Translated from Romanian

ROMANIA

HIGH COURT OF CASSATION AND JUSTICE
Panels of 5 Judges
Decision no. 83/2022
Public Session of April 12th, 2022

On the present appeals, from the examination of the papers in the file, ascertains the following:

I. The circumstances of the case
1. Complaint of the Judicial Inspection. Disciplinary action
On the 01st/09.2016, the petitioner Professional Partnership of Notaries "A. and B." filed with the direction of the Bucharest Court of Appeal a complaint by which they signaled "serious violations of the statute of magistrates, committed by the Judge Ms. C., within the Bucharest Court of Appeal, 2nd Criminal Division", on the occasion of the investigations in the file no. x/2015. The above-mentioned complaint was sent to the Judicial Inspection for competent resolution, being registered on the docket of the latter on the 12th/09/2016, under no. x/2016.

Specifically, through the filed complaint, it was claimed that file no. x/2015 was registered on the docket of the Bucharest Court of Appeal on 04th.07.2015, being randomly assigned to the panel of judges C7 Penal Code (judge D.). Subsequently it would be investigated and solved by the Judge Ms. C., who, in the petitioner's opinion, abusively took over the investigation of the file.

In relation to the above, the petitioner requested the disciplinary sanction of the magistrate for infringing the provisions of art. 99 letter o) of Law no. 303/2004 regarding the status of judges and prosecutors, consisting in the non-compliance with the provisions regarding the random allocation of cases.

By the Resolution of 12th.12.2016, the initiation of the preliminary disciplinary investigation was ordered against judge C. of the Bucharest Court of Appeal, under the aspect of committing the disciplinary offense provided for under art. 99 letter o) of Law no. 303/2004.

Through the Resolution of 13th.12.2016 of the chief inspector of the Judicial Inspection, the request of the judicial inspector to whom the investigation had been assigned, with regard to the designation, in order to carry out the disciplinary investigation, also of the other inspector, as a member of the team established by the Order no. 9/25.01.2017 of the chief inspector.

In order to carry out the investigation, on the 16th.12.2016 the invitation to participate in the disciplinary investigation scheduled for 18th.01.2017 (starting on 10:00 hours), as well as the resolution to initiate the disciplinary investigation, were communicated to the magistrate.

On the 18th.01.2017, at 10:00 hours, the judicial inspectors appeared at the headquarters of the Bucharest Court of Appeal, in order to carry out the disciplinary investigation.

As of that date, the Judge Ms. C. was not in court, as she had left the country for a specialization internship at the Institute of Advanced Legal Studies in London.

Another timeframe was established for the carrying out of the disciplinary investigation and it was ordered that the new invitation drafted by the team of inspectors be communicated, immediately, to the lady judge, by electronic mail, to the address found on tab x of volume II of the disciplinary investigation file, respectively x@x.com.

On 14th.02.2017, at 10:00 a.m. hours, as per the sent invitation, the team of inspectors appeared for the second time at the headquarters of the Bucharest Court of Appeal.

The magistrate was not present this time either, the reason for not appearing being the same as the one mentioned in the case of the previous deadline. Since the Court Governing Board informed the team of inspectors that the Judge Ms. C. had authorized her colleague, Judge Ms. E., to represent her, the latter was invited to the council room of the Bucharest Court of Appeal, on which occasion she stated that the Judge Ms. C. had authorized her by an (unsigned) e-mail to request a new deadline, in order for her to be able to hire a defence attorney.

Another date was set for the disciplinary investigation, namely 03/06/2017, 10:00 a.m., a new invitation addressed to Judge C. and a new proof of communication being drawn up.

In the morning of 03/06/2017, a request was submitted to the disciplinary investigation file by the Judge Ms. C., sent by e-mail on 03/03/2017, through which the latter indicated that she had filed a criminal complaint against the judicial inspectors to whom the work was assigned to them, in which sense he filed a dilatory motion for the disciplinary investigation until the resolution of the criminal complaint, until the decision of exclusion from the magistracy remains final and, respectively, until the final resolution of file no. x/2015

At the same time, during the same morning, a new request was registered at the Judicial Inspection and submitted to the file, sent by e-mail (during the night, at 00:42), requesting that the disciplinary investigation "begin with the hearing of Mr. prosecutor F. and judge G." and to attach to the file "the requested entries that are in file no. x/2015 of the High Court of Cassation and Justice".

With regard to the fact that the magistrate showed she had filed a criminal complaint against the judicial inspectors, in the morning of 03.06.2017, the latter filed a statement of abstention, which was rejected by the resolution of the chief inspector of the Judicial Inspection.

As a result, on the 06th.03.2017, at 10:45 hours, the team of inspectors appeared for the third time at the headquarters of the Bucharest Court of Appeal, in order to carry out the disciplinary investigation.

At the time of arrival, the Court Governing Board handed over the original proof of service to the team of inspectors (the procedure was carried out by electronic mail).

The File no. x/2016, comprising 1310 files, could not be made available to Judge Ms. C., in order for her to take note, as she did not appear for the investigation. In this sense, the minutes provided under art. 27 para. (3) of the Regulation on the Norms for the performance of inspection activities by the Judicial Inspection was drawn up by the team of inspectors at 11:00 a.m. of the above-mentioned day.

Based on para. (5) of the same regulatory text, the team of inspectors proceeded to carry out the disciplinary investigation.

The request for evidence formulated by Ms. Judge, regarding the hearing of Mr. Prosecutor F. and of Judge Ms. G., respectively for the attachment of some documents from file no. x/2015, pending before the High Court of Cassation and Justice (sent by e-mail, according to the aforementioned) was rejected on the grounds that the proof of evidence was not stated, and the documents were not clearly indicated.

The judicial inspectors proposed, *ex officio*, the proof by hearing, as witnesses, of the Judges Ms. D. (the head of the panel to which the case no. x/2015 of the Bucharest Court of Appeal was assigned for resolution) and Ms. H., the president of the 2nd Criminal Division of the Bucharest Court of Appeal, at the time when the investigated action was committed.

The Judge Ms. H. was heard, her statement being attached to the file. The hearing of Ms. Judge D. was waived, as she was not in court, due to her participating in a seminar being held at the Galati Court of Appeal, between 06th.03.2017 and 07th.03.2017.

The evidence submitted during the disciplinary investigation could not be made available to the Judge Ms. C., due to the fact that she did not appear for the disciplinary investigation, for none of the established deadlines.

During the disciplinary investigation phase, the Judge Ms. C. formulated, in writing, memos, which she submitted to the Judicial Inspection, through which she stated that the resolution initiating the disciplinary investigation was null and void *ab initio* because it was issued by two inspectors in an obvious state of incompatibility, as well as that the principle of confidentiality of the disciplinary investigation was infringed, i.e. she found out from a television station that she was being investigated disciplinarily.

By the Resolution of the 17th.03.2017 a decision was made to admit the referral and exert the disciplinary action against the Judge Ms. C. from the Bucharest Court of Appeal, 2nd Criminal Division, being disciplinarily investigated for having committed the disciplinary offense as provided under art. 99 letter o) of Law no. 303/2004.

Through the disciplinary action registered on the docket of the division for judges in disciplinary matters of the Superior Council of Magistracy under no. x/2017, the Judicial Inspection requested that, through the decision to be pronounced, the enforcement of one of the sanctions as provided under art. 100 of Law no. 303/2004 regarding the status of judges and prosecutors, republished, with subsequent amendments and additions ("Law no. 303/2004"), on the defendant, Ms. C., a judge with the Bucharest Court of Appeal, for having committed the disciplinary offense provided for by art. 99 letter o) of Law no. 303/2004.

2. Request for Intervention

On March 28th, 2018, the "Forum of Judges from Romania" Association ("the Association") filed a motion to intervene as a party (*ancillary request*) in the interest of the defendant-judge C.

In the motivation of this request it was shown that, by reference to the provisions of art. 124 para. (3) of the Constitution of Romania, art. 1 and art. 2 para. (3) of Law no. 303/2004, as well as to art. 4 of the Statute of the Association "Forum of Judges from Romania", the latter justifies a legitimate interest, claiming compliance with the stated legal provisions, as an essential condition for guaranteeing the independence of the judiciary and compliance with the status of the magistrate.

Regarding the lack of grounds of the disciplinary action, it was stated that, in this case, the constitutive elements of the disciplinary offense as provided for under art. 99 letter o) of Law no. 303/2004, retained in the charge of the defendant-judge, respectively: (i) the act does not meet the requirement of a repeated violation of the principle of random allocation, as it concerns a single case (file no. x/2015 of the Bucharest Court of Appeal), where the defendant was reproached bot to have observed this rule; (ii) the requirement of a serious nature of the infringement is not met; (iii) the defendant's bad faith or guilt cannot be held in regard to the infringement of the principle of random allocation of cases.

In support of the above, the Association "Forum of Judges from Romania" mainly invoked the fact that, by retaining for resolution the file no. x/2015 after the court session of 22nd.01.2016 (where she was appointed to replace the panel principal judge), the defendant-judge complied with the provisions of art. 351 para. (1) and art. 354 para. (2) Code of Criminal Procedure, of art. 6 par. 1 of the European Convention on Human Rights, as well as the rulings of the European Court of Human Rights in the Case Cutean vs. Romania (Decision of the 2nd December 2014).

3. Decision of the Disciplinary Court
A. Hearing Report of the 28th of March 2018
By the Hearing Report of the 28th of March 2018, issued in the file no. x/2017, the division for judges in disciplinary matters of the Superior Council of the Magistracy rejected the motion to intervene as a party (*ancillary request*) as formulated by the Association "Forum of Judges from Romania" as inadmissible; it rejected the request for suspension of the trial of the case made by the defendant; it rejected exception for lack of standing due to the fact that the person was not legally qualified to represent the plaintiff as well as the exception due to the lack of passive capacity of the defendant to stand trial, both invoked by the defendant.

It was noted that, although, as intended by the law, the disciplinary action is a species of the civil action, it is necessary to emphasize that, in this case, there is no typical substantial private law relation, the public component being more significant;
yet, in the absence of a typical substantial private law relation, the applicability of the provisions concerning the request for intervention contained in the Code of Civil Procedure, as a general law - pursuant to art. 49 para. (7) of Law no. 317/2004 -, it is subject to the limits arising from the specificity of the special law, since *specialia generalibus derogant*.

It was also considered that the role of professional associations of magistrates to defend and promote the rights of magistrates, in relation to the involved authorities, must be procedurally evaluated in the light of the specific rules established by law. However, the law - art. 29 para. (2) of Law no. 317/2004 - already allows associations to appear in front of the disciplinary court in public meetings, giving them the opportunity to express, when they consider necessary, a point of view on the issues being debated, at their initiative or at the request of the members of the Superior Council of Magistracy.

In the present case, however, no proof was submitted of the existence of a actual and existing interest, according to the law, there being no special situation which could expose the Association to an immediate and imminent injury if the disciplinary action were to be admitted and which would allow the professional association to occupy a higher position than the one provided for under Art. 29 para. (2) of Law 317/2004.

B. Decision no. 9J of April 2nd, 2018
By the Decision no. 9J of the 2nd April 2018, issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, in the file no. x/2017, the disciplinary action exercised

by the Judicial Inspection against the defendant-judge C. was admitted and, based on art. 100 letter e) of Law no. 303/2004 regarding the status of judges and prosecutors, republished, with subsequent amendments and additions, the disciplinary sanction consisting of "exclusion from magistracy" was applied to the Judge Ms. C. for having committed the disciplinary offense as provided under art. 99 letter o) of the same legislative instrument.

The above-mentioned solution, pronounced by the division for judges in disciplinary matters of the Superior Council of the Magistracy, is based on the following considerations.

Regarding the reason for the non-legality of the disciplinary investigation, as a result of the infringement of art. 7 and art. 8 of the Decision no. 1027/2012 of the Plenary of the Superior Council of the Magistracy, respectively of the principles of impartiality and independence of inspectors, but also of the principle of confidentiality, the disciplinary court found that the aspects related to the possible lack of impartiality and objectivity of the judicial inspectors were analyzed in compliance with the applicable legal provisions the administrative procedure of the disciplinary investigation.

With regard to the lack of impartiality of the chief inspector of the Judicial Inspection, the division for judges in disciplinary matters of the Superior Council of the Magistracy held that there are no specific elements to question his impartiality and independence in the exercise of legal duties.

Regarding non-compliance with the principle of confidentiality regulated by art. 8 of the Regulation on the rules for the performance of inspection operations by the Judicial Inspection, as approved by the Decision no. 1027/2012 of the Plenary of the Superior Council of the Magistracy, the disciplinary court held that the submitted evidence did not reveal that the information published in the press, regarding the disciplinary investigation of the defendant, were transmitted by the chief inspector of the Judicial Inspection or by another person from this institution.

On the merits of the case
The objective side

Analyzing the provisions of art. 101 para. (1), para. (5), para. (6) and para. (7) from the Internal Order Regulation of Courts of Law, art. 52 para. (1) and art. 53 of Law no. 304/2004 regarding the judicial organization, as well as the provisions of point 2 letter f) from Recommendation no. R (94)12 of the Committee of Ministers to the Member States regarding the independence, efficiency and role of judges of 13th.10.1994, in conjunction with the papers and documents on file, the disciplinary court held that, in the present case, the infringement of the rules regarding the random allocation of the cases results from the fact that the Judge Ms. C. retained for resolution the case no. x/2015 - which had been assigned to the panel of judges C7F, headed by Ms. Judge D.-, after 22nd.01.2016, although the decision of the Governing Board of the Bucharest Court of Appeal had ordered the changing of the composition of the panel of judges C7F only for the meeting of 22nd of January, 2016.

The provisions of art. 101 of the Internal Order Regulation of Courts of Law expressly provide that the replacing of a Judge from a panel can only be done for objective reasons, and according to art. 19 para. (1) letter j) of the mentioned regulation, it is the responsibility of the governing board of the court to approve such a change.

