

**Analysis regarding the activity of the Romanian Superior Council of
Magistracy in exercising its role of guaranteeing the independence,
impartiality and professional reputation of judges and prosecutors against
any act that can affect them
(January 2017 – April 2019)**

I. Introduction

1. The role of the Romanian Superior Council of Magistracy to defend the body of judges and prosecutors against acts that affect their independence, impartiality or professional reputation.

As the fundamental guardian of the independence of the judiciary, according to article 133 paragraph (1) of the Romanian Constitution, the Superior Council of Magistracy (SCM) has the duty to take all necessary measures to defend judicial officers (judges and prosecutors) against any act that affects their independence, impartiality or professional reputation.

According to article 30 of Law no. 317/2004 regarding the Superior Council of Magistracy, with subsequent amendments, including those brought by Law no. 234/2018:

“(1) The respective sections of the Superior Council of Magistracy have the right or the correlative obligation to defend, *ex officio*, judges and prosecutors against any act of interference in professional or related activities which could affect their independence or impartiality in solving cases, in accordance with Law no. 304/2004 on judicial organization and against any act that would create suspicions regarding them.

Also, the *respective sections of the Superior Council of Magistracy defend the professional reputation of judges and prosecutors. Reports on the defence of the independence of the judiciary system, viewed as a single entity, will be settled on request or ex officio by the Plenum of the Superior Council of Magistracy.*

(2) The Plenum of the Superior Council of Magistracy, sections, president and vice-president of the Superior Council of Magistracy, *ex officio* or at the request of the judge or prosecutor, shall order the Judicial Inspection for the execution of certain verifications, in order to defend the independence, impartiality and professional reputation of judicial officers.

(3) In situations where the independence, impartiality or professional reputation of a judge or prosecutor is affected, the corresponding section of the Superior Council of Magistracy takes the necessary measures and ensures their publication on the website of the Superior Council of

Magistracy. Also, it may notify the competent institution of its decision on the measures that are imposed or order any other appropriate measure, according to law.

(4) The judge or prosecutor who considers that her/his independence, impartiality or professional reputation is affected in any way may address the Superior Council of Magistracy, the provisions of paragraph (2) being applicable.

(5) At the request of the targeted judge or prosecutor the press release published on the website of the Superior Council of Magistracy will be posted at the institution where he/she works and/or published on the institution's website.

(6) The Superior Council of Magistracy ensures the obeying of the law and the criteria of professional competence and ethics in the professional career development of judges and prosecutors. (7) The competence of the Plenum of the Superior Council of Magistracy and of its sections regarding the career of judges and prosecutors shall be exercised in compliance with the provisions of Law no. 303/2004 on the statute of judges and prosecutors, republished, with amendments and Law no.304/2004, republished, with amendments.”

Law no. 234/2018 diminished the competencies of the SCM Plenum in defending the professional reputation of judges and prosecutors, transferring these competences to the two sections, even though this measure is against the provisions of the Constitution.

Even if the Venice Commission's Opinions constantly converge towards the division of careers in magistracy, the only form in which strict division can be achieved between judges and prosecutors, without the risk of having such amendments declared unconstitutional is a constitutional review.

Modifying the organic law is not a proper way to change the role and attributions established by the Constitution for the SCM as a collegial body, respectively for its sections, as structures with attributions in the field of disciplinary liability. At most, these provisions can only establish other mechanisms that can be used by SCM as a collegial body in achieving its role as a guardian of the independence of the judiciary. Rearranging roles and responsibilities between the SCM Plenum and the SCM Sections leads to the deterioration of the constitutional role of the SCM and to bypassing the constitutional attributions specific to the Sections, contrary to article 125 paragraph (2), article 133 paragraph (1) as well as article 134 paragraphs (2) and (4) of the Constitution.¹

To truly understand the constitutional competencies of the two sections of the Superior Council of Magistracy in relation to the general constitutional role of the Plenum of the Superior Council of Magistracy, we need to study the provisions of article 133 paragraph (2) letter a) and of article 134 paragraph (2) of the Constitution.

The corroborated analysis of the two constitutional texts reveals the fact that the two sections of the Superior Council of Magistracy are not made up of all members of the SCM, but only the 14 members elected in the general assemblies of judicial officers and validated by the Senate. Nine judges are part of the Section for judges and five prosecutors are part of the Section for prosecutors. The constitutional role of the sections is regulated in article 134 paragraph (2) of the Romanian Constitution, according to which the Superior Council of Magistracy fulfills the role of a court in the field of disciplinary liability for judicial officers, through its sections, according to the procedure established by its organic law.

¹ See the viewpoints drafted by the Romanian Judges' Forum Association, available at web page <http://www.forumuljudecatorilor.ro/wp-content/uploads/FJR-Aspecte-privind-prevederi-din-legile-justitiei-neconforme-Constitutiei-sau-tratatelor-internationale.pdf> [last consulted at 05.05.2019].

From these we can reasonably infer that the constituent lawmaker unequivocally established that the role of the sections of the Superior Council of Magistracy exclusively covers the field of the disciplinary liability of judicial officers as a specific, particular element of the general role of the Superior Council of Magistracy, which as a whole is the guardian of the independence of the judiciary.

This is precisely the reason why when the notion *Superior Council of Magistracy* is used, the constitutional lawmaker refers to the **Plenum of the Superior Council of Magistracy** and when it regulates the disciplinary liability of judicial officers (judges and prosecutors), the lawmaker *expressis verbis* refers to the sections of the Superior Council of Magistracy.

In this regard, we must stress the fact that the special competence in disciplinary matters bestowed upon the **sections of the SCM** represents a potent guarantee for ensuring the role of the Superior Council of Magistracy as a protector of the independence of the judiciary, as it establishes the fact that judges and prosecutors will be tried in disciplinary matters without any external influence, exclusively by their own elected representatives.

Thus, as long as the Romanian Constitution provides general competence for the Plenum of the Superior Council of Magistracy as a collegiate and representative body, and only a limited competence for its sections, it is unconstitutional for this *status quo* to be changed via an organic law.

If the contrary were true, that would mean that one could, in theory, create two *de facto* structures of the Superior Council of Magistracy – one for judges and one for prosecutors.

On the one hand, this legislative solution would defy the constitutional role established by the constituent lawmaker for the Superior Council of Magistracy as a single constitutional authority representative for judicial officers and, on the other hand, would lead to significant accentuation of decisional “corporatism” of the sections, which would affect not only the independence of justice, but also the constitutional principle of loyal cooperation within the judicial authorities.

According to this principle, decisions that concern the independence of the judicial authorities, except those in disciplinary matters, shall be taken in the Plenum, with the participation of representatives of the judicial officers, as well as of the representatives of the institutions with significant attributions within and with respect to the judicial authority (the president of the High Court of Cassation and Justice, the general prosecutor of the Prosecutor’s Office attached to the High Court of Cassation and Justice and the Minister of Justice), as well as a representative of the civil society. In other constitutional systems, where the constituent lawmaker intended to mark a clear distinction between the professional body of judges and the professional body of prosecutors, distinct legal councils were created by the Fundamental Law.

Opinion no. 10 (2007) of the Consultative Council of European Judges (CCJE) to the Committee of Ministers of the Council of Europe on the Council of Justice at the service of society, **regarding the protection of the image of justice**, sets out the following elements:

“80. In Opinion no. 7 (2005) the CCJE recommends that Member States establish, as a whole, programs aimed at not only informing the public about justice, but also defining a more just idea of the judge’s role in society. The CCJE considers that the courts themselves should be recognized as suitable bodies to put into practice programs that aim to improve understanding and trust of the society to its judicial system. At the same time, a coordination role of the different local initiatives, as well as the promotion of nationwide popularization programs, should be assigned to the Council of Justice, which may also join to the services of professionals who are accustomed to their exercise, to meet a complex need of information.

81. Also, in Opinion no. 7 (2005), the CCJE alludes to the role of an independent body – which might even be the Council of Justice or one of its committees, if necessary, with the help of media professionals – to solve the difficulties caused by the coverage of judicial press cases or encounters with journalists fulfilling their mission.

82. Finally, in the same Opinion, the CCJE considers *that when a judge or a court is challenged or attacked by the press (or by political actors through mass media), the judges involved should refrain from reacting using the same channels, but it would be desirable that either the Council of Justice or a judicial authority be able to react quickly and effectively to such disputes or attacks if needed.*

83. The Council of Justice should be empowered not only to express its views publicly, but also to take all useful steps to the public, public authorities and, where necessary, courts, to defend the reputation of the judicial institution and/or its members.

84. The Council of Justice may be the body capable of playing a more direct role in protecting and promoting the image of justice, this role involving finding a balance between conflicting rights and freedoms, social and political actors and the media, on the one hand, and the public's interest in an independent and efficient judiciary system, on the other hand.”

2. Jurisprudential principles on the freedom of speech, independence, impartiality or professional reputation of judges and prosecutors

The law does not define the notion of “a good reputation”, which is, according to article 14 paragraph 2 letter c) from Law no. 303/2004 on the status of judges and prosecutors, one of the conditions of entry into the profession. However, the jurisprudence in the matter stated that good reputation represents a set of elements that give the person the prestige necessary to conduct the activity of judicial officer (favorable public opinion about a person or her actions, positive perception of moral and professional conduct in the social environment). By way of interpretation, however, the High Court of Cassation and Justice, the Administrative and Fiscal Complaints Division, in decision no. 4600 of 17 December 2018, delivered in file no. 657/45/2016 decided that *“it cannot be entirely ruled out that a person who has committed an intentional criminal act can be appointed a judge, regardless of the sanction applied”*.

Unlike the notion of “good reputation”, professional reputation (to which the text of article 30 paragraph 2 of Law no. 317/2004 refers) is an essential value in the exercise of the function and, at the same time, it represents the opinion the judicial officer creates in the collective consciousness about how he/she exercises the profession, being closely related to independence, impartiality and integrity, values which each judge must manifest in the exercise of her profession. The SCM has consistently held that “the judge’s reputation implies an obligation to have a general exemplary conduct, which corresponds to the right to enjoy good reputation in society, the judiciary system and the professional body and, on the other hand, the obligation for the State to ensure that the judicial officer’s reputation is maintained when certain facts are likely to affect her prestige and, consequently, her authority in exercising the profession” (see, for example, Decision of the SCM Plenum No.45/21 January 2016).

