

## **ROMANIA: USING DISCIPLINARY ACTIONS AS A TOOL OF INTIMIDATION, PRESSURE OR REPRESSION AGAINST INCONVENIENT JUDGES AND PROSECUTORS**

Since 2018, the Judicial Inspectorate has been the main tool for pressure and intimidation on Romanian judges and prosecutors, the aim being either to remove them from the office or to silence all those who have objected in some form or another to the legislative amendments made since 2018 to the justice laws, which have contributed to destroying the independence of judges and of the system as a whole.

We exemplify the use of disciplinary procedures as a tool of intimidation, pressure, or repression through the following cases:

### **2018-2019:**

#### **Military Prosecutor Bogdan Ciprian Pîrlog (Co-President of the Justice Initiative Association)**

The first disciplinary procedure, started in 2018, refers to the opinions expressed in the article *“Main aspects likely to severely harm the judicial system”*, published on January 25, 2018, on [www.juridice.ro](http://www.juridice.ro) website, the prosecutor being accused of committing the disciplinary offence stipulated in art. 99 let. a) of the Law no. 303/2004 on the status of judges and prosecutors. The Judicial Inspectorate decided to take disciplinary action against the military prosecutor Bogdan Ciprian Pîrlog, arguing that he acted *“in overt and total disregard of the rules and standards of conduct judges and prosecutors must abide by, willingly denigrated (...) the members of the Superior Council of Magistracy’s Section for Judges, stating that it is loyal to and supportive of the current political establishment”*.

Regarding the inspectors within the Judicial Inspectorate, it was acknowledged by the latter that the prosecutor *“had allegedly described them as entities controlled by the political rulers so as to be used (...) as means to exert pressures upon magistrates”*.

The second disciplinary procedure was about committing the disciplinary offence stipulated in art. 99 let. m) of the Law no. 303/2004, *“unreasonable non-compliance with administrative provisions or decisions set forth, in accordance with the law, by the presiding judge of the law court or by the chief of the prosecutor’s office, or with other administrative duties stipulated by the law or regulations”* and concerns the activities carried out by military prosecutor Bogdan Ciprian Pîrlog in regard to the gendarmes' acts of violence against the peaceful demonstrators protesting against corruption in Victory Square, on August 10, 2018.

In 2019, in case no. 3/P/2019, the Department for Prosecutors within the Superior Council of Magistracy (SCM) suspended the disciplinary procedure until the delivery of a conclusive decision by the High Court of Cassation and Justice in case file no. 2874/2/2018.

The third disciplinary procedure supposes committing the disciplinary offence provided by art. 99 let. a) of the Law no. 303/2004 and concerns the opinions expressed by prosecutor Bogdan Ciprian Pîrlog, in his capacity of representative of the “Initiative for Justice” Association, during a reunion organised by the Romanian President, Mr Klaus Werner Iohannis, on March 27, 2019. The Judicial Inspectorate decided to take disciplinary action against the military prosecutor Bogdan Ciprian Pîrlog on the grounds that his critical views concerning the creation of a special prosecution section with exclusive competence for offences committed by judges and prosecutors failed to reflect reality. The Section for Prosecutors within the Superior Council of Magistracy ascertained the absolute nullity of Resolution no. 2860/B/30.08.2019 and of the disciplinary procedure.

The fourth disciplinary procedure concerns the *ex officio* notification related to technical surveillance and stakeout activities illegally conducted on the deputy Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

All these disciplinary actions brought against Prosecutor Bogdan Pîrlog were annulled by the Section for Prosecutors of the SCM.

**Judge Crina Elena Munteanu (Bihor Regional Court, member of the Romanian Judges' Forum Association)** was a subject of disciplinary actions in 2019, in two different cases.

The first case concerned an infringement of the rules regarding the random distribution of cases because of a decision of the Management Board of the Court (taken by all 7 members of the College, including judge Munteanu). The Board decided to appoint her temporarily as the only one justice of peace within Bihor Regional Court. The decision was made considering the insufficient number of judges and the need to maintain confidentiality. It should be noted that a single judge was placed in disciplinary proceedings, although the decision was also taken by the other 6 members of the College Body. The Superior Council of Magistracy – Section for Judges dismissed the action.

The second disciplinary file concerned certain aspects that she specified during an interview granted to *Newsweek Romania* online paper. She spoke about the corruption networks within the Bihor County judiciary, coming as a whistleblower on matters. The Superior Council of Magistracy - Section for Judges upheld the disciplinary action and imposed the penalty of suspension from office for a period of 6 months. The High Court upheld the appeal brought by the Judge Crina Elena Munteanu and imposed the penalty of a reduction of the allowance for 3 months.

**Judge Ciprian Coadă (Constanta Court of Appeal, member of the Romanian Judges' Forum Association)** criticised Constitutional Court Decision no. 68 from 27<sup>th</sup> February 2017 in an article published on [www.juridice.ro](http://www.juridice.ro). In 2018, the Section for Judges within the Superior Council of Magistracy sanctioned him with a 5% monthly allowance decrease for 2 months, for the disciplinary offence provided by art. 99 let. a) of the Law no. 303/2004, "*manifestations that affect the honour or professional integrity or prestige of the judiciary, carried out in or outside the exercise of one's occupational duties*".

