



Mr. George BĂLAN
Vice president of the
Superior Council of
Magistracy

**Relevant professional
background:**

- Bachelor's Degree in Law (1990);
- 21 years of work experience in magistracy;
- General Prosecutor of the Prosecutors' Office attached to Bucharest Court of appeal (2002-2010) and chief prosecutor of several offices within Prosecutors' Office attached to the High Court of Cassation and Justice (1998-2002);
- president of the Disciplinary Committee within the Public Ministry (1999-2002);
- chief prosecutor of Bucharest 1st District Prosecutors' Office attached to the First instance court (1996-1998);
- attended many specialization training sessions in corruption, criminal, international cooperation, organized crime fields;



THE MESSAGE OF THE VICE PRESIDENT

With its new structure, resulted after the 2010 elections, SCM had a difficult and syncopated start, for which we are partially responsible. We overcame this arduous time and now we are striving to achieve the objectives undertaken by the majority of the Council's members.

The vote of confidence expressed by the teams of judges has become a support in our efforts to implement their will through the projects already started.

Thus, SCM carried out institutional, legislative, consultative and organizational activities in order to develop a new procedure for promoting at the High Court of Cassation and Justice, to strengthen the functional capacity of the Judicial Inspection, to appoint NIM's management and to optimize the operation of this institution.

SCM plans in the immediate future to take the necessary measures to prepare the system for implementing the new Codes. Another initiative will be to complete the regulations governing the appointment to executive positions, other than those subject to examination or competition, in order to standardize the procedures for the promotion within the Judiciary.

Consistent to the inter-institutional dialogue and the desire to develop a close and constructive cooperation with various political and judicial actors, we've had several meetings with representatives of parliamentary groups, on the topic of launching the National Project for Justice.

We believe that our task is to design a national project for the judicial system, which, on the medium and long term, will provide the main parameters of the public policies for the Council and the Judiciary - a project that will represent a reform from within the system, not outside it.

All these steps, undertaken in the short period since we operate, rely on the will of the Council's members to build an institutional image based on integrity, morality and competence.

George Bălan, Prosecutor
Vice-president, SCM, 2011

Content

1. **STRENGTHENING THE SCM CAPACITY**
2. **TRANSPARENCY AND ACCOUNTABILITY**
3. **HUMAN RESOURCES WITHIN THE JUDICIARY**
4. **MAGISTRATES' TRAINING**
5. **JUDICIAL INSPECTION**
6. **INTERNATIONAL COOPERATION**

**THE COMPOSITION OF THE COUNCIL
2011-2016**

President:

1. judge Nicolae Horațiu
DUMBRAVĂ

Vice president:

2. prosecutor George BĂLAN

**Elected members, with permanent
activity – Judges and prosecutors:**

3. judge Bucurel Mircea ARON
4. judge Vasiliță Cristi DANILEȚ
5. prosecutor Grațiana Daniela ISAC
6. judge Ana Cristina LĂBUȘ
7. prosecutor Dimitrie Bogdan LICU
8. judge Adrian Toni NEACȘU
9. prosecutor Oana Andrea SCHMIDT HĂINEALĂ
10. judge Alexandru ȘERBAN
11. judge Marius BADEA TUDOSE
12. vacant position
13. vacant position
14. vacant position

**Elected members – Representatives
of the civil society:**

15. Mrs. Corina DUMITRESCU
16. Mrs. Georgiana IORGULESCU

Ex officio members:

17. Livia Doina STANCIU – president of the High Court of Cassation and Justice
18. Cătălin Marian PREDOIU – Minister of Justice
19. Laura Codruța KOVEȘI – General Prosecutor of the Prosecutors' Office attached to HCCJ



STRENGTHENING THE SCM CAPACITY

ELECTIONS

Election of SCM members, representatives of magistrates

The first general assembly for the preliminary elections for assigning the candidates took place on April 29th 2011. The calendar of the elections was amended due to the fact that the Plenum of the Council partially admitted the complaint lodged with regard to the procedural shortcomings of the elections within the Prosecutors' Office attached to Brasov Court of First Instance and ordered for the elections to be reorganized on May 11th 2011.

