THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY ROMANIA

ARTICLE 11 UNCAC

JUDICIAL AND PROSECUTORIAL INTEGRITY

ROMANIA (EIGHTH MEETING)

Annex to the Romanian Note Verbale no. 1024

The recruitment of the prosecutors of the Directorate for Investigating Organized Crime and Terrorism (DIICOT) follows the criteria and procedures expressly provided in art. 79 of the Emergency Ordinance of the Romanian Government no. 78/2016 for the organization and functioning of the DIICOT, as well as for the modification and completion of some legislative acts.

According to art. 10 of the same Emergency Ordinance, the function of the prosecutor within the Directorte (DIICOT) is incompatible with any other function, be it public or private, with the exception of the academic/teaching functions in the higher education system.

At the same time, the DIICOT prosecutors have the same incompatibilities and interdictions as for the magistrates, enshrined in the Romanian Constitution, Law no. 303/2004 of the status of judges and magistrates, Law no. 161/2003 on the measures to ensure transparency in the exercise of public functions/dignities, of public functions and in the business environment, the prevention and punishment of corruption, but also Law no. 62/2011on on the social dialogue.

The standards of conduct in the profession, in relation with other authorities and with the public, are described in the Ethics Code for judges and prosecutors, approved by the Decision of the Plenary Council of Magistracy no. 328 from 24th of August 2005 (published in the Official Romanian Gazette, Part I, no. 815, on 8th of September 2005). The compliance with the rules contained in the code constitute a criteria to assess the effectiveness of the quality of the activity and integrity, and their infringement may result in disciplinary liability.

The regulation on the disciplinary liability (provisions related to omissions, the manner of the exercise of the action and the sanction) can be found in Law no. 303/2004 concerning the status of magistrates.

For the prevention of the infringement of the disciplinary rules, the Superior Council of Magistracy, in its Decision of the judges Section no. 434 from 17.05.2016 and the Decision of the prosecutors Section no. 364 from 30th of May, 2016, ordered the establishment of networks of ethics advisors, on Courts level, also on the level of Prosecutor's Office, to offer information and guidance to the magistrates. Subsequently, the Superior Council of Magistracy suspended the implementation of those two decisions, taking into account the action in cancellation inserted by an association of magistrates at the Court of Appeal in Bucharest, a process that is not yet finally resolved.

Additionally, the DIICOT's prosecutors have access to the annual programme of professional training at the National Institute of Magistracy, which includes numerous seminars in professional ethics.

Please find below the measures taken by the Romanian institutions concerning articles 7, 8, 11 and 13 of the Convention.

I. Information requested from states parties in relation to integrity in criminal justice institutions

A. Measures concerning article 7 of the Convention

- *Establish and strengthen systems to ensure transparency and accountability in the recruitment, hiring, retention, promotion and retirement of public officials in criminal justice institutions, including whether specific procedures exist for the recruitment and hiring of senior officials in criminal justice institutions, if they are different from other civil servants;*

Developing a culture of transparency is the first general objective of our National Anticorruption Strategy. Each of the institutions took their own measures to ensure public information regarding the vacant job positions and how they can be occupied, the retention, the promotion and the retirement.

One of the most useful measures to ensure transparency is to regulate the steps of the contests and the promotion or retirement possibilities.

For example, judges and prosecutors are part of a single body of so-called magistrates.

The career of magistrates is organised by Law 303/2004 on the Statute of judges and prosecutors. The admission to the position of magistrate can only be the result of an open competition organised by the National Institute of Magistracy (NIM). The candidates are examined in writing on specific legal matters, they undergo a test of logic and are interviewed, they also undergo a psychological examination. To participate in the examination, the following pre-conditions must be met: a) Romanian citizenship, permanent residence in the country and full legal capacity; b) law degree; c) no criminal and fiscal record and enjoying a good reputation; d) mastering the Romanian language; e) medically and psychologically fit to exercise the office (article 14 paragraph 2 of the above law).

Exceptionally, depending on the needs of the system, judges may be selected through an open competition directly for some positions in first level courts opened for competition for judicial practitioners such as specialised judicial personnel, lawyers, notaries, police officers with higher legal education, court clerks with higher legal education etc. They must have served for at least five years within the legal field concerned. The competitions follow the same pattern as the ones organised to enter the NIM, but once the exam passed, the candidates have to follow only a certain period of training and they are appointed by the President of Romania at the proposal of SCM at certain first level courts.

In Romania, there is a unique body of professional judges. In higher courts, once promoted, as a result of their activity, judges become more specialised in certain areas such as criminal, administrative, civil, or intellectual property matters. After the initial training and graduation at

the NIM, magistrates are appointed by the Superior Council of Magistracy (SCM) as junior magistrates-trainees. After completion of another year of practical work, they must then take the capacity exam. Once the exam is passed, the SCM submits a proposal to the President of Romania to appoint them as magistrates. The President cannot reject a proposal more than once, with a reasoned decision. If the SCM maintains its proposal, it has to support the renewed proposal with explanations.

Any career advancement for a magistrate can only take place after a successful examination or competition organised by the SCM through the NIM, and under the conditions set forth by the law (articles 42 to 56 of Law 303/2004): evaluation of documentation, interview with the plenum of the SCM, written examination. These are organised annually at the national level following a public announcement of vacancies and the competition, or at any moment depending on the needs and the number of vacant posts to be filled. Further conditions include a "very good" mark in the last appraisal, and conditions of length of service in the current position - 5, 6, 8 or 12 years depending on the case. These conditions also apply for promotions to the positions of president and vice-president of the various courts and tribunals, including the court of appeal and the High Court of Cassation and Justice (HCCJ).