The High Court of Cassation and Justice admitted the appeal on legal grounds and sanctioned him with a warning.

**Judge Cristi Danileț (Cluj Regional Court, former member of the Superior Council of Magistracy - 2011-2016, Board member in Voices for Democracy and Justice – VedemJust Association)** has been a subject to a disciplinary proceeding for damaging the professional honor or probity or the prestige of justice, committed in the exercise or outside of the exercise of his duties (Article 99 let. a) of the Law No nr.303/2004), because of his opinions expressed during a press interview. In fact, he made a radiography of the judicial system touching some sensitive topics: the functioning of the National Anti-Corruption Directorate and the Directorate for Investigating Organized Crime and Terrorism, the conduct of the SCM/Minister of Justice with regard to judges and prosecutors, or the activity of the special prosecution section with exclusive competence for offences committed by judges and prosecutors. The Section for Judges of the SCM dismissed the disciplinary action, the solution being maintained at the High Court of Cassation and Justice.

**Judge Cristi Danileț** has been sanctioned in May 2019 by the Section for Judges of the SCM for a message posted on Facebook (*The army could go to the street to 'preserve*

*democracy*’) with the penalty of a 5 % reduction in the allowance for 2 months, and the High Court upheld the solution by final judgment.

**Judge Camelia Bogdan (Bucharest Court of Appeal, member of the Romanian Judges’ Forum Association)** has been charged with *committing serious or repeated infringement of the provisions on the random allocation of cases*, under Article 99 (o) of the Law No 303/2004. Due to the fact that the titular judge of the panel was on leave, Judge Camelia Bogdan has been appointed by the College Body of the Court to conduct the trials, on that occasion, in one of the cases she proceeded with the administration of evidence, remained to rule and subsequently reopened the case, continuing to hear the case, in the light of the case-law of the ECtHR (*Cutean* case, judgment of 2 December 2014), according to which the judgment must be delivered by the judge who heard the evidence.

The Section for Judges of the SCM decided the judge to be punished with the most severe punishment, the exclusion from the judiciary, the solution being maintained by the High Court of Cassation and Justice.

#### **2020:**

**Military Prosecutor Bogdan Ciprian Pîrlog** was the subject of disciplinary proceedings (started ex officio) concerning the committing of the disciplinary offence encoded in Article 99 (m) of the Law No 303/2004 (*unjustified failure to comply with administrative provisions or decisions ordered in accordance with the law by the head of the court or prosecutor’s office*) and the disciplinary offence provided by Article 99 (p) of the Law No 303/2004 (*obstruction of the investigation carried out by the judicial inspectors by any means*). Briefly, the Judicial Inspectorate claimed that he refused to communicate copies of the prosecutor’s report and the decision of the Military Tribunal requesting, respectively, issuing of a Technical Surveillance Mandate (location, interception of conversations, environmental audio-visual recording), in a criminal case in which prior checks were carried out. The prosecutor declined to release these documents because the criminal investigation was in progress, and it was secret.

Another disciplinary investigation concerned the committing of the disciplinary offence provided by Article 99 (a) of the Law No 303/2004 (*manifestations that damage professional honor or probity or the prestige of justice, committed in the exercise of or outside the performance of duties*), based on the opinions allegedly expressed by military Prosecutor Bogdan Pîrlog in one interview of HotNews.ro LIVE: <https://www.hotnews.ro/stiri-esential-24177285-cum-ajuns-clasarea-dosarului-10-august-plimbat-timp-aproape-doi-ani-intre-trei-parchete-care-este-impactul-procurorul-militar-bogdan-pirlog-cel-care-deschis-dosarul-invitat-interviurile-hotnews-live-v.htm>. The Judicial Inspectorate sustained that the statements criticizing the Minister of Justice, Cătălin Predoiu, Prosecutor General, Gabriela Scutea, and Chief Prosecutor DIICOT, Giorgiana Hosu, represented disciplinary misconduct. It has also been held that the disciplinary deed also consisted of the comments on the investigation and on the decision to close the “10 August” case file.

The disciplinary actions brought against Prosecutor Bogdan Pîrlog have been annulled by the Section for Prosecutors of the SCM.

**Prosecutor George Nica (Military Prosecutor, Head of the Judicial Section of the Military Prosecutor’s Office attached to the Bucharest Military Tribunal, member of the Justice Initiative Association)**. The Judicial Inspectorate initiated disciplinary investigations against him for breach of Article 99 (a), (j) and (m) of the Law No 303/2004. He has been accused of having provided, in September 2020, data/information from a criminal file (which concerned the traffic accident from 30 august 2020, in which the Minister of Transportation,

Lucian Bode, had been involved), since, as a replacement for the spokesperson of the Military Prosecutor's Office, he intervened at three television stations, even though the communication of data to the media would have been the responsibility of the head of the public prosecutor's office or of another person designated by him, and told the name of the sub-officer from the Protection and Guard Service who drove the vehicle involved in the accident, thus the confidential nature of certain information which the magistrate became aware of in the performance of his duties was not respected.