The date of the general assemblies according to the Plenum Decisions no. 332 and 333/May 26th 2011 is **June 24th, 2011**. At that date, the process of electing the judges and prosecutors for the three vacant positions in the Council has been completed. These members will be subject to validation by the Senate.

Election of SCM members, representatives of civil society

On June 6th, 2011, the Senate appointed one member of the Council, representing the civil society, namely Mrs. Corina Dumitrescu, dean of a university. On June 22nd, 2011, the Senate appointed the second representative of the civil society within the Council, namely Mrs. Georgiana Iorgulescu, director of a NGO operating in the legal field.

THE COUNCIL'S RESPONSE TO THE NEW DRAFT LAW OF REVISING THE CONSTITUTION

Considering the new draft law of revising the Constitution, the legislation department of SCM analyzed the provisions of the draft law and proposed a series of observations, which *were submitted to the Constitutional Court on June 15th 2011* by the president Horațiu Dumbravă. The observations took into account also the individually expressed opinions of magistrates and professional associations.

In essence, the document drafted by the SCM states that the revision limits of the Constitution are affected, taking into consideration that some provisions ***infringe on the independence of the judiciary***. Excluding from the jurisdictional competence of some types of cases, based on political reasons, and restructuring the SCM are reasons that can affect the stability of the system and the accomplishment of its role.

Also, the SCM states its intention to request the official opinion concerning the conformity of the draft law to the European standards on conserving and strengthening the state, to the European Commission for Democracy through Law (the Venice Commission), to which Romania is a member.

As well, the SCM pointed out that, although the provisions of the EU Council Directive 2005/212/JAI on the confiscation of illegal property have to be observed, the amendment of art. 44 paragraph 8 of the Constitution on the presumption on the legal aquirement of property has to be made in a new manner, in order to comply with the fundamental rights of the citizens and the EU best practices in this field.

ENTERING INTO FORCE OF THE NEW CODES

Entry into force of the new Civil Code – October 1st, 2011

Within the Plenum session, on May 26th, 2011, the members of the Council discussed the necessary measures to be taken in order to prepare the judicial system for entering into force of the new Civil Code on October 1st, 2011. Therefore an **inter-institutional Working Group** was established and a new **project „The codes are coming!”** was launched, for implementing the new Code. Three meetings took place till now, with representatives of the majority of the stakeholders. The WG discussions aim at identifying adequate means to implement the new code. The participants took into account the need to put together available resources and to ensure optimal communication among institutions in order to disseminate information for training the professionals in the field of law and for finding quick and appropriate forms to enhance the implementation of the codes.

In order to assume the legal obligation to **protect the magistrates' professional reputation**, the Superior Council of Magistracy, as a response to the recent public statements of the Romanian president and of other political actors, stated the following:

- ***Any critics concerning judges and prosecutors are not allowed.*** Any kind of accuses general or groundless, weaken the authority of the judiciary and decrease the public confidence.
- ***The SCM respects the other powers of the state*** and requires for the other powers to respect the judiciary and to acknowledge the authority of judges.
- The SCM considers that **also indebted to magistrates, the financial and economical crisis was overcome**, and the rights of the petitioners were thus respected.



TRANSPARENCY AND ACCOUNTABILITY

The relation with the Parliament

The representatives of the Superior Council of Magistracy participated to the works of the judicial commissions of the Senate and the Chamber of Deputies analyzing the draft law for the amendment of Law no. 303/2004 on the statute of judges and prosecutors and of Law no. 304/2004 on the judicial organization, as well as the draft law concerning the entry into force of the new criminal code and the amendment of laws containing criminal provisions. The core issues of these draft laws concern the magistrate's material accountability, the closing of some courts and prosecutor offices.

On May 2nd 2011, the members of the SCM met with the representatives of the parliamentary group of UDMR (the Hungarian minority) and with the parliamentary group of the other national minorities. On May 4th 2011, they had a meeting with the representatives of the joined parliamentary group USL in order to address issues like: the entry into force of the new codes, the administration of justice, the constitutional role of the three powers under the rule of law, as well as the beginning of the national project for justice.

