

Consolidation of the judicial system integrity.

Cooperation between the Superior Council of Magistracy in Romania and the Judicial Council in the Netherlands

Report, part II

Integrity indicators.

Integrity counsellors; Integrity Council; electronic platform concerning the integrity dynamics in the Romanian judicial system.

I. INTRODUCTION

At national level, the legislation generally provides the legal framework necessary to ensure the integrity standards of the judicial system.

The operational mechanism in the system are limited to the disciplinary procedure of enforcing penalties and periodic assessment, but with reduced effects concerning the prevention of such phenomena: an efficient mechanism to prevent the acts and actions against the professional ethics and deontology is missing.

There is no adequate, systemic, practically oriented and actual manner of awareness of the judges and prosecutors, of the entire professional body for the problems of ethics and undertaking the behaviour standards necessary to practice the profession, including by forms of continuous professional training, but also of consulting some specialists – namely, experienced judges and prosecutors – by the magistrates with dilemmas concerning certain situations they are in and which could affect their integrity.

There are some easy to identify causes which lead to the idea that the current system, penalty oriented rather than prevention oriented, is an imperfect one:

- The multiple regulation of some interdictions and incompatibilities, with similar content.
- The existence of different procedures for enforcing penalties in case of breaching these obligations – interdictions and incompatibilities.
- The uneven practice in the solutions issued by the Judicial Inspection (case closing solutions), the judges and prosecutors departments of the Superior Council of Magistracy (the solutions issued as judgement departments in disciplinary matters. Here, we have to notice not only the uneven practice between the two departments, but also the uneven practice within the same department), but also by the High Court of Cassation and Justice (in the means of appeal against the solutions issued by the judges and prosecutors departments of the Superior Council of Magistracy).
- The lack of clarity and predictability of some of the legal standards concerning the classification of an act as entailing the disciplinary liability or affecting the

The current regulation and the current system concerning the integrity of the judges and prosecutors, of the professional ethics and deontology, are penalty oriented and less to prevention.

good reputation and the different consequences that arise from these two types of liability.

- The diversity of the incurred practical situations and which need an analysis of the recommendable conduct.

The finding of these causes from practice leads to the conclusion of the need to build and implement a prevention system in the integrity matter, able to make the entire integrity system operational, as an essential component of a profession oriented especially to satisfying a public service, that of ensuring an independent and impartial act of justice.

Consequently, the following are proposed as means to accomplish this goal:

The establishment of a prevention system concerning the judges and prosecutors integrity is proposed, which has as main coordinates:

*- their counseling in ethical and deontological matters;
- a database made available for them;
- permanent consulting of the judges and prosecutors in this matter.*

- Establishing a counselling mechanism for the magistrates, for integrity issues.
- Ensuring their access to a database comprising the practice of the institutions with responsibilities in the field.
- Drawing up questionnaires on the perception of judges and prosecutors concerning the establishment and implementation of the prevention system. A first questionnaire could be drawn up before launching this prevention mechanism, after which, periodically (once every 2 years), by this modality – of the questionnaire –

the manner in which the system works and how it can be improved could be discovered.

A very important aspect must be stated, which differentiates to some extent the understanding of the judicial system notion in Romania from other European judicial systems (although there are European states with similar systems): the judicial system is made, in Romania, from judges and prosecutors, which carry the generic name of magistrates. The essential fact is that the legal system concerning the integrity refers to magistrates, namely both judges and prosecutors.

In the broader sense, the judicial system comprises also the auxiliary staff, namely clerks, archivists and registrars from courts and public prosecutor offices.

II. ASSESSMENT INDICATORS OF THE JUDGE AND PROSECUTOR INTEGRITY

The need to assess the functioning of the judicial system altogether, but also of each magistrate, lead to the establishment of some integrity indicators between which there is an interdependency relation.

Therefore, grouping the requirements enforced by the compliance with the integrity standards as the three indicators, namely independence, impartiality and conduct, has no absolute nature, most of the times the criteria taken into consideration overlap.

Therefore, here we have to notice the following:

1. **The interdependency** of the integrity indicators with the concept of integrity: there is no hierarchy

Three indicators are proposed in order to assess the integrity: independence, impartiality and conduct of the judge and prosecutor.

These indicators are interdependent and tend to measure the integrity extent of the judge and prosecutor.

between the concepts of independence, impartiality, conduct and integrity, on the contrary, these concepts overlap each other, they determine each other. Therefore, the integrity can be an indicator for the extent of independence, but also for the impartiality or conduct of the magistrates, as well as these concepts can represent indicators for integrity (in this case);

2. **Can the integrity be measured?** The role and meaning of the indicators in this report is to provide an image, an assessment towards the integrity of the justice system, but also of each judge and prosecutor. The problem which arises is if the integrity can be measured and how it can be measured through these indicators. In any case, as a first step in this direction, the definition of the indicators and sub-indicators can be considered a first “instrument” of measuring the integrity in the above mentioned sense. Nevertheless, the experts who drawn up this report are aware of the fact that there are other steps to be made, first of all at formal level (primary and secondary legislation changes), secondly the acceptance of these prevention instruments by the professional body of magistrates. These next steps depend on the manner in which the prevention mechanisms and indicators system proposed through this report will be accepted and implemented.

1. INDEPENDENCE

Independence is the right of every citizen in a democratic society to benefit from a justice which is (and is perceived) independent from the legislative and executive power and which protects the rights and freedoms of the citizens in a state based on the rule of law.

Independence must not be understood as being a privilege established in favour of the magistrates, their task being **to make efforts in order to maintain the independence of the judicial system, both at individual and institutional level.**

Independence in justice has three analysis types based on different categories: objective and subjective independence; internal and external independence; independence of the judicial system and independence of each judge and prosecutor¹.

In any case, an idea which is also underlined in the international documents concerning independence in the judicial system, it must be understood that these categories are intercorrelated: for example, although the independence of the judicial system as a whole represents a prerequisite for the independence of the judge, it is not

Independence is not a privilege for the judge or prosecutor, it is an obligation in order to satisfy the need of the citizen to have an independent justice.

Categories of this indicator: objective and subjective independence; internal and external independence; independence of the judicial system and independence of each judge and prosecutor.

a sufficient condition for the individual independence, which can be affected by the external influence of the organisations of the state and other entities, as well as by the internal influences from the judicial system². And the examples can continue.

In the report herein, taking also into consideration the integrity paradigm, the objective and subjective independence, as well

¹ 2014 Report of the European Network of Councils for the Independence and Accountability of the Judiciary. Here: [kinggropups'independence'encj_report_independence_accu](#)

as the independence of the judicial system and independence of each judge and prosecutor are considered. Also, in the analysis of sub-indicator 1.3 (subjective individual independence), the categories of the internal and external independence shall be reached, especially from the perspective of the possible negative influence of the internal or external factors on the judge and prosecutor integrity.

