workload and taking into account the specialization of the judge.

Exceptionally, if a panel cannot be set up in a certain section, the Management Board of the court may order the participation of judges from other sections.

Within the courts, general assemblies of judges shall be organized annually or whenever necessary. The general assemblies of judges have the following competences:

- to debate the annual court activity;
- to elect, according to the law, the members of the Superior Council of the Magistracy;
- to debate about law issues;
- to analyse draft normative acts, upon request from the minister of justice or the Superior Council of the Magistracy;
- to express points of view upon request from the Superior Council of Magistracy;
- to elect and dismiss members of the Management Boards;
- to initiate the procedure for the dismissal of the members of the Superior Council of Magistracy, according to Law No. 317/2004 on the Superior Council of Magistracy.
- to carry out other competences provided by law or regulations.

[1] Art. 43, 49, 41 – Law no, 304/2004 on the judicial organisation

Therefore, the president and the vice president do not have a decisive role in the management of the court, the powers being divided among themselves, on the one hand, and the governing board of the court, on the other.

As we indicated in the answer to question no. 3, the distribution of cases to the panels of judges is not within the competence of the court management, but is done randomly, through the ECRIS computer application. However, the president of the court organizes and coordinates the activity of random distribution of cases. The president and the management board shall also determine the rules applicable in situations not provided for by law or regulation[2].

5. Workload

In 2009, the Superior Council of Magistracy (SCM) 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 (SCM). 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.

We specify that **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

[2] The internal regulations of the courts, approved by the Decision of the Superior Council of Magistracy nr. 1375/2015.

Magistracy (SCM) and are based on the statistical data contained in the ECRIS software 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 2019, the average length of proceedings as far as courts of appeal are concerned was usually short (3.7 months or 4 months).

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[3];
- 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[4].

4. Remuneration of judges – transparency and access to the information

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.

[3] State of Justice Report 2019 (https://www.csm1909.ro/PageDetails.aspx?PageId=267&FolderId=3570&FolderTitle=Rapoarte-privind-starea-justi%C5%A3iei)
[4] State of Justice Report 2020 (https://www.csm1909.ro/ViewFile.ashx?guid=a16b26f8-b678-41f9-a7ab-8aed0f11ce5f-InfoCSM)

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. Also, the prosecutor's offices administer their own budget, by means of the Prosecutor's Office at the High Court of Cassation and Justice. In addition, the National Anti-corruption Directorate directly administer its own budget.

Thus, **the Courts are the only ones financially depending on executive**.

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.

The remuneration of the judges is still subject to several disputes in courts, mainly based on the idea of ensuring a unitary remuneration at the entire system level.

Despite the fact that, according to the Law no. 303/2004 on the statute of the judges and prosecutors, their remuneration should be subject to a special law, the remuneration of judges and prosecutors is included in the Single Act on the salary of the public sector employee. This fact has led to numerous errors in establishing the salaries.

There is still discrimination between judges and prosecutors from the National Anti-corruption Directorate (NAD) and prosecutors from the Directorate for the Investigation of Organized Crime and Terrorism (DIOCT). Although they often don't have the seniority and are at lower hierarchical level as compared to the judges activating at the court of appeal level, the NAD and DIOCT prosecutors have higher salaries, established at the level of the Prosecutor's Office attached to the High Court of Cassation and Justice. Such a discrimination has led to a series of legal actions, the courts obliging the Ministry of Justice to remunerate them at an equal level with the prosecutors within the NAD and the DIOCT.

From another perspective, **the remuneration of the judges is used in the public sphere as a reason to attack them**. Such attacks have been more accentuated in the last years, the Minister of Labour making repeated false statements regarding the magistrate's remuneration level. This fact has triggered the "indignation" of the Superior Council of Magistracy in 2021[5], as well as

[5] https://www.csm1909.ro/299/8547/COMUNICAT-DE-PRES%C4%82

the reaction of the High Court of Cassation and Justice and of the Romanian Magistrates' Association (AMR).

5. The adoption of a succession of legislative drafts regarding the annulment of the magistrates' occupational pensions, initiatives which were accompanied by a spiteful public discourse against them

As we have mentioned before on different occasions, in Romania the subject of justice is heavily politicized and populist arguments are used by different parties in order to gain votes.