Regarding the dismissal of judges and prosecutors, it is governed by art. 65 of Law no. 303/2004 for the following cases: a) resignation; b) retirement law; c) transfer to another according to the law; d) professional incapacity; e) as a disciplinary sanction; f) sentencing and conditional sentence ordered by a final decision; f1) waiver of prosecution and penalty waiver ordered by final decision if it considered that it should be retained in office; g) breach of art. 7 on additional prohibitions express (e.g. the activity of his involvement in the business through an intermediary); h) failing the entrance exam in their careers; i) that the conditions laid down in art. 14 para. (2) a), c) and e) (see above conditions of recruitment).

Termination of service is regulated under article 65 of Law 303/2004, and foreseen in the following cases: a) resignation; b) retirement, according to the law; c) transfer to another office, according to the law; d) professional incapacity; e) as a disciplinary sanction; f) final conviction or the postponement of the application of the penalty of the judge or prosecutor for an offence; f 1) dropping of the criminal investigation or of the application of the penalty established by a final decision, when it was decided that remaining in office would not be appropriate; g) violation of the provisions of art.7 on the additional explicit exclusions (e.g. acting as an arbitrator, getting involved into a business through an intermediary); h) failure to succeed in the examination to enter the career of magistrate; i) failure to meet the requirements provided by art.14 paragraph (2) letters a), c) and e) (see recruitment requirements above).

The removal of a magistrate from his/her office is decided by the SCM, with the formal endorsement by decree of the President of Romania. The removal from office of junior judges and prosecutors is the sole responsibility of the SCM. A special regime is applicable to military judges and prosecutors.

The above decisions of the SCM must be motivated and can be appealed with the SCM on points of law, and subsequently with the High Court of Cassation and Justice.

The Anti-corruption General Directorate (AGD), structure responsible for preventing corruption within MoIA (Ministry of Internal Affairs), is focused on preventive training of the commission's members and the HR structures on the occasion of promotion contests of the police agents, contests for recruitments from external source, for contracted personnel, and admission contests for Police Academy and schools for police agents.

The right to retirement and social security of police officers and gendarmes is regulated by Law no. 223/2015 on state military pensions, published in the Official Journal no. 556 of 27 July 2015 amended and supplemented. The primary legal standard describes the categories of pensions that compose the military retirement state system, respectively: service pension, disability pension and survivor's pension and the conditions required for the personnel in order to benefit from this right (for example, the standard retirement age, years in service, length of service, etc.).

The transparency principle is also assured though "social medial" outlets. For example, the National Administration of Prisons (NAP) has a Facebook page named "Admission NAP" through which interested parties may post any complaints regarding suspicions that might have resulted from their experience with the examination process. This allows NAP to take immediate action to correct any discrepancies.

With regard to the civil servants within the National School of Clerks, they exercise their duty in accordance with the Law no. 188/ 1999 regarding the Status of the civil servants, republished, as further amended. The recruitment and evaluation of the civil servants is made in accordance with the Law no. 188/1999.

At the level of the National School of Clerks, operational procedures relating to the recruitment and the evaluation of the individual professional performance of the civil servants are drawn up, in accordance with the legal provisions, thus:

- the procedure relating to the recruitment of civil servants approved by the Decision no. 30/2016 of the Director of the National School of Clerks.

- the procedure on the evaluation of the individual professional performance of the civil servants approved by Decision no. 29/2016 of the Director of the National School of Clerks.

- the promotion of civil servants is carried out in accordance with the provisions laid down in the Government Decision no. 611/2008 for the approval of the rules relating to the organization and career development of civil servants, with subsequent amendments and supplements and the Law no. 188/ 1999 regarding the Status of civil servants.

With regard to the contractual staff within the School, they carry out their duties under the provisions of the Labour Code.

The recruitment of the contractual staff within the School and the promotion of it is carried out according to the Government Decision no. 286/2011 approving the Framework Regulation of 23.03.2011 laying down the general principles of the employment of a vacant post or temporarily

vacant post correspondent to the contractual functions and the criteria for promotion in degrees or in professional steps immediately above of the contractual staff within the budgetary sector paid from public funds.

- ***Implement adequate procedures for the selection and training of individuals for positions considered vulnerable to corruption and the rotation of such individuals to other positions***

Each institution chooses what procedures it considers adequate.

For example, in the Ministry of Internal Affairs, the prevention activities are conducted, at the central level, by the Prevention Department within the AGD and at the territorial level by the designated officers within AGD's anti-corruption territorial structures (in each county and in Bucharest).

Anti-corruption informing activities last at least 30 minutes and are conducted in order to present the latest information regarding the prevention, countering corruption and the legislation in force in this field. AGD permanently conducts informing activities of the personnel on deontology and ethics:

- In 2015, at the national level, AGD officers organized in the ministry of internal affairs structures 1932 informing activities to which attended 40.637 employees, 6314 with leading positions and 34.323 with executive positions.

- In 2016, AGD conducted 1.893 preventive sessions to which 55.018 MoIA employees attended 10.707 with leading positions and 44.311 with executive positions.

The objective of these activities was to raise the interest, motivation and the involvement of the participants, having as a main objective the reduction of the corruption deeds committed by MoIA personnel.

Materials regarding the ethics and professional behaviour:

- Following the elaboration of the new Anti-corruption Guide on 9 December 2014, on the occasion of the International Anti-corruption Day, AGD conducted, at national level, anti-corruption campaigns in order to promote this guide. At the central of the MoIA structures/general inspectorates, 55 activities were conducted and attended by 1899 employees. The guide was printed in 5000 copies in Romanian and 500 copies in English.

- Every semester, AGD elaborated and disseminated, to MoIA structures, 500 copies of the Informing Bulletin entitled Integrity, which comprises information on preventing and countering corruption.

- Every 3 months, syntheses are drafted on preventing and countering corruption activities conducted by AGD, documents which are disseminated to MoIA units.

- With support from CENTRAS and with the consultation of MoIA, a publication was elaborated, entitled Informing Guide addressed to the citizens who relate to MoIA personnel. The Guide was printed in 7000 copies and was disseminated to MoiA units and AGD's territorial units which work with the citizens.

- Within a EU funded project entitled United against Corruption, a Best Practices Guide on preventing and Countering Corruption was elaborated, addressing this topics in Romania, Bulgaria and Latvia.