The Judicial Inspectorate also stated that the military prosecutor had expressed his opinion on how the investigations in the case had been carried out, taking the view that certain activities had to be carried out, and that he had communicated data/information from the criminal file, even though he did not have the written or oral consent of the case prosecutor or of the head of the public prosecutor's office where the case has been registered and, at the time when the information has been provided, there was no suspect in question.

**Prosecutors Antonia Diaconu (Public Prosecutor's Office attached to the Pitesti District Court, co-president of the Movement for Defence of the Status of Prosecutors Association), Cosmin Adrian Iordache (National Anti-Corruption Directorate – Central Structure, co-president of the Movement for Defence of the Status of Prosecutors Association), Carmen Alexandra Lăncrăjan (National Anti-Corruption Directorate – Central Structure, member of the Board of the Movement for Defence of the Status of Prosecutors Association)** were subjects of disciplinary proceedings for issuing several press releases on behalf of the Association concerning the “Caracal” criminal case.

The Section for Prosecutors found that the resolution of the disciplinary action was null and void. The appeal on a point of law brought by Judicial Inspectorate was definitively dismissed by the High Court of Cassation and Justice.

**2021:**

**Judges Dragoș Călin (Bucharest Court of Appeal, co-president of the Romanian Judges' Forum Association), Alina Gioroceanu (Olt Regional Court, member of the Romanian Judges' Forum Association), Laurențiu Grecu (Mehedinti County Court, member of the Romanian Judges' Forum Association), Anca Codreanu (judge at Brașov County Court, former co-president of the Romanian Judges' Forum Association) and Cristi Danileț (Cluj Regional Court, former member of the Superior Council of Magistracy - 2011-2016, Board member in Voices for Democracy and Justice – VedemJust Association)**

Firstly, the Judicial Inspectorate requested the suspension from office for three of these judges (**Dragoș Călin, Alina Gioroceanu, Laurențiu Grecu**), request rejected by the Section for Judges, but the trial lasted for more than 2 months.

Secondly, the Judicial Inspectorate then proceeded to bring all these judges into disciplinary proceedings, imputing to them the infringement of Article 99 (a) of the Law No 303/2004, in regard with some messages claimed to belong to members of a secret and unpublic Facebook group entitled “The Magistrates Forum”. The content of these messages essentially referred to opinions of judges/prosecutors on the establishment of the special prosecutor's section for the investigation of offences in the judiciary, its stakes, the interests of members of the Superior Council of Magistracy and certain politicians regarding the establishment of this structure, to criticism or appreciation for the conduct of certain members of the Superior Council of Magistracy and criticism against Judicial Inspectorate. Although there was absolutely no evidence of authenticity regarding these messages, the Judicial Inspectorate represented by its Chief Inspector (Lucian Netejoru) decided to send the judges before the Superior Council of Magistracy – Section for Judges. After almost 18 months of trial, the

Section for Judges rejected the disciplinary action in September 2022, because of no evidence of authenticity of these messages. The appeal on a point of law made by the Judicial Inspectorate was definitively dismissed by the High Court of Cassation and Justice in May 2023, after more than 2 years from the beginning of the disciplinary action.

**The Good Lobby Profs supported Judges Dragoș Călin, Alina Gioroceanu and Laurențiu Grecu - [The Good Lobby Profs statement in support of Romanian judges – Forumul Judecătorilor \(forumuljudecatorilor.ro\)](https://www.forumuljudecatorilor.ro):** "These actions, brought by the Judicial Inspection office and now pending before the Superior Council of Magistracy, threaten to undermine the independence of the judiciary and to cast serious doubt on Romania's commitment to the rule of law. Based on the information currently available, the charges that judges' private messages are political in nature and violate rules of professional integrity cannot be supported. The authenticity of most of these messages attributed to the three Romanian magistrates has also been strongly called into question. Unless outrightly dismissed by the Superior Council of Magistracy, consideration of these charges would have a chilling effect on the members of the Romanian judiciary in breach of Article 19(1) TEU. The request of the Judicial Inspection for the suspension of the judges as an interim measure is furthermore disproportionate and violates EU law. (...) subject to disciplinary action have been strong defenders of judicial independence in Romania, including through litigation resulting in preliminary references now pending before the Court of Justice of the European Union on the compatibility of Romanian legislation with EU law. Since one such preliminary reference concerns the legality of the Judicial Inspection under its current leadership (Case C-83/19), the ongoing disciplinary actions has the strong appearance of a conflict of interests and may be construed as retaliatory actions. It is worth noting in this context that according to EU Advocate General Bobek, in a set of opinions issued on 23 September 2020 in relation inter alia to Case C-83/19, the interim appointment of Romania's Chief Judicial Inspector and Romanian national provisions on the establishment of a specific prosecution section with exclusive jurisdiction for offences committed by members of the judiciary are contrary to EU law."