Independence sub-indicators:

1.1. ***Institutional independence***

(from the system) implies to ensure the functioning of the judicial system without any intervention from the legislative and executive powers, as well as to provide sufficient resources for the good functioning of the judicial system.

So, the assessment elements of this sub-indicator³ are:

- The legal framework which provides the necessary protection for the independence of the justice system (the Romanian Constitution, laws of justice, secondary regulation);
- The self – government of the justice system, in the sense that the competence for the organisation, financing and adopting the decisions related to the system pertains to the structures within the system and not to those outside the system;
- Who decides the budget of the justice system and the manner in which the budgetary resources are allocated within the justice system;
- Any process for the amendment of the legislation on justice, the institutional reform or rearrangement processes must be made by consulting and involving the justice system.

The independence of the justice system consists in providing the functioning of the judicial system without the intervention from the legislative and executive powers, as well as to provide sufficient resources for the good functioning of the judicial system.

1.2. ***The objective individual independence of the judge and prosecutor***

implies the elimination of any external or internal interferences. There is a variety of modalities by which a pressure on the judges and prosecutors can be applied, in the context of the individual process of decision – making in the daily activity, but also in their career evolution.

The objective individual independence of the judge and prosecutor is based on the elimination of any external or internal interferences.

Strengthening the subjective independence, by preventing external or internal pressures, means strengthening the integrity.

Strengthening the subjective independence, by preventing such potential pressures, obviously leads to the strengthening of the judge and prosecutor integrity.

Components of this sub-indicator are revealed also here:

- The procedures of judges and prosecutors selection, appointment, assessment and sanctioning must not pertain/depend on influences outside the justice system;
- The public enforcement, even at formal level, of the ***sub judice*** rule⁴ or, at least, the development of those mechanism by the justice system to reject the

³ Idem, p. 10 – 11.

commenting of the justice system decisions (to be understood that this is about those comments which prejudice the individual independence of the judge and prosecutor and not about those comments based on arguments, even critics);

- Providing the decisional independence of the magistrates, by eliminating the possibility of the hierarchical superiors to intervene in the procedures administration and cases settlement;
- A special situation is represented by the role of judges in the appeal/second appeal courts in relation to the judgements which they issue and by which they change the decisions of the judges in the lower courts: disagreements may be issued against their colleagues, by the judges in the appeal/second appeal courts, in certain formal or informal situations, if, for example, they consider that those judgements are wrongfully substantiated or visibly wrong of if they breach the standards on the efficiency and duration of the procedures; nevertheless, the limit of affecting the independence of the judge who settled the case by the challenged decision should not be breached. Also, the independence limit cannot be breached neither by the judge in the hierarchical lower court who systematically does not comply with the judicial practice of the higher court, without consistent and pertinent arguments in relation, for example, with the practice at national level or of the supreme court.

- 1.3. ***The subjective individual independence of the judge and prosecutor*** implies his/her obligation to decide free of any external influences, either they are exercised by the other powers of the state, the political class, the hierarchical superiors or the economical environment, or by the mass – media or public opinion. The judge must remain, also, independent from the colleagues and pressure groups.

The subjective individual independence of the judge and prosecutor consists in his/her obligation to decide free of any external influences, regardless if they are exercised by the other powers of the state, the political class, the hierarchical superiors or the economical environment, or by the mass – media or public opinion.

The independence of the judge and prosecutor implies, in equal measure, the compliance with the interdictions provided by the law, but also the development of the ability to reject the external or internal factors which could influence or create the appearance of an influence on the decision – making process or responsibilities exercising.

The interdictions

are meant to ensure the avoidance of the situations which could affect the decisional independence of the judge and prosecutor by the interference of personal interests in the professional activity, but also to consolidate the trust of the public in the judicial system.

Practically, the compliance with the interdictions, as an element of the sub-indicator subjective individual

By providing the interdictions, the avoidance of the situations which could affect the decisional independence of the judge and prosecutor is ensured.

The interdictions represent a useful and necessary instrument for measuring the integrity.

⁴ The sub judge rule is that rule forbidding public or private discussions referring to the correct result of the cases pending before the courts. See http://www.ency.eu/images/stories/pdf/workinggroups'independence'ency_report_independence_accountability_2014_disclaimer.pdf, p. 12.

independence, are very good instruments for measuring and assessing the integrity of a judge or a prosecutor. Therefore, their enumeration and a definition are essential:

1.3.1 ***Occupying another position*** – the positions of judge, prosecutor, assistant magistrate and judicial assistant are incompatible with any other public or private positions, except didactic positions in the higher education, as well as those for training within the National Institute of Magistracy and the National School of Clerks.⁵

1.3.2 ***Worker of the intelligence service*** – judges and prosecutors cannot be operative workers, including undercover workers, informants or collaborators of the intelligence services.⁶

1.3.3 ***Performing other activities*** – judges and prosecutors are prohibited:⁷

a) to perform commercial activities, namely production, trade or services activities⁸ under the conditions of the New Civil Code, directly or by intermediaries;

b) to perform arbitration activities in civil, commercial (between professionals under the conditions of the Romanian Civil Code) or any other litigations;

c) to be shareholder or member in the management, administration of control bodies of professional corporations, trading companies, including banks or other credit institutions, insurance or financial companies, national companies, national enterprises or autonomous administrations⁹;

d) to be a member of an economic interest group;

e) The magistrates are forbidden to participate directly or by intermediaries to pyramidal/Ponzi schemes, gambling or investment systems for which the funds transparency is not provided according to the law.¹⁰

The following are not considered interdictions, under the conditions of the law:

a) Participation to the draft of publications, articles, specialty studies, literary or scientific works.

b) Participation to audiovisual broadcasts, except those having political character.

c) Judges and prosecutors can be members of some examination commissions or for drafting normative acts projects, international or internal documents, members of scientific or academic societies, as well as of any non – profit entities.¹¹

1.3.4. ***Performing political activities*** - judges and prosecutors are prohibited:¹²

⁵ Art. 125, paragraph (3) and art. 132 paragraph (2) of the Constitution, art. 5 paragraph (1) of the Law no. 303/2004, art. 101 of the Law no. 161/2003, art. 21 of the Deontological code of judges and prosecutors.

⁶ Art. 7 of the Law no. 303/2004.

⁷ Art. 8 of the Law no. 303/2004.

⁸ After the entry into force of the New Civil Code, the phrase “commercial activities” shall be replaced with production, trade or services activities, according to art. 8 of the Law no. 71/2011.