In analyzing issues concerning safeguarding the body of judicial officers against acts which prejudice independence, impartiality or professional reputation, one cannot ignore to take into account the principle of freedom of speech, inviolable under article 30 of the Romanian Constitution and guaranteed under article 10 of the European Convention of Human Rights. Neither judicial officers (judges and prosecutors), nor national courts, like other public institutions,

are immune to criticism and control from society, but there must always be a clear distinction between criticism and insult. If the sole intent of any form of expression is to insult the court or members of a court, the application of appropriate and proportionate penalties will not, in principle, constitute a violation of article 10 paragraph 2 of the Convention (*Skalka v. Poland*, no. 43425/98, judgment of 27 May 2003, paragraph 34).²

The ECtHR has stated, repeatedly, that it always takes into consideration the special role of the judicial system in society; as protectors of justice, judicial officers need the trust of citizens. From this perspective, it could be necessary to protect them from destructive attacks without a serious basis, more so given the fact that the reserve requirement prohibits the respondent judges from reacting (*Rizos and Daskas v. Greece*, no. 65545/01, judgment of 27 May 2004, paragraph 43).

The press is one of the means by which politicians and the public opinion can check if the judges exercise their high responsibilities in accordance with the basic purpose of the mission entrusted to them. However, the press must always take into account the role of the judiciary in society. As the protector of justice, a fundamental value in the rule of law principle, its actions need the confidence of the citizens. It may also be necessary to protect it against destructive attacks that are devoid of serious cause, especially considering the fact that judicial officers concerned are (more or less) forbidden to react.

The Court reiterated that problems with the functioning of the judiciary system are matters of public interest, and their debate enjoys the full protection of article 10. However, the Court emphasized the special role in society of the judiciary, which, as a protector of justice, a fundamental value in the rule of law principle, must enjoy the public's trust to successfully fulfill its purpose. It may be necessary to protect this trust against destructive attacks that are clearly unfounded, especially from the point of view of the fact that judges who are being criticized are being held up by the duty of discretion that prevents them from doing so (see *Prager and Oberschlick v. Austria*, no. 15974/90, judgment of 26 April 1995, paragraph 34). The expression "authority of the judiciary system" includes, in particular, the premise that the courts are a forum for settling disputes and settling the guilt or innocence of a person accused of committing an offense and are accepted by the general public in this respect (see *Worm v. Austria*, no. 22714/93, judgment of 29 August 1997, paragraph 40).

The stake in the protection of the authority of the judiciary system is the trust that the courts must inspire in a democratic society to the accused when criminal proceedings are conducted, as well as to the general public (*Fey v. Austria*, no. 14396/88, judgment of 24 February 1993). For this reason, the Court has held that it is up to the judiciary system to act with discretion in exercising freedom of speech in all cases where the authority and impartiality of the judiciary system might be affected (*Wille v. Liechtenstein*, no. 28396/95, judgment of 28 October 1999, paragraph 64).

If the defence lawyer accused the case prosecutor of an illegal behavior, but this criticism only concerns the strategy in leading the prosecution, the way in which he performed her duties in the specific case and not generally her professional or other qualities, even if there were some misplaced terms, the prosecutor has to tolerate very broad criticism from her adversary, in her

² The jurisprudential aspects of this study are taken by *Vasile Bozeșan, Dragoș Călin, Florin Mihăiță, Ionuț Militaru, Dorin Pană, Politicieni, jurnaliști, magistrați. Limitele libertății de exprimare. Comentarii și jurisprudență*, Editura Hamangiu, București, 2014, p. 63 et seq.

capacity as a defence lawyer, especially as the arguments did not leave the courtroom (*Nikula v. Finland*, no. 31611/96, judgment of 21 March 2002).

An article which merely seeks to satisfy the audience's curiosity about aspects of a person's private life without contributing to a general interest debate requires a stricter interpretation of freedom of speech (*Société Prisma Presse v. France*, no. 66910/01 and no. 71612/01, judgment of 1 July 2003).

In cases where the right to privacy, protected under article 8 of the Convention, and freedom of speech, guaranteed under article 10, must be balanced it is necessary to analyze the contribution of photographs or articles to a debate of general interest. In a context in which photographs present a person – even a public figure – in her/her daily activities of a purely private nature and, moreover, were made without her knowledge and consent, her right to privacy is violated (*Von Hannover v. Germany* no. 1, no. 59320/00, judgment of 24 June 2004).

The press is one of the means by which politicians and the public can check if judges exercise their high responsibilities in accordance with the basic purpose of the mission entrusted to them. However, the publication of an article generalizing criticism of judges, of an excessive extent, in the absence of a sufficient factual basis, in the sense that they have violated the law or, at least, violated their professional obligations, does not affect only the reputation but also undermines public confidence in the integrity of judicial officers in general (*Prager and Oberschlick v. Austria*, no. 15974/90, judgment of 26 April 1995).

In a democratic society, citizens can criticize the administration of justice and the officials involved in its realization, but criticism has to respect certain limits. Even if certain statements can be considered as valuable rulings, bribery and abuse of service exceed this level of criticism, since they are not based on any evidence (*Lešník v. Slovakia*, no. 35640/97, judgment of 11 March 2003).

It can be considered an unlawful interference in the exercise of freedom of speech, as guaranteed under article 10 of the Convention, condemning a person for having stated in an interview with a newspaper that, following a Constitutional Court ruling, “total anarchy will reign regarding the organization of lawyers, as a profession” and that asks whether the Constitutional Court itself is constitutional and if the judges of the Constitutional Court “do not consider the European Court of Human Rights an authority” (*Amihalachioaie v. Moldova*, no. 60115/00, judgment of 20 April 2004).

The limits of admissible criticism are wider when the targets are officials who act in the exercise of their official duties. Therefore, by criminally convicting a newspaper editor for the slander of training judges in an article about the press conference organized on the criminal investigation in a delicate case, which had very important media coverage, article 10 of the Convention, which protects freedom of speech, had been violated (*July and SARL Libération v. France*, no. 20893/03, judgment of 14 February 2008).

Freedom of speech applies to lawyers who have the right to speak in public about the functioning of justice, but criticism must not exceed certain limits. Given the key role of lawyers in this area, they should contribute to the proper functioning of the judiciary system and, therefore, to the trust in the public prosecutor (*Morice v. France*, no. 29369/10, judgment of 11 July 2013).

The publication of the jurisprudence of the courts together with comments by the the person who collected the case law, as well as the issuing of opinions that are personal, legal or concrete case law matters, is not an illicit act, but a manifestation of the right of each individual to communicate ideas, opinions, information without the interference of public authorities. Moreover, in the case where the aspects of the person's private life are not covered, but aspects of her professional life, as it is a legal, scientific discussion, whose purpose is to express an opinion

considered pertinent to a problem as a matter of fact, civil liability cannot be triggered (First Instance Court Sector 5, Bucharest, civil sentence no. 5291 of 12 June 2012).

The allegations made on alleged unlawful acts committed by a person relating to her position as a prosecutor, which constitute serious and actual circumstances go beyond mere speculations, with the tone of some well-known, well-known information have the character of an unlawful act, as the article incriminated far exceeds the framework of a challenge or exaggeration, containing factual statements that were proved real (Bucharest Court of Appeal, 9th Civil Section, civil decision no.177/R of 28 April 2011).

The incisive tone of the author of an article falls within the legitimate framework of freedom of speech, without constituting an illicit act, seen as a violation of the rule of law principle an objective capable of damaging the subjective right to the public image of a person. There is no doubt that the right to free expression must be exercised in good faith and according to the law but the limits of the freedom of speech through the press must not be interpreted restrictively so as to negatively affect it the citizen's right to information (First Instance Court Sector 2 Bucharest, civil sentence, no. 4819 of 11 June 2007).

Articles written in a pamphlet style, containing a series of satirical comparisons and metaphors, in which journalists are guilty of certain moral hardships, conceptions, negative aspects of social reality, character traits of a person through which direct accusations are not brought, in the sense of committing acts of a criminal nature, do not go beyond the notions of freedom of speech, freedom of opinion, and are not illicit facts (First Instance Court Sector 1 Bucharest, civil sentence no. 11389 of 10 June 2011).

There is no bad faith when journalists analyzed and reproduced in the article published, in a journalistic discourse on topics of public interest, information taken over from official sources, namely acts originating from public institutions, essentially decisions of the courts and solutions given by criminal prosecution bodies in the case files which injured party has been investigated, taking due care in the circumstances data to verify the authenticity of the allegations and showing good faith, providing reliable and accurate information based on accurate, ethical facts journalist (First Instance Court Sector 1, Bucharest, sentence no. 1303 of May 18, 2006).

The fact that the moderators of the show did not make any claims that might be damaging to a person's image, did not accuse him of her/her address and was respected the principle *audiatur et altera pars* does not remove their obligation to intervene in the sense drawing a reasonable limit on those declared in a public broadcast, to the extent who find that they do not have sufficient evidence to tell to the person concerned facts whose real character is still under the sign of uncertainty (First Instance Court Sector 2 Bucharest, Civil sentence no. 12239 of 7 December 2010).

The actions of the courts, which are the protector of justice and whose mission is fundamental in the rule of law, require public trust. It is therefore necessary for judges to be protected against unfounded attacks, especially since the duty of discretion forbids judicial officers to react (*De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, paragraph 46).

A court order prohibiting a newspaper and a journalist from publishing information on the accident involving a judge or related court proceedings up to the ruling of the defamation case is disproportionate in breach of Article 10 of the Convention (*Obukhova v. Russia*, no. 34736/03, judgment of 8 January 2009).

II. Defending the independence, impartiality or professional reputation of judges and prosecutors by the Superior Council of Magistracy during 2015-2016

Report from the Commission to the European Parliament and the Council on the progress made by Romania under the Cooperation and verification mechanism of 27 January 2016 and the related Technical Report found that in the year 2014, the Superior Council of Magistracy issued 11 rulings to defend the independence of the judiciary system and 19 rulings defending her/her professional reputation judicial officers, and, in 2015, issued 16 resolutions to defend independence of justice and 10 rulings defending its professional reputation, independence and impartiality of judicial officers (judges and prosecutors).