**Against the prosecutors Bogdan Ciprian Pîrlog (co-president of the Justice Initiative Association), Cristi Ardelean and Alexandru Codreanu (members of the Movement for Defence of the Status of Prosecutors Association)** have also been taken disciplinary actions for messages posted on a WhatsApp group of a prosecutors' association and on Facebook group entitled 'The Magistrates Forum', on the grounds that they made statements of a denigrating nature to certain colleagues or public persons, which would have affected the image of justice. The Section for Prosecutors of the SCM found the disciplinary action null and void. The appeal on a point of law of the Judicial Inspectorate was definitively dismissed by the High Court of Cassation and Justice.

In addition, in 2021 and 2022, **Military Prosecutor Bogdan Ciprian Pîrlog (co-president of the Justice Initiative Association)** has been subject to disciplinary proceedings in a number of 7 disciplinary files for disciplinary offences referred to in Articles 99 (a) (d), 99 (a), 99 (a) and (b), 99 (a), 99 (a) and (b), 99 (a) and (b), 99 (g) and (m), 99 (a) and (b), 99 (g) and (b), 99 (a), 99 (m), 99 (a) of the Law No 303/2004 on the Statute of Judges and Prosecutors. Three of these cases are suspended, three cases are still pending, and one has been annulled by the Section for Prosecutors of the SCM for illegalities in disciplinary investigations.

**Judge Cristi Danileț (Cluj Regional Court, former member of the Superior Council of Magistracy - 2011-2016, Board member in Voices for Democracy and Justice – VedemJust Association)** has been referred to the Section for Judges of the SCM for breaching Article 99 (a) of the Law No 303/2004, accusing him of posting two films on TikTok (one video in which the judge cuts a live fence and another in which he cleans the swimming pool). The

judgment delivered on 13<sup>th</sup> December 2021 SCM – Section for Judges ordered the exclusion from the judiciary. He has also been suspended from office on 14<sup>th</sup> December 2021.

In December 2022, by final decision, the High Court of Cassation and Justice changed the sanction to a warning.

Against the same **judge (Cristi Danileț)** has been brought disciplinary proceeding for the article written in the book “900 Days of Uninterrupted Siege on the Romanian Magistracy”. That disciplinary action was dismissed by the Superior Council of Magistracy – Section for Judges.

**Judge Costin Andrei Stancu (Pitești Court of Appeal, member of the Romanian Judges’ Forum Association)** was referred to the SCM’s Section for Judges and was subject to disciplinary proceedings relating to compliance with procedural rules in a criminal case. In particular, the judge directly applied the judgment of the Court of Justice of the European Union of 18 May 2021, deciding that the Prosecutor of the special prosecution section with exclusive competence for offences committed by judges and prosecutors who dealt with a criminal case would decline jurisdiction and that the case would be entrusted to another unit of the Public Prosecutor’s Office, established by excluding the legal provisions governing the activity of the Section for the Investigation of Criminal Offences. In April 2022, the Section for Judges dismissed the disciplinary action. The appeal on a point of law brought by Judicial Inspectorate was definitively dismissed by the High Court of Cassation and Justice in April 2023.

**The Good Lobby Profs supported Judge Costin Andrei Stancu - [The Good Lobby Profs – Statement in support of Judge Costin Andrei Stancu – Forumul Judecătorilor \(forumuljudecatorilor.ro\)](#):** ”Having reviewed the Resolution and supporting documents, we must conclude unequivocally that Judge Stancu is the victim of abuse on the part of the Judicial Inspectorate and that the abovementioned Resolution violates his independence as a member of the judiciary. The Resolution seeks disciplinary action against Judge Stancu’s application in a case before him of the Judgment of the Grand Chamber of the Court of Justice of the European Union in Case-83/19 of 18 May 2021. The Resolution faults Judge Stancu’s “interpretation that the CJEU [a]s final and binding” as “revealing [...] that he shares the idea that has emerged in the public space, supported by certain politicians.” (p. 23). This conclusion is inexplicable and deceptive. We confirm that long-standing doctrines of EU constitutionalism regarding the primacy of EU law and the interpretation and application of EU law in national courts required Judge Stancu, in his capacity as a judicial officer of the European Union, to act as he did in applying relevant EU legal doctrine to the case before him. We further note that the Resolution baselessly imputes Judge Stancu to have acted in bad faith. Nothing in the file establishes or suggests that Judge Stancu sought by his disposition to cause harm to the applicant in the case before him. We stand in solidarity with Judge Costin Andrei Stancu and call on the Superior Council of Magistracy to swiftly dismiss the disciplinary charges against him. We call on the European Commission to monitor these proceedings closely and stand ready to bring an infringement action against Romania before the Court of Justice of the European Union should the disciplinary action not be dismissed. The proceedings against Judge Stancu, and their chilling effect on the members of the Romanian judiciary, confirm the conclusion of the Grand Chamber of the Court of Justice of the European Union in Case C-83/19 that “the powers and functions of the Judicial Inspectorate might be used as an instrument to exert pressure on, or political control over, the activity of judges and prosecutors” [para. 206].”