⁹ By way of derogation from these provisions, judges and prosecutors can be shareholders or partners as a result of the law on mass privatisation (by successive laws from the beginning of the '90, the state privatised most of the state – owned companies, each citizen receiving a share – coupons – representing a part of the property transferred by the state to the citizens).

¹⁰ Art. 22 of the Deontological Code.

¹¹ Art. 11 of the Law no. 303/2004, Art. 6 of the Deontological Code, art. 102 of the Law no. 161/2003 forbids the magistrates

¹² Art. 40 of the Constitution, Law no. 303/2004 (art. 9) and Law no. 161/2003 (art. 103).

- To be part of political parties or formations;
- To perform or take part in political activities;
- To express or manifest, in any manner, their political beliefs, in carrying out their work responsibilities.

Also, judges and prosecutors:

- While carrying out their work responsibilities, must not be influenced by political doctrines; cannot militate for the joining of other persons to a political formation, cannot take part in collecting of funds for the political formations and cannot allow the use of their prestige and image in such purposes;
- Cannot provide any support to a candidate for a public position with political character;
- Cannot make use of the acts which they fulfil in while carrying out their work responsibilities in order to express or manifest their political beliefs and cannot take part in public meetings with political character¹³.

1.3.5. The use of the public image

The law prohibits the methods by which public symbols are used, including symbols specific to justice (Law no. 161/2003, art. 114).

In this sense the following are prohibited:

- The use by a person who exerts a public office or a public function – **including magistrates** – for private interest, of symbols that are related to the exertion of their office or function (art. 114 of Law no. 161/2003);
- It is prohibited to use as well as the permission to use the name accompanied by the capacity of the person who exerts the public office or public function, including for judges and prosecutors, in any form of advertisement of an economical agent Romanian or foreign, as well as of a commercial product, national or foreign;
- It is prohibited to use or the permission to use the public image, the name, voice or signature of judges and prosecutors for any form of advertisement regarding an activity which brings profit, excepting the free advertisement for charitable purposes;
- It is prohibited to magistrates the use and direct or indirect exploitation of information which is not public, gained in relation to the exertion of attributions, in order to obtain advantages for themselves or for others.

¹³ Art. 5 of the Deontological Code.

1.3.6 The interference in the activity of another judge/prosecutor¹⁴.

- it is prohibited to judges and prosecutors to publicly express their opinion with regard to the proceedings found in the course of developing or on cases which have been referred to the prosecutor's office.
- Judges and prosecutors cannot give written or verbal consultations in litigious problems, even if those trials are pending before other courts or public prosecutor offices than those within they are exercising their function.
- Judges and prosecutors cannot perform any other activity which is carried out by the lawyer according to the law.
- Judges and prosecutors are allowed to plead in the conditions provided by law only in their personal cases, of ascendants and descendants, of spouses, as well as of persons under their guardianship – even in such situations, judges and prosecutors are not allowed to use their quality in order to influence the solution of the court or public prosecutor office and shall avoid creating the appearance that they could influence in any way the solution.
- Magistrates with executive positions who cannot use their prerogatives in order to influence the development of trials and settlement of cases¹⁵.

Besides complying with the interdictions established by law, magistrates have the task of ensuring the law supremacy, defending the justice independence, of exercising their function with objectivity and impartiality, having the law as sole basis, without acting further on pressures and influences of any nature.¹⁶

Moreover, magistrates shall inform the president of the court or the general prosecutor, depending on the case, to whom they are subordinated, any political or economic interference in the judicial process of any natural or legal person or of any group of persons.¹⁷

2. IMPARTIALITY

Impartiality consists in the ability/capacity of the judge and prosecutor to decide fairly, objectively, impartially, justly in the cases to be settled.

Impartiality is the capacity of the magistrate to make a fair, objective, impartial, just assessment in the cases to be settled.

Sub-indicators:

2.1. The obligation to refrain from settling cases in situations expressly provided by law (Criminal procedure code, namely the Civil procedure code);

¹⁴ Art. 10 of the Law no. 303/2004.

¹⁵ Art. 11 par. 3 from the Deontological code.

¹⁶ Art. 4 from Law no. 303/2004, art. 3 par. 1 and 2 and art. 9 from the Deontological code, art. 5 par. 2 letter a from the Internal regulations of courts.

¹⁷ Art. 107 from Law no. 161/2003.

2.2. The obligation to be free from any relations, subjectivity or bias which affects or may be perceived as affecting the capacity to decide independently.

This obligation consists of:

- not consciously making any observation that could reasonably suggest any prior decision degree in solving the dispute or that could influence the fairness of proceedings;
- showing respect to all persons (parties, witnesses, lawyers), without making distinctions based on illegal grounds or incompatible with the correct fulfilment of functions;
- ensuring that their professional training is visible in the fulfilment of tasks;
- fulfilling their functions with the respect due to the principle of equal treatment of parties, avoiding preconceived ideas or discrimination, keeping the balance between the parties and ensuring that every party and participant to trial is heard correctly.

2.3. The obligation to behave in order to avoid conflicts of interests and power abuses.

This obligation consists of:

- not performing other activities, except those permitted by law;
- refraining from performing professional activities that could distract them from their legal responsibilities or make them exercise those responsibilities only partially or with partiality;
- the obligation to adopt, both in the function exercise and in the personal life, a CONDUCT by which they support the confidence in their impartiality and to minimize the situations that could lead to recusation;
- the diligence obligation to prevent conflicts of interests between judicial attributions and their social life.

3. CONDUCT

The notion of conduct implies the externalization of a certain manifestation, the way in which a person behaves, the attitude in society, externalized moral habits.

Conduct, as integrity indicator, is defined by a decent, profession-adequate behaviour both in the proper exercising of the function and outside it.

Conduct, as integrity element, is not only evaluated in the courtroom or in the investigation, but it must also be evaluated in the mode of social behaviour.

With other words, the ethical conduct has as reference point the way in which others perceive the behaviour of a person as being according to the moral ethics and commandments recognized by the society and on the other hand, the way in which a person understands to manifest in the society. Therefore, conduct can only be thought in relation to the society, with other persons.

In the particular case of the justice system, of judges and prosecutors, the latter must fulfil their tasks with integrity, in the interest of justice and society, which implies obligations both in the professional and personal life.

Moreover, judges and prosecutors must have a profession-adequate behaviour in exercising their function and outside it, both by reference to the internal standard of profession dignity and to the external one of public confidence in the judicial process.

Conduct, from the perspective of a judge or prosecutor integrity, is not only evaluated in the courtroom or in the investigation or prosecutor activity – although it is an essential aspect for integrity, but it must be also evaluated in the way of social behaviour. No matter how professional a judge or prosecutor is in its professional activity, a blameable conduct in the society disqualifies not only the magistrate but also the justice system. Therefore, in order to ensure the integrity idea of a judge or prosecutor, it is necessary to develop the notion of conduct in order for the judges and prosecutors to avoid violating a “code” of conduct necessary for the profession.