In fact, after the registration of the case on the docket of the Bucharest Court of Appeal, it was assigned to the C7 panel of judges in criminal matters, composed of Ms. Judge D., and, after the

settlement of the preliminary chamber stage (*directions hearing*), it was sent back to the C7F panel of judges, led also by Ms. Judge D.

The panel composed of Ms. Judge D. resolved the case in the preliminary chamber (*directions hearing*), and later ordered the start of the judicial investigation, proceeding to the hearing of the defendants, the resolution of the requests made by them, the approval of the evidence.

However, at the hearing of 22nd.01.2016, Judge Ms. C. proceeded to hear three witnesses, after which she postponed the case for a week, to the C7 Continuity Panel, and not to the C7F Panel, the latter was only set up for the court session of 12th.02.2016.

As long as, by the Decision of the Governing Board no. 10 of 14th.01.2016, the Judge Ms. C. had been appointed to join the panel C7F only for the hearing of 22nd.01.2106, she did not have the legal possibility to enter the hearing of 29th.01.2016, and later resolve the case, except, possibly, based on another decision of the Board.

Thus, the assertion of the defendant that she cannot be accused of not observing the principle of random allocation of cases, because she only approved hearings for the C7 panel of judges, cannot be retained, since by the Decision of the Governing Board no. 10 of 14th.01.2016 she was planned to participate exclusively in the C7 hearing of 22nd.01.2016.

The infringement of the mentioned principle does not necessarily imply the allocation of the file to another panel of judges than the one to which it was randomly assigned, but may also involve the hypothesis according to which a judge assigned to a panel of judges for a single court hearing continues to work on a case on the docket of said panel of judges, although he/she no longer had a legal basis to continue as a member of this panel.

Also, the defence of the defendant in the sense that she was a member of the C7 panel at the hearing of 22nd.01.2016 was dismissed as unfounded, retaining that, from the contents of the Decision of the Governing Board no. 10 of 14th.01.2016 it follows that she was appointed to replace the presiding judge for a single court hearing, therefore, the defendant's capacity as a presiding judge of panel C7 cannot be retained.

At the same time, the disciplinary court considered as relevant the fact that, between February and August 2016, Judge Ms. C. was not appointed as a member of the C/F and C/CP/C7 CO – panel of judges in criminal matters - assigned to Ms. Judge D. – as she was being assigned to other substantive / preliminary chamber (directions) panels by a decision of the Governing Board of the Bucharest Court of Appeal (no. 28/2016), nor was she the presiding judge of another substantive panel.

Ms. Judge C. did not appear on the planning of the Criminal Division, because, in December 2015, when the planning was drawn up, the Judge was still with the administrative and fiscal division, being assigned as a judge within that division, between November and February 2016. As she returned to the 2nd Criminal Division earlier, namely in January 2016, in order to balance the workload, decisions were taken in the Governing Board (no. 10 of 14th.01.2016 and no. 28 of the 2nd February, 2016).

The disciplinary court found that the evidence brought in the case does not reveal, however, the existence of a decision of the Governing Board that would have changed the composition of the C7F panel of judges - of which Ms. Judge D. was the presiding judge – also for other hearings than the one of 22nd.01.2016.

The legal norms regulating the random allocation are not left by the legislator to the discretion of the judge, a possible interpretation thereof being within the reach of the Governing Board of the court, so that the disciplinary court does not censor the way in which the Judge interprets the law in the exercise of their jurisdictional powers.

The disciplinary court noted the fact that the way in which the defendant-judge understood to refer to her legal obligations is all the more serious as one of the goals envisaged by the regulation of the rules of random assignment is to prevent situations that might generate doubts from the perspective of public perception regarding the appearance of impartiality of magistrates in solving cases with which they are entrusted.

The defence of the defendant, in the sense that she kept the case for settlement in order to comply with the principle of continuity, considering that during the hearing of 22nd.01.2016 she proceeded to hear a number of 3 witnesses, was dismissed as unfounded.

Under this aspect, the disciplinary court held that file no. x/2015 was randomly assigned to the panel composed of Ms. Judge D., a judge who was unable to participate only in the hearing of 22nd.01.2016. The Decision no. 10 of the 14th.01.2016 of the Governing Board of the Bucharest Court of Appeal was issued in this sense.

The judgments Cutean v. Romania and Beraru v. Romania, invoked by the defendant in her defence, respectively to justify her attitude in resolving the previously mentioned case, do not refer to situations similar to the one of the present case, given the fact that, in the case no. x/2015, Ms. Judge D., the presiding magistrate of the panel, had resolved the case in the preliminary chamber (directions), she had ordered the initiation of the judicial investigation, she had heard the defendants, had approved the evidence, had resolved the requests made by the defendants and was only unable to participate in one of the court sessions, the one of 22nd.01.2106, and thus, precisely in consideration of the two judgments invoked by the defendant in her defence, the latter had the legal obligation not to retain the case for resolution.

In any case, any incidence of the mentioned ECHR judgments should, in the light of the principles that govern the judicial organization, be assessed only by the randomly vested panel, in the composition established at that time, and not by the Judge appointed in the context of a temporary, isolated absence, of the first one.

From this perspective, the disciplinary court rejected the defence of the defendant in the sense that she had proceeded to the administration of some decisive evidence, which would have caused the retention of the case for resolution on continuity considerations, based on the two ECHR decisions. Thus, the disciplinary court held that the defendant misappropriated, with clear intention, the real and correct way of enforcement of the above-mentioned ECHR decisions, in order to justify her in maintaining the respective file for investigation.

Moreover, in terms of the defendant's intention to keep the file it is relevant that from the content of the resolution pronounced on 22nd.01.2016, it follows that the Judge Ms. C. did not refer to the two judgments in order to explain the reasons which formed the basis of the taking over of the file, but understood to invoke them only after the initiation of the disciplinary investigation against her.

It should also be noted that, in the event of a finding that there were reasons for which, in her opinion, she should have kept the case for resolution, the defendant had at least the obligation

to address the Governing Board of the Court of Bucharest Appeal, a body that had the legal authority to change the composition of the C7F panel of judges also for a court session other than the one on 22nd.01.2016.

The disciplinary court held that it was obvious that the defendant did not address the Governing Board because she knew that there were no well-founded reasons allowing her to be a member of the C7F panel also for another court session, respectively to configure for this panel a court hearing on the 29th.01.2016.

Nor was the defence of the defendant-judge retained either, in the sense that the lawyers of the case did not file a request for disqualification against her, the motivation being that disqualification is regulated by a soft law, while the legal norms which regulate the random allocation of cases are public order laws.

In the arguments of the pronounced decision, the disciplinary court mentioned as relevant certain aspects retained by the High Court of Cassation and Justice, on the occasion of the resolution of the appeal declared against the criminal sentence no. 90/F of 11th.05.2016 pronounced by the Judge Ms. C.

The disciplinary court found the defendant's claim to be unfounded in the sense that the Judicial Inspection no longer had the legal possibility to start a new disciplinary investigation regarding file no. x/2015 of the Bucharest Court of Appeal, since checks had already previously been carried out in the same file and upon complaint of the same petitioner, following which checks a *nolle prosequi* resolution was issued.

Thus, by Resolution no. 1929/03rd.05.2016 of the Judicial Inspection, it was decided to close the complaints made by the Professional Partnership of Notaries "I., A. si Asociații", the Judicial Inspection noting that essentially, the petitioner expressed by the complaint their dissatisfaction with the way in that the Judge applied the procedural provisions regarding the collection of documents, as well as those aimed at sanctioning infringements committed during the trial.

It was stated that the measures ordered by the Judge were criticized by the parties who considered themselves injured within the ways of appeal provided by the law, being thus analyzed by the magistrates entrusted with the resolution of case no. x, so that the closing of the complaints is required.

According to art. 14 para. (2) of the Regulation on the rules for the performance of inspection operations by the Judicial Inspection, the preliminary checks carried out by the judicial inspectors following a complaint, are, as a rule, limited to the reported aspects.

The fact that the Judicial Inspectorate did not observe *ex officio* the infringement of the rules of random assignment by the Judge Ms. C., during the preliminary checks in the previously mentioned operations, does not constitute an impediment for the Judicial Inspectorate to observe *ex officio* or to admit the complaint of the petitioner regarding said act.

In this sense, the disciplinary court held that there are no legal or regulatory provisions, from which it would be impossible to carry out disciplinary checks against the same magistrate, in relation to the same file, but for different facts.

Consequently, the disciplinary court found that the act of the Judge Ms. C., who, at the court term of January 22, 2016 - when she was appointed by the Decision no. 10 of the Governing Board

of the Bucharest Court of Appeal to participate in the court session of file no. x/2015, in the panel of judges C7/F -, although the judicial investigation in question had already been started by the presiding judge of C7/F, ever since the court hearing of the 30th October 2015 (the defendants were heard, either in the usual procedure or in the simplified procedure, evidence was approved), Ms. Judge D. granted a later trial hearing, on the C7/F Continuity Panel of Judges, thus unlawfully retaining the case for trial, ordering further evidence to be brought, changing the legal classification, taking additional statements, either from the defendants or from the witnesses, granting a hearing for debates, and finally pronouncing a sentence in first instance, - all this is circumscribed to the objective side of the disciplinary offense as provided for under art. 99 letter (o) of Law no. 303/2004 - the provisions regarding the random allocation of cases being seriously infringed.

The Subjective Side
Under the subjective aspect, the disciplinary court held that the guilt of the defendant judge C. in committing the act is proven and it results from the fact that, although she knew that her status as a magistrate required her to behave in a certain way, the way in which she acted was likely to affect citizens' trust in the judicial system, revealing the existence of the intellectual factor as well as of the volitional factor, thus of guilt, in a disciplinary sense.

Also, the submitted evidence revealed that the defendant committed the disciplinary offense with direct intent.

Thus, although according to the decision of the Governing Board, Judge Ms. C. was only supposed to enter the hearing of 22nd.01.2016, in the C7F panel of judges, whose presiding judge was unable to participate in the panel only at that specific hearing of file no. x/2015, she postponed the trial for a week for the submission of evidence already approved by Judge Ms. D., ordering at the same time the supplementing of this evidence, although the C7F panel did not have a court session set up for the 29th.01.2016.

In addition, the disciplinary court also noted from the content of the resolution pronounced on 22nd.01.2016 that, at the first call of the case, three of the witnesses who answered "present" stated that they could not stay in court, but the defendant insisted and called the case a second time, later proceeding to the hearing of three witnesses.

Therefore, the Judge Ms. C. had the intention to retain the case for resolution and to violate the rules of random allocation, before proceeding to the hearing of the witnesses, respectively before the court session of 22nd.01.2016.

It was considered obvious that the postponement of the case for only one week was ordered by the Judge Ms. C. in order to justify the retention of the case for resolution, considering the fact that the holder of the panel, Ms. Judge D., was returning to work on 01.02. .2016.

Being asked, by the disciplinary court on the reason for postponing the case for only one week, Judge Ms. C. did not invoke the existence of any reasons to speed up the resolution of the case, but only mentioned that this was possible and that she usually does this. He also showed that he postponed the case only for a week, although the case involved complex crimes and required a large volume of preparation work, "because the information was still fresh for her".

Under this aspect, the disciplinary court noted that, for the date of 29th.01.2016, the incumbent C7F panel of judges did not have a court session set up, and the defendant, in order to be able to

grant a hearing on this date, postponed the case to the C7 Continuity panel, of which she became a member, without there being a decision of the Governing Board in this regard.

It was noted that the ECRIS file of the file shows that for the C7F panel the hearing of 29th.01.2016 was manually deleted, this hearing being assigned to the C7F Continuity panel of judges.
The disciplinary court assessed that the defence of Judge Ms. C. cannot be accepted, in the sense that the court hearing of 29th.01.2016 was granted with the agreement of the Court Governing Board, the proof in this sense being the creation of the C7 Continuity panel, as she herself did not have the ability to perform this operation in the ECRIS application. Since the case was postponed in the public hearing of 22nd.01.2016 to the 29th.01.2016, when the C7F panel did not have a court session established, the only technical possibility to enter the hearing of 29th.01.2016 in ECRIS was to use this C7 Continuity Panel; in the absence of this operation, it would not have been possible for the session clerk to fulfill the duties subsequent to the hearing of 22nd.01.2016 (issuing of subpoenas and performing all other actions as imposed by ECRIS).

At the same time, the disciplinary court held that all other files from the court session of 22nd.01.2016 were postponed by Judge Ms. C. to the hearing of 12th.02.2016, in the court session that was to be chaired by the presiding judge, Ms. D., the only file postponed to the 29th.01.2016 being the one with the no. x/2015.

Also, on the 29th.01.2016, as the requested relations had not arrived, Judge C. granted a further term to 02.02.2016 - the date on which Judge D. was in court - and granted the floor in the substantive debates, postponing the pronouncement on 11.02.2016. On this date, the defendant put the case back on the docket, in order to discuss with the parties the change in the legal classification of the facts regarding some of the defendants and the addition of evidence.

Therefore, the disciplinary court held that all these actions of the defendant, embodied in the method of managing the case - respectively the insistence to hear witnesses during the hearing of 22nd.01.2016; granting a hearing deadline of one week, during the period when the presiding judge was not in court; and later, by granting a further deadline, since the presiding judge had returned to work, at which hearing the ruling was postponed, placing the case back on the docket, even though, as the defendant herself stated, "she had studied the case very well, the information being fresh" -, *[all these]* prove the clear intention of Judge Ms. C. to make up justifications for her act of infringing the rules of random assignment.

The disciplinary court also took into account the statement of Ms. Judge H., the president of the 2nd Criminal Division at that time, who was approached by the defendant judge, - knowing that she had no legal basis to retain case no. x for trial after the hearing of 22nd.01.2016, - and, without explaining the entire situation in the case, asked her, in an informal setting, whether "in case she hears all the witnesses during that hearing, there would be any problem for the ruling in the case to be postponed", and she later claimed that she had her consent.

It was also Ms. Judge H. who stated that the judges who took the place of the presiding judge in the substantive panels granted hearings to the incumbent panel of judges, as the regulation also provides. She also mentioned that, in the appeal panels, in case one of the presiding judges was absent and certain witnesses were heard in the presence of the judge on duty, there was no question of the panel keeping the case, but of re-submission of the witness evidence in the presence of the presiding judge.