The relation with the Government

The representatives of the SCM participated to the works of the commission established at the level of the Ministry of Justice on the elaboration of the law for the entry into force of the Criminal procedure Code.

On May 26th 2011, the SCM Plenum welcomed Mr. Emil Boc, the Prime-Minister of Romania, at the Council's premises. The discussions concerned the length of procedures, unification of the jurisprudence, the entry into force of the new codes, the need to optimize the schemes of personnel and the financing of justice.

A public debate on the draft law to improve the system of the disciplinary liability of judges and prosecutors was launched by the Ministry of Justice. On 15th of June 2011, CSM expressed its agreement, in principle, concerning any type of accountability for the justice system, as long as it does not violate judicial independence. This draft law was sent for consultation to courts, in order for magistrates to express an opinion. In the first week of July, CSM will organize a debate on this topic with the professional associations of magistrates.

Cooperation agreement between the Superior Council of Magistracy and the Council of Mediation

On May 26th 2011, the Superior Council of Magistracy concluded a Cooperation Agreement with the Council of Mediation to be carried out over a period of five years. The main objectives of the protocol are focused on increasing public confidence in the judicial system and increasing efficiency of the activity within the courts and the prosecutors' offices by promoting mediation.

Cooperation Agreement between the Superior Council of Magistracy and the National Union of Bars of Romania

On May 19th 2011, the Superior Council of Magistracy concluded the Cooperation Agreement with the National Union of Bars of Romania, to be carried out over a period of five years. According to this Protocol, the two institutions agreed to collaborate for increasing the public confidence in justice, for increasing the respect for the independency and the impartiality of justice, for the magistrates' professionalism, the respect for judges' and prosecutors' irremovability, independency and statute, as well as for increasing the respect of the independency of lawyers and of the citizens' rights to judicial assistance provided by professionals entitled by law to perform as lawyers and for increasing the quality of justice.

The petitioner's guideline

A new version of the petitioner's guideline was drafted. According to the general information presented within the guideline, it emphasizes some of the main duties of the Council, such as analyzing the non-adequate attitude of judges or prosecutors, the breach of the professional duties in relation with the litigants or any other disciplinary offences.

The guideline also responds to other frequent questions, by stretching several actions where the Council can not be involved, such as: the pending cases, the judgments rendered by courts, the procedural measures rendered by the prosecutors, the independence of magistrates, the appeals, the judicial assistance of litigants.



HUMAN RESOURCES WITHIN THE JUDICIARY (1)

Improvement of the procedures for transfer, promotion, secondment and appointing into leading positions

Within the Plenum session on May 26th 2011, the Council approved the proposals for amending **the Regulation on the transfer, the secondment, the delegation of judges and prosecutors as well as for the appointment of judges and prosecutors in leading positions and of the appointment of judges in prosecutor positions and of prosecutors in judge position.**

The main amendments of the procedure on the **appointment of judges into leading positions** consists in a new requirement for the court leading board and the court president to give a reasoned endorsement on the appointment of judges as presidents of sections and a change in competence by transferring from the Council sections to the Plenum the organisation of an interview for the candidates.

The procedure for **appointment of prosecutors into leading positions** was amended in a similar manner as for judges, the difference consisting in the fact that the respective prosecutor shall present 10 specific works related to his activity.

The procedure for the **appointment of judges into leading positions within the High Court of Cassation and Justice** was amended by mentioning that the candidacies are evaluated by the SCM, based on a report issued by the Human Resources Department (analyzing the fulfilment of the legal requirements) and an interview held before the Plenum. The recommendation is submitted then to the President of Romania.

The main amendments of the procedure for **secondment** of judges and prosecutors concerned the reasoning of the secondment request by the institution submitting it, including a detailed description of the nature and of the specific duties to be carried out by the judge/prosecutor.

The amendments regarding the **appointment of judges in prosecutor positions and of prosecutors in judge positions** regard several criteria to be taken into account, such as: the workload of the court/prosecutors' office where the judge/prosecutor is functioning, the length of service as magistrate, the length of service at the court/prosecutors' office where they currently activate and the length of service in the degree of jurisdiction similar to the level of jurisdiction where the judge/prosecutor shall be appointed.