Sub-indicators:

3.1. Probity and professional competence:

The conduct evaluation must take into account the way in which magistrates have as reference point the professional conduct. It is possible to measure the integrity from this perspective if the following obligations are taken into consideration, if they are complied with by each and every judge and prosecutor:

The evaluation of the judge and prosecutor probity and professional competence is not only possible but also necessary.

- Judges and prosecutors must ensure the law supremacy through their entire activity, must comply with the rights and liberties of persons, as well as the equality before the law and must provide non-discriminating legal treatment to all participants to judicial procedures, regardless of their quality, comply with the Deontological code and take part in the continuous professional training¹⁸.
- Judges and prosecutors must show loyalty and respect for the applicable laws, which implies exercising their offered powers without exceeding them, must fairly fulfil their professional tasks, including the administrative ones.
- During the judicial procedures, they must show seriousness, respect for the applicable legal norms, must be polite, without excessive solemnity and inadequate behaviour.
- Judges and prosecutors must reasonably combine their legal knowledge with the specific circumstances of cases, maintaining a practical common sense, must have a reasonable and fair attitude, must know the realities to which they are applying the legal norms, must be calm and cautious in settling disputes and distinguish and distance themselves from the parties and acts they are judging.
- Judges and prosecutors must reasonably show courage in exercising their tasks and in order to answer those seeking justice, even if this can also lead to a lack of popularity. Thus, they must resist political, social pressures exercised by the public opinion, mass-media and groups of interests.
- Judges and prosecutors must show a high degree of professional consciousness, must maintain a high professional level through continuous professional training

¹⁸ Art. 4 par. 1 from Law no. 303/2004.

that offers them the necessary qualifications and develop their judicial skills in order to keep the activity quality. If they work in a team, they shall pay attention to the opinions of colleagues and shall cultivate the skills related to team-work.

- Judges and prosecutors must dedicate most of their time allocated to the work program to the activities of the court/public prosecutor office and adequately use the available resources.
- Judges and prosecutors must refrain from interventions in order to obtain any transfer, appointment or form of personal promotion or try to obtain benefits for themselves or for other person by virtue of the held function, to claim the settlement of personal interests or of other persons, other than within the limit of the legal framework.
- Judges and prosecutors must refuse gifts or advantages for them or close persons during the exercise of their function.
- Judges and prosecutors must not use and disclose confidential information obtained in this quality, in a purpose which is not related to their professional duties.

3.2. Dignity and honour

In this case it is also necessary the evaluation of integrity in terms of this element (sub-indicator) of conduct of judges and prosecutors:

- Judges and prosecutors must exercise their functions by applying in good faith the legal norms, being preoccupied with the dignity of persons and acting in a legal framework. Their courtesy and intellectual probity govern the relations with other professionals within the justice system, secretariat/register office, court clerks, lawyers, magistrates, involved parties and press.

The behaviour of the judge and prosecutor must relate to the necessity to maintain the moral standard required by the profession dignity and its role in society, both in the public and private life.

- In the relation with the press, judges and prosecutors can publicly express their opinion concerning exercising the right of reply if they were defamed through press releases or audiovisual shows but it is also recommendable to show discretion and reserve in front of attacks in order not to give the impression of partiality or that they are acting in favour of one of the parties.
- The honour implies the fact that magistrates must make sure that through their professional practice and their person do not endanger their public image, of the court/public prosecutor office or justice system.
- The behaviour of the judge and prosecutor both in the public and private life must be related to the necessity to maintain the moral standard required by the profession dignity and its role in society, but to also maintain the public confidence, of jurists and litigants in the impartiality of the judge and of the judicial system. The obligation to show reserve and discretion by the magistrate requires the creation of a balance between the rights of the judge and prosecutor as citizen and the obligations related to the exercise of its function.

- As any person, the judge and prosecutor is entitled to the protection of private life. His/her reserve obligation cannot prevent him/her from having a normal social life: it is sufficient to act with minimum precaution in order to avoid the undermining of his/her function dignity and capacity to exercise it.
- Judges and prosecutors cannot perform actions which could affect in any form the fulfilment of their professional obligations with impartiality, fairness and within legal terms, through their nature or financing or execution mode.¹⁹

3.3. Diligence:

Diligence is necessary to obtain and increase the public confidence in justice, reason for which some obligations are necessary for this purpose:

- Judges and prosecutors must ensure by reference to the available means the settlement of cases in a reasonable period of time adequate to the case object and the quality of judicial orders.

The settlement on time, the avoidance of useless delay of cases depend also on the attitude and activity of the judge and prosecutor; they must make sure that the cases are settled in a reasonable period of time by reference to the available means.
- The operability of judicial procedure is influenced not only by the provisions from legal documents and resources made available to the judicial system, but also by the attitude and activity of magistrates.
- Judges and prosecutors have the obligation to avoid the delay caused by unprofessional approach and use all known legal instruments in order to ensure reasonable trial dates for parties and for themselves in every procedure, to be as efficient as possible.

3.4. Respect and capacity to listen:

An important element of conduct is also the way in which a person, a judge or prosecutor in the present case, relates to those around him/her, to the society and its members. Therefore, the integrity evaluation from this perspective is not only possible, but also necessary:

- Judges and prosecutors must avoid not only a behaviour contrary to the law, but also show diplomacy and understanding, fulfil their attributions without favouritism. The society and its members expect to be respected and listened by the magistrate in the function exercise.
- Respect is the ability to treat with due consideration the place/position and dignity of persons. Listening is the ability to pay attention to the presentation of facts and deductions/technical arguments presented by the parties and their defenders.
- Judges and prosecutors must interact with the public, lawyers, colleagues and administrative personnel in a respectable, fair and receptive manner.

¹⁹ Art. 20 Deontological code.

- Judges and prosecutors must make sure that their conduct is blameless in the eyes of a reasonable observer and must avoid the violation of decency rules or the appearance of its absence. Judges and prosecutors must avoid any behaviour that promotes the belief that their decisions are motivated other than by the enforcement of law, in a justified and fair manner.

Judges and prosecutors must fulfil their attributions without favouritism, must show diplomacy, respect and capacity to listen the parties, participants to trial, colleagues from the court, court personnel.