The Judicial Inspection Division for Judges has 17 complaints filed by the Superior Council of Magistracy, among which, for example: through case no.2024//1214/DIJ/2015³, Superior Council of Magistracy asked the Judicial Inspectorate to verify to determine whether and how the extent of the independence of the judiciary system as a whole has been affected the statements made by the former President of Romania on a TV show in Romania dated 6 April 2015, in which he made several references to the activity of some judicial officers, as well as other activities carried out within the judiciary system, taken over subsequently by the media. By Decision no. 415/29.04.2015, the Plenum of the Superior Council of Magistracy appropriated the conclusions of the Judicial Inspection and accepted the request, that the statements of Mr T.B. made during the show “U.C.”, broadcast on the B1TV television station on 31 March 2015, as well as the comments posted on the page socializing Facebook on 02.04.2015 by the lady communication team deputy E.G.U. and taken over by the media are affecting independence, impartiality judicial officers handling the cases concerning Mrs. E.G.U., as well as the judiciary system as a whole.

At the same time, the statements issued in the public space of the former President of Romania, T.B., in the “X-P.” broadcast on 06.04.2015 on the B1TV television station affect the independence, prestige and the credibility of justice with the consequence of undermining its authority, including the judiciary system as a whole; through work no. 3219/6/1940/DIJ/2015, Superior Council of Magistracy asked the Judicial Inspectorate to perform checks to determine whether and to what extent the independence of the judiciary system in the its whole and if the statements made by Prime Minister V.V.P. on the evening of June 1, 2015, in a show, are likely to affect prestige and the credibility of justice. By Decision no. 659/22.06.2015, Plenum of the Superior Council of Magistracy appropriated the conclusions of the Judicial Inspection and accepted the request; through the work no. 1268/01/317/DIP/2015, the Superior Council of Magistracy, by its ruling no. 181/19.02.2015, requested the Judicial Inspection to carry out checks on the defence of the independence of the judiciary system as a result of the statements of 14.02.2015, made by Mr. C.P.T. – The President of the Romanian Senate, regarding the rejection of the request for waiver of the parliamentary immunity of Senator V.V.. By Decision no. 255/19.03.2015 The Plenum of the Superior Council of Magistracy has appropriated the proposal of the Judicial Inspection in the sense that the statements issued in the public space by the President of the Romanian Senate are likely to prejudice the independence, prestige and credibility of justice, with the consequence of undermining its authority, including of the Judiciary system as a whole.

The European Commission noted that “the successful conclusion of the criminal investigation and prosecution condemnation of a large number of well-known Romanian

³ The data are taken from the Annual Reports on the SCM activity published on the web page <http://old.csm1909.ro/csm/index.php?cmd=24> [last consulted on 12.05.2019].

politicians for corruption high-level is a sign that the underlying trend in terms of independence justice is positive and that no person committing an offense is in any position above the law. There has also been a reaction to this trend: they remain common criticism of judicial officers expressed by politicians and the media as well lack of respect for court rulings. This year (2015), there was a increasing the number of requests for defence of the independence of the judiciary system, following attacks in the media and by politicians, including the Prime Minister and the President of the Senate. There have also been cases of pressure on judges of the Constitutional Court. As mentioned in the 2015 report, in the run-up to the election of the President of Romania, there were signs of change in the sense of a more responsible approach. But it dissipated in spring, especially following the opening of the National Anticorruption Directorate (NAD) an investigation targeting the prime minister. Critics have personally targeted both the chief of NAD, as well as that of the High Court of Cassation and Justice (HCCJ). In 2015, the Superior Council of Magistracy (SCM) and the Judicial Inspection continued to defend independence of the judiciary system and professional reputation, independence and impartiality judicial officers. There are still many examples of SCM notifications of attacks in the media and from politicians, and therefore the SCM had to issue more critical communications about them. *However, the SCM cannot provide a level of media coverage of its press releases equivalent to what they were enjoyed initial criticism and, beyond this moral support, the SCM does not provide financial aid or legal judicial officers who request repairs in court. (...)*

In 2015 (author's note), the role of the SCM as an institution that defends the independence of the judiciary system is already established. Most requests to defend the independence of the judiciary system are now initiated by the SCM itself, without receiving a request from the judicial officers concerned. The SCM has explained that, since some of the criticisms concern the institutions or the judiciary system in general, the decision to initiate the action should not be left to the judicial officer – especially when the cases are still pending. The role of the SCM was also supported by other institutional actors: a request to defend the independence of the judiciary system was presented after a unanimous vote of the General Prosecutors' General Assembly in the NAD, and another was presented by the Minister of Justice. The SCM is trying to make its actions known in this area by issuing press releases. The MCV Report of 2015 highlighted the difficulty of providing an equivalent level of advertising with the initial criticism to the SCM press statements. Although SCM rulings are always transmitted to the National Audiovisual Council, this has not always led to the adoption of effective reparation measures or the correction of information by the media channel that has launched or took over the attacks. It can be noted that in other Member States there are legal obligations to give the *right of reply* and the positions thus expressed must be published in such a way that they have a comparable level of visibility in accordance with the positions of the Council of Europe and the case law of the Court European of Human Rights.

In 2016, the SCM issued 20 rulings defending the independence of the judiciary system and 20 rulings defending the professional reputation, independence and impartiality of judicial officers, most of them as a result of attacks on NAD prosecutors. The average response time was 31 days.

According to the data from the SCM Activity Report, during the year 2016, the Judicial Inspection Division for Judges registered **4 complaints by the Superior Council of Magistracy,** aiming to defend the independence and impartiality of the judiciary system, all four complaints being admitted by Plenum of the Superior Council of Magistracy, including the request of the SCM to carry out checks on the defence of the independence of the judiciary system, as well as

the prosecutors within the National Anticorruption Directorate following the statements of the EU lady, published in the media. By Decision no. 690/07.06.2016, the Plenum adopted the conclusions of the Report of the Judicial Inspection in that it affected the independence of the judiciary system as a whole, as well as the prosecutors within the National Anticorruption Directorate. In the reference period, 22 complaints from the Superior Council of Magistracy were filed at the Directorate for Judicial Inspection for Prosecutors, having as object the defence of the independence and impartiality of the judiciary system, of which 19 were admitted by the Plenum of the Superior Council of Magistracy, a rejected application, and two papers have were connected. Among other things: referral to the Superior Council of Magistracy based on the request of the National Anticorruption Directorate to carry out checks on the defence of the independence, impartiality of the prosecutors and the judiciary system as a whole in relation to the opinions expressed in the “Sinteza zilei”, broadcast by Antena 3 on the evening of July 12, 2016. Plenum of the Superior Council of Magistracy, by Decision no. 1007/23.08.2016, took the conclusions of the Judicial Inspection Report, in the sense that the telephone intervention of Mr. D.P. in the 12 July 2016 issue, and the views expressed by the moderator of the broadcast are likely to affect the independence and impartiality of prosecutors and the independence and prestige of the judiciary system; referral to the Superior Council of Magistracy in connection with the request made by the National Anticorruption Directorate for verification of the independence of the judiciary system in relation to the statements made in connection with the statements made by Mr N.E, member in the Parliament of Romania, at Antena 3, dated 11 July 2016 and taken over by many televisions publications. By Decision no. 1009/23.08.2016, the Plenum adopted the conclusions of the Judicial Inspection Report in the sense that the statements by Mr N.E., deputy, are likely to undermine the independence of the judiciary system, within which the NAD prosecutors operate; referral to the Superior Council of Magistracy in connection with the request made by the National Anticorruption Directorate for verification of the independence of the judiciary system as a result of the statements made by Mrs. VLO, mayor of Craiova, made at Antena 3 on the date of 19 July 2016 and taken over by most media outlets. Plenum of the Superior Council of Magistracy, by Decision no. 1076/19.09.2016, has taken the conclusions of the Report of the Judicial Inspection, in the sense that the allegations issued in the public space by Mrs. V.L.O. are likely to affect the independence, prestige and credibility of justice; referral to the Superior Council of Magistracy for verification of the independence of the judiciary system in relation to the statements made by Mr T.B. and other persons close to the former President in several television appearances. The Plenum of the Superior Council of Magistracy, by Decision no. 1389/14.11.2016, he accepted the conclusions of the Judicial Inspection report in the sense that the statements made by the former President of Romania, as well as by the EU Member, deputy in the Parliament of Romania, in several television appearances, are likely to produce an impact negatively on the credibility of the judiciary system, undermining the independence of NAD prosecutors and the independence, prestige and credibility of justice as a whole.

Report from the Commission to the European Parliament and the Council on the progress made by Romania under the Cooperation and Cooperation Mechanism January 25, 2017, and the related Technical Report noted the following:

“Although SCM rulings are always passed to the National Audiovisual Council, there has been no progress in taking action effective repairs or correction of information by the media channel that launched or which took over the attacks. This is a consequence of more general issues related to freedom of speech in accordance with Council of Europe standards and with ECHR jurisprudence. While the broader subject of media regulation and others taking the remedies

is itself outside the scope of the MCV, there is a direct connection with the independence of the judiciary system. The new SCM and the new government could, also follow the application of the recommendation to explore the possibility of putting in practice a more robust mechanism so that the SCM can support the judicial officers who want to defend themselves in court or defend them in court. (...) **Recommendation:** Ensure that in the Code of Conduct for MPs, which is being drafted in Parliament, there are clear provisions on mutual respect between the institutions and it is clear that lawmakers and the process Parliamentarian must respect the independence of the judiciary system. A Code of Conduct, similarly, it could be adopted for ministers. The SCM should still report with on the measures taken to defend the independence of the judiciary system and to defend its reputation, independence and impartiality of judicial officers and could hold a debate in which the Government, the Parliament and the National Audiovisual Council will publish or invited to respond to the report. (...)