- 1000 copies of the National Anti-corruption Strategy 2016-2020, printed by the Ministry of Justice, were disseminated in 2017, to the leadership of MoIA and to the main MoIA institutions, as well as to AGD's territorial units.

- In 2017, 200 banners with preventive messages were placed (by AGD's prevention officers) on the buildings of MoIA's structures, at central and territorial level. The objective is to raise the citizens' awareness on issues afferent to corruption and to promote the green line 0800.806.806 and other means to report on corruption deeds. By the end of this year, all the counties will be covered.

The NAP grants a special importance to training its employees that may be exposed to corruption based vulnerabilities. In this regard, for the upcoming three years, the NAP has planned a number of courses and activities revolving around anti-corruption for new employees (no matter their positions), personnel that interact directly with the inmates, personnel involved in procurement and in financially managing projects funded through European non-refundable finances.

All NAP employees have access to training through the internal e-learning platform. In the last years, the platform hosted a number of topics of interest on the subject of preventing corruption: the integrity counsellor, the mechanism behind employees signalling corruption acts, conflicts of interest and incompatibilities declarations of assets and interests, the deontological code for public functionaries with special status, corruption crimes and their consequences.

B. Measures concerning article 8 of the Convention

- ***Establish or improve procedures, rules and regulations for the reporting, including by members of criminal justice institutions, of acts of corruption to appropriate authorities and the mechanisms for the protection of reporting persons;***

Our national legislation ensures legal protection of the persons who intent to report on corruption deeds (Criminal Code, Criminal Procedure Code, Law no. 682/2002 on witness protection, Law no. 571/2004 on protecting personnel within public authorities and institutions and from other units who report on breaches of the law), though there are indications that the lack of internal procedures affect the efficiency of whistleblower protection mechanisms.

In Romania, the law on protection of whistleblowers in the public interest was adopted in 2004 (Law no. 571/2004 on the protection of personnel in public authorities, public institutions and other units who report violations). The law applies to Parliament, the Presidential Administration

and the Government, the central and local administration and autonomous administrative authorities, national companies, autonomous administrations of national and local and national companies with state capital. The law does not apply to the judiciary or private companies.

From a legal perspective, the law is built on the principles of the Constitution on freedom of conscience (art. 29), freedom of expression (art. 30) and the right to information (art. 31) and the European Charter of Fundamental Rights on freedom of thought, conscience and religion (art. 10 par 2), freedom of expression and information (art. 11), the right to protection against unfair dismissal and termination of employment contract (art. 30) and the right to good administration (art. 41).

Whistleblowing is defined as a complaint made in good faith of any offense involving a violation of the law, professional ethics and principles of good administration, efficiency, effectiveness, economy and transparency.

At MoIA level, the legislation on protection of whistleblowers and the obligation of the public servants to report corruption deeds are an important objective of all training and informing activities conducted by AGD at MoIA level.

Publicity of the free-of-charge telephone line

AGD administrates a free-of-charge telephone line 0800.806.806 that can be reached 24/7 by citizens who want to report a corruption deed. MoIA represents an important part of the citizens who use this line.

The analysis of the most recent poll on the perception of MoIA personnel reveals that, in case they want to report a corruption deed, they prefer to report it to his direct head or call the anti-corruption line mentioned above.

- ***Establish or strengthen existing disciplinary procedures and mechanisms to enforce codes of conduct or ethics, standards of professional conduct and conflict of interest legislation;***

Regarding magistrates, the disciplinary investigation is carried out by the Judicial Inspectorate. A disciplinary case can be referred to the SCM by a magistrate with managerial responsibility, by the minister of justice (which may receive complaints from citizens) as well as by any person who has a particular reason to complain about the conduct of a judge or a prosecutor (for instance a party to a court case). Where needed, the judicial inspectorate can conduct an enquiry or investigation. The disciplinary measures which can be applied are the following, in accordance with article 100 of Law 303/2004: a) warning; b) decrease of the salary by 20% for a period of up to 6 months; c) disciplinary removal for a period of up to one year to another court or another prosecutorial office, located in the jurisdiction of another district court of appeal; d) suspension for a period up to 6 months; e) revocation.

The Judicial Inspectorate also regularly carries out thematic controls and it may act ex officio or upon notification on specific cases concerning the integrity of a magistrate.

Regarding standards of professional conduct, a Code of Ethics for judges and prosecutors has been adopted by the Superior Council of Magistracy, through a decision in 2005. This document contains 7 chapters, referring to problems like:

- judicial independence (objectivity and impartiality, political neutrality, participation allowed to publications and academic activities);

- promoting the rule of law (avoidance of a discriminating behaviour and respect for the dignity of others, etc.);

- presenting impartiality, non-disclosure of confidential information or documents, the obligation for the judges with management functions to allocate resources in an efficient manner, good governance, etc.;

- the dignity and honor of the judge (correct relations with the rest of colleagues,

- incompatible activities (other functions in public or private sector, non-participation in pyramid-type games, etc.).

At the level of the National School of Clerks, a Code of Ethics for the staff within the National School of Clerks had been drawn up and adopted and then brought to the attention of the personnel.

The Code of Ethics is published also on the site of the National School of Clerks, http://www.grefieri.ro/Docs/20150623Codul%20etic%20al%20personalului%20SNG.pdf.

As a result of the Decision no. 1246/18.10.2016 of the Superior Council of the Magistracy, at the level of the National School of Clerks, through the Decision no. 135/09.12.2016 of the Director of the National School of Clerks 2 ethics advisers were appointed - 1 ethics adviser among the judges and prosecutors seconded at School and 1 ethics adviser among the clerks seconded to the School.

Also, through the Decision No 98/12.12.2011 of the Director of the National School of Clerks a civil servant has been designated pursuant to Law no. 7/2004 for ethics advice and monitoring of compliance with the rules of conduct by the civil servants within the National School of Clerks.