**2022:**



**Judge Cristi Danileț (Cluj Regional Court, former member of the Superior Council of Magistracy - 2011-2016, Board member in Voices for Democracy and Justice – VedemJust Association)** was subject to disciplinary actions for being part of a apparently political formation, membership forbidden for judges and prosecutors. He was also a member of two NGOs who gave press releases criticizing the work of the governing parties. Although the judge had abstained from voting in the event of the issuance of those press releases, the Inspectorate also noted that he would have participated in political actions by writing a scientific article on education published by one of the two NGOs and he presented it at a non-public meeting of the members of one of the two NGOs.

The Section for Judges upheld the disciplinary action and ordered exclusion from the judiciary and suspension from office. But in April 2023, the High Court of Cassation and Justice upheld the appeal lodged by the judge and definitively dismissed the disciplinary action.

**Judge Cristi Danileț** has been accused of performing his duties with serious negligence and he has been sent to disciplinary section for judges and excluded for a third time from the judiciary. The neglect action consists in failing to pass the 30-day period of pre-trial detention in the minute of a decision to arrest 3 drug trafficking suspects, even though the judge had specified that duration in the arrest warrant itself and also stated in the courtroom session that there was an arrest for 30 days. He was also suspended from office. In April 2023, the High Court of Cassation and Justice upheld the appeal brought by the judge and ordered the allowance to be reduced by 25 % for 6 months.

**Judge Mihai Ștefan Ghica (Cluj County Court, member of the Romanian Judges' Forum Association, candidate for the position of member of the SCM, who won the elections in the first phase, the Council having decided, without any legal basis, for the first time in the history of CSM elections, by changing the known and used procedure, to organize a second tour, in which another judge was declared successful by a difference of 8 votes)** has been referred to disciplinary section for offences provided by the first sentence of Article 99 (h) (*repeated and imputable non-compliance with legal provisions on the expeditious handling of cases*) and (t) of the Law No 303/2004 (*acting in bad faith or with gross negligence*). The Judicial Inspectorate noted, in the reasoning of a decision, that the judge stated that the only reason for replacing the measure of pre-trial detention with that of judicial review is that the measure does not cease by law. At the same time, the Inspectorate considered that the legal end of preventive arrest appears as a legal consequence of the lack of minimum diligence on the part of the judge, as regards the delivery and reasoning of the judgment, for a period of 8 months.

In fact, the prosecutor had requested at the hearing that the measure of pre-trial detention be replaced by judicial review, and the question of the lawful end of pre-trial detention was not the consideration for which the measure was replaced. In addition, no legal provision prohibits the replacement of pre-trial detention by judicial review as long as the period of pre-trial detention had not expired at that time. The drafting deadline was exceeded by 3 months, but this was due to an entirely exceptional context, since, during the same period, the judge had almost all the complex files taken over from other panels of the court (either following the taking over of the files from other panels of judges or following the dissolution of other panels due to retirement of the holder or to exclusion of the judge, without filling vacant positions), which raised various issues (limitation of criminal liability, a large number of parties and volumes), as well as numerous urgent cases or preventive measures in which judicial decisions would have been delivered and reasoned.

The Section for Judges of the SCM dismissed the disciplinary action on 3th May 2023.

**Judge Ancuța Blănariu (Iași District Court, candidate for the position of member of the Superior Council of Magistracy in 2022, who upheld in a public statement the principles and values followed by the Romanian Association of Judges' Forum)** is being accused of the offence provided by Article 271 (s) of the Law No 303/2022 (*performance of duties with gross negligence or bad faith*), the Judicial Inspectorate invoking that four applications for recusal had been made against the judge in a criminal case and, although only two of the applications had been decided by rejection, she ordered that the proceedings continue.

In addition, in 2023, **judge Ancuța Blănariu** was subject to disciplinary proceedings for the offence contained in Article 271 (s) of the Law No 303/2022 (*performance of duties with gross negligence or bad faith*). The Judicial Inspectorate noted that, in several criminal cases, applications for recusal had been made against the judge and, although those applications had not been decided, she ordered that the proceedings should be continued.

In both disciplinary cases, the judge took the measure of continuing the trial in order to not allow the prescribing of criminal acts, but she did not deliver the solution, waiting for the recusal to be decided.

Both cases are pending before the Superior Council of Magistracy - Section for Judges.

Also, in 2022, the Judicial Inspectorate brought disciplinary proceedings against **Judge Ancuța Blănariu** for the irregularity enshrined in Article 99 (t) of Law No 303/2004 (*performance of duties with gross negligence or bad faith*), because the judge ordered the measure of the precautionary seizure in a criminal case, without summoning the defendant. With a majority of 5 judges, the Superior Council of Magistracy – Section for Judges upheld the disciplinary action, ordering the downgrading of the judge from the rank of regional court (“tribunal”) to that of judge of low court (“judecătorie”). The other 4 members of the Disciplinary Chamber stated that the disciplinary action should be dismissed.