In Romania, the number of judicial officers seeking redress in court is low. The SCM does not provide any support to substantively support a SCM decision through providing legal or financial assistance to judicial officers in such situations (there are cases in other Member States in which judicial officers receive counselling and assistance to initiate a cessation action or to file a complaint criminal proceedings) or by initiating an action in court on its own behalf. The NAD Chief Prosecutor has sued the television station “Antena 3” for allegations made in a television program, requesting moral damages amounting to 1 million lei and payment of costs. In October 2015, the Bucharest Court of Appeal condemned “Antena 3” in communicating the ruling to the post television and condemned journalists to pay moral damages worth 250,000 lei. The ruling is not final. Another approach used in other Member States was to invest in media training courses for judicial officers or to appoint for each institution judges or prosecutors as spokesmen with training in the field. Until now, there have been few such measures in Romania.”

It is worth noting that the High Court of Cassation and Justice – administrative and fiscal contentious (from the composition part of the future member of the SCM, even chairman of the SCM in 2018), by decision no. 2869/27 October 2016, established two press articles that made allegations relating to the professional competence of a judge, imputing to him that he would be “*executing orders*”, being called “*executing*”, respectively that it would have delivered a ruling without deliberating with the other member of the panel, they had a purpose informing the public about a subject of general interest, being the equivalent of a journalistic freedoms that include the possible use of a certain amount of exaggeration, even of challenge.

III. Defence of the independence, impartiality or professional reputation of judges and prosecutors by the Romanian Superior Council of Magistracy between 2017 and April 2019

1. Elected members of the Romanian Superior Council of Magistracy. Candidacy projects

The current Superior Council of Magistracy was elected in the autumn of 2016, with the mandate coming to an end in early 2022. Also, after several delays, the Senate appointed the two members of the Superior Council of Magistracy representing civil society at the beginning of September 2017, until that time the composition is incomplete.

The High Court of Cassation and Justice is represented by judges Mariana Ghena and Simona Camelia Marcu, who also served as chairperson of the Superior Council of Magistracy.

In her nomination for the presidency of the SCM in January 2018⁴ (in which some of the issues raised in the nomination for the dignity of the SCM member in 2016), *Simona Camelia Marcu* said her mandate would be “*growth of the degree of public confidence in the judiciary system. The Council will continue to use the legal means regulated by Law no. 303/2004 and by Law no. 317/2004, in order to guarantee the independence of the judiciary system, with quicker reactions against any attacks or interference in the act of justice in the activity courts and prosecutors’ offices or the Council, as well as for discouraging such actions. Rapid reaction is essential because it demonstrates judicial officers and public opinion’s firmness in defence of the independence of justice, and the passing of a long time weakens both the interest for the generating fact as well as the positive effects of the Council’s intervention.*”

In the 2016 SCM membership application, **Mariana Ghena**, proposed, among others, “the restoration of the judge’s professional prestige, which must be landmark of professionalism and morality, the establishment of a dialogue mechanism between the powers of the state, increasing the transparency of the activity of the Judicial Inspection.”

Judges from the courts of appeal are represented in the Superior Council of Magistracy by Lia Savonea (Bucharest Court of Appeal), Nicoleta Ținț (Brașov Court of Appeal) and Andrea Chiș (Cluj Court of Appeal).

Lia Savonea, the current chairman of the SCM, has proposed, through the candidacy⁵ project to change the SCM image at the “end of a repeated historical failure”. Of note is the mentions that “the inability to manage disagreements, individualities, public positions contrary to those assumed in plenary or section, the climate of suspicion and mistrust, the vedetisms, have strongly contrasted with sobriety, with mature attitude, with the responsibility that would have been expected from members SCM. This condition involves a risk of altering changing hopes and, ultimately, to weaken the legitimacy of the SCM. Intentional or not, sometimes perhaps unconsciously, the cardinal value of respect for the other has been lowered to a minimum threshold. Inside, it was made a hypocritical campaign for respect, against the backdrop of some

⁴ In order to see more details go to the webpage https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=2ahUKEwj1_IThr8TcAhVJOJoKHQgIB8sQFjAEegQIBBAC&url=https%3A%2F%2Fwww.csm1909.ro%2FDownload.aspx%3Fguid%3Ddaa3cbc5-a04a-4baa-aa60-94053431e88f%257CInfoCSM&usg=AOvVawIp6by8IS1jeePhmEJ81g5r

⁵ See web page <https://www.universuljuridic.ro/programul-jud-lia-savonea-putem-schimba-mai-bine-sistemul-judiciar/> [last consulted on 05.05.2019].

actions that betrayed more the disdain. *Low rhetoric, acid comment, noisy observation* were cultivated. Truth has been perverted into a rating issue. Slowly slowly, competence has lost its motivation because it has been seen that it can be done without effort and that endeavor does not necessarily lead to success. Besides, the judges, the representatives of others legal professions speak too often, in order not to be considered at least a serious signal, about disregard, about the “*ivory tower*” syndrome.”

Nicoleta Țiņț claimed⁶, among other things, “to guarantee real independence for each judge, to defend their professional reputation and protect their confidence society in judges (*the speed and firmness of the reaction, as well as the realization advertising it under conditions conducive to a comparable level of visibility and impact with that of defamatory actions are of a nature not only to protect the trust of society in the judiciary system, but also to create and maintain the conviction of each judge that he/she enjoys real and effective protection from SCM*)”, the Superior Council of Magistracy will initiate the actions of the defending the independence of judges and, implicitly, the judiciary system.

Andrea Chiș has, through the candidacy project, proposed increased efficiency in the ex officio notification of the pressure exerted on judges in certain cases, as well as in the optimal resolution of the defence of her or her independence the professional reputation of the judge (“*I think the future council should: notice ex officio, where appropriate, acts of interference in the professional activity of the judge; to settle in good time the notifications to defend the independence of the judge or the professional reputation of the judge*”)⁷.

Judges from the district courts are represented in the Superior Council of Magistracy by Gabriela Baltag (Neamț District court) and Evelina Oprina (Ilfov district Court).

Gabriela Baltag argued⁸, among other things, improving the status of judges, a mandatory condition for strengthening the judiciary system by assigning the component of public dignity, recognized by the other powers, but also by those who hold office leadership at the level of the supreme court and in the major prosecutor’s offices, strengthening the status prosecutors by excluding the authority of the minister of justice and hierarchical subordination – in otherwise, to exclude them from the judicial officers for lack of independence which is capable of jeopardizing the independence of judges.

Evelina Oprina, through the candidacy project⁹, proposed as the Council Superior Council of Magistracy, as a disciplinary court, to be a balanced, objective and prudent and to ensure for the judiciary system a guarantee of the protection of the judge against any attempts at pressure or abuse, but also assuring justice for the bills, for the public, the confidence that judges make up an elite body that does not tolerate and does not accept conduct that is inconsistent with the rigor, exigency and responsibility of the mission entrusted to him.

Judges from the courthouses are represented in the Superior Council of Magistracy by Mihai Bălan (Timișoara) and Bogdan Mateescu (Râmnicu Vâlcea).

⁶ See web page <https://www.universuljuridic.ro/alegeri-csm-2016-program-judecator-nicoleta-margareta-tint-pentru-mai-multa-implicare-pentru-echilibru-responsabilitate-buna-credinta-si-onestitate-sistemul-judiciar/> [last consulted on 05.05.2019].

⁷ See web page <https://www.avocatura.com/stire/15552/proiect-de-candidat-pentru-csm-andrea-chis-adoptarea-unui-cod-etica-liber-si-reve.html> [last consulted on 05.05.2019].

⁸ See web page <https://www.universuljuridic.ro/alegeri-csm-2016-judecator-gabriela-baltag-principalele-obiective-urmarite-cazul-alegerii-ca-membru-csm/> [last seen on 05.05 .2019].

⁹ <https://www.universuljuridic.ro/alegeri-csm-2016-program-judecator-evelina-mirela-oprina-independenta-este-inainte-de-toate-o-problema-de-caracter/> [last consulted on 05.05 .2019]. The project ends in the following way: “I will therefore be a representative of all judges, fair, impartial, brave, assumed and involved.”

Mihai Balan argued¹⁰, among other things, defining and defending the status of judicial officers against any interference in their activity.

Bogdan Mateescu proposed, through the candidacy¹¹, the efficiency of the defence of independence the judiciary system as a whole or in individual cases (“it is the duty of every SCM member *to react publicly, immediately, to any kind of attitude to affect the independence of the judiciary system*; a member of the Council cannot remain passive in the face of attacks, in the obvious conditions of the lack of efficiency of the defence procedure system independence, which additionally involves an analysis of the part of the Judicial Inspection, although sometimes, especially in the case of political statements, things are clear and the applicable procedure only delays a predictable position”).

Prosecutors are represented in the Superior Council of Magistracy by Codruț Olaru (Prosecutor’s Office attached to the High Court of Cassation and Justice), Cristian Ban (Prosecutor’s Office attached to Bucharest Court of Appeal) – for the prosecutor’s offices attached to the courts of appeal, Florin Deac (Prosecutor’s Office attached to Maramureș District court) and Nicolae Andrei Solomon (Prosecutor’s Office attached to Bucharest District court) – for the prosecutor’s offices attached to the district courts, namely Tatiana Toader (Prosecutor’s Office attached to Bucharest Courthouse of Sector 2) – for the prosecutor’s offices attached to courthouses.

Codruț Olaru has proposed, through the candidacy project, the consolidation of the statute the judicial officer of the prosecutor (“sense in which the judicial officer’s independence must be also acknowledged by the judicial officer prosecutor.”)¹² **Cristian Ban** pursued the realization of some regular meetings with prosecutors’ associations and civil society or consultation prosecutors, within a reasonable time, on the proposed draft legislative acts by SCM. **Florin Deac** considered the *prompt, efficient and real defence of independence and image of the judicial officers*. **Nicolae Andrei Solomon** proposed, through the candidacy project¹³, proposed a *quick and appropriate response* in the interference situations a the legislature or the executive in the field of activity of the judicial authority (when the permissible limits of political public discourse and freedom of speech are exceeded expression, the principles of the separation of powers in the state and the independence of the judiciary system as a whole), the adoption of reactions in those situations in which the media are exerting pressure on judicial officers who solving the causes with impact, engaging in public debates on the field justice, especially those concerning changes in legal provisions with extensive scope consequences on the work of justice or the implementation of policies and good practices for promoting integrity and preventing corruption within the system judicial. Tatiana Toader considered the SCM members’ responsibility through the presentation by each member of an annual activity report, and the SCM to participate, through a communication specialist, in public debates on the state of justice. **Tatiana Toader** considered the SCM members’ responsibility through the presentation by each member of an annual activity report, and the SCM to participate, through a communication specialist, in public debates on the state of justice.