Therefore, considering all these circumstances, the disciplinary court ascertained the obvious intention of the defendant-judge to retain for resolution the case no. x/2015 and to infringe the

legal provisions regarding the random allocation of cases, as she was aware of the obligations she had according to the law, while also trying to give an appearance of legality to the ordered measures.

As a consequence, the disciplinary court held that the defendant-judge foresaw the outcome of her actions and pursued the infringement of the legal norms regarding the random assignment of cases (art. 19, art. 101 of the Internal Order Regulation of the Courts of Law, of art. 52 and art. 53 of Law no. 304/2004), by retaining case no. x to solve it.

The generated consequences consisted in the serious injury brought to the act of justice, which was deprived of one of the fundamental guarantees of legality of the competent judicial body, which should fulfill the conferred prerogatives for the trial.

Also, the trust of public opinion in the impartiality of the act of justice was adversely affected, so as to induce the idea that it can be influenced as a result of directing the files pending before the courts.

At the same time, the guarantee of a fair trial was not provided, thus also infringing the provisions of art. 6 §1 of the European Convention for the Protection of Fundamental Human Rights and Freedoms, referring to an independent, impartial tribunal as established by law.

According to the rulings of the disciplinary court, the existence of these consequences was also confirmed by the High Court of Cassation and Justice, through the judicial control exercised in the appeal promoted against the sentence pronounced in this case by the defendant-judge.

For all these considerations, the disciplinary court held that, through the evidence brought in the case, the cumulative fulfillment was proven of the constituent elements of the disciplinary offense as provided for under art. 99 letter o) of Law no. 303/2004 and, consequently, admitted the disciplinary action filed by the Judicial Inspection against the defendant-judge C.

Individualization of the sanction
On individualizing the sanction applied under art. 100 of Law no. 303/2004, the disciplinary court took into account the circumstances, the actual severity, as well as the consequences of the act committed by the defendant who, as a judge, through her actions, affected the prestige and image of justice as a public service, the act being liable to lead to the discrediting of justice.

From this perspective, the disciplinary court retained the particularly serious nature of the act impugned to the defendant, in relation to the manner in which it was committed, as well as in relation to the segment of activity which involved the enforcement of the act of justice, the standard being that of the "diligent magistrate ".

Thus, it was noted that the defendant-judge knowingly infringed the legal provisions regulating the random assignment of cases and, moreover, she made up justifications for her act, which she knew would generate the retained consequences.

The attitude of the defendant-judge was also examined from the perspective of the lack of trust which the judicial system is confronted with, which could affect its authority, given the context in which the act was committed and the way in which Ms. Judge related to the specific values of the act of justice.

In the process of individualizing the sanction, the defendant's attitude during the course of the disciplinary procedure was also considered as relevant. Thus, the disciplinary court noted that she showed a behavior in discordance with the status of a magistrate, embodied in the repeated formulation of notifications and complaints against persons who were legally empowered to carry out activities specific to the disciplinary investigation and the exercise of disciplinary action (the judicial inspectors to whom the operations were assigned, the inspector-president of the Judicial Inspection), as well as against the Chairman of the Superior Council of Magistracy, of the High Court of Cassation and Justice, etc.

Considering the purpose of sanctioning disciplinary infringements, the behavior shown by the defendant was considered to induce the idea of a deficient functioning of the judicial system, with the direct consequence of altering the trust of public opinion in the competence, probity, independence and impartiality which every person legitimately expect from magistrates to whom they entrust the defence of their rights.

The following of the acts committed by the defendant was assessed as certain, consisting of a damage to the image of justice which, for its proper functioning, must enjoy the full confidence of public opinion.

The disciplinary court also took into account the fact that Judge C. had previously been subjected by the division for judges in disciplinary matters of the Superior Council of the Magistracy, to the sanction of exclusion from the position of judge, by the Decision no. 1J/08.02.2017, which was modified by Decision no. 336 of the 13th of December 2017 of the High Court of Cassation and Justice - Panel of 5 Judges, in the sense of applying, to the defendant, the disciplinary sanction consisting in the disciplinary transfer to the Court of Appeal of Târgu Mureş for a period of 6 months.

Taking into account all these circumstances, which, objectively, must be taken into account when individualizing the sanction applied, bearing in mind the particular severity of the deed, as described previously, the guilt of the defendant, also circumstantiated by the intention to fabricate justifications for the deed sa, as well as the causal link, the disciplinary court assessed that the defendant-judge no longer meets the requirements imposed by the proper exercise of the function of judge,

As a result, considering the provisions of art. 100 letter e) of Law no. 303/2004, republished, according to which the applicable sanctions must be proportional to the severity of the infringements, the division for judges in disciplinary matters of the Superior Council of the Magistracy considered that it is justified to apply to the defendant-judge C. the most serious sanction, namely the exclusion from magistracy.

II. Appeals

Against the resolution of 28th March 2018 issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, in the file no. x/2017, both the defendant-judge C. and the intervenor Association "Forum of Judges from Romania" filed an appeal, creating file no. x/2018 on behalf of the High Court of Cassation and Justice - Panel of 5 judges.

Against the Decision no. 9J of the 2nd April 2018 and the resolution of the 28th of March 2018 issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, in the file no. x/2017, the defendant C. filed an appeal, thus creating the file no. x/2018 on the docket of the High Court of Cassation and Justice - Panel of 5 judges.

By the resolution of October 22, 2018 issued by the High Court of Cassation and Justice - Panel of 5 judges, in file no. x/2018, pursuant to art. 139 Code of Civil Procedure, the connection of file no. x/2018 to file no. x/2018.

2.1. The appeal declared by the Association "Forum of Judges from Romania" against the resolution of th2 28th of March 2018

Through the appeal filed against the resolution of the 28th of March 2018 issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, in file no. x/2017, the Association "Forum of Judges from Romania" requested its annulment, the approval, in principle, of the request for ancillary intervention formulated and the referral of the case back for retrial.

The criticisms formulated by the Association refer to the non-legality of the solution by rejection as inadmissible, of the request for ancillary intervention, by the disciplinary court, by infringement of the procedural provisions of art. 64 of the Code of Civil Procedure, invoking the ground of appeal provided under art. 488 para. (1) point 5 of the Code of Civil Procedure.

Firstly, the appellant Association states that the disciplinary court motivated the rejection of the request for ancillary intervention also by invoking its practice in disciplinary matters, without indicating, however, the causes taken into account, given that the practice outlined in 2017 was contrary to the solution pronounced in the case.

In this context, as the appellant claims, the rejection of their request for ancillary intervention can be considered a revision of the case-law of the disciplinary court without a solid argumentation, thus infringing the principles constantly affirmed by the European Court of Human Rights (Case of Ilie Şerban v. Romania, Decision of July 10th, 2012, application no. x/04; Case of Stefan and Stef v. Romania, Decision of the 27th January 2009, applications no. 24428/03 and no. 26977/03/02, par. 20 - 26; Case of the Former Yugoslav Republic of Macedonia, application of the 14th of January 2010, application no. x/03, par. 38).

Secondly, the criticisms of the appellant Association envisage the unfounded character of the rulings of the disciplinary court regarding the lack of the Association's own interest in formulating the request for ancillary intervention in the interest of the defendant C.

It is invoked that the legitimate interest of the Association to support the defences formulated by the Judge Ms. C. results from art. 4 of the Association Statute, by reference to the role granted by the constitutional and legal provisions - art. 124 para. (3) of the Constitution of Romania; Art. 1 and art. 2 para. (3) of Law no. 303/2004), the appellant Association claiming compliance with the stated legal provisions as an essential condition for guaranteeing the independence of justice and compliance with the status of the magistrate.

The appellant Association also invokes the existence of a general interest within the meaning of art. 37 Code of Civil Procedure, so that proof of the existence of a injury caused to the intervener would not be necessary for his request for ancillary intervention to be considered admissible.

Also, the Association states that, since according to art. 49 of Law no. 317/2004, the Judge who has the capacity of defendant in a disciplinary procedure has the right to be represented by another judge, even more so a professional association consisting only of judges is interested to intervene in support of the Judge under disciplinary investigation, both in order to support an interpretation of secondary legislation in accordance with the principles of law that must be

respected and/or the case-law of the European Court of Human Rights, as well as to support the procedural position of the envisaged Judge.

Thirdly, the appellant's criticisms concern the arguments of the disciplinary court, according to which the request for ancillary intervention formulated in the disciplinary procedure before the division for judges in disciplinary matters of the Superior Council of the Magistracy is inadmissible, given the fact that this procedure has a strictly personal character with a public component.

The appellant appreciates that the disciplinary court has the obligation to follow the procedure regulated by Code of Civil Procedure, according to art. 49 of Law no. 317/2004, respecting all the rights of the parties and of any interveners in the procedure.

Also, the appellant claims that art. 29 para. (2) of Law no. 317/2004 must be interpreted in the sense that it refers to the possibility of expressing certain points of view on behalf professional associations in administrative matters concerning the good administration of justice, and not when the division for judges of the Superior Council of the Magistracy acts as a court of law .

There is no incompatibility between the intervention institution as regulated under art. 61 - art. 64 of the Code of Civil Procedure and the disciplinary procedure, since the division, being a court in disciplinary matters, must apply all the procedure rules in order to observe and guarantee the right of defence of the accused person, and this right does not only include the possibility of hiring a lawyer, but also that of allowing another person to intervene on their behalf.

Fourthly, the appellant claims that, by removing from the application of art. 64 Code of Civil Procedure., the disciplinary court infringed the procedural guarantees that both the defendant and the accessory intervener Association "Forum of Judges from Romania" should have benefited from. Thus, it is further argued that, by not summoning the intervening Association and by not granting a court hearing for the latter to be heard, the disciplinary court infringed its right to defence (art. 13 and art. 14 para. (4) and para. (5) of the Civil Procedure Code), as well as the principle of contradictory proceedings (art. 22, paragraph (2) of the Civil Code).

2.2. The appeal declared by the defendant-judge C. against the resolution of the 28th March 2018

Through the appeal filed against the resolution of the 28th of March 2018 issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, in file no. x/2017, based on the provisions of art. 488 para. (1) point 5, point 6 and point 8 Code of Civil Procedure, the appellant C. requested the admission of the appeal, the annulment of the appealed decision, the admission of the request for ancillary intervention as formulated by the Association and the referral of the case back for retrial to a legally constituted court.

Preliminarily, the appellant C.:

- invokes the infringement by the Judicial Inspection of art. 8 of the Regulation on the rules for the performance of inspection operations by the Judicial Inspection, as adopted by the Plenary Meeting of the Superior Council of the Magistracy, with the changes provided for in the Decision of the Superior Council of the Magistracy no. 340/29.03.2016, published in Monitorul Oficial *[Official Gazette]* no. 302/20.04.2016, article enshrining the principle of confidentiality of the work of the Judicial Inspection;

- criticizes the refusal of the chief inspector to suspend the disciplinary investigation until the completion of the preliminary checks carried out by the Judicial Inspection in the case with the object of the illegalities committed by the judicial inspectors investigating the defendant, respectively Ms. J. and K., but also until resolving complaints regarding them;

- criticizes the suspension, by the disciplinary court, of file no. x/2017 only until the becoming final of Decision no. 9J of the 8th February 2017 issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, in file no. x/2017;

- states that the reinstatement of file no. x/2017, having as object the disciplinary action directed against her for having committed the disciplinary offense provided under art. 99 letter (o) of Law no. 303/2004, was carried out in a discretionary manner, the disciplinary court ordering the summoning of the defendant, *ex officio*, without the chief inspector of the Judicial Inspection having formulated an express request in this regard;

- claims that, although, on the 28th.03.2018, the Association filed an appeal against the resolution rejecting the request for intervention, the file was not forwarded in appeal, this ignoring the provisions of art. 64 para. (4) final sentence from the Code of Civil Procedure, which enshrines a case of mandatory suspension.

Regarding the reasons for appeal concerning the resolution of 28th of March 2018, the appellant claims that the solution pronounced by the disciplinary court is discretionary, considering the constant practice of the Superior Council of the Magistracy / High Court of Cassation and Justice of admitting the interventions of magistrates' associations in disciplinary proceedings.

On the 9th of May 2018, the appellant C. submitted, by e-mail, written notes where she invoked:

(i) the exception invoking the statute of limitation, in the light of the ECHR standards as illustrated in the Case of Oleksandr Volkov v. Ukraine, Judgment of the 9th of January 2013, para. 87 and 132 and the following;
(ii) the unlawfulness of the resolution of the 28th of March 2018, under the following aspects:

A. The reinstatement of the case by the disciplinary court was carried out in infringement of art. 9 of the Code of Civil Procedure, with the consequence of quashing the resolution of 28th of march 2018 in its entirety, the disciplinary action being rejected as obsolescent, these grounds for appeal being provided under art. 488 para. (1) point 5 of the Code of Civil Procedure
- the reinstatement of the disciplinary action was carried out in infringement of the principle of disposition that governs civil procedures (art. 9 Code of Civil Procedure), applicable in the case according to art. 49 para. (7) of Law no. 317/2004. The reinstatement, in the case of optional suspension based on art. 413 Code of Civil Procedure, cannot be carried out by the court *ex officio*, but only on request of the interested party, an interpretation which also results from the provisions of art. 417 Code of Civil Procedure regarding the interruption of the course of obsolescence;
- under the conditions mentioned in the previous paragraph, the reinstatement of the case is null and void, according to art. 179 Code of Civil Procedure.