- When they organize their activity, judges and prosecutors shall take into account with measure and attention the requests/requirements of all those affected by that case. Their conduct must be based on the respect for human beings, taking into consideration the totality of their characteristics, be it physical, cultural, intellectual or social, as well as those concerning the race or gender of persons.
- In the evaluation of acts and decisions, judges and prosecutors must find a balance between empathy, compassion, kindness, discipline and severity in order for the enforcement of law to be perceived as legitimate and fair.
- Judges and prosecutors must carefully listen to the parties within all procedural stages. Listening implies the absence of partiality and preconception, which involves not only a real intellectual opening and receptivity but also the ability of self-analysis. Listening must be neutral, distant but without being condescending or dismissive, human but not without compassion.
- Judges and prosecutors must develop their capacity to communicate with other persons, to express themselves with measure and respect, in a non-discriminating and calm manner, refraining from using ambiguous, disrespectful, condescending, ironical, humiliating or offensive expressions.
- A good communication must be also present in delivered (written or oral) decisions. The court orders must be intelligible in order for any involved person to be able to understand the logic on which the magistrate bases his/her decision.
- Judges and prosecutors, individually, collectively or in exercising their executive attributions, must make sure that the values concerning respect and listening are shared and respected by all. Their humanity is manifested through the respect for other persons and for their dignity, in all circumstances of their professional and private life.
- Judges and prosecutors prove their humanity not only to parties but also to persons from their professional environment, such as lawyers, auxiliary personnel, etc.. Judges and prosecutors must have a respectful behaviour towards administrative personnel and their autonomous sphere of attributions and competences and fair and respectful relations towards the autonomy and independence of their colleagues.
- The relations of judges and prosecutors within groups they are part of must be based on respect and good faith, regardless of the seniority in profession and

their function. Judges and prosecutors cannot express their opinion concerning the professional and moral probity of their colleagues²⁰.

3.5. Treatment equality.

Judges and prosecutors have duties specific to the profession, provided in all international documents that refer to justice: equity and equality of treatment concerning the parties and participants to a trial. Therefore, it is necessary for the judges and prosecutors to comply with certain obligations:

- Judges and prosecutors must make decisions without favouritism or discrimination, keeping the balance between the parties and complying with the principle of contradiction, without showing prejudices or preconceived ideas and without taking into account aspects foreign to legal rules.
- Judges and prosecutors must respect all persons who appear before them and make sure they are treated equally. These must be aware of the objective difference existing between different categories of persons and make efforts in order for every party to be listened, understood and respected.
- Judges and prosecutors must make sure that no person says that he/she was ignored, treated with condescendence or despised. Where the Constitution, national laws or international rules provide this, a judge can apply positive discrimination; in other cases, he/she shall make sure that the treatment equality prevails.

3.6. Transparency.

The information on the justice operation and presence of public to judicial procedures contributes to their social acceptance. The equal access of involved persons, by means of requests or defences, to civil and criminal procedures promotes transparency and consolidates public confidence. Thus, there are some issues to be taken into account for outlining a conduct necessary for an upright judge or prosecutor:

Transparency involves, as conduct act and integrity sub-indicator, the equal access of involved persons, by means of requests or defences, to civil and criminal procedures.

- The balance between the transparency necessity and confidentiality required by the respect of private life or for the maintenance of public order must be kept.
- In the relations with the media, institutional information must prevail. The information concerning a certain case can be only disclosed in a legal framework.
- Transparency is provided through the reasoning of judicial orders in a manner that ensures coherence, clarity and fairness from the point of view of judicial logic in the analysis of all brought arguments, analysis of produced evidence and application of legal provisions.

²⁰ Art. 18 Deontological code.

II. ANALYSIS CONCERNING THE NECESSITY TO FOUND A NETWORK OF SPECIALISTS/INTEGRITY COUNSELLORS, AT THE LEVEL OF COURTS OF APPEAL, PUBLIC PROSECUTOR OFFICES ATTACHED TO COURTS OF APPEAL, HIGH COURT OF CASSATION AND JUSTICE AND PUBLIC PROSECUTOR OFFICE ATTACHED TO THE HIGH COURT OF CASSATION AND JUSTICE, AS WELL AS OF AN INTEGRITY COUNCIL.

Comparative law

Latvia. A collegial body called the Commission of Judicial Ethics was created that offers opinions and interpretations concerning the standards of judicial ethics and their possible violations. The commission offers opinions at the request of persons who are entitled to initiate the judicial procedure (discipline commission and disciplinary court), at the request or initiative of judges, publishes studies and explanations regarding the interpretation and application of ethical standards, organizes discussions on this topic, contributes to the development of ethical standards subject to the discussion of judges and can decide the initiation of disciplinary procedures.

The commission is made of 10 members elected in meetings of judges, by secret vote, from acting or retired judges, representative for all categories of courts and with impeccable reputation, good understanding of the ethics role in the activity of judges and knowledge of disciplinary problems. Their mandate is of four years, with the possibility to be elected for two consecutive mandates. The attributions of this Ethics Council must not overlap with those of the Discipline Commission, disciplinary court, Council of Judges.

The Commission of Judicial Ethics functions based on a regulation approved by the Council of Magistracy, the first meeting being established by the president of the Supreme Court of Justice. At least 6 members must be present at the Commission proceedings, the secretariat being ensured by the personnel of the Supreme Court. Judges of the Constitutional Court or representatives of other legal professions or other judicial ethics experts can be invited to sessions. The Council presents once a year an activity report to the conference of judges.

Slovenia. The Association of Judges from Slovenia adopted on June 8th 2001 a Code of judicial ethics. According to the provisions of this code, the Judicial Council appoints an Ethics and Integrity Commission having as attributions the adoption of opinions concerning the compliance with the Code of Judicial Ethics, the issuance of recommendations in order to ensure the compliance with ethical standards, the adoption of guides concerning the judicial ethics and integrity, ensures the cooperation with the Centre for the Training of Magistrates in order to provide the training of judges in ethical and deontological matters. The members of the Council can be only judges. There is a Council of Judicial Ethics within the Association of Judges from Slovenia which provides counselling to the members of the association on ethical problems.

Lithuania. At the request of the judges, the Disciplinary and Ethics Commission, an independent institution with powers in disciplinary matters, is obliged to offer them

counselling in matters of disciplinary and ethics conduct. The judges shall require the recommendations related to the circumstances that might lead to the infringement of the rules of judicial ethics either in writing or electronically.

The Disciplinary and Ethics Commission is formed by seven members, out of which two are elected by the President of the Republic, one by the Parliament and four by the Judicial Council.

Bulgaria. Within the framework of the Superior Council of Magistracy there is a Committee for Professional Ethics and Prevention of Corruption whose organization and attributions are stipulated by the Law on the Organization of the Legal System. With respect to courts, the same law mentions the local ethics committees, which are formed by six elected magistrates. Where local committees were not appointed, the attributions shall be exercised by the Ethics Committee within the Superior Council of Magistracy.

In order to standardize the working procedures of the local committees, the Ethics Committee within the Superior Council of Magistracy embraced a common regulatory meant to clarify the manner in which the activity of the local committees is structured and developed and the way in which the registration mode of examinations shall be carried out.