¹⁰ See the web page <https://www.universuljuridic.ro/alegeri-csm-2016-program-judecator-mihai-andrei-balan-principalele-obiective-ce-urmeaza-fi-urmarite-cazul-alegerii-ca-membru-csm/> [last consulted on 05/05/2019].

¹¹ See the web page <https://www.universuljuridic.ro/alegeri-csm-2016-program-judecator-judecator-mihai-bogdan-mateescu-principalele-obiective-asumate-in-cazul-alegerii-ca-membru-al-csm/> [last consulted on 05/05/2019].

¹² See <https://www.juridice.ro/462364/consolidarea-statutului-procurorului-1.html> și <https://www.juridice.ro/463732/consolidarea-statutului-procurorului-2.html> [last consulted on 05.05.2019].

¹³ See the webpage <https://www.universuljuridic.ro/alegeri-csm-2016-program-procuror-nicolae-andrei-solomon-principalele-obiective-ce-vor-fi-avute-vedere-exercitarea-mandatului-de-membru-al-csm/> [last consulted on 05.05.2019].

2. Quantitative analysis of the requests for defence of the independence, impartiality or professional reputation of judges and prosecutors by the Superior Council of Magistracy between 2017 and April 2019

The Commission Report to the European Parliament and the Council on the progress made by Romania under the Cooperation and Verification Mechanism of January 2017 recommended that the SCM continue to report to the public on the actions it has taken to defend the independence of the judiciary system and protect the reputation, independence and impartiality of judicial officers.

According to the data provided by the Annual Reports of the Superior Council of Magistracy, in the year 2017¹⁴, in the Directorate for Judicial Inspection for Judges 7 complaints were sent by the Superior Council of Magistracy, having as object the defence of the independence and impartiality of the judiciary system, and at the judicial investigation for prosecutors has been recorded 12 complaints aimed at defending the independence and impartiality of the judiciary system. Also, at the Judicial Inspection Department for judges, 13 complaints were filed in order to defend the professional reputation of the judges, and 11 prosecutors' requests for defence of the professional reputation, independence and impartiality were registered at the Directorate for judicial inspection for prosecutors.

From 1 January to 5 December 2018, at the Judicial Inspection Division for judges there were 22 papers dealing with the defence of independence and the impartiality of the judiciary system, 16 referring to "requests formulated by a judicial officer disciplined, currently suspended from office, with a similar object. "In the same reference period at the Directorate for Judicial Inspection for Prosecutors were registered 4 notifications sent by the Superior Council of Magistracy, having as object the defence of the independence and impartiality of the judiciary system. At the Judicial Inspection Directorate there were 36 complaints sent by the Superior Council of the Judiciary system to judges Judicial officers, having as their object the defence of professional reputation. Of these requests, "18 are formulated by a disciplined disciplinary judicial officer, currently suspended from office and having a similar object." Within the Directorate for Judicial Inspection for Prosecutors, 19 applications for professional reputation, independence and impartiality were filed by prosecutors.

In 2017, the SCM admitted 10 requests for defence of the professional reputation of individual judicial officers or the independence of the judiciary system (7 requests plus an ex officio referral of the reputation Prosecutor's Section, respectively 2 requests regarding the independence of the judiciary system, one being doubled by the ex officio notification of the SCM President).

In 2018, the SCM admitted 10 requests for defence of the professional reputation of individual judicial officers or the independence of the judiciary system (8 requests for reputation, respectively 2 requests regarding the independence of the judiciary system, one of them being appropriated by over 1500 judicial officers).

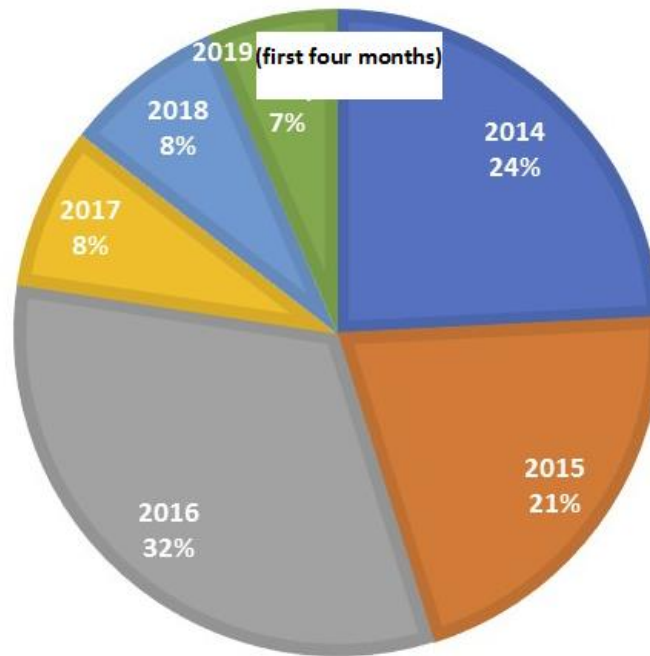
In the first 4 months of 2019, the SCM admitted 8 requests for defence of the professional reputation of individual judicial officers or the independence of the judiciary system (8 requests plus an ex officio referral to the SCM President for reputation, the last judge of HCCJ being referred to as the "man" of the SCM President, ie a single request regarding the independence of the judiciary system, with over 700 judicial officers).

¹⁴ Published on <http://old.csm1909.ro/csm/index.php?cmd=24> [last seen on 12.05.2019].

In total, in two years and four months of mandate, the SCM has adopted fewer decisions than the SCM earlier in 2014 (30) or in 2016 (40), i.e. an approximate number of rulings issued only in 2015 by the former SCM (26). In fact, the ratio between the previous SCM and the current SCM is close to 75% to 25%.

APPLICATIONS ADMITTED BY THE PLENUM OR THE SCM SECTIONS

■ 2014 ■ 2015 ■ 2016 ■ 2017 ■ 2018 ■ 2019 (first four months)



Regarding **the duration of proceedings** of these requests, the average of two months from registration, which existed between 2015 and 2016, it was frequently exceeded in the period 2017-2019.

The record is held by the Decisions of the SCM Plenum no. 27, no. 28, no. 30 and no. 31/11.01.2018, whereby the rejection of the professional reputation claims was ordered *approximately one year after the date of the request* (petitioner Camelia Bogdan).

The decision of the Plenum no. 606/24.05.2018 was adopted *approximately ten months after the date of the request* for defense of the professional reputation (petitioner Viorica Costiniu).

The decisions of the Plenum no. 1032 and no. 1033/01.11.2018, which rejected the defense of professional reputation, were issued *after about 8 months from the date of the request* (petitioners Giluela Deaconu and Lucian Gabriel Onea).

By the decision of the Plenum no.1040/13.11.2018 the application for defense of the professional independence was admitted *after about 6 months from the date of the request* (petitioner Elena Iordache).

By the decision of the Plenum no.366/27.03.2018 it was decided to reject the application defence of the independence of the judiciary system as a whole after about 4 months from the date of formulation (petitioner Laura Codruța Kovesi, Chief Prosecutor, National Anticorruption Directorate). Plenum Decisions no. 500/25.04.2017 and no. 560/09.05.2017 were issued after

about three to four months from the date of the defamatory deed (National Anticorruption Directorate).

Regarding the **time limit for publishing the reasons for the rulings** handed down in the matter, the 30 days were generally respected, but there were also notable exceptions, without any plausible explanation for delays (*Plenary Session no. 433/19.04.2018 took over 170 days for publication; decision Plenum no. 27/11.01.2018 and Plenum Decision no.30/11.01.2018 required over 160 days for publishing; The decision of the Plenum no.779/04.07.2018 needed more than 100 days for publishing; Decision of the Plenum no. 1031/01.11.2018 required over 70 days for publication; Decision of the Judges Section no. 14/10.01.2019 and the Decisions of the Plenum no.1040/13.11.2018, no. 1032/01.11.2018, no. 1033/01.11.2018, no. 955/11.10.2018, no. 434/19.04.2018, no. 32/11.01.2018, no. 31/11.01.2018 and no. 26/11.01.2018 took over 60 days for publication*).

Regarding **the number of votes cast by SCM members**, 9 rulings of the SCM Plenum, 3 rulings of the Section for judges and 6 rulings of the Section for prosecutors were taken unanimously (for the most part, taking notice of renunciation petitioners for defence of professional reputation). Most voted adopted 59 decisions of the SCM Plenum and 10 rulings of the Judges Section. The Prosecutor's Section has always deliberated with a unanimous vote. There were also abstentions from the vote (one abstention – the Plenum Decisions no. 1275/07.12.2017, no. 604 and 605/24.05.2018, no. 780/04.07.2018, no. 322/20.03.2018, but also 2 abstentions – Plenum Decisions 28, 29 30, 31 and 32/11.01.2018, no. 366/27.03.2018), as well as null votes (3 - Plenary Decisions no.1032/01.11.2018 and no. 558/15.05.2018; 1 – The Decisions of the Plenum no. 433/19.04.2018, no.1032/01.11.2018, no. 779/04.07.2018; Ruling of the Judge Section no. 475/14.03.2019). If in the case of the last ruling quotes it can be presumed that the null vote belongs to the SCM president, who formulated it referral to the reputation of a judge of the HCCJ described as the “man” of the SCM President, for example, in the case of the Decision no. 779/04.07.2018, by which the Plenum the request made by the Romanian Judges' Forum Association and 1504 judges and prosecutors, on an individual basis, the existence of a null vote is incomprehensible and can be qualified as one refusal to fulfill the specific duties of a member of the Romanian Superior Council of Magistracy.