- even if it would be considered that a relative nullity operates conditioned by the existence of an injury, this injury exists, since in the conditions of the non-filing of the case ex officio, it would have been subject to obsolescence, under the conditions of art. 416 para. (1) Code of Civil Procedure., the file remaining inactive for 6 months from the resolution of the appeal declared against Decision no. 1J of The 8th of February 2017;

- in the event of the annulment of the resolution of 28th of March 2018, the same sanction also applies against Decision no. 9J of 2nd of April 2018, against the provisions of art. 179 para. (3) Code of Civil Procedure

- The resolution of 28th of March 2018 was pronounced in infringement of art. 415 points 1 related to art. 9 Code of Civil Procedure

- the rules regarding the principle of disposition in the civil process are rules of public order, their infringement being sanctioned with the absolute nullity of the decision thus pronounced. The will of the Judicial Inspection was not materialized in a request, but expressed only in the form of an appropriation of the measure ordered by the disciplinary court.

In conclusion, the appellant requests the admission of this ground of appeal invoked under art. 488 para. (1) point 5 Code of Civil Procedure, the annulment of the contested resolution in its entirety, and the disciplinary action directed against her is to be rejected, as obsolescent.

B. Non-legality of the challenged resolution, given the disciplinary court's refusal to declare the suspension by right of the case trial until the resolution of the two appeals filed against the resolution of 28th of March 2018 by the appellant-defendant and by the appellant Association, the grounds for appeal being provided by art. 488 para. (1) point 5 Code of Civil Procedure

- the resolution of 28th of March 2018 is illegal, given that the disciplinary court rejected the request of the appellant-defendant regarding the suspension of the case trial until the resolution of the appeal filed against the rejection resolution, as inadmissible, the request for ancillary intervention, considering that art. 64 para. (4) Code of Civil Procedure regulates a case of legal, mandatory suspension;

- contrary to the facts retained by the disciplinary court, considering the provisions of art. 49 para. (7) of Law no. 317/2004, the text of art. 64 Code of Civil Procedure is also applicable within the disciplinary procedure carried out before the division for judges in disciplinary matters of the Superior Council of the Magistracy, there being no reason why this legal provision should be considered incompatible with the disciplinary procedure, as the disciplinary court assessed in the present case.

C. The resolution of 28th of March 2018 is unlawful, being null and void, given that the appellant-defendant's right to defence was infringed, by rejecting the majority of the evidence submitted by her - the documentary evidence consisting in the attachment of the judgments and resolutions pronounced in the hearing of the preliminary chamber of 22nd.01.2016; the submission of the transcript of the court session of 22nd.01.2016; the hearing of the president L. and of the Ms. Judge whom the defendant replaced in the court hearing of 22nd.01.2016 – the grounds for appeal being provided by art. 488 para. (1) point 5 Code of Civil Procedure.

As part of the referral request to the Constitutional Court of Romania, with the exception of unconstitutionality of G.E.O. no. 77/2018, submitted by the appellant-defendant in the court hearing of 22nd.10.2018, and in the referral to the C.J.E.U. submitted by the appellant C. by e-mail, on the 11th.02.2019, the latter invoked the exception of non-legal representation of the Judicial Inspection, but without showing exactly what the legal / administrative / procedural documents are covered by the invoked exception.

2.3. Appeal declared by the defendant-judge C. against the Decision no. 9J of the 2nd April 2018 and against the resolution of 28th of March 2018

In support of the appeal, the magistrate invoked criticisms which, in her opinion, are circumscribed to the reasons for appeal provided by the provisions of art. 488 para. (1) point 1, point 5, point 6 and point 8 of Code of Civil Procedure and requested: the admission of the appeal; the quashing the contested decision and of the contested resolution and, mainly, the rejection of the disciplinary action, as obsolescent: (i) in a first subsidiary, the forwarding of the case for retrial to the division for judges in disciplinary matters of the Superior Council of Magistracy, as the first court of law thus qualified by the provisions of art. 44 para. (1) of Law no. 317/2004, (ii) in a second subsidiary, the retention of the case for retrial on the merits of the disciplinary action, with the consequence of its rejection, as unfounded; the obliging the respondent Judicial Inspection to pay the court costs caused by this appeal.

2.3.1. The non-legality of the disciplinary investigation, the reason for appeal being provided by art. 488 para. (1) point 5 Code of Civil Procedure

The criticisms invoked by the appellant C. aim at:
- the lack of analysis by the division for judges in disciplinary matters of the Superior Council of Magistracy of:
a) the circumstances of the infringement of confidentiality of the disciplinary investigation by the judicial inspectors M. and J., because of the confidential data of the disciplinary investigation have become known to the public;
b) the consequences of the judicial inspectors not knowing the valences of the principles of immediacy and adversariality, basic rules of the trial phase of criminal procedures; the aspects exceed the competence of verifications of the Judicial Inspection;
c) the issue of assigning the operations to Ms. Inspector J. at an interval of five days after the registration of the operations at the headquarters of the Judicial Inspection;
d) the issue of the double-standard interpretation, by the judicial inspector J., of the valences of the principle of continuity, although the appellant did submit evidence to the case file that the same case inspector pronounced a closing solution in relation to a judge of the Bucharest Court of Appeal who took over a case randomly assigned to other judges and solving it, for reasons of observance of the principle of continuity.

- infringement of art. 8 of the Regulation on the norms for the performance of inspection operations by the Judicial Inspection, but also of art. 5 of Law no. 544/2001, by providing the television station "N." and certain press publications (e.g., the "Luju.ro" portal) with the content of the verifications carried out before the start of the disciplinary investigation and of the resolution to start the disciplinary investigation issued in file no. x/2016 of the Judicial Inspection;
- the judicial inspectors J. and M. intervened in the trial activity of the High Court of Cassation and Justice, considering that they started a disciplinary action against the Judge of the merits for an accusation which can only be censored by the supreme court, the composition of the panel of judges being one of the grounds of appeal against the criminal sentence no. 90/11.05.2016 of the Bucharest Court of Appeal, 2nd Criminal Division, pronounced by the defendant-judge;
- the disciplinary offense held against the defendant-judge was not described, so she was unable to understand the impugned act;
- the defendant-judge was denied access to the disciplinary file;
- although there was evidence on file with regard to the initiation of the criminal prosecution, the chief inspector of the Judicial Inspection rejected the requests for abstention by the case inspectors, who had set hearings in the file registered with the Judicial Inspection, in the dates for which the defendant-judge gave evidence of the objective impossibility to appear;

- during the disciplinary investigation, all requests for defence and access to the file submitted by the defendant were rejected and she was denied access to the direct submission, in her presence, of the evidence with essential witnesses, proposed for the defence.

2.3.2. Non-legality of the resolution of 28th f March 2018
A. The non-legality of the resolution in terms of the *ex officio* reinstatement of the case after suspension

By summoning the parties and reinstating the case ex officio, after its suspension, pursuant to art. 413 para. (1) point 1 Code of Civil Procedure, the disciplinary court infringed the principle of disposition which governs the civil trials (art. 9 Code of Civil Procedure), as well as the provisions of art. 415 Code of Civil Procedure, the ordered measure being thus affected by absolute nullity, according to art. 179 Code of Civil Procedure

The fact that, after the summoning of the parties and the reinstatement of the case, the plaintiff filed a request showing that she agreed with this measure is not equivalent to resuming the trial at the request of the interested party. The will of the Judicial Inspection was not materialized in a request, but only expressed as an appropriation of the measure ordered by the disciplinary court.

Even if one were to consider that a relative nullity operated in this case, conditioned by the existence of an injury, this results from the fact that, in the absence of the reinstatement *ex officio* of the case, it was subject to obsolescence, as the conditions of art. 416 para. (1) Code of Civil Procedure are fulfilled, the file remaining inactive for 6 months after the resolution of the appeal filed against Decision no. 1J of the 8th of February 2017 issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy.

B. The appealed resolution was pronounced in infringement of art. 64 para. (6) Code of Civil Procedure, the reason for the appeal being provided by art. 488 para. (1) point 5 Code of Civil Procedure

The claims of the appellant-defendant envisage the non-legality of the resolution of 28th of March 2018, determined by the solution pronounced by the disciplinary court – i.e. to reject the request to suspend the trial of the case until the resolution of the appeal filed against the decision to reject the request for ancillary intervention made by the Association as inadmissible -, considering that art. 64 para. (4) Code of Civil Procedure regulates a case of legal, mandatory suspension.

According to the arguments of the appellant C., considering the provisions of art. 49 para. (7) of Law no. 317/2004, the text of art. 64 Code of Civil Procedure is also applicable for the disciplinary procedure carried out before the division for judges in disciplinary matters of the Superior Council of Magistracy, there being no reason for this legal provision to be considered incompatible with the disciplinary procedure, as the disciplinary court assessed in this case.

C. The appealed decision and the appealed resolution are contrary to art. 64 para. (4) Code of Civil Procedure and to the right to a fair trial, the reason for appeal being provided by art. 488 para. (1) point 5 Code of Civil Procedure.

Given that we are in the presence of a court proceeding, carried out before a court created by the will of the legislator, in the opinion of the appellant-defendant it follows without a doubt that the provisions of art. 64 Code of Civil Procedure are compatible with the provisions of the special law that does not rule on the exclusivity of the participants in the disciplinary trial.

The appellant requests the High Court to censor the solution pronounced by the disciplinary court and to retain that the appeal by the defendant-judge and by the intervening Association, of the resolution of 28th of March 2018 has attracted the suspension of the case by law, until the resolution of the two appeals.

In the absence of the possibility, for the intervener, to take part in the resolution of the case on the merits, their right to a fair trial provided under art. 6 of the European Convention on Human Rights, were infringed, thus imposing the annulment and referral of the case back for retrial, in order to observe the double degree of jurisdiction.

In the event of the annulment of the resolution of the 28th of March 2018, the same sanction also applies against the Decision no. 9J of the 2nd April 2018 considering the provisions of art. 179 para. (3) Code of Civil Procedure

D. The resolution of 28th of March 2018 is illegal due to the infringement of the right to defence, through the rejection by the disciplinary court of most of the requested evidence, the grounds for appeal being provided by art. 488 para. (1) point 5 Code of Civil Procedure

2.3.3. Non-legality of Decision no. 9J of the 2nd April 2018

A. At the court hearing of 2nd of April 2018, the division for judges in disciplinary matters of the Superior Council of Magistracy was not legally constituted, the reason for appeal being provided by art. 488 para. (1) point 1 Code of Civil Procedure

The appealed decision is non-legal, being pronounced by a court whose composition was flawed by the absence of a judge who had the obligation to take part in the settlement of the case.

According to the claims of the appellant C., out of the nine judges of the division for judges in disciplinary matters of the Superior Council of the Magistracy, two, namely judges L. and O., filed requests to be allowed to abstain, which were admitted. However, at the time of the trial of 2nd of April 2018, Mr. Judge page was absent from the panel.

According to art. 44 para. (1) of Law no. 317/2004, the division for judges/prosecutors in disciplinary matters of the Superior Council of the Magistracy has the role of a court and thus the mandatory rules regarding the composition of a court panel automatically become applicable to it. Yet, the division for judges is composed of all the elected members.

In the content of art. 44 et seq. of Law no. 317/2004, the legislator did not intend to derogate from the rules regarding the composition of the court panel.

In this case, art. 26 para. (1) of Law no. 317/2004 is not applicable, given that this legal text is located in Chapter III of the above-mentioned law, with the title "Functioning of the Superior Council of the Magistracy", chapter which considers the functioning of the Superior Council of the Magistracy as a collegiate body for the defence of the independence and reputation of magistrates and for the management of the activity of courts / prosecutors' offices or of the career of judges / prosecutors, with regard to the administrative activity of the Superior Council of Magistracy.

Instead, the attributions of the divisions of the Superior Council of Magistracy in disciplinary matters are dealt with in a separate chapter of the law – Section 4 - art. 44 - art. 53, so as to

emphasize that this competence and the entire disciplinary procedure are regulated by special provisions in relation to the other provisions of the law.

Considering these arguments, as well as the provisions of art. 49 para. (7) of Law no. 317/2004, the appellant C. concludes that the division for judges in disciplinary matters of the Superior Council of Magistracy, as a court, must judge according to all the rules, principles, standards and provisions of Code of Civil Procedure, and not according to the rules of administrative law included in the law on the functioning of the Superior Council of Magistracy.

Art. 211 of the Code of Civil Procedure requires the court to resolve the case in a panel constituted according to the law. Yet, the division for judges in disciplinary matters, as a court, is legally constituted by all its members, and not only by a part of them.

Under these conditions, the appellant considers that the judgment challenged by this appeal is struck by absolute nullity.

B. The challenged decision and resolution were pronounced in infringement of the provisions of art. 6 in conjunction with art. 22 Code of Civil Procedure, of the principle of finding the truth and of art. 6 of the European Convention on Human Rights, the grounds for appeal being provided by art. 488 para. (1) point 5 Code of Civil Procedure

Infringement of the defendant-judge's right to defence

According to the claims of the appellant C., in the case brought before the court, the infringement of her right to defence occurred under three aspects:

a) the rejection of the deferral request made by the elected defender of the magistrate, who was unable to appear, as a Catholic and celebrating Catholic Easter, a legal holiday which involved two days off - April 1st and 2nd, 2018;
b) the rejection of the evidence requested by the defendant-judge in her defence, such as, e.g, the request for the transcript of the court session of 22nd.01.2016; the hearing of Ms. Judge D. and of the persons with attributions in the random allocation of cases at the Bucharest Court of Appeal, during the reference period, of the session clerks, as well as the rejection of certain questions, essential for the unraveling of the case, addressed by the defendant to the heard witness, respectively to Ms. judge H.
c) although, at the time when the defendant-judge was rejected in her deferral request for lack of defence, she was informed that the provisions of art. 222 para. (2) Code of Civil Procedure would apply, and the judge who assisted the defendant expressly requested a deferral in this sense, the deferral to allow for the submission of written conclusions was not postponed in the case.

Although, according to the appellant's assessments, the requested evidence was useful and relevant for the resolution of the case, the disciplinary court rejected it, without indicating in specific terms the arguments that substantiated this measure.

Appellant C. invokes the infringement, by the disciplinary court, of the principle of finding out the truth and the right to defence, from the perspective of the right to a fair trial, due to the fact that the disciplinary court remained in its judgment in the absence of the defence counsel of the defendant-judge and rejected all the evidence which could have proved her innocence, which determines the non-legality of the evidence administration procedure.