- ***Detect and prevent possible conflicts of interest, such as systems requiring members of criminal justice institutions to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, income, assets and substantial gifts or benefits from which a conflict of interest may result, including as they take office and regularly during the performance of their public functions.***

Romania has set an ambitious system of declaration of assets, income and interests. The legal framework is established by Law no. 176/2010. It is applicable to a big number of public officials, including deputies and senators. The system is designed to ensure that the officials concerned do not get additional sources of illegitimate income and it is designed to evaluate possible variations in the patrimonial situation of the declarants. The system is also designed to ensure that declarants comply with certain obligations, for instance parliamentarians who can be in a situation of incompatibility by exerting other top responsibilities in the public sector, in the business sector, unions etc. There are thus two sets of declarations. These declarations are received and centralised by a specific agency created specifically for that purpose, the National Integrity Agency (hereinafter, the NIA). The asset declaration form developed by the NIA contain information on 1) real estate; 2) movable assets; 3) assets and financial interests; 4) debts and liabilities; 5) gifts; 6) income and sources thereof.

The interest disclosure form includes information on 1) posts and functions or engaging in accessory activities; 2) business contracts with state authorities; 3) any other interest or relationship that may or does create a conflict of interest; 4) shares in companies, commercial/national companies, loan institutions, groups of economic interest, as well as member in associations, foundations or other non-governmental institutions; 5) membership in professional activities and/or unions, 6) involvement in management, administration and control within commercial companies, autonomous administrations commercial/national companies, loan institutions, groups of economic interest, as well as member in associations, foundations or other non-governmental institutions; 7) certain categories of contracts signed directly or by an entity in which the declarant exerts responsibilities.

The duty to declare assets and income applies to family, spouse and dependent children of the respective public officials. The forms are available to public officials both on paper and electronically and guidelines on filling in the templates were elaborated by the ANI as well. According to Law 176/2010 each agency has to appoint a designated person responsible for implementation of legal provisions with regard to the asset and interests disclosures in that agency. Namely, the responsibility of the designated person includes collection and registering of declarations of assets and declarations of interests submitted by the officials required to file a report and they carry out a preliminary formal check on compliance with the format. The declaring official may then rectify and re-submit the form(s) concerned.

The declarations are submitted annually by the public officials concerned, no later than 15 June for the previous fiscal year, as well as at the beginning and/or termination of the office within 15 days. The various declarations are available publicly, on a continuous basis, on the website of the NIA which includes a searchable database, as well as on the website of the public institution to which the official concerned belongs.

The National Integrity Agency (NIA) is responsible for the implementation of the mechanism of declaration of assets and interests, and for monitoring compliance of parliamentarians in this area. This independent administrative body, comprising nearly 100 members of staff, is supervised by a committee composed of representatives from various political and public bodies of Romania.

The NIA also provides permanent assistance regarding the completion and submission of declarations of assets and declarations of interests as well as on the legal regime of incompatibilities

and conflicts of interest (for instance in 2013, the NAI issued 1593 official clarifications). Additionally, ANI has available on its website a F.A.Q. section.

The magistrates (prosecutors and judges), as well as the clerks seconded within the National School of Clerks) have the legal obligation to submit within the time limits laid down by the law the following declarations: the assets declaration provided by Law no. 176/2010; the declaration of interests provided by Law no. 176/2010; the annually declaration on its own responsibility with regard to the relatives in the judicial system (Article 5 paragraph 3 of Law no. 303/2004); the authentic statement, on its own responsibility, whether it belongs or not as an agent or collaborator of the bodies of the security, as political police (Article 6 of the Law no 303/2004) and the annually authentic statement, on its own responsibility, on the quality of an operative worker, including covered, an informer or a collaborator of the information services (Article 7 of the Law no. 303/2004).

The civil servants within the National School of Clerks have the obligation, in accordance with the legal provisions, to submit annually declarations of wealth and declarations of interests provided by Law no. 176/2010, which are published on the site of the National School of the Clerks - http://www.grefieri.ro/default.asp?nod=46.

Also, the civil servants from NAP have the legal obligation to submit within the time limits laid down the assets declaration and the declaration of interests provided by Law no. 176/2010.

According to GRECO's fourth round evaluation report on Romania, the system of declarations of assets, income and interests may be viewed as an example of best practices, that could inspire other countries.

THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY ROMANIA

ARTICLE 11 UNCAC

JUDICIAL AND PROSECUTORIAL INTEGRITY

ROMANIA (FOURTH MEETING)

1. Has your country adopted and implemented article 11 of the UN Convention against Corruption?

States parties are encouraged to provide information on their implementation of policies and measures taken to strengthen integrity and to prevent opportunities for corruption among members of the judiciary.

Where appropriate, States parties may also wish to provide information regarding measures taken to strengthen integrity and prevent opportunities for corruption among their prosecution service.

In assuming their responsibilities and respect for the principle of independence, the Superior Council of Magistrates (SCM) decided, on 10 March 2011, to draft a strategy for strengthening the judicial integrity. The strategy is accompanied by an action plan for the accomplishment of each proposed objective and the implementation of the foreseen measures and it is part of the National Anticorruption Strategy (NAS) 2012-2015.

According to the Strategy for strengthening the integrity in the judiciary, the actions and measures refer to both the individual, as well as to the institution and system. Enhancing the integrity in the judiciary contains measures related to:

1. Increase of Transparency in the Judicial System. In order to reach this goal, the proposed measures are:
- Improvement of the conditions of use of the courts data base management system,
- Transparency and objectiveness of recruitment, promotion and evaluation procedures,
- Improvement of file management and of judicial procedures,
- Improving the connection of the Superior Council of Magistracy and of the system with the outside world.

2. Strengthening of the individual integrity includes measures relating to:
- Improvement of the system of conduct and deontology rules;
- Development of a culture of judicial integrity by the specific training;
- Improvement of the system of disciplinary liability.