3. Qualitative analysis of the requests for defence of the independence, impartiality or professional reputation of judges and prosecutors by the Romanian Superior Council of Magistracy between 2017 and April 2019

During all this time, the judiciary system has been subjected to attacks not met by politicians, whether defendants or not, via channels media controlled by them. *The report on the state of justice for 2018*, published in May 2019 by the Superior Council of Magistracy, notes as vulnerability “intensifying the attacks launched by politicians and the media at the address of the judges “. ¹⁵

Indeed, the Venice Commission found that “there are reports of pressure and intimidation of judges and prosecutors, including some senior politicians and media campaigns,”¹⁶ and the Commission’s Progress Report on Romania’s MCV of 13 November 2018 explicitly mentioned that “judges and prosecutors continued to face attacks on a person in the mass-media, not having sufficient countermeasures.”¹⁷

By *the Opinion of the Bureau of the Consultative Council of European Judges* of April 25, 2019, issued at the request of the Romanian Judges’ Forum Association regarding the situation of the independence of the judiciary system in Romania, the repeated and unprecedented attacks of political actors against judges in Romania (“**any comments, comments or remarks in Romania that go beyond the limits of legitimate criticism and seek to attack, intimidate or otherwise pressure judges, or demonstrate disrespect for them, using simplistic, irresponsible or demagogic arguments, or denigrating others way legal system or judges as individuals**”). CCJE stressed that “powers executive and legislative (...) must give all the necessary and appropriate protection at that time when court functions are threatened by attacks or intimidations directed at members of the judiciary system. The unbalanced critical commentary of politicians is irresponsible and causes a serious problem because public confidence in the system judiciary system can be undermined involuntarily or deliberately. In such cases, the judiciary system must point out that such behavior is an attack on the constitutional order of a democratic state, as well as an attack on the legitimacy of another state power. Such behavior also violates international standards.”¹⁸

Referring strictly to the SCM’s work on the defence of the independence, impartiality or professional reputation of judges and prosecutors, the **Report of the Commission to the European Parliament and the Council on the progress made by Romania under the Cooperation and Verification Mechanism of 13 November 2018 and the related Technical Report noted the following:**

“The Superior Council of Magistracy has not been able to act as a factor effective control and balance to defend the independence of the judicial institutions under pressure, an important constitutional role highlighted in the January 2017 report. The divisions of the Superior Council of Judicial officers (...) have made it increasingly difficult for the Superior Council of Magistracy to be effective as a bullhorn of the judiciary system - especially when consulted on legislation - and as the administrator of the judiciary system. Even when the Superior Council of Magistracy

¹⁵ Available at http://old.csm1909.ro/csm/linkuri/06_05_2019_94958_ro.pdf [last consulted on 12.05.2019].

¹⁶ See the Venice Commission Opinion on Amendments to Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on judicial organization and Law no. 317/2004 on Superior Council of Magistracy, CDL-AD (2018)017, paragraphs 15 and 157.

¹⁷ See the Commission’s Report to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (Strasbourg, 13.11.2018 COM (2018)851 final), Section 2 (General), p. 2

¹⁸ See also CCJE Opinion no. 18 (2015) on the position of the judiciary system and its relationship with other state powers in a modern democracy, paragraph 52.

presented a unanimous opinion, it was ignored in important cases. ***Although in 2018 judicial institutions and some judges and prosecutors have been the subject of particularly tough public criticism from Government and Parliament representatives, the Council has been reluctant to take ex officio decisions in response to attacks on the independence of the judiciary system.*** This entails the risk that the judicial officers will be discouraged from fulfilling their role as a state entity in expressing opinions on issues relevant to the judiciary system. (...) For example, following statements by the Prime Minister, the President of the Senate and the President of the Chamber of Deputies, on the occasion of a rally against the abuses of the justice system dated June 9, 2018, the SCM Plenum adopted a decision only after a complaint from the Romanian Judges' Forum Association. Since November 2017, the SCM has adopted four rulings in defence of the independence of the judiciary system and four rulings in defence professional reputation, independence and impartiality of judicial officers. From a total of 34 rulings, 6 requests to defend the independence of the judiciary system were rejected and 20 requests for defence of professional reputation, independence and impartiality of judicial officers were rejected.”

The point of view of the European Commission is not at all decalibrated or unmotivated, on the contrary.

Between 2017 and 2019, the ex officio notifications were sublime but lacked almost completely, although several members of the current SCM were promising one an active role in defending the body of judicial officers against acts of nature to bring their independence, impartiality or professional reputation.¹⁹

The Prosecutor's Section has automatically filed an application for the case The Plenum's Decision no. 1139/31.10.2017, in which the reputation was defended professional prosecutor Elena Rădescu, a judicial inspector at the Judicial Inspection, in connection with the unrealistic assertions made during the “Sinteza zilei” (Antena 3) broadcasts of 05.09.2017 and 06.09.2017 regarding the activity of the prosecutor in respect of him Lele Alexandru Florian, a former prosecutor. It has been noted that misinformation has occurred in the television show, which is the result of the lack of minimum checks on the subject under discussion.

The president of the Superior Council of Magistracy (Mariana Ghena) doubled the request of the National Anticorruption Directorate which led to the adoption of the Plenum Decision no. 500/25.04.2017, which found to affect the prestige and independence of the judiciary system in relation to the statements of deputy Sebastian Ghiță from the shows on Romania TV (28.12.2016-05.01.2017, 13.01.2017, 16.01.2017): “*NAD is the instrument used by top celebrities and foreign interests to crush the vote of the Romanians. (...) When there is interest in someone in Romania, once benevolent denunciators who know, lie, interpret things in a certain way, favorable to the prosecutor. (...) Thousands, maybe hundreds of thousands of Romanians, began to suffer and to be dragged into trials and in untrue cases, made on false evidence and not reflecting the reality. (...) At the request of Mrs. Kovesi, a construction company in Ploiești, received money from Asesoft, was the one who paid the plane to bring Mr Nicolae Popa, former director of the FNI, in Indonesia. The reality is that a private company at the request of the Romanian state and Mrs. Kovesi, paid 200,000 euros to bring the one who went bankrupt to the FNI. (...) Coldea's power over colleagues and other institutions comes from her exclusive relationship with Kovesi. Laura Codruta Kovesi and Florian Coldea are officers of a foreign secret service of a partner country of Romania. That's why Florian Coldea forces RIS to help Kovesi all the time with plagiarism, with the NACDTCU, with the commissions, with everything, so Kovesi will stay their function”.*

¹⁹ For example, from all existing public data, it does not appear that SCM member Nicoleta Ținț has ever proposed to have the Superior Council of Judicial officers refer at least to the Judicial Section.

Independently, the President of the Superior Council of Magistracy (Lia Savonea) noticed ex officio only in the case in which her name was put in public discussion, associated with a former colleague and principal collaborator at the Court of Justice Bucharest Appeal, Presiding Judge of HCCJ. Thus, by the Section Decision for judges no. 475/14.03.2019 defended the professional reputation, keeping in mind that the expression “Savonea’s man”, associated with one of the members of the panel, brings a serious prejudice to impartiality, inducing the idea among public notice that it is not can guarantee a fair trial and that Judge Daniel Grădinaru has he abused her position, suggesting her lack of impartiality. Also, from the same register is the connection that the journalist makes about Judge Simona Nenita, linking her husband to a convicted person corruption.

*Inexplicably, in a case in which the professional reputation of a prosecutor (Alexandra Carmen Lăncrănjan) could be defended ex officio, it was stated in the Plenum Decision no. 366/27.03.2018 that this “**aspect was not requested**”. The request made by the Chief Prosecutor of NAD at that time, Laura Codruta Kovesi, aimed at the way in which the press reflected the information made public by press release no. 1056/V111/3 of 13.11.2017 of the National Anticorruption Directorate, stating that “this type of media attack, targeting the judicial officers, and in connection with a criminal investigation of the ongoing Anticorruption Directorate, which deals with the investigation of criminal offenses, is a form of interference in the work of prosecutors and are likely to affect the independence of the judiciary system.”*

*We also witness the strange implications of associations of judicial officers in the field (for example, the National Union of Judges in Romania and the Association of Judicial officers in Romania have called for the independence of the judiciary system to be defended against the alleged ones pressures that the Chief Prosecutor of the NAD would have exercised over the judicial inspector Mihaela Focică, **although in flagrant cases of public slander of the judicial officers and of the extreme media linguistics, the voice of these associations has not been heard.** By the decision of the Plenum no. 1471/19.12.2017 it was decided to reject the application, taking into account that from the note of relations given by the prosecutor Focica Mihaela, it appears that she did not perceive the discussion carried out with the chief prosecutor of the National Anticorruption Directorate, Mrs. Kovesi Laura Codruța, as a pressure to affect its individual independence, stressing that it was not threatened, intimidated and pressured by the chief prosecutor of the National Anticorruption Directorate.*

*The only admissible associative applications were formulated by **the of the Romanian Judges’ Forum Association, being appropriated by about 2200 colleagues judges and prosecutors.***

*Thus, by the decision of the Plenum no. 779/04.07.2018, the application was accepted defence of the independence of the judiciary system that targeted attacks by representatives of the of the legislative power and of the executive power, materialized in the speeches of some leaders policies of 9 June 2018, 10 June 2018 respectively. The petitioner pointed out that the hardness of the political discourse, starting from the cataloging of judicial officers, within some generalizing assertions, as “**corrupt**”, “**Stalinists**,” “**securitists**,” “**torturers**”, culminating in **the absolutely unacceptable name of “rats”**, is a slippage extremely serious from the principles of democracy, and the whole “scenario” of the political rally, the “props” used and the so-called “will of the people” to circumvent the “chosen ones” by the means criminal liability, associated with the statement of “**street fight**”, “**to the end**” outlines the image of a serious threat to the independence of justice. The Plenum has appreciated that the statements of some political leaders have exceeded the limits of some critics admissible. Supporting the use of pressure, as a generalized practice of*

setting up criminal files, inoculates the idea of a repressive *de plano* system at the organs prosecution. References to “friendly memberships” suggest lack of independence and impartiality of judges, being accredited the idea of “ordered” solutions.

Also, by the Plenum Decision no. 50/14.03.2019 was admitted the request of the Romanian Judges’ Forum Association for “the defence of the independence of the judiciary system as a whole” regarding the allegations to the President of the Chamber of Deputies, Liviu Nicolae Dragnea, on 16 December 2018. The SCM Plenum noted that, given the quality of the President of the Chamber of Deputies of the political man in question, it would be necessary to use it in a language moderate, especially as some of the causes and investigations are underway progress. The limitation of the political language used was clearly exceeded when it was suggests that justice is selective or must be restarted. The author of the speech does not expresses simple rulings of value to the judiciary system, but makes statements factual, concrete, which do not correspond to the reality of the cases finally or finally settled, the existence of thousands of convicted persons, even though they are innocent, the indication of generalized practices, the alleged abuse of the prosecutors during the investigations, the description of the judicial decisions being the result of agreements with the prosecutor.