The High Court of Cassation and Justice upheld the judge’s appeal and dismissed the disciplinary action.

**Judge Daniela Panioglu (Bucharest Court of Appeal, candidate for the position of member of the Superior Council of Magistracy in 2022)** is referred to disciplinary proceedings for the disciplinary offences referred to in Article 99 point h), sentence I (*failure to comply, repeatedly and for reasons attributable to magistrate, with the legal provisions relating to the expeditious settlement of cases*), point o) (*failure to comply with the provisions on the random distribution of cases*), point r), sentence I (*failure to draft judicial decisions, for reasons attributable reasons, within the time limits laid down by law*) and sentence II (*failure to sign the judicial decisions, for attributable reasons, within the time limits laid down by law*), and (t), sentence I (*exercising office in bad faith*) of Law No nr.303/2004 on the status of judges and prosecutors.

**Judge Alina-Nadia Guluțanu (Bucharest Court of Appeal, member of the Romanian Judges' Forum Association)** was referred to disciplinary proceedings for the disciplinary offences referred to in Article 99 (o) (*failure to comply with the provisions on the random distribution of cases*), letter r, sentence I (*failure to draft judicial decisions, for attributable reasons, within the time limits laid down by law*) and letter t, sentence I (*exercising office in bad faith*) of Law No nr.303/2004 on the status of judges and prosecutors.

In essence, the Judicial Inspectorate held that, in the appeal panel, both judges had wrongly upheld the application for recusal made by the National Anti-Corruption Directorate against two judges, who had taken over, from the original appeal panel, an appeal file concerning corruption offences committed, inter alia, by a former mayor of Pitești, from 1992 to 2015, by a member of the Social Democratic Party, and by his daughter, who is a national



television star. It was also noted that, following the finding that the two judges challenged by the National Anti-Corruption Directorate were incompatible, judges Panioglu Daniela and Alina-Nadia Guluțanu wrongly referred the file to the original appeal panel, which had been randomly appointed and had taken all the evidence, claiming by the Judicial Inspectorate that they had prevented the random allocation of the case, with the effect of delaying the resolution of the case and the risk that criminal liability would be time-barred.

In their defence, the two judges stated that they had granted the application for recusal, in the light of the conduct in the hearing room of the two judges who were challenged, who had declared themselves, firmly, competent to hear the case, whereas the evidence had been taken by the original panel of appeal, which had been randomly vested. Having regard also to the principle of continuity of the formation of the court, the assignment of the case to another panel would have led to the delay in the proceedings, by the reopening of the evidence by a new appeal panel, and thus to the expiry of the limitation period for criminal liability, invoked, moreover, by the Public Prosecutor's Office in its application for recusal. Also, in their defence, the judges invoked the inadmissibility of the intervention of the Judicial Inspectorate on the background of a final solution.

The Judicial Inspectorate also alleged that the judges had infringed the decision of the College Body, which designated the members of the appellate panel. In reality, the decision of the College Body concerned the taking over by the new appeal panel of only new incoming cases in which no evidence had been taken.

As regards the arrears of the judge Daniela Panioglu, the Judicial Inspectorate claimed that she had postponed the ruling in 9 cases, thus delaying the resolution of those cases, that she had not signed the closing decisions in two cases and that she had recorded 25 arrears at the time when the Judicial Inspectorate was notified *ex officio*.

In her defence, the judge referred to the poor administration of the criminal section where she was functioning, which was notified several times in writing, as well as the huge workload and complexity of the cases dealt with. Out of 23 judges within the Criminal Chamber, Mrs. Daniela Panioglu was, in terms of the complexity of the cases, dealt with 33.392,10 points complexity, being followed by judge Guluțanu Alina-Nadia, with 32.141 points complexity, whereas the internal rule governing the work of the judge provides for a maximum complexity of 5.021 points per judge. The judge also stated that the only decision in an appeal case that should be drafted at the time of the disciplinary proceedings had a complexity of 867 points, 54 defendants, 405 prosecution volumes and 62 court volumes, and that, during the delivery of the ruling and its drafting, the Decision of the Constitutional Court and of the High Court of Cassation and Justice Settlement Panel on the limitation of criminal liability had taken place, so that the defendants began to request their cases to be reopened in order to discuss that issue.

Also, regarding the arrears, in the case of Judge Alina-Nadia Guluțanu, the Judicial Inspectorate retained that, at the date of the *ex officio* investigation, she had a number of 5 undrafted court decisions, including a decision regarding the correction of a material error, but, at the time of the disciplinary action was started, a single decision was undrafted, which was drafted until the first term of judgment before the disciplinary court. Judge Alina-Nadia Guluțanu also invoked the total complexity of 28,860 points on the case files which were dealt by her and of 6,523.75 points on the closed cases.