In this sense, the appellant invoked the provisions of art. 22 para. (2) Code of Civil Procedure, art. 6 of the European Convention on Human Rights, art. 10 of the Universal Declaration of Human Rights, art. 14 of the International Covenant on Civil and Political Rights, as well as the ECHR case-law (Case of Coeme and others v. Belgium, applications no. 32.492/96, 32.547/96, 32.548/96, 33.209/96 and 33.210/96, par. 115 , CEDO 2000-VII; Case Vlasia Grigore Vasilescu v. Romania, Judgment of the 8th of June 2006).

The appellant requests the quashing in part of the appealed resolution and of the appealed decision and the referral of the case back for retrial, in order for all the evidence to be submitted, in compliance with the legal provisions.

C. The appealed decision was pronounced in infringement of art. 426 para. (1) Code of Civil Procedure, being drafted by the Registry Office of the Divisions, the reason for appeal being provided by the provisions of art. 488 para. (1) point 1, point 5 and point 6 Code of Civil Procedure

According to the claims of the appellant, the fact that the contested decision was drafted by the Registry Office of the Divisions - in accordance with the regulations of art. 34 para. (1) from the Regulation on the organization and operation of the Superior Council of the Magistracy as approved by the Decision of the Superior Council of the Magistracy no. 326/2005, amended and supplemented by the Decision of the Superior Council of Magistracy no. 130/2014 – this infringed the provisions of art. 426 para. (1) Code of Civil Procedure, in relation with art. 6 of the European Convention on Human Rights and Decision of the Constitutional Court of Romania no. 33/2018.

In support of the above, the appellant invokes the case-law of the ECHR, respectively the Cases of Mellors v. the United Kingdom (Judgment of 17th July 2003), P.K. v. Finland (Decision of 9th of July 2002), Beraru v. Romania (Judgment of 18th March 2014) and Cutean v. Romania (Judgment of 2nd December 2014), Cerovsek and Bozic'nik v. Slovenia (Judgment of 7th March 2017), Achina v. Romania, Gheorghe v. Romania (Judgment of 15th March 2007).

It is argued that the solution of the Regulation, to distribute the drafting of decisions pronounced by the division for judges in disciplinary matters to the clerks working within the Superior Council of the Magistracy, has no basis in Code of Civil Procedure, as this is not provided in any disposition of the architecture of art. 426 of the Code of Civil Procedure.

Yet, according to Kelsen's pyramid, an administrative act that would allow magistrates to be relieved of the obligation to justify their decisions infringes the provisions of art. 426 Code of Civil Procedure, thus being infringed the valences of the *lex superior derogat inferiori* principle and, consequently, the standards of legal argumentation which must govern the resolution of conflicts of laws.

The appealed decision, as the appellant concludes, was not pronounced by the person who drafted it. Consequently, the values of the principle of immediacy were disregarded, an infringement which is to be analyzed according to the conventional and constitutional guarantees in the light of access to an independent and impartial court of law, the Constitutional Court ascertaining that the motivation of a decision by a person who did not participate in the deliberation infringes the guarantees of the right to a fair trial, as well as art. 124 and art. 126 of the Constitution, which enshrines the independence and impartiality of justice.

D. The appealed decision is unmotivated, the reason for appeal being provided primarily by art. 488 para. (1) point 6 Code of Civil Procedure

In relation to the arguments regarding the non-legality of the motivation of the decision by a clerk who did not take part in the resolution of the case, as exposed under point C above, the appellant C. shows that the improper motivation was assimilated, in the practice of the courts of law, to a lack of motivation, which attracts the incidence of the sixth ground of appeal as provided under art. 488 para. (1) point 6 Code of Civil Procedure
Further on, the appellant invokes the infringement of the right to a fair trial as regulated by art. 6 par. 1 of the European Convention on Human Rights, given that in this case the statements of the parties were not investigated, they did not serve as support for the solution pronounced by the court, since the motivation, i.e. the investigation of the evidence and the exposition of the motivation belongs/belong to another judge. It is also claimed that the requirements of art. 425 para. (1) letter b) Code of Civil Procedure were infringed, as the court vested with the resolving of the action did not present the motives which led to the adopted solution.

In support of the above-stated arguments, the appellant invokes the case-law of the ECHR (Cases of Perez v. France (GC), Judgment of February 12, 2004, par. 80; Van der Hurk v. Netherlands, Judgment of 19th April, 1994 par. 59; Albina v. Romania, Judgment of April 28, 2005; Gheorghe v. Romania, Judgment of 15 March 2007; Vergil Ionescu v. Romania, Judgment of 28.06.2005, applications no. 32.492/96, 32.548/96 and 33.210/96, par. 115), as well as the High Court of Cassation and Justice (Decision no. 3338 of 11th April, 2011 issued by the civil and intellectual property division of the High Court of Cassation and Justice).

E. The appealed decision was issued in infringement or with a wrong application of the rules of substantive law - art. 72 and art. 69 para. (2) of Law no. 317/2004, as well as the infringement or wrong application of art. 99 letter m) and letter o) of Law no. 303/2004, ground of appeal provided by art. 488 para. (1) point 8 Code of Civil Procedure.

According to the claims of the appellant C., none of the constitutive elements of the disciplinary offense as provided for under art. 99 letter o) of Law no. 303/2004, impugned to it, is met in the case.

The Objective Side
In the opinion of the appellant, the prerequisite situation of the disciplinary offense as provided under art. 99 letter o) of Law no. 303/2004 consists of:

a) the pre-established attribute for the Judge to have powers delegated by the president of the court, respectively of the division, to distribute the cases, by handling and using the ECRIS computer system;

b) in the absence of said competences, the unlawful carrying out of operations of handling and operating the random allocation application, for the purpose of a directed allocation of a case.

Yet, the appellant-defendant did not perform any operation on the ECRIS computer system, she does not have the authority to modify the records in the computer application and she never tried to connect fraudulently in order to make changes in the files. Moreover, the appellant did not seriously or repeatedly infringe the provisions regarding the random allocation of files.

In fact, in this case it is relevant that the defendant-judge did not transfer the case to another panel of judges, as wrongly held in the referral resolution of the disciplinary court and in the appealed decision, instead, it remained with Panel C7F Continuity, this setting having been made by another person, whose identity remained unknown to her, given that her request for evidence in this regard was rejected.

Following her own steps, taken by the defendant-judge, through the Letter no. x/10th.05.2018 of the Bucharest Court of Appeal, she was informed that in 2016 the persons with attributions regarding the verification of random assignment at the level of the 2nd Criminal Division were the president of the division - Ms. Judge H. - and Ms. Judge Q.

In the case brought to trial, - as the defendant-judge argues -, the principle of random assignment came into contradiction with the principle of immediacy in the submission of evidence, starting from the precondition that fundamental principles of law oblige the judge who is assigned a case by decision of the court's governing body of which s/he is a member, to judge and not to unduly postpone a case, since the activity of application of justice is a public service.

The rules of law applicable in resolving the conflict between the two equally important principles must be interpreted according to the way in which these two principles influence and impact the case. The random allocation operation is part of the technical-administrative component of the right to a fair trial, while the direct assessment of evidence belongs to the essence and content of the right to a fair trial, so any conflict between these two principles should be decided in favor of the essence of law.

In arguing on the priority of the principle of the immediacy of the submission of evidence, compared to the principle of random allocation of cases, the constant case-law of the ECHR is invoked (Cases of Beraru v. Romania, Judgment of 18th March 2014; Cutean v. Romania, Judgment of 2nd December 2014; Albert and Le Compte v. Belgium, Judgment of 10th February 1983; Deweer v. Belgium; 27th February 1980; Judgment of 27th June 1968; Le Gompte, Van Leuven and De Meyere v. Belgium, Judgment of 23rd June 1981; Colozza v. Italy, Judgment of 12th February 1985; Mellors v. the United Kingdom, Judgment of 17th July 2003; P.K. vs. Finland, Decision of 9th July 2002).
The ECHR judgments in the Cases Cutean and Beraru v. Romania determined a new approach to the provisions of art. 354 para. (2)-(3) Code of Criminal Procedure, in the sense that, when during the trial changes occur in the composition of the panel, in order to ensure the fairness of the criminal procedure, it is no longer sufficient to resume the debates. In some situations, it is even necessary to re-submit the evidence - at least the essentials, such as hearings - directly in front of the Judge is newly-entered in the panel, so s/he can directly assess their credibility, which implies a resumption, even partial, of the judicial investigation.

In the current practice of the Bucharest Court of Appeal, as the appellant claims, the practice of changing the composition of the trial panel by decision of the governing board is enshrined to the extent that there are situations which require the continuation of the trial by the Judge who started the judicial investigation and directly administered the evidence, thus replacing the Judge who had replaced the Judge to whom the case had been allocated by random assignment in the ECRIS system, thus generating the phrase "C - Continuity". The Plenary of the Superior Council of the Magistracy considered that such a practice does not contravene the principle of random allocation of the cases (SCM/CSM Plenary Decision no. 367/27.03.2018, which refers to the Report no. x/2014 and the SCM (CSM) Plenary Decision no. 1022/ 23.09.2014).

The defendant-judge is being accused of infringing the provisions of art. 53 para. (1) and para. (2) of Law no. 303/2004, as she is alleged to have proceeded to transfer the file no. x/2015 from the initially vested panel to the panel of which she was the presiding judge. Yet, the file tab accessible on the portal of the courts of law conforms that, from registration to resolution, the respective file was investigated by the C7F panel. Therefore, starting with 29th.01.2016, the file was investigated by the C7F Continuity Panel, of which the presiding judge was the defendant, as she

had proceeded to submit the decisive evidence, and the establishing of the composition of said panel is a matter which exceeds her authority, as a judge appointed by decision of the Governing Board.

The same aspect results from the hearing lists displayed at the established court hearings, as well as from the related hearings registers, not attached during the disciplinary investigation. In addition, during the mentioned period, judge C. was not assigned to another panel of judges. Through the portal Emap Courts - ECRIS, one can access the tab of the above-mentioned file, being able to ascertain the fact that, throughout the reference period, the file in question appeared only on the docket of the C7F panel – of which, through the decision of the Governing Board, the investigated magistrate was a member - and the fact that she did not transfer the case to another panel, as wrongly held by the disciplinary action.

The disciplinary court should have taken into account the fact that, according to the Internal Organization Regulation, but also in relation to the functioning of the ECRIS system, the judges had no powers in the configuration of panels and, as such, they could not change the composition of the panels or take over the resolution of a file. *Mutatis mutandis*, in the present case, one could have established that the defendant judge would have been unable to proceed with the transfer of the file to another court panel, as erroneously retained by the appealed decision.

On the contrary, as the appellant shows, considering that the court hearings are public and, on the other hand, that there are designated persons within the courts who directly and permanently monitor the observance of the random allocation, it is practically impossible for a judge to take over another colleague's file and secretly manipulate it during a period of four months, without any reaction from the people whose duties are to proceed in accordance with the law and respectively take the necessary measures in case of infringement of the legal provisions (art. 7 letter g) and art. 8 para. (1) letter a) from the internal order regulation of the court).

Yet, in the disciplinary file there is no document informing the defendant-judge, during the resolution of the file in question or even afterwards, that she did not proceed correctly in compliance with the ECHR case-law, nor was the Judicial Inspection notified in order for the necessary measures to be taken by the governing bodies of the Bucharest Court of Appeal, considering that the entire judicial activity carried out in that file was fully in accordance with the law.

On the contrary, as can be seen from the statement given during the disciplinary investigation by the president of the II - Criminal Division of the Bucharest Court of Appeal, Ms. Judge H., the Judge assigned to the case was concerned with the observance of the continuity of the trial panel and carried out, in transparent way, discussions with the decision-makers in this regard, precisely to avoid the occurrence of any error in the application of the legal provisions in the matter.

In addition, the lack of impartiality of the defendant during the settlement of file no. x/2015, as a judge assigned by decision of the Governing Board, cannot be retained as no rejection application was filed against her.

Contrary to the ascertaining of the disciplinary court, the defendant did not act with "the intention of pre-fabricating justifications for an act, which she knew could generate the

ascertained consequences". The reason why the magistrate notified the president of the division and the president of the court was precisely that of making sure of the lawful nature of her conduct.

The non-legality of retaining said misconduct to the charge of the magistrate derives from the fact that the pronounced decision was overturned by the court of appeal, being noticed only one year after the file was registered; the High Court of Cassation and Justice was not confronted with any conclusions regarding the illegal composition of the panel, by the prosecutor of the session - as it results from the minutes of the proceedings submitted by the petitioner - and the other parties, as well as the notary A. and the Judiciary Inspection did not make any requests to highlight any non-legality during the resolution of the case by magistrate C.

In file no. x/2015, even the randomly assigned judge, namely Ms. D., verified in the composition of the C7 F panel the measures taken by the defendant-judge in the composition of the C7 F Continuity Panel, as they appear from the documents submitted during the hearing of 02nd.04.2018 by the Judicial Inspection, as well as from the information received from the Bucharest Court of Appeal.

Yet, the quashing of a single court decision, ordered on a ground of absolute nullity one year after the file was registered on appeal, in a case where the parties were under judicial supervision, for a reason also contested by the hearing prosecutor, could hardly be a ground to sanction the defendant. In this regard, It is significant that the sanctioned magistrate was not a party to the proceedings by which the judgment no. 90/11.05.2016 delivered by the latter, was quashed in the case no. x, by the Decision No. 255/05th.07.2017, on the ground of unlawful composition of the panel,.

By retaining the disciplinary offence in the light of the rulings issued by the High Court of Cassation and Justice when solving case no. x, by the Decision no. 255/05th.07 2017 - although its clearly illegal character is obvious from the assertion that the composition of the trial panel is established by organic law, according to the provisions of art. 73 para. (1) letter l) from the Constitution, and not by the Internal Order Regulation -, the disciplinary court used, when applying and individualizing the sanction, criteria not provided by law, infringing art. 49 para. (6) of Law no. 317/2004, being also incident the case of quashing provided for under the provisions of art. 488 para. (1) point 6 of the Code of Civil Procedure.