The Ethics Committee is responsible for the verification of complaints and notifications with respect to conduct

The Ethics Committee is primarily responsible for the verification of complaints and allegations regarding the conduct of magistrates, most of these being sent to the local committees or to the court's leadership in order to be analyzed. During these verifications they can proceed to the hearing of the magistrate and of the person who filed the allegation.

If the allegations have a solid ground, the Superior Council of Magistracy is proposed to initiate disciplinary procedures. The allegations concerning the work of the judiciary itself are sent to the Judicial Inspection within the Superior Council of Magistracy.

The Committee for Professional Ethics and Prevention of Corruption shall verify if the magistrates comply with the conditions related to the requirements of good repute, prior to their appointment, but also the abidance of integrity standards by the magistrates to be promoted or appointed to senior positions.

The Netherlands. The Superior Council of Magistracy made a number of recommendations with respect to the creation of infrastructure integrity in courts, which should enable greater policy integrity and an awareness of the issues raised by the compliance with the standards within the judicial system.

At first it envisages the appointment of a member from the court's leading body and making him/her responsible for monitoring the compliance with integrity standards and organizing regular meetings meant to facilitate the exchange of opinions and sharing their own experiences and findings and promote the creation of a network.

At the same time it is recommended to create ethics committees for each court, formed by representatives of all areas meant to stimulate the awareness of the necessity to follow integrity standards and of the issues that may arise from this perspective. These commissions organize vocational training activities, workshops for the employees, consultations on integrity issues, launch debates on ethic dilemmas and bring them into the attention of judges and staff members, draw the attention on integrity issues promoted by the mass-media, formulate recommendations for the

court's leading body every time they require it or on its own initiative. It is considered to be appropriate for them to appoint contact people to take part in regular meetings.

Thirdly, it is recommended to appoint an integrity counsellor for each court who shall take part in a training programme and shall provide counselling to judges and staff members. The appointment shall result from a selection procedure for which the court's leading body is required. During the selection the reputation of the judge shall be taken into consideration and his/her ability to communicate efficiently with all staff members. After the appointment, the court's leading body shall sign a contract with the integrity counsellor so as to determine his/her attributions. The court shall make public the identity of the counsellor and his/her contact details and make sure that the whole staff has access to the information, as well as the terms of discussions and the safe preservation of the documents.

At internal level

As previously mentioned, in Romania the Deontological Code of Judges and Prosecutors was adopted by Decision no. 328/2005 of the Plenum of the Superior Council of Magistracy.

According to article 2, paragraph 1 – the compliance with the norms laid down in this deontological code represents an important criterion when evaluating the quality of the activity and integrity of judges and prosecutors.

It is noted that the Deontological Code of Judges and Prosecutors takes over the legal provisions with respect to prohibitions, incompatibilities or other professional obligations of judges and prosecutors.

This overlapping repeatedly lead to confusion and both judges and prosecutors were sanctioned for disciplinary offence being accused of violating the norms of the Deontological Code.

For example, article 17 stipulates that: "The judges and the prosecutors shall restrain themselves from deeds or actions meant to compromise their dignity with respect to their function and within the society". The infringement of these provisions can lead to disciplinary sanctions since according to the provisions of article 99, letter a of Law no. 303/2004 – are considered to be a disciplinary offence – "the manifestations that prejudice the honour, the professional probity or the reputation of justice and which were carried out while performing their working duties or outside them".

At the same time the infringement of the provisions of article 14 of the Deontological Code ("The judges and prosecutors shall require order and solemnity during the resolution of causes and shall adopt a dignified and civilized attitude towards the parties, lawyers, witnesses, experts, interpreters or any other person and expect for them to act accordingly") might constitute the disciplinary offence stipulated by article 99 letter c of Law no. 303/2004 ("the unworthy behaviour displayed during the exercising of working duties towards colleagues, other court members or members of the prosecutor's office, judicial inspectors, lawyers, experts, witnesses, parties or the representatives of other institutions").

Another obligation related to honour, dignity and the reputation of justice is stipulated in article 11 paragraph 3 of the Deontological Code ("Judges and prosecutors are forbidden to intervene for the purpose of accelerating procedures, ask for personal favours or intervene for family members or other parties, using means from outside the legal framework". They shall not interfere in the activity of other judges or prosecutors"). Taking into consideration the provisions of article 99 letter n of Law no.

303/2004, which incriminates the disciplinary sanction, the infringement of these provisions might lead to the disciplinary sanctioning of the magistrate – “exercising one’s function in order to receive preferential treatment from the authorities or to intervene for the purpose of accelerating procedures, ask for personal favours or intervene for family members or other parties, using means from outside the legal framework”, respectively “the interference in the activity of other judges or prosecutors”. These are only few examples, but in the actual legal regulation in disciplinary matters, almost any type of conduct that may interfere with the provisions of the Deontological Code might be subject to disciplinary sanctions.

On the other hand, the Deontological Code can be argued since some of its provisions are not predictable enough, not clear enough, leaving room for interpretation and does not come with an application guide. In this situation the judges and the prosecutors do not know exactly what conduct they should adopt in a concrete situation, most of the times being forced to ask for the opinion of the Superior Council of Magistracy.

For example, in matters related to the appreciation of conduct they use concepts or institutions which were not fully defined or individualized, such as “the use of inadequate expressions in the content of judicial decisions or judicial documents belonging to the prosecutor” or “check the compliance with the requirements of good repute”.

There are certain situations in which the legislator applies interdictions, although they have a similar impact to the original ones. In this regard, we can provide the example of article 10 paragraph 3 of Law no. 303/2004 with respect to the status of judges and prosecutors, which is entirely taken from the Deontological Code of Judges and Prosecutors and registered as standard of conduct, according to which “The judges and prosecutors are allowed to plead, within the legal framework of the law, only for their personal causes with respect to the ancestors and descendants of spouses, as well as the people for which they have custody”. By the interpretation “per a contrario” of the text in question, the magistrates are not allowed to exercise their duties in case of their brothers or sisters, although the family relationship is comparable to that of their ancestors.

There are also situations in between permission and forbiddance. For example, the situation of the judge and prosecutor whose husband, ancestor, descendent or collateral is involved in political activities and which by virtue of their capacity of spouse or relative shall take part in such manifestations, as elections or sponsorships (sportsmen, artists, writers, etc.)

The procedure that has the purpose to identify the infringement of the norms stipulated by the Deontological Code can also be criticized since it is similar to the disciplinary procedure and the entity that decides whether it the norms were infringed or not is the same as the one which decides upon the disciplinary sanctioning of the magistrates, meaning the Sections of the Superior Council of Magistracy.