The Section for Judges of the SCM upheld the disciplinary action and ordered exclusion from the profession, and the judges were subsequently suspended from office.

The High Court of Cassation and Justice upheld judges' appeal and dismissed the disciplinary action.

**Judges Daniela Panioglu and Alina-Nadia Guluțanu** were accused of the disciplinary offence governed by Article 99 (t), sentence I, of Law No nr.303/2004 (*performance of duties in bad faith*).

The Judicial Inspectorate found that the judges had acted in bad faith in taking the measure of pre-trial detention in relation to a defendant, who had been prosecuted, in a state of release, for committing the offence of aggravated destruction, by arson, whereas he, during the appeal proceedings, had tried to burn the same civil parties at night again, with the result that the appeal court ordered his hearing and pre-trial detention, taking into account two criminal procedural grounds.

The Judicial Inspectorate considered that the defendant should not remain in custody and instructed him to apply to the judicial authorities for damages, since he had been unlawfully arrested.

The judges invoked the inadmissibility of the intervention of the Judicial Inspectorate on the background of their decision and explained before the disciplinary court the legality and merits of taking the preventive measure, as justified by the court decision censored by the Judicial Inspectorate.

The Section for Judges of the SCM upheld the disciplinary action and ordered exclusion from the profession, and the judges were subsequently suspended from office.

The High Court of Cassation and Justice upheld judges' appeal and dismissed the disciplinary action.

**Judges Panioglu Daniela and Alina-Nadia Guluțanu** were sent to disciplinary proceedings for the act referred to in Article 99 (t), sentence I, of Law No nr.303/2004 (*performance of duties in bad faith*).

The Judicial Inspectorate noted that the judges, in the reasoning of a decision, had made, in bad faith, assessments regarding the work of two prosecutors from Constanța County.

However, in the criminal case, the defendant, former President of the National Health Insurance Agency, had been sentenced in first instance to 6 years imprisonment for the offence of bribery amounting to EUR 6 300 000, in order to implement 4 projects. In his appeal, he relied, inter alia, on the wording of a denunciation, with the effect of halving the special limits of imprisonment, and the appellate court requested and received relations from the prosecutor's office where the two prosecutors operated. Subsequently, the National Anti-Corruption Directorate rejected all the acts issued by the two prosecutors in favour of the defendant, on a number of grounds of illegality, such as the breach of substantive jurisdiction, the expiry of the limitation period for criminal liability, the harassment of the witnesses in the appeal file, witnesses who, in the file worked by the two prosecutors, became suspects on the basis of their own statements, in order to compromise the witness evidence in the appeal file. The appeal court did not halve the special limits of the prison sentence and stated that the denunciation did not materialise, as the acts of the prosecutors had been overturned and that there were indications of the criminal activity of the two prosecutors.

The judges also contended in their defence that it was inadmissible for the Judicial Inspectorate to examine the merits of a final decision because, by way of disciplinary action, the force of *res judicata* was infringed.

The Section for Judges of the SCM upheld the disciplinary action and ordered exclusion from the profession, and the judges were subsequently suspended from office.

In all those disciplinary cases, the suspension measures were imposed on 19 December 2022, on the basis of the old law, according to which the disciplinary penalty of exclusion entailed the legal suspension in an automatic manner, although on 16 December 2022 the new law entered into force, under which the suspension measure no longer applies by law and it is

subject to review in appeal, which was not governed by the old law. The Section for Judges of the SCM refused to apply the more favourable law.

The High Court of Cassation and Justice upheld judges' appeal and dismissed the disciplinary action.

**Judges Panioglu Daniela and Alina-Nadia Guluțanu** were sent to disciplinary proceedings for the act referred to in Article 99 (t), sentence I, of Law No nr.303/2004 (*performance of duties in bad faith*).

The Judicial Inspectorate found that the judges had acted in bad faith, both by not ruling on the measure of pre-trial detention and by imposing a judicial fine on the prosecutor.

However, in reality, the defendant in the criminal file was in pre-trial detention, which had previously been maintained by the appellate court for a period which exceeded the duration of the ruling and the drafting of the decision, so that the appeal court no longer ruled on the preventive measure by means of the operative part of the criminal decision. In addition, the main solution was to refer the case back to the public prosecutor and the accused, at the pre-trial stage, was placed in pre-trial detention for 176 days, out of the maximum period of 180 days laid down by law, so that, following the submission of the case to the public prosecutor, the pre-trial detention could no longer be maintained for a further 60 days, as the maximum duration would have been exceeded.

The appellate court imposed a judicial fine on the prosecutor for abuse of law, since he referred the matter to the court several times, using various procedural means, with the same question of law, although the appellate court had settled the matter with a clear statement of all the reasons.

The Section for Judges of the SCM upheld the disciplinary action and ordered exclusion from the profession, and the judges were subsequently suspended from office.

Subsequently, in April 2023, the judge Daniela Panioglu was informed that the Judicial Inspectorate is conducting another disciplinary investigation ex officio, relating to the same criminal case mentioned above, regarding the committing of two further disciplinary offences relating to conduct in the hearing room and bad faith vis-à-vis the public prosecutor at the hearing.