Changing the composition of the panel appointed to judge a case, by decision of the Governing Board, and not by including certain judges from the duty lists, is not sufficient *per se* to reach the conclusion of an illegal composition, a cause of absolute nullity, causing the retrial of the case, only under the terms provided by law.

The composition of the courts, the organization and functioning of the Superior Council of Magistracy, of the courts of law, of the Public Ministry and of the Court of Accounts are established by organic law, according to art. 73 para. (3) letter i) from the Constitution, and a derogation/addition to the law by an act with lower legal force is not allowed.

It is thus concretely justified, in specific terms, against the defendant-judge, how she is supposed to have infringed the legal provisions regarding the random allocation of cases, which, according to the provisions of art. 73 para. (3) letter i) of the Constitution, must be detailed by organic law, and not by legal acts with lower force. The disciplinary court failed to analyze the defendant's defences in compliance with the standards of the Code of Civil Procedure and the standards of the ECHR in the matter of the right to a fair trial, a fact that attracts the annulment with a retrial

for lack of motivation, the provisions of art. 488 para. (1) point 5 Code of Civil Procedure being also applicable.

Thus, although the defendant argued that justice is carried out for the benefit of the citizen, as this is an activity of public interest, the disciplinary court did not point out whether it is fair for witnesses to be called before the court for more or less objective reasons, which s/he cannot censor, whenever, the randomly assigned judge would have been prevented from entering the composition of a panel of judges.

The Subjective Side
According to the claims of the appellant C., in the present case, the legal conditions are not met in order to consider that the act held against her was committed with guilt.

The appellant participated in court hearings in the composition of the C7 Panel on the Merits and later in the C7 Continuity on Merits, between 22nd.01.2016 – 11th.05.2016, being convinced that this activity does not meet the material element of the impugned disciplinary offense.

The motivations of the Decision no. 421 of the 28th October 2013 of the High Court of Cassation and Justice - Panel of 9 Judges - are invoked, with regard to the conditions necessary in order to retain the culpable commission of a disciplinary offense.

The disciplinary court failed to verify important aspects for the establishing of guilt, namely, whether the defendant-judge had the authority that would allow her to modify, in the ECRIS computer system, the composition of the C7F Panel or whether she had the authority to generate the hearings list, and to includee herself as the presiding Judge of the C7F Panel, the evidence submitted by the magistrate being rejected as irrelevant.

From the resolutions pronounced in file no. x/2015, during the hearings of 22nd.01.2016, 29th.01.2016, 02nd.02.2016, 11th.02.2016, 22nd.02.2016, 14th.03.2016, 21st.03.2016, 19th.04.2016, 25th.04.2016, 10th.05.2016 and 11th.0.2016, it follows that trial hearings were granted to the same C7F panel, and not to another panel, as erroneously mentioned in the disciplinary action.

Also, the appellant C. claims that her guilt cannot be held, considering that all she did was to comply with the ECHR standards and judge a case where she was obliged to start the submission of evidence. The lack of guilt must also be considered since, during the allocation of this file, the defendant-judge was also in charge of drafting the decisions pronounced in the administrative and fiscal division of the Bucharest Court of Appeal, as well as preparing the defences for three disciplinary investigations, carried out for three days against her, between 25th.01.2016 and 28th.01.2016. Yet, the file no. x/2015 was a complex file, with 50 criminal investigation volumes, with several defendants and several charges.

The appellant also states that she tried this file because only a few months before she had been reprimanded by the Court Governing Board that she was away for a long time for purposes of professional training, a fact that attracts the disregard of the principle of continuity, and she was transferred, by the Decision no. 251 of 03rd.11.2015, to the administrative litigation division of the Bucharest Court of Appeal.

The lack of any guilt on the part of the defendant-judge must also be taken into account considering that the text of the decision of the Governing Board is incomplete, thereby establishing that the defendant was to become a member of the C7F Panel "as of the 22nd.01.2016".

The phrase "from" used in the text of the decision can be misleading, especially since when it was desired for a judge to enter a single hearing, the phrase "exclusively" was used, as the same judge was designated, *exempli gratia*, by the Decision of the Governing Board of the Bucharest Court of Appeal no. 182 of 25th.08.2016, or the phrase "since the date of".

F. The wrong legal classification of the act, the reason for appeal being provided by art. 488 para. (1) point 5 and point 8 Code of Civil Procedure.

The criticisms of non-legality of the decision refer to the erroneous legal classification of the act impugned against the appellant C. as a disciplinary offense, provided for under art. 99 letter o) of Law no. 303/2004, considering that the act would fall under category of disciplinary offenses, as provided for under art. 99 letter m) of the final sentence of from the same normative act.

In the opinion of the appellant, his deed can be considered, at most, a failure to comply with an administrative decision by which the magistrate would have been ordered to participate in a court session, and he participated in several, motivated by the fact that principles established in the practice of the ECHR, they imposed this conduct on him.

According to the appellant's assessments, we can find ourselves in the presence of the disciplinary offense held against her, in the present case, in the situation where the way in which a file is distributed in a court is not taken into account. However, the method of random allocation of files in a court has an expressis verbis regulation in the Internal Order Regulation of Courts of Law and prosecutor's offices, from the contents of which it follows who has attributions in the random allocation of files.

Given that the basis of the disciplinary action cannot be changed in the appeal, the appellant requests to be ascertained that the entire disciplinary investigation is null and void, so that the decision must be quashed and the disciplinary action rejected, this reason for appeal falling within the provisions of art. 488 para. (1) point 5 and point 8 Code of Civil Procedure, in relation to which the statute of limitation for the resumption of the disciplinary action is to be ascertained.

G. The failure to meet the elements of disciplinary liability, from the objective and subjective aspects, the grounds for appeal being provided by art. 488 para. (1) point 8 Code of Civil Procedure.

Through this ground of appeal, the defendant-judge shows that the act held against her does not meet the requirement of a repeated infringement of the principle of random allocation, as it concerns only one case, respectively file no. x/2015 of the Bucharest Court of Appeal, regarding which to she was charged with non-compliance with this rule. The fact that several trial hearings were granted in the respective case does not amount to a repeated infringement of the principle of random assignment, since, as a rule, only one random assignment can take place in a case.

Also, in this case, the condition regarding the severe nature of this infringement is not met either, as the text of the law suggests a flagrant infringement of a clear and uninterpretable rule, which expressly regulates the issue of the manner to distribute a case, committed in bad faith, when the Judge practically pursues a different goal than that of a fair and equitable resolution of the case.

In this case there was no such infringement, since the change occurred in the composition of the C7F Panel on 22nd.01.2016 according to the regulatory provisions.

In the session of 22nd.01.2016, the magistrate proceeded to submit essential evidence, namely the hearing of three witnesses, thus starting the debates and the judicial investigation.

Thus, the defendant-judge retained the file in the pronouncement, in compliance with art. 354 para. (2) 1st sentence, of the Code of Criminal Procedure.

Neither does the reinstatement caused by the need to discuss the change of legal classification and the submission of additional evidence and the continuation of the case resolution by the appellant represent an infringement of the principle of random allocation, as the continuity of the panel had to be preserved.

If, after the case was reinstated, another judge were to have performed acts of judicial investigation, this would have infringed the principle of immediacy and continuity of the panel, respectively art. 351 para. (1) and art. 354 Code of Criminal Procedure, the right to a fair trial, the rulings in the ECHR case-law (Case of Cutean v. Romania).

When there is a contradiction between the national norm and the European Convention on Human Rights (including the ECHR case-law, which, together with the Treaty, make up the conventionality block), the provision of the Treaty is the priority, as well as the way in which it is interpreted by the Court case-law (art. 20 para. (2) from the Constitution, paragraph 1 (2) Code of Criminal Procedure.

In this context, the magistrate cannot be accused of infringing the rule of random allocation by changing the composition of the panel in the absence of objective, justified reasons, as long as, in criminal procedural matters, certain derogatory principles operate, namely, the principle of immediacy and that of continuity to the panel after entering the debates.

The disciplinary court erroneously held that the presiding judge of the C7 panel started the judicial investigation in the case as early as October 2015, since the reading of the indictment, the settlement of certain requests of the defendants regarding the preventive measures, the hearing of the defendants strictly regarding the admission of their guilt, the approval of certain evidence are not equivalent to entering the judicial investigation phase.

Only with the hearing of the witnesses, the submission of other evidence and the hearing of the defendants who do not admit their actions, can we speak of entering the judicial investigation. Yet, on the hearing of the 22nd of January 2016, the magistrate proceeded to the hearing of present witnesses and defendants, which were essential procedural actions for the resolution of the case.

In the mentioned ECHR cases, the Court essentially established that the Judge who submitted evidence through their own senses must also be the one who pronounced the solution. This was the reason why the appellant considered that the rules and principles of the ECHR apply with priority. Contrary to the assertions of the division for judges, it was not the presiding judge of the panel (who had been replaced) who had to decide on the incidence of these ECHR decisions, because she was not present in court at the hearing of 22nd.01.2016 and she was not the one who submitted the evidence, but the appellant.

The disciplinary court erroneously held that the intention of the defendant-judge in committing the act resulted from the omission to refer to the ECHR case-law, in the resolution of 22nd.01.2016, in order to explain the reasons for keeping the file. It is well known that sometimes the clerk

does not reproduce exactly what the Judge says in the courtroom, however, from the transcript of the court session (an evidence requested by the appellant), it follows that she had informed the present lawyers, the parties and witnesses that, should they remain in the courtroom and at the next call, they would be heard and, considering the ECHR standards, as well as the principle of immediacy and continuity, the defendant will have to solve the case.

It is erroneous what was retained, namely that the appellant forced the witnesses to remain in the courtroom, in order to create justifications for the withholding of the case. There were subpoenaed witnesses, others who wanted to be heard and none of the people present in the room informed him that they did not want to be heard by the appellant.

In this case, the existence of the decision as pronounced by the High Court of Cassation and Justice in resolving the appeal exercised against the sentence pronounced by the defendant-judge cannot be retained as proof of the commission of a disciplinary misconduct, not even with regard to the objective side - the appellant was not a party in the respective appeal, and the High Court did not analyze the way the procedure was carried out from the perspective of the ECHR rulings cited above -, not even from the subjective aspect, this decision being the first in which a situation like the one in this case was analyzed, there being no case-law on a similar matter at the High Court level.

Regarding the non-respect of the appearance of impartiality, which would bestow a severe and intentional character on the defendant-judge's conduct, she states that she had no interest in the said case, as well as the fact that, throughout her trial of the case, no infringement of any legal or regulatory norm by the judge was invoked.

Thus, in the opinion of the appellant, there is no evidence of her intention to commit the disciplinary offense, not even culpa can be retained as a form of guilt.

Regarding the analysis of the subjective side of the impugned act, the appellant shows that, at the level of the Bucharest Court of Appeal, there was no educational session, in which to discuss how the cases of Beraru and Cutean v. Romania are applied in a situation where a colleague, on a substantive panel, cannot enter the session for a time, and their substitute proceeded to submit essential evidence in the respective file. Also, at that time (January 2016), there was no relevant national case-law on this aspect.

On the contrary, in the practice of the courts at that time, it was considered that non-compliance with the principle of immediacy and with the standards developed by the ECHR in the Cutean and Beraru cases had as a corollary the retrial of the case by the substantive courts (Decision no. 445/P/18 May 2015 of the Constanta Court of Appeal).

According to the claims of the appellant, taking into account the consequences of the impugned act, the motivations of the disciplinary court - regarding the serious injury brought to the act of justice and the public trust in the impartiality of justice and the failure to ensure the guarantees of a fair trial - are erroneous.

The disciplinary court based its considerations exclusively on the decision of the High Court to quash the sentence pronounced by the defendant-judge, but this decision is not relevant in this aspect, since only the national provisions were analyzed therein, as the supreme court did not take into account the ECHR case-law considered by the defendant.

On the other hand, the above-mentioned decision is not opposable to the appellant in the present case, as she did not have the position of a party before the said court of appeal.

The appellant considers that, for the arguments shown above, the reasons for appeal provided under art. 488 para. (1) point 6 and point 8 Code of Civil Procedure, become incident.

The disciplinary court incorrectly applied the legal provisions regarding the establishment of direct intent.

According to the claims of the appellant C., the disciplinary court erroneously held that the subjective attitude of the defendant-judge falls under the legal provisions concerning direct intention, incorrectly applying the respective legal provisions.

In the present case, the appellant neither foresaw the result of her act, nor did she accept, in a way that would denote indifference, the possibility of its occurrence. Considering that, according to the arguments in the previous section, the appellant committed the act with the conviction that it did not constitute a disciplinary offense, it follows that the appellant did not have the possibility to foresee the impugned result of participating in the settlement of a case, the immediate consequence that was retained against her.

Moreover, in order to be able to assess, according to the law, the possible existence of a direct intention, the disciplinary court should have reported the subjective attitude of the defendant-judge towards the result of her action, determining, by evidence, whether she foresaw its occurrence before committing the action, and not automatically deduce, from the appellant's participation in the settlement of the case (from the alleged achievement of the objective side), the existence of a direct intention. This is because direct intention is characterized by a follow-up attitude of the perpetrator faced with the possibility of causing a socially dangerous result.

The disciplinary court deduced the existence of the defendant-judge's guilt from the alleged caused immediate result, making a serious confusion between foreseeing the consequences of the act, an element of the subjective side, and the actually caused result, an element of the objective side.

However, the analysis of the subjective side is separated from the one concerning the immediate follow-up of the fact, which is part of the objective side. The division should have determined whether the eventuality of an immediate follow-up was accepted by the perpetrator.

The judgment of the case by the defendant-judge does not mean the acceptance of the result of the action, in the sense of the legal definition of direct or indirect intention.

Also, the disciplinary court erroneously granted relevance to the notification of the division president after the submission of certain essential evidence in the case.