The assessment of the implementation of the Strategy for strengthening the integrity in the judiciary shall be carried out within and in accordance with the monitoring mechanism for the implementation of the NAS 2012-2015. It supposes the participation of the Superior Council of Magistracy to:

- Reunions of the Platform for the cooperation with the independent institutions and anticorruption agencies,
- Coordination meetings organized by the minister of justice,
- The thematic evaluation missions.

The Strategy for strengthening the integrity in the judiciary and its action plan will be implemented between 2011 and 2016.

Within the measures provided by art. 11 UNCAC with a view to strengthen the integrity of magistrates and to prevent the corruption possibilities, the conduct standards from the Deontological Code for judges and prosecutors can be taken into account, together with some of the disciplinary measures provided by Law no. 303/2004 on the statute of judges and prosecutors, republished, with subsequent amendments.

2. Please cite, summarize and, if possible, provide copies of the applicable policy(ies) or measure(s):

In particular, the Secretariat would be grateful for information regarding:

- *the constitutional and legal framework applicable in States parties aimed at ensuring the independence and integrity of the judiciary and, where appropriate, the prosecution service;*

- *codes of conduct and disciplinary mechanisms applicable to members of the judiciary and prosecution service, including whether these were developed with reference to international standards such as the Bangalore Principles on Judicial Conduct or the Standards of Professional Responsibilities and Statement of the Essential Duties and Rights of Prosecutors.*

As regards the legal and constitutional framework that has the role to ensure the independence and integrity of the judiciary, the following should be taken into account:

The Romanian Constitution:
Art. 124 – (3) Judges shall be independent and subject only to the law.
Art. 125 – (3) The office of a judge shall be incompatible with any other public or private office, except for academic activities.

Law no. 303/2004 on the statute of judges and prosecutors:
Art. 5 – (1) The offices of judge, prosecutor, assistant magistrate and judicial assistant are incompatible with any other public or private offices, except for the teaching offices in

higher education, as well as for the training offices within the National Institute of Magistrature and of the National School of Clerks, under the terms of the law.

Law no. 161/2003 on certain measures to ensure transparency in the exercise of public dignities, public office and in the business sector, preventing and sanctioning corruption: Chapert V – Regulations regarding the magistrates.

The Deontological code of judges and prosecutors, adopted through the Decision no. 328/2005 of the Superior Council of Magistracy and the disciplinary mechanisms applicable to the members of the judiciary, provided by Law no. 317/2004 and Law no. 303/2004, were drafted in accordance with the international standards. Among the measures proposed by the Strategy for strengthening the integrity in the judiciary related to the disciplinary accountability of judges, prosecutors and auxiliary personnel from courts and prosecutors' offices, we mention:

- Improvement of the legislative framework in disciplinary matters corroborated with the modernization of the evaluation system;
- Consolidation of the role and status of Judicial Inspection. The Judicial Inspection is and must remain outside the area of judicial power. The maintaining of autonomy in relation with the political factor will be envisaged and any attempt to subordinate it by mechanisms allowing the intromission of the other two powers in the activity of the Inspection or of the inspectors will be rejected. The Inspection will insist on the preventive side, so that inspectors must contribute to the improvement of management in courts and prosecutor's offices. When they carry out activities in disciplinary matters, they must provide a quick and correct unfolding of the procedures.
- Efficient processing of notifications on the system malfunctions.

In addition, we mention the amendments brought to Law no. 303/2004 on the statute of judges and prosecutors, republished, with subsequent amendments, envisaging mainly the extension of the disciplinary misconduct area; the disciplinary sanctions, including the introduction of the sanction of suspension of office up to 6 months; defining the notion of exercising the office with gross negligence or bad faith; introducing the condition of good reputation as a request for the acces and maintainence in office.

The independence of judges is not regulated as a purpose in itself, nor as a privilege of judges, it represents a guarantee offered to citizens for a good act of justice. They have to have the certainty that magistrates are independent from the legislative and executive powers and that, regardless of their special statute, they are subject only to the law.

- *measures taken to ensure transparency and accountability in the selection, recruitment, training, performance management and removal of members of the judiciary and the prosecution service;*

As regards the measures adopted to ensure transparency and accountability in selecting, recruiting, training, management of performance and expel the members of the judiciary:

- **joint standards for both modalities of recruiting the future magistrates – both for the admission to the National Institute of Magistracy (NIM) and for the direct admission in magistracy of legal advisers with more than 5 years seniority in the profession**

Through the Plenum Decision no. 279/ April 5, 2012, the SCM approved a new Regulation on the organisation and carrying out the admission to magistracy, regulation on the basis of which this exceptional modality to recruit magistrates is carried out following the same procedure as the adminssion to NIM. This measure was aimed at eliminating the differences, from the point of view of the complexity and difficulty of the subjects, between the justice auditors and the legal advisers with more than 5 years seniority in the profession, as well as ensuring the same exigency standards for both recruiting measures.

- **Organising the contests with the observation of the principles of transparency, equality and objectivity according to the legal provisions, regulations and Methodology to carry out the contests and exams organized through NIM**

The contest regulations institute measures and guarantees with a view to observe the principles of transparency and equal chances:

- Regulating the mandatory publication on NIM's and SCM's websites of all information related to the contests,
- Regulating the attributions of the organization commission in the sense of taking all the necessary measures to secure the subjects, the ready reckoners and the theses, to observe the assessment and grading procedures and to carry out in good conditions the contest,
- Regulating the incompatibility cases for taking part in the contest commissions both through legal perovisions (No person whose spouse, relatives or affinity to the fourth degree is included among the candidates shall be appointed in the commissions) and in the cooperation contracts concluded with the members of the commissions (the person who meditated one or more of the candidates or is in a different situation which might affect the performance of the objectivity and impartiality of the activities under the contract is in an incompatibility situation),
- Regulating the rules that need to be taken into account when dtafting the subjects (in accordance with the contest thematic and bibliography, to ensure a balanced coverage of the subjects, to have a complexity appropriate for the thematic content and references, to be dealt with in the working time set, to avoid repeting the subjects from previous contests, to ensure a balanced distribution of correct answers and the number of correct answers among the versions of answers, the time necessary to solve the subjects should not exceed the time allotted for the test, to ensure a unitary evaluation at national level, the subjects can not contain controversial issues in doctrine or in practice),
- Regulating the possibility to formulate contestations to the ready reckoners, the procedure to solve them and the obligativity to motivate the solutions,