In all cases where the penalty of exclusion was applied, judges Panioglu Daniela and Alina-Nadia Guluțanu lodged an appeal. The High Court of Cassation and Justice upheld judges' appeal and dismissed the disciplinary action.

In one case file, the panel granted a deadline in September 2023 and in two other cases, although the highest court had to rule on 28 June 2023, the cases were re-opened, without specifying the reasons in the minutes of the decision, with a deadline on October 09, 2023. It should be noted that the judges have been suspended for more than 1 year, without any time limit on this measure (since the SCM-Section for Judges refused to apply the new law, which establishes a maximum duration of the suspension period) and without receiving any salary or sickness insurance rights.

To our knowledge, Judge Panioglu Daniela and Alina-Nadia Guluțanu were part of a panel dealing with corruption cases, issuing conviction decisions against public persons (including members of the SDP). In early 2022, the management of the Bucharest Court of Appeal informed the judges of their intention to remove them from the corruption panel on the grounds that, in this way, they would have time to draft the remaining decisions. They refused on the ground that such a solution was not provided for by the law or internal rules of the courts (but that relating to the suspension of the allocation of cases to the bench for a fixed period) and, on the other hand, that measure would have meant the reopening of proceedings in all the cases in which the judges had administered the evidence, with the risk that the facts would be time-barred. Following that refusal, disciplinary actions began, culminating in exclusion from

the judiciary 4 times followed by the suspension from office. Thus, the same *modus operandi* can be observed as in the case of judge Cristi Danileț.

### Conclusions

First of all, it should be stressed that, between 2018 and June 2022, the investigation of disciplinary cases was conducted under the leadership of Chief Inspector Lucian Netejoru (on which the CJEU ruled in its judgment of 18 May 2021 that his interim appointment in September 2018 was a political one and infringed the Treaty of the European Union) and since July 2022 under the leadership of Chief Inspector Roxana-Ioana Petcu (appointed by the former SCM). These disciplinary actions aimed at harassing judges and prosecutors who either had critical views on the amendments to the justice laws or participated in the 2018 protests, or who did not respond to certain requests from the court management. The excessive length of proceedings (between 1 and 2 years), the application of the most serious penalty (exclusion from the magistracy) in certain cases leading to automatic suspension from office have invariably led to the disruption of the lives of the judges and prosecutors affected by these measures, but also to the entire system as it had the intended effect of inducing silence, fear of reacting to legislative changes affecting the independence of the judiciary and, ultimately, obedience towards presidents of courts.

Secondly, all inspectors dealing with these disciplinary cases were selected during the period when the Chief Inspector was Mr. Lucian Netejoru, based on a procedure controlled exclusively by him, and these inspectors continue their mandate now.

By judgment of 11 May 2023 (Case C-817/21, *Inspekția Judiciară*), the CJEU noted that the prerogatives of the Judicial Inspectorate “**have been used, on several occasions, for the purpose of political control of the judicial activity**, some of these examples appearing, in fact, in the Commission’s reports to the European Parliament and to the Council of 22 October 2019 and of 8 June 2021 regarding the progress made by Romania within the cooperation and verification mechanism [COM(2019) 499 final, p. 7 and 8, as well as COM(2021) 370, p. 18], of which the Romanian authorities must take due account, under the principle of loyal cooperation provided for in Article 4(3) TEU, in order to achieve the objectives pursued by Decision 2006/928 (see paragraph 71 of the decision of 11 May 2023) (...) “these elements of the factual and legal national context brought to the attention of the Court tend to confirm, rather than to refute, a possible finding that the regulation in question in the main litigation is not designed in such a way that it cannot give rise to any legitimate doubt, in the perception of individuals, regarding the use of the prerogatives and functions of the Judicial Inspectorate as an instrument of pressure on, and of political control over the judicial activity” (see paragraph 72 of the judgment of 11 May 2023).”.

The examples of the European Commission refer to the disciplinary procedures against judges from the associations of judges and prosecutors who rejected changes of the laws of judiciary and submitted requests for preliminary ruling to the Court of Justice of the European Union (judges Dragoș Călin, Anca Codreanu, Cristi Danileț, Alina Gioroceanu, Laurențiu Grecu, rejected by the High Court of Cassation and Justice two years after its start), respectively disciplinary investigations initiated in relation to public statements criticizing the reforms (prosecutor Bogdan Pîrlog, judge Cristi Danileț, judge Crina Muntean) or regarding the heads of judicial institutions who opposed the forced judicial reform (the Chief Prosecutor of the National Anticorruption Directorate - Laura Codruța Kövesi, the President of the High Court of Cassation and Justice - judge Cristina Tarcea, all of these disciplinary procedures were rejected).

Through the new Laws of Justice entered into force on December 16, 2022, no real reform of the Judicial Inspectorate was carried out, and the issues considered problematic for the independence of judges and prosecutors were not resolved.