From this perspective, the Deontological Code for judges and prosecutors has been often criticized by judges, prosecutors and professional associations, appreciating that magistrates should be guided in their activity by ethical principles of professional conduct.

A clear distinction should be made between acts attracting disciplinary sanctions that are provided by law and ethical principles that provide guidance to magistrates on desirable behaviors and that are to be included as such in a code.

It is also found that in Romania there are no real means of prevention in this field.

As mentioned before, the only means of prevention is represented by the training programs, organized at centralized level, by the National Institute of Magistracy and at decentralized level, by the courts of appeal and public prosecutors' offices attached to the courts of appeal.

But considering the fact that participation in such training programs is not mandatory, there are many judges and prosecutors that throughout their career had not participated in any training program in this field. On the other hand, even when participating in such a program of training, the chances of internalizing ethical principles guiding the professional conduct of the magistrates also in the society are limited.

Last but not least, these programs of training are not coordinated at centralized level as there is no specific procedure whereby trainers coordinate on certain topics of discussion, communicate between them when themselves have some difficulty in interpreting various situations, nor is there a procedure that after completing the annual training program to centralize the topics of interest of the participant judges and prosecutors, to sketch the impressions, opinions and their views.

As a new component within the National Institute of Magistracy, as of 2014, at the beginning of the 1st year of training, under the coordination of the full time trainer of the National Institute of Magistracy in ethics and professional deontology, justice auditors were involved in drafting an **own set of rules of conduct**.

This approach was taken into consideration, given the fact that the assumption of a responsible conduct is made with high efficiency if every justice auditor becomes co-participant in the process of drafting a set of rules that would be applicable to him during the training program.

The formation of attitudes and behaviors is a component seen within the discipline of Ethics and professional deontology of the National Institute of Magistracy, being put into practice by the full time trainer who was the one who facilitated the entire process of analysis of the desirable behaviors during both years of training, formulated by the justice auditors themselves.

This step envisaged the fact that justice auditors need to be able to analyze their behavior, to observe themselves in relation with the trainers, colleagues and other persons with whom they come into contact so that **they can self-regulate their behavior**.

Consequently, an opportunity to make visible the self-assumed behaviors has been created. This modeling has an impact also on subsequent conduct of justice auditors in courts and public prosecutors' offices and even in personal life. In order to achieve the objectives of the formation of correct attitudes and behaviors in ethics, for situations when deviations from the rules of conduct appear, the full time trainer has the role to **advise** justice auditors and find together the causes of a specific type of action, guidance to self-reflection and facilitate the correction of the observed behavior.

This approach in ethics, together with the proper training process led to better results as in previous years.

The large number of decisions ordering criminal conviction or disciplinary sanction of some judges or prosecutors for committing acts that affected the dignity,

honor and prestige of the justice, may be an element leading to the conclusion that at present, in Romania, there is no effective mechanism to prevent such situations.

The method started and used within the initial training may have results if it is continued within the continuing training of judges and prosecutors.

All these elements constitute a basis for the initiation of discussions on the idea of establishing a network of ethical counsellors, at the level of each court of appeal, public prosecutors' office attached to courts of appeal, the High Court of Cassation and Justice and the public prosecutor's office attached to the High Court of Cassation and Justice, the elaboration of a code of ethics self-assumed by the system, as well as an Integrity Council.

Otherwise also at international level, it has been recommended repeatedly the foundation within the legal system of states of one or more bodies or persons having an advisory and counseling role, being available to the judges/prosecutors whenever they are unsure whether a particular action/activity is compatible or not with their status. The presence of such bodies or persons may encourage the discussions within the judiciary system on the content and significance of ethical rules. Anyway, these bodies or persons must pursue different objectives and have to be separate from the bodies that order disciplinary sanction.

As a first phase we propose the foundation of **a network of ethical counsellors**.

Functioning – an ethical counsellor or 2 counsellors within each court of appeal, public prosecutors' office attached to courts of appeal, the High Court of Cassation and Justice and the public prosecutor's office attached to the High Court of Cassation and Justice;

Methods of designation

a. ***Election by the general assemblies*** with the participation of all judges and prosecutors within the jurisdiction of the court or public prosecutors' office attached to the court from among judges/prosecutors with an outstanding professional reputation, with a high degree of moral integrity and communication skills;

Advantages: it confers authority because it enjoys of the appreciation and respect of the colleagues;

Disadvantages: being an extrajudicial activity and based on volunteering, it is possible that the judges/prosecutors do not show availability for the exercise of additional duties. There is also the risk of a reduced participation of magistrates to the General Assemblies which, in conjunction with the lack of interest from the judges/prosecutors to apply their candidature, can generate the choice of some persons who do not fit the desirable profile.

b. ***Designation by the governing board of the courts of appeal/public prosecutors' offices attached to the courts of appeal*** mentioned above from among the judges/prosecutors with an outstanding professional reputation, with a high degree of moral integrity and communication skills;

Advantages: it is a faster procedure compared to the previous one;

Disadvantages: being an extrajudicial activity and based on volunteering, it is possible that the judges/prosecutors do not show availability for the exercise of additional duties; the procedure does not confer enough authority.

c. *Designation by work order by the presidents of the courts of appeal, general prosecutors of public prosecutors' offices* from among the judges/prosecutors with an outstanding professional reputation, with a high degree of moral integrity and communication skills;

Advantages: it is a faster procedure compared to the previous ones; does not require, mandatory, the consent of the designated person

Disadvantages: does not confer authority, it is possible that the designated person may not wish to be fully involved in the activities and the designation procedure does not provide sufficient independence from the court leadership.

d. *Selection by the National Institute of Magistracy.*

Advantages: the qualities needed to perform this activity are analyzed and decided by a board of experts in the field;

Disadvantages: it is a cumbersome procedure that requires time, since it is an extrajudicial activity based on volunteering, it is possible that the judges/prosecutors do not show availability for the exercise of additional duties; the procedure does not confer enough authority among the colleagues.

Mentions:

It is essential for the ethical counsellor to provide to his colleagues a trusted framework, as a person and as a professional. This means implicitly, the credibility that the ethical counsellor has in front of his colleagues and equally it means support availability manifested towards them. At the same time, confidence derives also from the responsibility with which each person assumes different aspects of the professional activity, so that the ethical counsellor must show a pattern of desirable behaviour of all these perspectives.

Achieving a trust relation which would stimulate the support and counselling solicitation for solving ethical problems and dilemmas, would have to start therefore from an attitude that is rather proactive than reactive of the ethics counsellor, so that the judges and prosecutors of the court, respectively of the public prosecutor's office, would identify and acknowledge the ethics counsellor as a reference of support and guidance for the clarification of certain aspects which are related to conduct, to ethical and integral behaviour in the exertion of the function in society.