- Regulating the possibility to appeal the results of the written contests;
- Regulating the establishment of the composition of the interview commissions - to avoid subjectivity in assessing and evaluating candidates to the interview, each examination board consists of a significant number of members with varied and relevant training in the field (under the Regulation, a psychologist, a judge, a prosecutor, a university professor and a teacher). Also to avoid bias caused by the existence of several interview committees and to ensure the unity of evaluation and assessment, the nominal composition of each of them is determined by drawing lots, the day of the test.
- Regulating the obligation to record, at least by audio means, the interview.

o *measures taken to improve the transparency and efficiency of procedures governing case assignment and distribution;*

As regards the distribustion of cases by judges, this is done according to the principle of IT random distribution, in ECRIS programme or through a cyclical system, ensuring thus the independence criterion.

According to art. 53 para. (1) of Law no. 304/2004 on judicial organisation, republished, with the subsequent amendments and completions, "The distribution of cases to panels shall be done randomly, through IT means", and according to art. 95 para. (2) from the Rules of procedure of courts, approved through the SCM decision no. 387/2005, with the subsequent amendments and completions, "The distribution of cases shall be done through IT means in ECRIS".

The random distribution of cases is a rule established as a principle by Law no. 304/2004, that allows some exceptions determined by certain procedural norms or circumstances, provided by the Rules of procedure of courts, that either make impossible their application or generate, in practice, some difficulties in the random distribution activities, determining an unjustified postponement in their trial.

Thus, according to art. 11 from Law no. 304/2004, "The trial is caried out with the observance of principles of random distribution of cases and continuiry, with the exception o the situations when the judge caanot attend the court session on objective grounds", and according to art. 95 para. (3) from the above mentioned regulation, "When the IT distribution of cases cannot be applied from objective reasons, the distribution of cases is performed using the cyclical system method. The IT random or cyclical distribution of cases is done only once, so that in situations where procedural incidents occur during the process, the rules laid down in this Regulation shall be applied".

The notion of "objective reasons" refers to those situations when, objectively, the judge initially designated cannot be part of the panel (in situations of transfer, promotion, retiring), and "procedural incidents" refer to to specific cases where a judge can be found in relation to a particular dispute, not circumstances that may affect the overall good organization and functioning of the court.

A guarantee of the observation of the random distribution principle is constitued by art. 95 para. (9), according to which "Any changes in the composition of the panel or distribution of cases under this Regulation shall be recorded in random distribution software. If the software does not allow such records, a special register for highlighting these changes will be kept, signed by the person or persons designated with the random assignment of cases".

The principle of random distribution in relation to the substantive dispute subject to trial is ensured by the application of art. 98 para. (3) of the Regulation, which provides that "If, after resolving procedural steps provided in par. (2), it appears that from motives provided by the law, the panel that the case was assigned to cannot trial it, the case is assigned randomly".

It is indisputable that the random distribution of cases is a rule of judicial organization established as a principle by art. 11 and 53 of Law. 304/2004 in order to give an additional guarantee to the judge's functional independence and to the impartiality of justice, the main way of random distribution being through IT means.

- *policies and/or practices aimed at increasing transparency in the court process, for example by allowing public and media access to court proceedings, facilitating access to court judgements and raising public awareness through information sharing and outreach programmes.*

Improving the citizens' access to the system of ocurts and prosecutor's offices and to information on these. To accomplishg this objective, the proposed measures are the following:

- Improving the courts' websites,
- Reconfiguration of thye management of courts and prosecutor's offices from the citizen's perspective,
- Publishing the reports of courts, prosecutor's offices, High Court of Cassation and Justice, the Prosecutor's offices attached to the High Court of Cassation and Justice, SCM,
- Ensuring an effective and efficient institutional management,
- Organizing public events and campaighsn specific from enhancinh the trust in justice.

3. Please provide examples of the successful implementation of domestic measures adopted to comply with article 11 of the Convention:

The Secretariat would particularly welcome practical examples and case studies of successes in implementing domestic measures in the field of judicial integrity. Such examples may include:

- *cases in which the breach of a judicial or prosecutorial code of conduct has led to the application of disciplinary measures.*

We offer some examples of cases where the legal provisions regulating the magistrates' conduct were breached and disciplinary sanctions were applied. These cases are final.

A. A disciplinary action exercised on May 17, 2011 againts the judge SM from a tribunal for committing the disciplinary offence provided by art. 99 let. a) from Law no. 303/2004.

In the context of friends' relations with the family of the said LRC, administrator of a company, the judge SM attended several social events and get involved in solving financial problems of this company. Thus, in March 2008, the judge was invited and attended the opening of a restaurant belonging to the same company, with other people, an event which was publicized in the local press. Also during 2009, L.R.C. met with the judge to whom reported having great debts to an electricity supplier of, in which case the judge advised him to seek a rescheduling flow and offered to accompany him to SC Electrica F. To this end, the judge called in advance the institution's legal adviser, then went with LRC and asked if the rescheduling of debt is possible. On the same occasion, the judge learned that a former legal adviser was appointed director of the institution's, the said PI, which is why the judge went to his office to congratulate him. In discussions with the PI, the judge told him the purpose of his presence in the unit.

In this context, it was noted that the judge SM, although having the obligation to refrain him/herself, settled two cases in which the said LRC had an interest in its capacity as administrator of the company sued. It was considered that the failure of the judge to observe the provisions governing expressly cases of incompatibility, when solving the two cases, resulted in the creation of legitimate doubts on the objectivity and impartiality, while affecting the prestige of his position and the public confidence.