Yet, the appellant informed not only the division president - who, before providing a concrete answer to the petitioner, had the duty to check the situation of the file and take the necessary measures, if it were considered that the principles of random allocation were not observed -, but also the president of the court, Ms. Judge L., her hearing did not delay the case and resulted as conclusive for the settlement of the case according to the provisions of art. 254 Code of Civil Procedure, from the debates.

The appellant also claims that the disciplinary court should have ordered the hearing of Ms. Judge D., in order to highlight the only intention of the appellant to comply with the ECHR standards, since, during a conversation with the appellant, Ms. D. expressed herself in the sense that, to the extent that the witnesses appear on the 22nd.01.2016, the appellant was to act as a presiding judge, keeping the case so as to continue the judicial investigation so as to observe the valences of the immediacy principle.

The reasons why the appellant did not address the Governing Board of the Bucharest Court of Appeal are the following: (i) there is no provision for such an obligation, contrary to what was stated in the appealed judgment without the support of a legal text and (ii) the appellant had already contacted the president of the court / the division president, persons with legitimate competences in the field of assigning cases and who had ruled that the appellant was obliged to continue the judicial investigation if she heard the witnesses.

In addition, by accessing the website of the Bucharest Court of Appeal, we noted that there are numerous situations in which the composition of the court panels is changed by a decision of the governing board, in no case being identified any decision by which the appointed judges requested the Court of Appeal Bucharest information on the method of relating to the guarantees of the right to a fair trial.

The subjective state that characterized the appellant at the time of committing the alleged disciplinary offense does not correspond to even the slightest fault without foresight, since the appellant, in consideration of the cited legal provisions, did not foresee the result of her action, as she neither should nor could foresee it. In other words, by choosing to consult with the president of the court and the president of the division with regard to her situation, considering that such an approach was not necessarily required by the legal provisions, the appellant showed a high degree of diligence. This diligence is likely to remove any possible fault regarding the impugned deed.

The circumstance that the president of the division did not verify any possible infringement, by the appellant, of the provisions of the internal order regulation and did not debate, in the professional education sessions, the way in which the judges of the division would apply the values of the principle of immediacy, as a result of the conviction of Romania at the ECHR, cannot be opposed to the investigated judge.

In the same line, the appellant argues, it should be noted that, although she repeatedly proposed the modification of the composition of certain court panels, by decisions of the Governing Board, by circumventing the provisions of the Internal Order Regulation, the president of the division was never sanctioned by the Judicial Inspection.

In the opinion of the appellant, the disciplinary court also unfoundedly held that the behavior of the defendant-judge induced the idea of a faulty functioning of the judicial system, as long as, at the time of the commission of the act, no complaint / warning / information in connection with non-compliance with the regulatory provisions or the principles governing the criminal procedure, neither by the court management nor by the 2nd criminal division, nor by the Judicial Inspection on the occasion of another verifications, nor by the parties or their lawyers.
H. The appellant considers that the application by the disciplinary court of the most severe sanction is unjustified, the grounds for the appeal being provided under art. 488 para. (1) point 8 Code of Civil Procedure

The appellant's assertion takes into account the fact that the severity of the act committed by her cannot be retained, the direct intention or the causing of the consequence consisting in the inducing of the idea of a defective functioning of the judicial system. At the same time, the appellant considers that the manner in which she understood to defend herself during the disciplinary procedure cannot influence the individualization of the applied sanction.

I. Failure to comply with the criteria for individualizing the disciplinary sanction and the principle of proportionality constitutes a reason for the non-legality of the appealed decision.

According to the claims of the appellant in the case, it is necessary to quash the appealed decision, as it was pronounced in infringement, respectively with the wrong application of art. 49 para. (6) of Law no. 317/2004 and art. 100 of Law no. 303/2004, since the disciplinary court illegally operated the individualization of the disciplinary sanction applied to the appellant.

Yet, the non-compliance with the criteria for individualizing the disciplinary sanction and the principle of proportionality is a ground for non-legality, according to the practice of the High Court of Cassation and Justice - Panel of 5 judges (Civil Decision no. 155 of the 12th October 2015, page 5) and the specialized literature.

First, the disciplinary court did not refer to the legal criteria for individualization, not using them as they are expressly provided under art. 49 para. (6) of Law no. 317/2004 and developed, through interpretation, even in the practice of the division for judges in disciplinary matters of the Superior Council of Magistracy and in the case-law of the High Court.

Second, the disciplinary court applied criteria that are not provided by law in order to individualize the disciplinary sanction applied to the defendant-judge, taking into account facts that cannot be relevant to the individualization operation and therefore wrongly applying the provisions of art. 49 para. (6) of Law no. 317/2004, which also attracts the incidence of the provisions of art. 488 para. (1) point 6 Code of Civil Procedure.

Third, the disciplinary court did not observe the principle of proportionality of the disciplinary sanction with the severity of the misconduct, expressly provided by art. 100 of Law no. 303/2004.

According to the provisions of art. 49 para. (6) of Law no. 317/2004, when individualizing the sanction, the disciplinary court was obliged to consider two criteria: the severity of the impugned misconduct and the personal circumstances of the defendant judge.

However, in order to establish which specific factual circumstances are relevant in order to determine the severity of the action and the personal circumstances of the appellant, according to the doctrine, the practice of the division for judges in disciplinary matters of the Superior Council of the Magistracy and the case-law of the High Court (Complete of 9 judges, Decision no. 6 of February 23, 2009, page 13), the criteria provided under art. 250 of the Labour Code are applied.

Therefore, in the opinion of the appellant, the disciplinary court should have referred to the following criteria, constantly valued in the practice of the division for judges in disciplinary matters of the Superior Council of the Magistracy (Decision no. 6/J of the 28th of June 2006, page 6; Decision no. 8 of 28th September 2006, pages 8-9; Decision no. 2J of 17th of March 2010, page 14; Decision no. 16 J of 9th September 2015, page 19) and of the High Court of Cassation and Justice (Panel of 9 judges - Decision no. 5 of 7th of May 2001, in the case G. Bogasiu, D. I. Vartires, A. Segărceanu, The legality control of the decisions of the Superior Council of Magistracy. The

case-law of the High Court of Cassation and Justice, Hamangiu Publishing House, Bucharest, page 220; Panel of 5 judges – Civil Decision of 14th of March 2011, *per a contrario*; Panel of 9 judges - Decision no. 1 of the 22nd of January 2006, page 4; Panel of 9 judges - Decision no. 10 of the 5th of June 2006, page 4; Panel of 9 judges - Decision no. 2 of the 30th of April 2012, page 52 - Appendix CB -13 (i):

a) the general behavior of the appellant in the exercise of her position as a judge, as it is revealed by the situation that no disciplinary sanction was applied to her for an act concurrent with the one in the present case, in order to highlight the recidivist behavior of the appellant;

b) the constant preoccupation of the appellant both for her own professional development and for sharing the acquired theoretical and practical knowledge with civil servants;

c) the circumstances in which the appellant committed the act, which denotes a reduced severity of the act;

d) the degree of guilt, which also denotes a reduced severity of the deed;

e) the lack of actual consequences of the appellant's act, including on the rights of the parties in the files where the appellant was a judge, which demonstrates, once again, the low severity of the action.

Contrary to art. 49 para. (6) of Law no. 317/2004, the disciplinary court did not take into account the fact that the defendant-judge, although she had previously been investigated disciplinarily four times, she had never before a disciplinary sanction, there being no reference to the non-existence of a previous disciplinary offense in the entire content of the appealed decision.

During her career, the defendant-judge obtained very good professional qualifications, she showed a constant concern for her professional development and sharing of the acquired knowledge, she made constant efforts for specialization and continuous professional development, she published over 100 articles, studies, notes and scientific communications in specialist journals and a monograph in her own name, the detailed list thereof is available in the appellant's CV, attached to the case file, but ignored by the disciplinary court.

According to the claims of the appellant C., the circumstances in which she committed the act indicate the low severity thereof, given the provisions of art. 10 and art. 11 of Law no. 303/2004 and the ECHR case-law on the matter (cases of Cutean v. Romania and Beraru v. Romania), but also the fact that the defendant-judge did notify the president of the court and the president of the division in good faith, prior to committing the act, and they did not apply any approach from which the appellant could have understood that she may have been in a state of incompatibility.

As regards the reinstatement of the file, after the court reserved the judgment, the appellant invokes the non-legality of the provisions of art. 111 para. (5) of the Regulation on the organization and functioning of the courts, to the extent that these would allow an interpretation in the sense of the impossibility of changing the composition of a panel of judges until the start of the debates, thus ignoring art. 354 of the Criminal Procedure Code and by infringing the valences of immediacy and adversariality developed by the ECHR in the cases of Cutean and Beraru.

The non-legality of these provisions can be examined in the light of art. 8 Code of Criminal Procedure, which governs the right to a fair trial, related to art. 21 para. (3) of the Constitution in

conjunction with art. 6 of the European Convention on Human Rights, related to art. 20 para. (2) from the Constitution.

Putting the case back on the docket, after remaining in the judgment, followed by sending the case to a judge other than the one who conducted the judicial investigation would infringe the principle of immediacy and continuity, in the light of the valences of interpretation as developed under the ECHR case-law, in the Cases of Poelmans v. Belgium - Judgment of the 3rd February 2009; Nicolai de Gorhez v. Belgium - Judgment of 16th October 2007, Enterprises Robert Delbrassine v. Belgium - Judgment of the 1st of July 2004, and of other consequences deriving from the failure of its representatives in taking measures to avoid the procrastination of judgment in older cases, such as the Ultra Pro Computers case (file no. x/2015), where the defendants had been sent in court for having committed certain acts in the year 2008.

The degree of guilt of the appellant denotes the low severity of the action.

In the opinion of the appellant, even if the High Court were to consider that the defendant-judge committed the act with guilt and that the requirement of the subjective side of the impugned disciplinary offense is met, in the light of the above, the degree of guilt is a low one.

The lack of consequences of the committing of the alleged misconduct derives from the fact that the sentence pronounced by the defendant-judge was overturned by the court of appeal.

When individualizing the sanction applied to the defendant-judge, the disciplinary court used criteria that are not provided by law, thus infringing art. 49 para. (6) of Law no. 317/2004, being an incident and the case for quashing provided for under the provisions of art. 488 para. (1) point 6 Code of Civil Procedure

Last but not least, the appellant points out that the view of the disciplinary courts on the sanctioning the alleged misconduct was not observed.

In the practice of the division for judges in disciplinary matters of the Superior Council of Magistracy and the High Court of Cassation and Justice, there existed a small number of cases, which analyzed the disciplinary offense provided for under art. 99 letter o) of Law no. 303/200452.

Their analysis reveals the following:
a) after the introduction of the ECRIS information system and the stabilization of its functions, the cases of directed assignment have been considerably reduced, also due to the fact that judges without management powers cannot manipulate the random assignment algorithm;
b) most of the sanctioned persons had management positions;
c) the taking over of the file by the sanctioned judge was done by malicious means or by violence;
d) the facts of manipulation of the random assignment were discovered relatively quickly by the management of the courts, being reported including by the clerks.

The sanction of exclusion from magistracy, in order to solve a case distributed by a decision of the Governing Board, is unique in disciplinary case-law, including at the level of the High Court. For more serious infringements than the one impugned to the appellant, also in conjunction with other infringements, the sanction was at most a 20% diminishing of the allowance, for a duration of 6 months.

In conclusion, the appellant shows that the disciplinary court infringed the principle of proportionality of the disciplinary sanction with the severity of the offense, provided by art. 100 of Law no. 303/2004, illegally individualizing the disciplinary sanction applied to the appellant.

J. Ignoring, by the disciplinary court, the effects of the Decision of the Governing Board of the Bucharest Court of Appeal no. 10/14.01.2016, which continues to be in the civil circuit and produce legal effects, the reason for appeal being provided by art. 488 para. (1) point 8 Code of Civil Procedure

According to the claims of the appellant, the practice of the Bucharest Court of Appeal of not complying with the provisions of the Internal Order Regulation in case of the absence of judges appointed by random allocation, by appointing other judges who are not part of the permanent lists, constitutes the rule and not the exceptional situation, at the level of this court, none of the judges with attributions in the random allocation/Board of management/division presidents being disciplined, according to the communication Bucharest Courts of Appeal.

Moreover, there is no need to impose disciplinary sanctions on a judge appointed by a decision of the Governing Board who applied the ECHR standards, carried out the judicial investigation, in order not to be liable for denial of justice, after consulting with the president of the division / the court president / judge who had not started the actual submission of evidence, but had only submitted the statements of the defendants in an abbreviated procedure, for the guilt recognition, one of them did not admit to the act and requested evidence to prove their innocence.

Had she acted otherwise, the defendant-judge would have infringed the principles of immediacy and continuity, art. 8 and 354 Code of Criminal Procedure, but also art. 6 of the European Convention on Human Rights, according to the valences of interpretation developed in the ECHR case-law through the above-mentioned cases and, at the same time, it would have exposed the Romanian state to other consequences, deriving from the failure of its representatives to take measures so as to avoid procrastination of cases in old cases, like the file no. x/2015.

K. In this case, the statute of limitations for the disciplinary action is reached, the reason for appeal is provided in art. 488 para. (1) point 8 Code of Civil Procedure.

The appellant shows that she invoked, before the disciplinary court, the exception of the statute of limitations of disciplinary liability, motivated by the fact that the impugned disciplinary offense was committed between 17.07.2014 - 02.08.2014, and the disciplinary sanction was applied to the defendant-judge by the contested decision at the time of her sanctioning the 2-year term from the date the commission of the act being exceeded by 6 months, as provided by art. 49 para. (7) of Law no. 317/2004.

The exception invoked according to the above was rejected by the disciplinary court, motivated by the fact that, essentially, the limitation period contained in the text of art. 49 para. (7) of Law no. 317/2004 only applies to the right of the division for judges in disciplinary matters of the Superior Council of the Magistracy to initiate a disciplinary action and not to the right to apply the disciplinary sanction.

Yet, according to such an interpretation, the disciplinary liability of magistrates becomes a form of liability which, by defying the general rules applicable to legal liability *lato sensu*, is not entirely prescriptive, but only in part, such a conclusion cannot be accepted.