Improvement of the procedures for endorsing the search, the temporary detention or the arrest proposals for judges, prosecutors and assistant-magistrates

By the Decision no. 267/2011, the SCM Plenum amended the Regulation of organization and functioning of the Superior Council of Magistracy on the search, the temporary detention or the arrest procedures for judges, prosecutors and assistant-magistrates.

The main amendments are the following:

- the sessions of the section of the Council for deciding on the notifications for the search, temporary detention or arrest of judges, prosecutors and assistant-magistrates shall not be public;
- the verifications shall be comprised within a report that shall indicate the ascertained facts, the judicial nature of the facts, the arguments of the body requesting the approval, as well as the other relevant aspects, including those concerning the admissibility of the request, outside the merits of the case;
- the notifications on the search, the temporary detention or arrest of judges, prosecutors and assistant-magistrates shall be registered by the Judicial Inspection in a non-public registry and shall have attached the report elaborated by the body which formulated the request, the case original file or a certified copy of the file and an index of the file content;
- the notification shall be immediately solved by the specific section of the Council;
- the decisions shall be immediately drafted and shall be kept within the Archive of the Judicial Inspection;
- the files regarding the searches, the temporary detentions or the arrests of judges, prosecutors and assistant-magistrates shall not be available for copying or studying.



HUMAN RESOURCES WITHIN THE JUDICIARY (2)

Improvement of the procedure for assessing the professional standards and the standards of good reputation

Commission no. 2 *"Institutional enhancement and improvement of the SCM and of the coordinated institutions"*, agreed upon the proposals for improving the assessment of the professional standards and of the standards for good reputation of the magistrates. The main amendments approved by the Commission were the following:

- candidates shall submit certificates attesting the sanctions for contraventions, within the past three years;
- the period of time passed since any disciplinary, administrative or even criminal sanction was applied should be taken into account among the other criteria, when assessing the good reputation;
- the requirement for good reputation shall not be met when the magistrate was convicted for criminal offences involving the professional prestige, even if she/he had been rehabilitated.

Exams

An exam for promotion into positions to the higher courts and prosecutors offices took place on May 8th 2011. 70 judges and 40 prosecutors have been promoted. The final results were validated within the Plenum session on June 15th 2011.

An exam for appointment into leading positions of judges and prosecutors is ongoing starting with April 8th and has to end on July 5th 2011.

91 new prosecutors and 100 new judges graduated the National Institute of Magistracy and they will take over their jobs starting with July 1st 2011.

Promotion to the High Court of Cassation and Justice

SCM together with HCCJ and the Ministry of Justice agreed to promote a draft law within an urgent procedure, in order to improve the current procedure for promotion. The draft law was submitted by the Government to the Parliament on May 4th 2011 and presented within the Steering Office of the Deputy Chamber on May 10th 2011. On June 15th 2011, the project was endorsed by the Judicial Commission of the Deputy Chamber, but with a major amendment represented by the replacement of the current method of candidates' evaluation – the interview with a written examination. The new provisions will be analyzed by the Council soon.

The SCM' Section for judges rejected on June 7th 2011 the request formulated by the High Court to undertake a new promotion procedure for filling the vacancies within the Criminal Section, reasoning that objective criteria are needed and expected through the new legislation.

New exam for admission to N.I.M.

During the plenary session held on 23.06.2011, SCM decided to organize a new exam for admission to magistracy, between August and September 2011. 200 positions of justice auditors will be open for competition.



MAGISTRATES' TRAINING

New leadership of the National Institute of Magistracy

During the Plenum sessions on May 31st 2011, the Council appointed the new director and the new deputy director entitled with the initial training of the National Institute of Magistracy, after interviewing 2 candidates for the director position and 3 candidates for the deputy director position. The new director of NIM is **Mrs. Octavia Spineanu Matei**, judge at the High Court of Cassation and Justice and trainer within NIM. The new deputy director of NIM entitled with the initial training is **Mrs. Ana Maria Garofil**, judge at Bucharest Tribunal and trainer within NIM.