One such subject now, which scores big political points, is "eliminating the special pensions".

In Romania there are a few categories of people that have "special pensions" (the correct term would be "occupational pensions"): police, military personnel (where are also included those that worked in the secret intelligence agencies), pilots, mayors, members of the Parliament, magistrates.

For several months, a disinformation and shaming campaign was conducted against us, the magistrates being blamed by the Government and the political leaders that, because of these pensions, the budget of Romania is jeopardized.

Due to these threats, the magistrates in Romania were protesting at the beginning of 2020 by using different methods. One such protest is for many tribunals and appeal courts, for example, to suspend their activities for several weeks.

Also, the Superior Council of Magistracy reacted publicly on multiple times, urging the Government not to abolish/modify the pensions without a proper consultation with the magistrates.

Nevertheless, the Parliament adopted at the end of January, 2020 the law which eliminated the occupational pensions of judges and prosecutors. The Supreme Court challenged the law in front of the Constitutional Court and, on May 6th, 2020 the Court declared that the draft law was unconstitutional, as it was expected.

Even when the draft law was adopted, a part of the press wrote that it was just an electoral measure and a way of turning the citizens against the magistrates. The members of the parliament were aware of the jurisprudence of the Constitutional Court and some of them admitted from the beginning that the law adopted is unconstitutional.

Basically, despite the law **was clearly unconstitutional**, they adopted it anyway in order to say after that the magistrates (including the Constitutional Court) don't want to give up their privileges.

A second draft law was than adopted.

On June 17, 2020 the Parliament has passed a bill on the taxation of all special pensions by up to 85%, with the draft being endorsed by all parliamentary parties, but mostly following an agreement sealed between the ruling parties.

According to the draft, after the amendments in the special committees, the occupational pensions ("special pensions"), including the ones of military pensioners and of magistrates would have been taxed by 85% if they were higher than RON 7,000 (about € 1,550) and by 10% for those ranging between RON 2,000 (about € 440) and RON 7,000 (about € 1,550).

Even that the new bill was affecting the military pensions, too, the Prime Minister declared, soon after the bill was adopted that: "In my view, the only pensions that can make a compromise from this contributory principle are military pensions - and this category includes former intelligence services officers, A/N -, because they are in the service of the nation all their lives and the pension is a service pension. "

According to the official statistics, in Romania are over 170,000 retired people from police and military (9,000 only from Romanian Intelligence Service) – and their special pensions will be kept –, and only 4,600 former judges and prosecutors.

The Supreme Court challenged this law in front of the Constitutional Court and by Decision No. 900 issued on December 15th, 2020, the law was declared unconstitutional.

Unfortunately, the subject continues to be debated in the same subjective manner in the public space, with politicians silencing the drastic regime of prohibitions and incompatibilities that judges under duress to observe throughout their careers. Also, the statements and initiatives of the other two powers, to drastically reduce or eliminate the service pensions of magistrates, ignore the legal provision that states the following: „*When establishing the rights of judges and prosecutors, one shall take into account the place and role of the Judiciary under the Rule of Law, of the responsibility and complexity of the office of judge and prosecutor, of the interdictions and incompatibilities provided in the law for these offices and shall aim at safeguarding their independence and impartiality*"[6].

6. The budget of the courts

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.

[6] Art. 73 – Law on the statute of judges and prosecutors

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 no. 304/2004 on judicial organization regarding the takeover of the budget of the courts by the Supreme Court starting with January 1st, 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.

Among the repeated steps taken by the Romanian Magistrates' Association (AMR) for the management of the courts' budget by the judicial power was the address dated June 18, 2019, which we sent to the Superior Council of Magistracy. Our association has requested to firmly initiate the legal steps in order to take over the budget of the courts from the Ministry of Justice.

On October 15, 2019, the Plenum of the Superior Council of Magistracy (SCM) decided to notify the Ministry of Justice to take legislative steps, for the Council to take over the budget of the courts, except for the budget of the High Court of Cassation and Justice. But so far, the ruling has not been carried out.