Unfortunately, both resolutions were issued with significant delays, though the context and the gravity of the speech demanded rapid action of the Superior Council of Magistracy, ex officio. It took thousands of signatures of Romanian judicial officers in order for the SCM Plenum to agree to take decisions of admission, after a month or two from the date of the facts imputed to the political people in the case in question, resolutions whose reasons were published after two, respectively three months, from the date of adoption, when the public impact became ineffective and irrelevant.

The irony of fate, the then SCM president, Simona Camelia Marcu, a was extremely inactive with regard to an ex officio notification and speedy resolution of the demand, although he supported in her nomination for the presidency of the SCM in January 2018, so only a few months earlier, the need for more reactions fast, “essential, because it demonstrates to judicial officers and public opinion firmness in defending the independence of the judiciary system, and the passing of a long time weakens both the interest for the generating fact and the positive effects of the Council’s intervention.”²⁰

Such state of affairs determines many Romanian judicial officers to refuse to address requests to the Superior Council of Magistracy, because their admission became, in the happy case of admission, almost unnecessary formality.

The SCM Plenum judged that the professional reputation of a judicial officer is not affected, in the context in which, at that time, there existed reasonable suspicions of committing a disciplinary offense. For the SCM Plenum no it is of no relevance to the possible subsequent rejection of the disciplinary action, including before the 5-judge panel of the HCCJ, and the destruction of the public image of that judicial officer by that time.²¹

²⁰ For more details, see web page https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=2ahUKEwj1_IThr8TcAhVJOJoKHQgIB8sQFjAEegQIBBAC&url=https%3A%2F%2Fwww.csm1909.ro%2FDownload.aspx%3Fguid%3Ddaa3cbc5-a04a-4baa-aa60-94053431e88f%257CInfoCSM&usg=AOvVawIp6by8lSIjeePhmEJ81g5r [last consulted on 05.05.2019].

²¹ In the case of the European Court of Human Rights, *Bogdan v. Romania*, no. 3689/18, the Romanian State must answer, inter alia, the Court’s question whether “the refusal of the SCM Plenary on January 11, 2018, pursuant to Article 30 of the Law no. 317/2004, in order to protect its professional reputation as a result of the press campaign to

A request to defend the professional reputation of some has been rejected judicial officers labeled as “performers” by a filmmaker at Antena 3 TV station, but the request made by journalists of the same TV station on finding violations of judges’ independence was admitted because the National Anticorruption Directorate requested only the release of photocopies for the purpose of solving a criminal complaint of documents in a file in which the applicant was the NAD chief prosecutor at that time. The Plenum found that the filing of an application in the described hypothesis could create the appearance of an influence of the court panel, given that “*an addressing that does not meet the legal requirements of form (the model in the Practical Guide of the National Institute of Magistracy – National School of Clerks) can generate discomfort*, which can be felt as an impairment or suspicion of independence or impartiality.”

If such non-compliant requests are likely to affect the independence of judges, statements by politicians from the series “*Tudorele, something that cannot be done! (...) Here we are talking about the investigated ministers, that prosecutors are making decisions in relation to the Government – they have begun to decide who will be Prime Minister in this country, who does not, that is, not the Romanians who vote, but! People those who meet secretly at tables and protocol villas, and all kinds of alike to all sorts of conspiratorial homes, we find today with stupor that this is the back force that tries to decide.* (...) We have an arrested colleague, a prime minister to whom he has been reopened a file after eight years, which they have closed down, every day we find strange things about our colleagues and the hunt goes on abusively, illegally, against the Constitution, and we cannot stand with our arms crossed anymore. (...) *What NAD has done in these four years (...) is called a political mafia, a group of organized crime* and I say it with the greatest responsibility, because what they did was the gravity that they believe that it can be seen in African countries maybe, but in no way a democracy strengthened or rule of law” *are not considered by nature to affect reputation professional NAD prosecutors and the independence of the judiciary system because “no it follows that criticism has been formulated to undermine the independence of power judiciary system and weakening public confidence in justice, but within political, public discourse, representing viewpoints, appreciations, personal opinions and personal fears”*(Plenum decision no. 559/15.05.2018).

Statements of the type “**Without prosecutors and judges dedicated and attached to binom²² fake specimens cannot be delivered and accepted and given outside sentences courtrooms. Their judges are placed in full scholarly distributed, and prosecutors have a field covered by the umbrella of secret protocols concluded with the RIS. Judges who are attached to occult binom smell from a post office. Some come from prosecutors initially trained as militiamen. Their tracks professional is quickly directed not through contests, but by side decisions. There are already famous black marks from the HCCJ, but also from the courts of appeal. Only let doubtful of the solutions given by Ioan Bogdan, Ionuț Matei, Șelaru, Popa. Camellia Bogdan is already a classic case, even revealed by Coldea and Kovesi**

which it was subjected, as well as the communication to the press of the confidential information in the disciplinary investigation file during the course of the investigation constituted an interference with its right to the observance of her private life within the meaning of Article 8 paragraph 1 of the Convention? In the affirmative, the interference was in accordance with the requirements of Article 8 (2) of the Convention (*Axel Springer AG v Germany* [MC], no 39954/08, paragraph 83-84, judgement of 7 February 2012, *Von Hannover v. Germany* [MC], 40660/08 and 60641/08, paragraph 106)?”

²² Colloquial term which, for a certain part of the press in Romania, designates the collaboration between the Romanian Intelligence Service (RIS) and the National Anticorruption Directorate (NAD).

in front of him Basescu. In the SCM system, judges Mateescu, Chiş, Ghena, and the Prosecutors Section is fully registered. “The Squirrel” from NAD stands in turn to drop Kovesi, and “waves at her with files to get her up. We understand of what the battle for verifying the ones covered by justice is a sort of Stalingrad.” considered journalistic exaggerations based on the existence of earlier press issues. By referring to “certain prosecutors”, it is considered not to conclude that the journalistic approach is likely to induce the idea that the whole the judiciary system would be biased and loyal to certain obscure interests (Plenary Session no. 604/05.24.2018; Decision of the Plenum no. 605/24.05.2018).

Dismissing some judicial officers who participated in the protests on the stairs of the Bucharest Court of Appeal²³ (“I have written here about other protests of the judicial officers, wondering each and every time how large the number of those who **agreed to serve the “system” instead of serving citizens’ rights**. Now, however, seeing that many young judicial officers have lined up behind Danileţ and Bogdan, I have some fear about the future of this country. If the SCM does not intervene now to penalize those who have made this instigation amongst young judicial officers, we will not be able to assist the restoration of the whole “System” that has functioned over the past two decades as a political weapon, in front of which the citizen was entitled only to status of sure victim. And it is not known whether, when the “System” recovers all of its lost territories now, there will be one like Tudorel Toader to defeat it by putting up the science of books against those who abandon the power of the law in favor of the servileness that yields ephemeral advantages “seems insignificant, by the decision of the Plenum no. 1030/01.11.2018 disposing of the defense of the professional reputation and the defense of the independence of the judiciary.

It was necessary for a request filed by 172 judicial officers for defense of the professional reputation by the Plenum's Decision no.51/14.03.2019, in relation to the six months ago of the lawyer Aurelian Pavelescu at the Romanian judicial officers present at the protest organized on 16.09.2018 at the Court of Appeal Bucharest, as they were named “impostors”, “thugs”, “imbeciles”, “they are the mafia state”, “the political police of Romania”, “the most corrupt of all Romanians“, ”Bolsheviks“, “corrupt judicial officers“, ”loafers“, ”ax tails“, ”hooligans“, ”politically used animals“, ”bandits“. The SCM Plenum noted that the limits of the freedom of expression had been exceeded and the public opinion was induced that the participating judicial officers did not have a good moral and professional reputation, professionalism and do not adequately fulfill their attributions. There is a serious prejudice to the image of the justice in Romania.

Also, although the Plenum Decision no. 1138/31.10.2017 found that the independence, prestige and credibility of the judiciary system was impaired, although it could have an active role, the SCM did not send a point of view to the Constitutional Court in the legal conflict of a constitutional nature concerned the issues in question.

The SCM Plenum noted that “the only acts drawn up by the Romanian Intelligence Service officers were information notes that have a classified regime and are found in the file only if the case prosecutor has requested their declassification or some phone note reproduction notes constitute criminal prosecution only with respect to article 143 of the Criminal Procedure Code, respectively, if a report of the judicial police officer designated by the case prosecutor or the latter is drawn up. False information has therefore been presented that has led to the undermining of the independence of the judiciary and the weakening of public confidence in judicial officers, as a

²³ See web page <https://www.hotnews.ro/stiri-esential-22704717-video-protest-magistra-ilor-treptele-cur-apel.htm> [last consulted on 12.05.2019].

result of which their independence may be impaired and can put pressure on the work of prosecutors, affecting both their own image and the institution. “

The division of careers, which underpinned the division of the Plenum competences between the SCM sections, has already given rise to contradictory decisions.

For example, by the Prosecutors Section Decision no. 699/13.11.2018 dismissed the request for defense of professional reputation formulated by Gheorghe Stan (prosecutor, deputy chief inspector of the Judicial Inspection) on an article in which a press release issued by the Prosecutors' Association of Romania – Braşov Branch (*“extending the mandate of the Judicial Inspectorate by issuing an emergency ordinance, was appreciated by the majority of the judicial officers as a particularly dangerous measure because, in this way, the political power came to call directly directing the Judicial Inspection, a situation that is not in line with the principles of the rule of law“*). The Prosecutors' Section considered that the press article refers to views on GEO no. 77/2018, not seeing concrete aspects of the petitioner's activity.