Through the decision no. 6/J from September 21, 2011, the section for Judges of SCM granted the disciplinary action against the judge and applied the sanction of diminishing the monthly salary with 15% for 3 months. The decision became final by not-appealing againts it.

B. The disciplinary action exercided on September 19, 2010 againts the judge MF from a fisrt court of instance for committing the disciplinary offences provided by art. 99 lets. h first thesis and m from Law no. 303/2004.

The judge was alleged that in three cases pending before the court, after personally receiving the requests for exchanging the first hearing, proceeded to their admission without checking the existence of grounds. In the same cases, the judge ascertained that the trial was abandoned, although the parties have not been cited.

It was considered that solving the requests for the replacement of the first hearing and judging the cases on the merits by the permanent judge violates both the principle of continuity of the court and the principle of random allocation of cases.

It was also noted that the provisions of distribution of cases were violated through the manner of preparation of the permanence planning for the period 16.07.2009 - 01.08.2009 as well, two schedules with different content being identified.

Through decision no. 16/J of October 27, 2010, the Section for judges of the SCM granted the action and imposed the penalty of "diminishing the Gross monthly allowance with 15% for a period of three months".

The appeal promoted by the judge MF was rejected by the High Court of Cassation and Justice by the decision no. 57 of 14 March 2011.

C. The disciplinary action exercised on May 30, 2012 against the judge PLM from the court of first instance for committing the disciplinary offenses specified in art. 99 lets. a) and b) of Law no. 303/2004.

It was noted that the judge's manifestations consisting of recommendations on how to solve legal problems, both before and after the registration of cases before the court whose president he was, were given with the authority conferred by the position he held and are likely to affect not only impartiality but also the prestige of justice; the judge's attitude is contrary to the prohibition imposed by art. 10 of Law no. 303/2004 on the statute of judges and prosecutors, republished and amended and to the prohibition laid down in art. 104 of Law no. 161/2003 on measures to ensure transparency in exercising public and business sector, the prevention and punishment of corruption, republished, with subsequent amendments.

It was also noted that the initiative of the judge to go to the court premises together with a future litigant, to invite to his office to sign the application for summons, to request the clerk whose duties involve the random distribution of cases to work overtime in order to register the application in the IT system, in circumstances other than those provided for in the Rules of Procedure of Courts constitute disciplinary offenses set forth in art. 99 letters. b) of Law no. 303/2004 on the statute of judges and prosecutors, as republished and amended.
Through decision no. 14/J of November 14, 2012, the Section for judges of the Superior Council of Magistrates granted the action and applied the penalty of exclusion from the magistracy.

The decision was appealed and the High Court of Cassation and Justice, by decision no. 171 of April 8, 2013, replaced the disciplinary sanctionwith the one of the disciplinary moving to another court for a period of 3 months.

D. The disciplinary action exercised on May 28, 2012 against the prosecutor BM of the Prosecutor's Office attached to the Court of first instance B, for committing two disciplinary offences provided of art. 99 letters. a) and three disciplinary provisions of art. 99 letters. b) of Law no. 303/2004 on the statute of judges and prosecutors, as republished and amended.

It was noted that the prosecutor participated in the negotiations that caused the termination of the preliminary contract of sale of land owned by a company, providing legal assistance and that, in August 2011, gave legal advice to a person for drafting a complaint against an order of the Prosecutor's Office attached to the Court of first instance B, where that person was a victim of the offense of cheating.

It was also noted that the prosecutor, following the promises made to a non-commissioned officer of the gendarmerie, which was part of the security device allocated for the 'Street S prosecutors office, made an intervention with the persons in leadership positions within Romanian Gendarmerie in order to maintain the non-commissioned officer's position; in August 2011, he intervened with the head of Service of an insurance company for necessary repairs to a car belonging to a person without paying their value, and between August and September 2011, he intervened with a head of community police in favor of his cousin to be assigned to a specific position within the institution.

Through decision no. 8/P of December 20, 2012, the Section for prosecutors of the Superior Council of Magistracy granted the action and imposed penalty of exclusion from the magistracy.

The decision was appealed and the High Court of Cassation and Justice, by its decision no. 329 of 27 May 2013, replaced the initial disciplinary sanction with the disciplinary movement for a period of three months to another prosecutor's office.

E. The disciplinary action exercised on April 9, 2012 against the prosecutor GVG of the Prosecutor's Office attached to the Tribunal B on the disciplinary misconduct of exercising the office in bad faith provided by art. 99 letters. h) of the Law. 303/2004, as well as interference in the work of another prosecutor, provided by art. 99 let. l) of Law no. 303/2004.

It was noted that the chief prosecutor G.V.G. of the Prosecutor's Office attached to the Tribunal B violated the legal provisions governin the jurisdiction after the quality of the person and requested the competent court to authorise the recording of phone calls made by a person who is a notary public. Thus, the prosecutor breached both the material rules on jurisdiction and on the quality of the person, carrying out criminal proceedings in a case where jurisdiction lies with the National Anticorruption Directorate, reported to the nature of the crime, the amount of the proceed of crime and quality of parliamentary of one of the persons investigated.

Another misconduct noted is the activity of takeing over a criminal case from a lower prosecutor's office, on the grounds of personal interests, that exceed the rule of performing the professional duties impartially and with disregard to the provisions of art. 64 para. (4) of Law no. 304/2004 on judicial organization, as amended and supplemented.

By ignoring these legal provisions, the chief prosecutor ordered the preferential taking over of the case pending finalisation to a lower prosecutor's, thus preventing the case

prosecutor to verify the criminal case and to decide on the proposal of the judicial police to indict the acused person, according to art. 261 and art. 262 Criminal Procedure Code.

In addition, it was also noted that the prosecutor committed the disciplinary offense consisting of interference in the activity of two prosecutors from the National Anticorruption Directorate.

By Decision no. 7/P of July 18, 2012, the Section of prosecutors of the Superior Council of Magistracy granted the action and imposed penalty of exclusion from the magistracy.