Mrs. Octavia Spineanu Matei - *relevant professional background*:

- 20 years of work experience in magistracy, as judge;
- 5 years experience as judge at the High Court of Cassation and Justice;
- specialized in civil law and intellectual property;
- trainer on Civil law at the National Institute of Magistracy;
- high expertise in didactical activities in the field of civil law, intellectual property and human rights;
- author of articles and studies on intellectual property and coauthor of collections of jurisprudence in the field of civil law.

Mrs. Ana Maria Garofil - *relevant professional background*:

- 10 years of work experience in magistracy (4 years as prosecutor, 6 years as judge);
- trainer on European law at the National Institute of Magistracy;
- didactical activity in the field of civil procedural law;
- specialized in civil law, civil procedural law and EU law
- significant participation at conferences, training activities, seminars in the field of EU law, money laundry and terrorism, cooperation in criminal matters etc.

In-service professional training activities on top priorities

- **Professional training in the field of the new codes.** According to the in-service training program for magistrates, during the referred period (May – June 2011), NIM had organized 4 seminars in the field of civil law and civil procedural law with the participation of 95 judges and 4 seminars in the field of criminal law and criminal procedural law with the participation of 51 judges and 57 prosecutors.
- **Professional training in the field of unification of jurisprudence.** According to the in-service training program for magistrates, during the referred period (May – June 2011), NIM had organized 3 workshops on the unification of jurisprudence, in the matter of civil law, criminal law and of commercial law.



JUDICIAL INSPECTION

The Council intends to strengthen the functional independence of Judicial Inspection and to improve the efficiency of its activity.

Strengthening the role of the Judicial Inspection

Within the Plenum session on May 5th 2011, the SCM approved and submitted to the minister of justice the proposals for amending Law no. 317/2004:

- providing in explicit word the **legal standing of the disciplinary commissions within the procedure of appeal before the courts;**
- **the organization of the Judicial Inspection as an autonomous body within the Superior Council of Magistracy under the leadership of the chief inspector.**

Disciplinary actions exercised by the disciplinary commissions

The **Disciplinary Commission for Judges** exercised **six disciplinary actions** as it follows:

- One for serious negligence in exercising the office according to art. 99 lt. h) these II of the Law no. 303/2004 on the statute of judges and prosecutors;
- One for unjustified refusal to fulfil an office duty, for exercising the office with bad faith or serious negligence and for delays in carrying out the office duties, for imputable reasons and unreasoned absences from the office, according to art. 99 lt. g), h), i) and j) of the Law no. 303/2004;
- Two for violation of legal provisions regarding their incompatibilities and interdictions regarding judges and prosecutors according to art. 99 lt. a of the Law no. 303/2004;
- Two for exercising the office with bad faith or serious negligence including the non-observance of the procedural provisions, unless the act is an offence and for non-observance of the provisions on random case distribution, according to art. 99 lt. h) and m) of the Law no. 303/2004;

The **Disciplinary Commission for Prosecutors** exercised **one disciplinary action** as it follows:

- for un-dignifying attitude towards colleagues, lawyers, experts, witnesses or litigants., when exercising their office duties, according to art. 99 lt. k) of the Law no. 303/2004.

Improvement of the Judicial inspectors' recruitment procedure

On May 5th 2011, the Plenum approved the amendments to the Regulation on organizing and functioning of the SCM in what concern the procedure of selecting the candidates for the inspector positions within the Judicial Inspection.

Following this amendments, on May 23rd 2011, **a new recruitment procedure was launched for recruiting judges and prosecutors on the vacant inspector positions.** The recruitment procedure was open for 5 inspector positions within the Judicial Inspection Service for judges and for 6 inspector positions within the Judicial Inspection Service for prosecutors, observing criteria of the regional distribution. The deadline for applying for these positions was June 8th 2011.

The Section for judges of the Superior Council of Magistracy

1) approved an assessment of the management within the High Court to be conducted starting with June 23rd 2011.