There was a legislative initiative at the Chamber of Deputies (in 2021) and then at the Senate (in 2022), regarding the takeover of the budget of the courts by the High Court of Cassation and Justice. Romanian Magistrates' Association (AMR) sent the Parliament a widely reasoned point of view. The involvement of the SCM in the dialogue with the other powers is all the more necessary as the draft law received a negative opinion, in February 2022, from the Committee on Human Rights, Equal Opportunities, Cults and Minorities[7] and from the Committee on Budget, Finance, Banking and Capital Market[8].

[7] https://www.senat.ro/legis/PDF/2022/22L034CA45.PDF

As early as 2009, the Constitutional Court warned that a legal conflict of a constitutional nature may arise if, in the absence of an effective dialogue between the state authorities, it is enough that, in time, the legal provisions regarding the takeover of the management of the courts' budget by the High Court of Cassation and Justice are ineffective[9].

However, the current draft amendment to the Laws of Justice has kept, in its original form, the budget of the courts under the authority of the executive, that is, of the Ministry of Justice. As a result of the repeated criticisms from the judiciary system, in the last form of the draft law, the partial transfer of the budget of the courts into the administration of the High Court of Cassation and Justice is stated. Specifically, the budget for personnel expenses[10].

As just pointed out, the Association of Magistrates in Romania (AMR) has been directly and constantly involved in this important subject for the independence of the judiciary.

7. Principle of separation of the careers of judges and prosecutors

The new draft laws on Justice, provided for public debate by the Ministry of Justice, abolishes the principle related to the separation of the judge and prosecutor careers, consecrated by means of art. 1 para (2) of Law no. 303/2004, in the form currently effective, according to which: *„The judge's career is separated from the prosecutor's career, the judges being unable to interfere with the prosecutor's career and vice-versa."*

This article is a transposition into the legislation of point 5 of the Memorandum on justice, a programmatic document launched by the Romanian Magistrates Association (AMR) and the National Union of Romanian Judges (UNJR), adopted in 2016 by over 80% of the general assemblies of the courts, which states, in compliance with the European documents, that: *„in the exercise of their positions, the judges and the prosecutors must be and they must appear independent toward each other, according to their own role".*

This provision has been **expressly welcomed by the Venice Commission**, which, in its Opinion no. 924/2018 on the laws of justice, has underlined that „***the strengthening of the justice independence is not possible „as long as the decisions regarding the careers of the judges are taken over by the prosecutors*** (para 132, 133 of the Venice Commission's Opinion no. 924/July 13, 2018).

However, according to the new project, the prosecutors will again be involved in the judge selection process for the High Court of Cassation and Justice, the competence being transferred

[8] https://www.senat.ro/legis/PDF/2022/22L034CA3.PDF
[9] Decision No 901/17 June 2009, published in the Official Gazette of Romania, Part I, No 901/17 June 2009. 503 of 21 July 2009
[10] https://www.just.ro/proiect-de-lege-privind-statutul-magistratilor/

from the Section for Judges of the Superior Council of Magistracy to the Plenum of the Superior Council of Magistracy.

The Romanian courts voted in large numbers against the proposal to abolish this provision, during the consultations launched by the Ministry of Justice in February, 2021.

On the occasion of the online meeting with 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 in order to find the best solutions for the judiciary. Let us hope that this positive approach will have concrete effects.

As a result of the sustained actions of the Romanian Magistrates' Association (AMR), together with the National Union of Judges in Romania (UNJR), the Association of Judges for the Defence of Human Rights (AJADO) and the Association of Prosecutors in Romania (APR), in the last form of the draft on the amendment of the Laws of Justice, the elimination of the principle of separation of the careers of judges and prosecutors was abandoned. Therefore, our efforts have not been in vain, since the bill has not reactivated a conception abandoned more than a decade and a half before.

In conclusion, there are still a number of problems facing the judiciary system today, both in relation to the status of judges and to the judicial organisation. Some of these problems have been corrected by amendments to the Justice Laws in 2017-2018.

It cannot therefore be objectively argued that those amendments have only jeopardised the independence of the judiciary system. The fact that positive changes were also made for the judiciary in 2017-2018 is confirmed by the public's perception of the independence of the judiciary. This perception improved significantly between 2020 and 2021, by 14%, increasing from 37% to 51%.[11].

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[11] See 2021 EU Justice Scoreboard