The prosecutor's appeal was dismissed by the High Court of Cassation and Justice, by decision no. 3 of January 14, 2013.

F. The disciplinary action exercised on January 26, 2012 against the first prosecutor LP from the Prosecutor's Office attached to the Court of first instance H, of committing the disciplinary offenses specified in art. 99 let. b) of Law no. 303/2004.

It was noted that the chief prosecutor of the Prosecutor's Office attached to the Court of first instance H infringed the legal provisions on incompatibilities regulated by art. 48 lets. d) and f) of the Code of Criminal Procedure, when controlling the legality and rationality of a solution not to indict, regarding criminal offenses committed by his wife.

The violation of impartiality and objectivity that the chief prosecutor should have observed in exercising the official duties resulted in the application of the legality visa on theabove mentioned act, this action giving the appearance of legality to the resolution adopted in the criminal case.

By Decision no. 3/P of April 5, 2012, the Section for prosecutors of the Superior Council of Magistracy grantede the action and imposed a warning penalty.

The decision remained final by decision no. 393 of October 1, 2012 issued by the High Court of Cassation and Justice, which dismissed the appeal.

- *examples of the effective use of mechanisms to facilitate the reporting of acts of corruption in the judiciary and the prosecution service and statistics regarding the number of complaints received through such mechanisms.*

- *the successful implementation of reforms related to case assignment and case management procedures resulting in a reduction in waiting times for the hearing and completion of cases.*

ECRIS is a computer based national system of IT National Management of files, documents and all information related to cases in the courts, prosecutors and the Ministry of Justice and is dedicated to support information activities in the justice system in the new information society.

Using the ECRIS nationally in all units of the justice system allows the standardization of activities and procedures and also creates the possibility of efficient administration thereof.

It is composed of three modules:

- Content Document Management System – module of management of information on files and documents in courts and prosecutors offices
- Legal Library Documentation System - legislation and jurisprudence data basis
- CENTRAL – module of analysis and collecting statistical information at central level.

    - *the successful implementation of educational and training programmes for members of the judiciary and prosecution service, including both initial formation and continuing education.*

a) Initial training of judges and prosecutors

The training program for the first year includes 20 hours for debates on ethics and professional deontology, with a view to establish and disseminate the moral and behaviour national and international standards specific to the office of magistrate, both in the exercise of the profession and in the relations in society. Among the themes approached during the sessions there are: independence and impartiality of magistrares, interdictions, incompatibilities and conflicts of interests, the professional duties of magistrates and observing the supermacy of the law, the honour and dignity of the magistrate's office.

In addition, for the justice auditors, extra-curricular conferences are organised, with a view to open their perspectives on other areas than the fundamental ones provided by the initial training and with a view to consolidate the social function of the initial training.

A relevant example in this sense is represented by the activity that took place on June 26, 2013 at the NIM premises, where the justice auditors and the trainers had the opportunity to meet the first deputy and general counsellor within the US Office of Government Ethics, an agency responsible to establish general governmental policies and supervise the ethics programs carried out in more than 135 executive centres in US. The reunion enabled a debate on aspects related to the professional integrity.

b) Continuous training of judges and prosecutors

Between September and December 2011, NIM carried out, in partnership with the Romanian Academic Society and the National Integrity Agency a training program for judges and prosecutors from the wealth verification Commissions attached to the Courts of appeal. The program was continued in 2012 as well, with a series of seminars for judges and prosecutors specialised in administrative law

The main theme of the project was Law no. 176/2010 on integrity in the exercise of public office and dignities. The aim of the seminars was to clarify aspeccts that raise

different interpretations in practice, with a view to generate a unified practice in this area. 3 seminars were organized attended by 45 persons.

The summer school organised by NIM is at its 10th edition in 2013. Starting in 2009, the theme was " Ethics and deontology".

4. Have you ever assessed the effectiveness of the measures adopted to implement article 11? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.

States parties may wish, in particular, to provide information regarding efforts taken to:

- *evaluate the overall integrity and effectiveness of the court system.*

  In describing such efforts States may wish to include what methodology and indicators were used, which institutions were responsible for implementation and what follow-up action was taken following evaluation.

- *seek the views of court users as regards the integrity and effectiveness of the judiciary, prosecution service and court system more broadly.*

  Such measures may include public or court user surveys, focus groups, the use of "score cards", the analysis of complaints received and other similar measures.

- *assess the impact of specific measures taken in furtherance of Article 11 such as the those mentioned in paragraph 2 above.*

Romania is evaluated under the Cooperation and Verification Mechanism, the remarks of the European Commission in the recent reports being positive with regard to the fight against corruption and the measures taken to enhance the integrity within the judiciary.

As regards the citizens opinions' on the integrity and efficiency of the judiciary, o pole will be carried out in this regards in the second half of 2013, within a project financed by the World Bank, under the program "The reform of the judiciary".

5. Which challenges and issues are you facing in (fully) implementing article 11 of the Convention?

Examples of the types of challenges States parties may face in implementing article 11 of the Convention include:

- *challenges in balancing efforts to increase the integrity and accountability of the judiciary, for example through the development of new evaluation procedures, with the protection of the independence of the judiciary.*

- *implementation challenges, such as the ability to enforce or otherwise encourage adherence to existing codes of conduct applicable to members of the judiciary or prosecution service.*

- *communication challenges, such as the ability to disseminate, publicise and promote new policies and practices to members of the judiciary, prosecution service or to the public more broadly.*

The Superior Council of Magistracy considers it is necessary to ensure a just equilibrium between independence and accountability. In this sense, a special attention is given to magistrates' professional appraisals from the integrity and professional deontology perspectives.

6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

States parties are encouraged to also provide a description of any such assistance already being provided and by whom.

Yes. The technical assistance could envisage organising the ethical commissions and their functioning, the professional appraisal of magistrates, developing the administrative caspacity of the Judicial Inspection.