2) approved the report on the management efficiency and fulfilment of duties arising from laws and regulations by judges in leadership positions, in order to ensure the proper functioning of the courts as a public service at *Bucharest Court of Appeal and at the courts in its jurisdiction.*

3) approved the report of the inspection on the management efficiency and fulfilment of the duties arising from laws and regulations for ensuring the proper functioning of the courts as a public service, by the *leadership of Botosani Tribunal* – Section for commercial and administrative contentious;

4) analyzed the control report of the Judicial Inspection on *the case Thyssen Sthal GmbH* in the matter of the length of the trial ;

5) approved to conduct several controls regarding the following aspects:

- a thematic control on registration, archiving, data communication and in the activity of PR departments within all the courts,
- verification within all the courts for assessing the situation of repeated complaints for avoiding the system of random distribution,
- inspection on the management efficiency and fulfilment of the duties arising from laws and regulations by judges in leadership positions in order to ensure the proper functioning of the courts as a public service at Arges Tribunal and Pitesti Court of Appeal and a similar inspection at Constanta Court of First Instance.

The Section for prosecutors of the Superior Council of Magistracy

1) approved an inspection to be conducted for verifying the measures took by the leadership and by the prosecutors within this unit for solving *cases pending for more than one year since the registration and for more than 6 months since the beginning of the criminal investigation* at the Prosecutors' Office attached to Pitesti Court of First Instance; approved a similar inspection at Prosecutors' Office attached to Targoviste Court of First Instance and at Prosecutors' Office attached to Cluj Napoca Court of First Instance.

2) approved a thematic control on registration, archiving, data communication and the activity of PR departments within all the prosecutors' offices.



INTERNATIONAL RELATIONS

Activity within the European Network of the Councils for Judiciary

On the **8th - 10th of June 2011**, a delegation of the Council, lead by its president, attended the General Assembly of the European Network of Councils for the Judiciary, held in Vilnius, Lithuania. The Romanian delegation shall be accompanied by a member of the Superior Council of Magistracy of the Republic of Moldavia, in order to support its accession into the European bodies.

As member of the Executive Board of the Network, Mr. Horatius Dumbravă, the president of the Council, attended the meetings of the Executive Board and of the Steering Committee, organised on the 8th of June 2011.

Relation with the European Commission and other international bodies

On the **23rd of May 2011**, a **delegation of the Council lead by its president**, Mr. Horațius Dumbravă, met in Bruxelles Mrs. Catherine Day, the General Secretary of the European Commission. The Romanian officials' visit to the European Commission was organised within the context of the drafting of the Commission report on the progresses of Romania and Bulgaria under the Verification and Cooperation Mechanism.

On the **17th of May 2011**, the Council took notice on the US State Department report on the observance of the human rights in Romania and the Council's point of view on the report was approved and published on the SCM website.

On the **19th of May 2011**, following the request sent by the European Commission through the European Network of Councils for the Judiciary, the Council approved the content of the EC template on Councils for the Judiciary necessary for the update of the European E-justice Portal.

Bilateral relations

On the **17th of May 2011**, Mr. Horațius Dumbravă, the president of the Council met a delegation of the UN, lead by Mrs. Knaut de Albuquerque e Silva, UN special rapporteur on the independence of judges. The report of the mission was elaborated and published on the 24th of May 2011, comprising recommendations concerning the independence of justice, judges and prosecutors, the reform of justice, including on aspects relating to the entry into force of the new codes.

On the **20th of May 2011**, the SCM hosted a visit of a delegation of European judges participating in the Exchange Programs between Judicial Authorities organised by the European Judicial Training Network. The 6 judges, representing Germany, Spain, Italy and France, participated to an internship, on 16-27 of May 2011, having as main objective the presentation of the organisation and functioning of the Romanian courts and institutions pertaining to the Judiciary.

On the **26th of May 2011**, a delegation of the SCM and NIM, lead by prosecutor Oana Andrea Schmidt-Hăineală, member of the Council, presented in Ankara the offer of the two institutions for the twinning project TR – 2010 – IB – JH – 02, *Increasing the professionalism and efficiency of the Judicial Academy in Turkey*. Romania was a candidate within a specific evaluation procedure for the project financed by the European Commission in competition with other two consortiums, Spain-France and Germany-Hungary.