In any of above mentioned variants of designation, the formality of this activity, which entails, either the completion of the Internal Regulation of the courts / The Internal Regulation of the public prosecutor's offices, or the adoption of a decision of the Plenum of the Superior Court of Magistracy (CSM). Also in order to stimulate the proactive participation of these counsellors on the activity proposed in this report, and also considering their attributions, they must have the status of trainers in the matter of ethics and professional deontology and to subsequently annually develop activities of

professional preparation in this direction: reason for which it is necessary to also modify the Regulation of I.N.M (The National Institute of Magistracy).

All the ethics counsellors, after designation, will benefit of a training program in the field of ethics and deontology, which constitutes a stage of the present project.

Possible attributions :

- the judges and prosecutors' counselling in various ethical problems, ex officio or by request;
- the organization of activities of professional training in stages, mandatory for all judges and prosecutors (workshops, counsels/ roundtables on integrity topics, the launching of the judges and prosecutors debate of various ethical dilemmas , including the broaching of certain problems of integrity reflected in the media, etc);
- these training activities entail the permanent communication between the members of the network for the identification of as many ethical problems and finding unitary resolution methods, establishing common programmes of training annually, in collaboration with the ethics board within INM;
- regular meetings of the network members for the debate of dilemmatic problems, the formulation of points of view on their resolution, which will be posted on the website. (These meetings can be formalized, in a similar fashion with the quarterly meetings in which issues of law are debated, which have generated a non- unitary practice – Court Order. 148/2015 of the Section for judges of the Superior Council of Magistracy).

Objective:

First of all, the above mentioned integrity indicators, could constitute a starting point for the analysis of :

- ✓ The degree of awareness of the importance of respecting the integrity standards among judges and prosecutors;
- ✓ The dilemmatic issues and finding adequate and unitary methods at national level for their resolution;
- ✓ The necessity to adapt these indicators to the constant evolution of the moral values, and to the social and cultural issues of Romania;
- ✓ The necessity to adopt an ethical code assumed by the system, as well as of an application guide on it;
- ✓ The necessity of instituting a body within the system, on national level , which would have the role of giving instructions, of observing and disposing measures, in the case of infringement of the rules of conduct .

Following this stage - that of constituting the network of ethics counsellors – a real diagnosis regarding the necessities of the system in this field will be possible to make and could constitute a basis for launching debates on the margin of the idea of **founding an Integrity Council, as well as the subsequent attributions of the network of ethics counsellors.**

Proceeding to a SWOT analysis of the opportunity and possibility of founding such a Council the following can be noted:

Strengths:

- the possibility to solve certain dilemmatic situations in which magistrates can find themselves in, diminishing in this way, the risk of incurring their own disciplinary or criminal liability;
- the possibility to provide unitary points of view regarding the interpretation manner of certain dispositions which provide the conduct standards of magistrates;
- the possibility to contribute to the unification of case law in disciplinary matter, by signaling situations in which the Sections of the Superior Council of Magistracy or the Panel of 5 Judges of the High court of Cassation and Justice have solved in different ways the issues of disciplinary law submitted to judgement;
- the possibility of creating databases in the matter of conduct norms application and compliance, as well as the sanction of their violation, accessible to all the magistrates:

Weaknesses:

- the magistrates' reserve to address this Council determined by the fear of making public the deontological dilemma which they are confronting;
- the placement at an institutional level, of the Integrity Council so that there will not be confusions emerging with regard to its role, which should remain consultative;
- the necessity of the intervention at the level of Justice Laws in order to establish the place, the role, the operational manner and the funding of the Integrity Council.

Opportunities:

- the existence, on a institutional level (The Superior Court Of Magistracy, the Judicial Inspection, The Ministry of Justice, The Public Prosecutor's Office attached to the High Court of Cassation and Justice, and the National Institute of Magistracy) of the preoccupation to remove those types of behaviour which can be detrimental to the magistrate office and the citizens' trust in the justice act, which would form favourable conditions for the institution of an Integrity Council.

Threats:

- the institutionalization of an Integrity Council can be grounds for confusion among magistrates who will expect the points of view emitted by the members of the Council with regard to the resolution of certain problems of deontological order to coincide with

those of the Judicial Inspection, the Sections of the Superior Council Of Magistracy or of the Panel of 5 Judges of the High Court of Cassation and Justice and as such, that there is no possibility to have their disciplinary or deontological liability incurred if they comply with them.

III. GENERATING AN INTERNET PLATFORM

An awareness at the level of all the magistrates body of the problematic raised by professional ethics and their assuming of the necessity to follow certain rules of conduct which would respect the integrity standards imposed by the function, implies also the ensuring of an easy and quick access as much to the regulatory acts, and the international documents in the matter, but also to the practice of institutions which have attributions in disciplinary liability or the determining of cases that breach the norms of the Deontological Code.

In the present, there is no database that is easily accessible and updated which would comprise the court orders previously ruled by the Superior Council of the Magistracy in disciplinary matter, regarding the determination of the infringement of the Deontological Code or the viewpoints expressed with regards to the existence or inexistence of situations which are incompatible and the resolution method of the exerted review procedures.

The Case law of Judicial Inspection is partially published on its own site, but it is not permanently updated and efficient searching criteria are not available.

It can thus be assessed as useful the making of a site that would offer all these information grouped on sections and benefitting of efficient search criteria with regards to the case practice and the interpretations of the Superior Council of the Magistracy regarding the potential incompatibilities: disciplinary case law, referrals and court orders related to the infringement of the deontological code, classification/resolutions in disciplinary matter, the case law of the High Court of Cassation and Justice, European/International case law, that of ECHR; good reputation; relevant legislation (internal, international).

Moreover, such a site allows the formation of a medium for interactive discussions between judges and prosecutors on integrity topics, in conditions of confidentiality. Equally, the site can offer a method by which the activity of the **Integrity Council** and the **Counsellors Network** can be followed and the opinions of the Integrity Council can be publicized alongside other information, seminars, and conferences.

The platform will comprise a public part, accessible to every user, which will be destined for the publication of information of legislative nature or processed case law made anonymous, but also a non - public part destined exclusively to the magistrates and which includes the forum destined for them, which will be integrated in the EMAP platform, administered by the Superior Council of the Magistracy.

The efficiency of such a site depends greatly on the existence of a/some persons who would manage it in the future, ensure the permanent updating, the taking over and processing of the data in view of its publication and which can eventually coordinate

also the activity of the counsellors' network and facilitate the exchange of information between them.

Insofar that it is opted for creating an Integrity Council, which would also benefit of a technical department, it could be capable of managing the site as well.

Another option can be constituted by the administration by the National Institute of Magistracy or by the Superior Council of Magistracy, but in this case certain persons should be designated to take charge of this administration, the activity being one which is time consuming, but also very important for the system.