By the decision of the Judges' Section no. 1358/27.11.2018, the request for defense of professional reputation by Lucian Netejoru (judge, chief inspector of the Judicial Inspection) on the same article was accepted. The Judges' Section held that the taking of the position of the Romanian Prosecutors' Association - Brasov Branch does not contain an objective account of the way in which the mandate of the Chief Inspector of the Judicial Inspection under the Emergency Ordinance no.77/2018 was ensured. It suggests an appointment that would circumvent the rule of law and violate the rule of law, although it has been criticized by the European Commission and is the subject of a reference for a preliminary ruling before the Court of Justice of the European Union (*case C-83/19, Asociația Forumul Judecătorilor din România*), for which a priority settlement procedure was established.

Perhaps the most inexplicable solution for the general public seems to be the one issued by the Judges' Section Decision no. 507/21.03.2019, which rejected the request to defend the professional reputation related to a Facebook journalist post: “Ni-nooo, nooo, ni-nooo! Camelia Bogdan: “87% of judicial officers are members of the Great Masonic Lodge”. So, 87%, not 86%, not 88%! I cannot help remembering again and again: Camelia Bogdan, Livia Stanciu and Laura Codruta Kovesi were the chimps' idols I found in the editorial by applauding television arrests three years ago when I came to EvZ. I would not be surprised to find that in order to execute Basescu's opponents, General Coldea took Bogdan directly from “Obregia”. With the same brain and the same understanding of the surrounding reality he gave thousands of years of prison in 12 years of activity. “Băse, stick it up your ass! And the other two as well!” The judges' section noted that these comments made by journalists, albeit tendentiously, support the legitimate preoccupation of the media to actively contribute to the debate on the functioning of justice. It is true that, in some cases, the language used by the journalist (*he took Bogdan directly from Obregia.*) *With the same brain and the same understanding of the surrounding reality he gave thousands of years of prison in 12 years of activity; will return to paradise people*) or appreciations (*Bogdan is trial addict*) can be perceived as a disproportionate reaction of press to the judicial officer, but in support of a democratic and pluralistic society, the press is tolerated a margin of exaggeration or even provocation. **The judges' section omitted to pronounce on the final expressions: “Băse, stick it up your ass! And the other two as well!”...**

We note the existence of a prior admissible complaint (Plenum Ruling no. 412/19.04.2018), formulated by Tudorel Toader, the Minister of Justice, through which he has ordered the revocation of the Decision of the Plenum of the Superior Council of Magistracy no.

1472/9.12.2017, whereby the reputation of the judiciary system in the Belina case was defended (after approximately three months after the defamatory deed). The Plenum took into account that in the recitals of the Decision no. 757/2017, published in the Official Gazette of Romania no. 33/15.01.2018, so after the adoption of the contested decision, the Constitutional Court appreciated that “regarding the opportunity of issuing the individual administrative act, the unit of the prosecutor’s office is not competent to start criminal prosecution but has the competence to investigate criminal offenses committed in connection with its issuance (...) no there is no mechanism to control the opportunity of issuing the administrative act. Therefore, if the law allows for a particular administrative operation to be left to the discretion of the administrative body, the censorship of the latter cannot be questioned.”

The competence to investigate the legality of administrative acts belongs to the administrative litigation and only incidentally may be investigated by the court who is prosecuted in the matter in which an allegation is brought in criminal matters regarding the acts/deeds committed in connection with the issuance of the act respectively. **The Plenum of the Superior Council of Magistracy also noted that, through answers given to reporters, Tudorel Toader, the minister of justice, has strictly referred on how to challenge the awfulness of government decisions, and not on offenses and persons identified in the press release of the National Anticorruption Directorate of September 22, 2017. Also, a presented in principle, the way and the powers to establish legality an act issued by the government, as well as the categories of normative acts that can be submitted such control.**

Although the Superior Council of Magistracy has concluded a Collaboration Protocol with the National Audiovisual Council on November 17, 2011, it is inoperative, the SCM never revealing the public institution with attributions in audiovisual in the period 2017-2019, although this was constantly achieved in during the term of the former SCM mandate (according to article 4, “NAC may refer to the SCM regarding the presentation in the audiovisual programs of opinions expressed by judicial officers with on ongoing trials or on cases with which it was he noticed the prosecutor’s office. (2) NAC verifies the SCM notifications on possible cases of non-observance by the radio or television stations of the provisions of Law no. 504/2002, as subsequently amended and supplemented, the provisions of Articles 38, 42, 43 and 44 or any other relevant provisions of Decision no. 220/2011 on the Code regulation of audiovisual content. (3) NAC checks the SCM notifications on the provision of the unrealistic data referred to in Article 5 by radio or television stations and, where it decides they are well founded, exercise legal powers to ensure that correct and complete information is transmitted to the public by exercising the right of rectification when it comes to obvious and significant errors, or the right to reply.”

IV. Conclusions

According to the opinion of the *Bureau of the Consultative Council of European Judges*, made public on the 25th of April 2019, issued at the request of the Romanian Judges' Forum Association, regarding the situation of the judiciary system's independence in Romania, **judges in Romania and beyond have the legitimate right to protest against any policies or actions that affect their independence in an environment based on mutual respect and in a manner that meets the need to maintain the independence and impartiality of justice.**

The independence of the judiciary is essential for upholding the rule of law principle and for the system to properly function. This independence must be actively enforced and attacks on judicial institutions, judges and prosecutors can have negative effects if there are no effective measures in place to prevent certain individuals (especially from the political spectrum) from criticizing court rulings, undermining the judicial officers' credibility or exerting pressure on them.

In Romania, there is significant mass media pressure exerted on the judiciary (see the attached table), raising legitimate doubts about the effectiveness of the supervisory work carried out by the National Audiovisual Council.

Since 2013, the **Commission's Report to the European Parliament and the Council on the progress made by Romania under the Mechanism of cooperation and verification**, made public on the 30th of January 2013, has recommended **"the introduction of a clear framework on the prohibition to criticize court rulings and to undermine the activity of the judicial officers or to put pressure on them and to the effective application of these requirements**, revising standards to ensure the existence of free and pluralist media, while ensuring effective remedies against the violation of fundamental human rights and the exercise of unjustified pressures and the use of intimidation by the mass media on the judiciary system and the institutions involved in combating corruption. Measures should be taken to ensure that the National Audiovisual Council is truly independent and it should fully fulfill its role by establishing and applying a code of conduct in this regard."

Besides the usefulness of information campaigns in the press, in order to know and avoid, as much as possible, the forms of obstruction of justice (for example, baseless accusations or slander and libel), **the Romanian society needs mainly institutions that respect the minimal conduct of the rule of law, effective and stable.**

Unfortunately, the Romanian Superior Council of Magistracy has demonstrated **neither stability nor a proactive role in the defence of judicial officers against acts meant to affect independence, impartiality or professional reputation²⁴, between January 2017-April 2019, with the exception of one situation, in which some of the victims were members of the Superior Council of Magistracy, especially the currently elected president.**

Despite the fact that judicial officers are slandered and dragged through the mud daily during numerous broadcasts of various television stations, on websites and printed press, the reactions of the Superior Council of Magistracy are almost non-existent, although their role is also to communicate publicly when false information is presented. Moreover, the SCM communicates publicly, in almost every situation, by at least four to five distinct voices

²⁴ The SCM did not request the support of the Consultative Council of European Judges or the Consultative Council of European Prosecutors, for example. It could also have an active role in the European Network of Judicial Councils in relation to the situation of the independence of the judiciary system in Romania. The CCJE condemned the "repeated and unprecedented attacks of political actors against Romanian judges" only after the Romanian Judges' Forum Association's intimation, having the lack of involvement of SCM.

(The SCM Plenum, the sections, the SCM president and members of the civil society, etc.), the latter issuing personal and extraordinary press releases, as if the institution were individual and not a collective body.²⁵

Although almost all of the elected members of the current SCM have declared, through their applications, that they are determined to have an active and firm role in defending judicial officers against acts that could potentially affect their independence, impartiality or professional reputation, this commitment seems to have just been a part of their election campaign.

The SCM has not taken any further steps to provide adequate support to criticized judicial officers that undermine the independence of the judiciary system (for example, financial or legal aid to judicial officers seeking moral damages through actions brought before courts).

The press releases issued in very rare cases between January 2017 and April 2019 are not covered by the press in a way equivalent to one in which the initial criticisms were broadcast and, as is apparent from the resolutions published by the SCM in the field, the National Audiovisual Council was not even noticed once for rectifying the information by channel distributing responsible for the slander.

Undoubtedly, in order to fulfill the constitutional obligation to guarantee the independence of justice, the Superior Council of Magistracy must defend the body of judicial officers against acts that affect the independence, impartiality or professional reputation of judges and prosecutors.

In order to achieve this goal, given the context illustrated *supra*, it is imperative to regulate extremely short deadlines for the *ex officio* referral, to solve these requests/complaints, to properly facilitate the defence of independence, impartiality or professional reputation, but also for dissemination of the resolutions provided by the Superior Council of Magistracy in the press, especially the channel that had broadcasted the slandering remarks, legally enstating the “*right to reply and defend*” in such cases.

Also, by modifying the legislative framework, the SCM could be tasked to file claims directly to the courts in order to defend the public image of judicial officers for whom the requests mentioned previously had been admitted or at least to support, from the SCM budget, the expenses necessary for filing such claims.²⁶

Last but not least, in order to faithfully reflect the analysis of requests for the defence of independence, impartiality or professional reputation by each member of the SCM, the Regulation on the organization and functioning of the Superior Council of Magistracy should also allow for dissenting opinions on all resolutions made with a majority of votes, based on article 30 of Law no. 317/2004 regarding the Superior Council of Magistracy.

²⁵ See, most recently, the press release entitled “History lessons are Truth”, available at <https://www.csm1909.ro/323/Comunicate-societatea-civil%C4%83-CSM> [last seen on 16.05.2019]. Some of the statements, belonging to a member of the SCM, create the impression of serious imbalances in the magistracy, which could minimize the very constitutional role of the Superior Council of Magistracy. Surprisingly, they are allowed by other members without proper public explanation.

²⁶ In France, under a 1958 law, the Ministry of Justice pays lawyers’ costs in order to allow the judicial officers concerned to bring an action in court. The judges who have been attacked personally hesitate most often to defend themselves, especially in cases involving a pending file, and maintain independence and demonstrate that they will remain impartial.