In support of the motivation for appeal presented in this division, the appellant C. criticizes the unconstitutionality of art. 46 para. (7) of Law no. 317/2004, showing that the method of interpretation of this legal text by the disciplinary court contravenes the principle of equality before the law, as it results from the Constitution, as well as the principles of a democratic state, characterized by the security of legal relations, but also the Universal Declaration of human rights, reflected in the constant case-law of the ECHR

The appellant invokes the ECHR Judgment of 9th of January 2013, pronounced in the Case of Volkov v. Ukraine (par. 135, 136, 137).

According to the claims of the appellant, one cannot accept the interpretation of the disciplinary court according to which the law would authorize the automatic and global recourse to civil law, as a reunification regulation, without taking into account the specifics of the legal relationship of disciplinary administrative law.

The special-type administrative disciplinary liability of magistrates is most similar, from the point of view of legal nature, to the general administrative disciplinary liability of civil servants - and to the disciplinary liability of labor law. These categories of disciplinary liability are not a subspecies of civil liability, but, as in nature, reason and regulation, they are closer to criminal or contraventional liability.

In the opinion of the appellant, a parallel with the criminal law is inevitable and revealing, as long as the discipline in service as regulated by Law no. 317/2004 has as its rationale precisely the achievement of that state of order which is attained by observing the set of mandatory rules, necessary in carrying out the activity within an organized group.

One can note that the criminal, contraventional, labor law disciplinary or administrative disciplinary liability is constituted in a distinct group, in relation to civil, patrimonial liability.

Therefore, one cannot deny the closeness between disciplinary administrative law, disciplinary labor law, criminal and contraventional law in matters of liability. In all cases, the basis of liability is an illegal act, which requires a preliminary investigation, necessarily ensuring the right to defence for the accused. By virtue of the above, for the application of administrative disciplinary liability, the most suitable is the borrowing of norms from the matter of disciplinary administrative liability, disciplinary labor law, criminal and contravention law, this being valid in the matter of the issue of the statute of limitation.

Starting from these preconditions, as long as in the case of criminal liability the need to recognize the effects of the statute of limitations is unanimously admitted, with exceptions expressly established by law, *a fortiori*, in the case of a disciplinary offense it is necessary to fully recognize the effects of the statute of limitations (not partially, in relation to the exertion of the disciplinary action, but in full, including in relation to the moment of application of the sanction).

Therefore, claims the appellant, reducing to absurdity, in the hypothesis in which the legislator would have appreciated that an act committed by a magistrate would present a social danger of particular severity, for which the imprescriptibility of liability should be necessary, the former would themselves institute the exception of imprescriptibility of liability for such a disciplinary offense, as the exception cannot be deduced from the simple silence of the law or from the lack of clarity of the regulation. In such an event, however, it is indisputable that the act in question would become a criminal act, practically losing its character of disciplinary offense.

Therefore, the appellant considers that it could in no case, be reasonably held that in the event of the disciplinary liability of the magistrates, the disciplinary sanction can be applied independently of any statute of limitations.

It should be noted that in the field of limitations of legal liability, both in criminal and contraventional law, as well as in the administrative disciplinary law and in labor law (the last two situations being closer, - in relation to the severity of the impact brought against social order -, to the disciplinary liability of magistrates), the moment of the effective application of the sanction is relevant, the moment of punishment, related to the moment of committing the act.

In support of the above-mentioned, the appellant invokes the provisions of art. 154 para. (2) Criminal Code, art. 16 para. (1) letter f), art. 396 para. (6), art. 598 para. (1) letter d) Code of Criminal Procedure, art. 13 para. (1) from GEO no. 2/2001 regarding the legal regime of contraventions, art. 77 para. (5) of Law no. 188/1999 regarding the Statute of civil servants, art. 252 para. (1) of Law no. 53/2003 regarding the Labor Code.

The rules regarding the application of the statute of limitations, contained in the above-mentioned legal texts, must also become effective in the case of administrative disciplinary responsibility of a special type - in this case of the magistrate. Thus, also in the case of special type administrative disciplinary liability, the statute of limitations must have as a starting point the moment of committing of the reprehensible act and, as an endpoint, the moment of the effective application of the sanction.

Considering the important difference, in terms of the degree of social danger of the act, one must conclude that disciplinary liability in the case of magistrates, as a type of administrative disciplinary liability, is entirely subject to the statute of limitations and under all aspects, in the event that the provisions of art. 46 para. (7) of Law no. 317/2004 are incomplete in terms of the regulation, they need to be completed with the terms provided in art. 252 of the Labor Code or with the terms of art. 11 paragraph (5) of Law no. 188/1999.

The limitative character of the disciplinary responsibility is related to the essence of disciplinary responsibility, this character being made clear with binding force by the Decision of the Constitutional Court no. 71/1999.

Although in the above-mentioned decision the Constitutional Court expressly refers to the case referred to trial, namely that of an employment relationship between an employee and an employer, the appellant shows that these considerations remain valid regardless of the nature of the disciplinary liability. Moreover, the Constitutional Court established the limited nature of disciplinary liability as a whole, and not with regard to certain stages thereof, the reference moment, from the perspective of the statute of limitations, being that of the enforcement of the disciplinary sanction.

In continuation of the previously presented arguments, the appellant invokes the case law of the High Court of Cassation and Justice, by which the limitable character of disciplinary liability was reconfirmed also in the case of civil servants (Decision no. 1107/01.03.2012).

III. Counterstatement of the respondent Judicial Inspection
The respondent Judicial Inspection submitted, on the 12th of July 2018, a counterstatement to the defendant-judge's appeal, requesting its rejection as unfounded, the contested decision being, in the opinion of the owner of the disciplinary action, legal and well-founded.

IV. The procedure carried out in appeal

The report drawn up in the case (file no. x/2018, before the joining of file no. x/2018), as provided under art. 493 para. (2) and (3) of the Code of Civil Procedure, was analyzed in the filtering panel of judges, being communicated to the parties in accordance with the provisions of art. 493 para. (4) of the mentioned code.

By the resolution in the council chamber of the 24th September 2018, the filter panel, considering that the appeal requests meet the formal requirements as provided under art. 486 of Code of Civil Procedure, as well as the admissibility conditions, in relation to the provisions of art. 51 para. (3) of Law no. 317/2004, admitted in principle the appeals brought before the court.

It should be mentioned that the trial of this file was suspended between the 13tho of May 2019 and the 28th of February 2022, due to the considerations set out below.

Appellant C. invoked, in the present file, the exception of the illegal composition of the panel of judges, contesting the compatibility of the intervention of the Constitutional Court and, further on, of the Superior Council of Magistracy, with the provisions of art. 2 of the TEU, and she also filed, on the 11th of February 2019, a request to refer the Court of Justice of the European Union, in order for it to issue a preliminary ruling.

Considering that an explanation of the notions employed for the operation of this article of the Treaty was necessary for the High Court in order to resolve the exception of the illegal composition of the panel of judges as invoked by the appellant and to establish the composition of the panel of judges, by the resolution of the 13th May 2019, the High Court admitted, in part, the request for referral to the Court of Justice of the European Union in order for it to issue a preliminary ruling regarding the following question:

"Should Article 2 of the Treaty on the European Union, article 19 paragraph (1) of the same treaty and article 47 of the Charter of Fundamental Rights of the European Union be interpreted in the sense that they oppose the intervention of a constitutional court (a body that is nota court of law according to domestic law) with regard to the manner in which the supreme court interpreted and applied the infra-constitutional legislation in the activity of constituting the panels of judges?"

Thus, pursuant to art. 412 para. (1) point 7 of Code of Civil Procedure, the trial of the case was suspended until the Court of Justice of the European Union pronounced the preliminary decision.

On the 21st of December 2021, the Judgment of the Court of Justice of the European Union was pronounced in the related cases C-357/19 and C-379/19, C-547/19, C-811/19 and C-840/19, and on the 28th of February 2022, in accordance with art. 415 points 3 Code of Civil Procedure., the High Court ordered the reinstatement of the case.

V. Considerations of the High Court on the Appeal

After analyzing the challenged decision in relation to the documents on file, with the criticisms formulated by the appellants, with the defences of the respondents, as well as with the relevant legal regulations, the High Court will reject the appeals with unanimity of votes, for the reasons that will be presented below, with the mention that, in order to systematize the exposition, the criticisms formulated by the authors of the two appeals and the corresponding defences will be

examined in a grouped manner, in an order established according to the nature of the invoked legal issues and based on the criterion of the effects they can cause in the settlement of the case, according to the provisions of art. 248 para. (1) from the Code of Civil Procedure.

In accordance with the rulings of the Constitutional Court in its Decision no. 381 of the 31st May 2018, published in the Monitorul Oficial *[Official Gazette of Romania]*, Part I, no. 634 of the 20th July 2017, in the sense that, in matters of disciplinary liability of magistrates, the appeal should not be qualified as the extraordinary legal remedy as provided by Code of Civil Procedure., but as an actual devolutional legal remedy against the decision of the disciplinary body, the High Court will proceed both to verify the legality of the procedure and the validity of the decision of the disciplinary court.

5.1. Regarding the appeals submitted by the two appellants against the resolution of 28th of March 2018
· Criticisms of non-legality aimed at the infringing of art. 64 para. (4) and para. (6) of the Code of Civil Procedure as well as the intervener's right to a fair trial, the reason for appeal being provided by art. 488 para. (1) point 5 Code of Civil Procedure.

The legal issue subject to resolution in this appeal concerns the compatibility of the provisions of art. 61 - art. 64 of Code of Civil Procedure with the provisions of Law no. 317/2004, which regulates the procedure for the settling of the disciplinary action.

It is true that art. 49 para. (7) of Law no. 317/2004, in the form applicable at the reference date in this case, provides:

"The provisions of this law that regulate the procedure for the settling of the disciplinary action are supplemented by the provisions of the Civil Procedure Code."

As the disciplinary court correctly retained in the contested resolution, the case-law of the Panel of 5 judges of the High Court of Cassation and Justice was consolidated, in the sense that in application of the referral rule under art. 49 para. (7) of Law no. 317/2004, the provisions of the Civil Procedure Code do not automatically become incident, but only to the extent that they are not incompatible with the special provisions regulating the procedure for the settling of the disciplinary action, as contained in Law no. 317/2004. Under this aspect, the case law has shown that "an essential argument is represented by the fact that the divisions of the SCM, when they are vested in the role of a court in matters of disciplinary liability of judges and prosecutors, are not courts within the meaning of art. 126 para. (2) of the Constitution and the provisions of Law no. 304/2004 on judicial organization, instead, they are an extrajudicial court (Decision of the Constitutional Court no. 148 of the 16th of April 2003) which performs an administrative-jurisdictional activity (Decision of the Constitutional Court no. 391 of the 17th of April 2007), thus being an administrative-jurisdictional body" (High Court of Cassation and Justice - Panel of 5 Judges, Decision no. 266/2017, point 66; Decision no. 271/2017, point 45; Decision no. 293/2017; Decision no. 36 of the 10th of February 2020.

From the perspective of the incompatibility of the procedural institution of the voluntary intervention with the administrative-jurisdictional procedure for the settling of the disciplinary action, the fact that disciplinary responsibility is strictly personal in nature is extremely relevant. The legal relationship of disciplinary responsibility has a significant public law component, a relationship to which one cannot attach, in the sense of the request for intervention as regulated by the Code of Civil Procedure, the specific interest pursued by a subject of private law. Such being the case, even if it represents, in the sense of art. 61 para. (3) of the Code of Civil

Procedure, a simple defence formulated by the ancillary intervener in support of one of the parties in the litigation - such as the procedural approach of the appellant Association in this case - the request for intervention is not admissible in the case of personal requests, a category to which the action in disciplinary liability belongs. Considering the existing similarity, in terms of strictly personal nature, between disciplinary liability and criminal liability, an additional argument, - in the sense of the inadmissibility of the request for ancillary intervention in the disciplinary procedure -, is represented, by analogy, by the fact that the Criminal Procedure Code doesn't regulate the legal institution of the main or ancillary intervention either.

The criticisms of the appellant Association also envisage the judgments of the disciplinary court regarding the lack of the Association's own interest in formulating the request for ancillary intervention in the interest of the defendant C., invoking a legitimate interest to support the defence of the defendant-judge, which supposedly results from art. 4 of the amended Statute of the Association " Forum of the Judges from Romania".

In accordance with its constant case-law regarding the admissibility of the request for ancillary intervention in the judicial procedure of the disciplinary liability of the magistrates, the High Court finds that the solution of the disciplinary court, rejecting as inadmissible the request for ancillary intervention of the Association, is a legal one, since the public interest invoked by the Association does not lead, in itself, to the fulfillment of the condition of the procedural interest to intervene in the case, in the sense of art. 61 para. (1) from Code of Civil Procedure

Taking into account the considerations shown in the paragraphs above, it follows that the criticisms formulated by the two appellants are equally unfounded, according to which, by rejecting, as inadmissible, the request for ancillary intervention as formulated by the Association, the disciplinary court would have infringed the procedural guarantees that both the defendant and the accessory intervener should benefit from, namely the right to a fair trial, with all the corollary of the relevant legal institutions - the right to defence (art. 13 and art. 14 para. (4) and para. (5) Civil Procedure Code), the principle of adversariality (art. 22 para. (2) sentence II of the Civil Procedure Code).

· The criticism regarding the illegal reinstatement of the case, by the disciplinary court, with the alleged infringement of art. 9 Code of Civil Procedure - the reason for appeal being provided by art. 488 para. (1) point 5 Code of Civil Procedure

From the analysis of the documents on file, it follows that the judgment of the case (file no. x/2017 registered on the docket of the division for judges in disciplinary matters of the Superior Council of the Magistracy) was suspended by the resolution of 10th May 2017, based on the provisions of art. 413 para. (1) point 1 Code of Civil Procedure, until the settling of the appeal filed against the Decision no. 1J/08th02.2017 of the division for judges in disciplinary matters of the SCM, issued in file no. x/2016, by which the sanction of exclusion from magistracy was applied to the appellant-defendant for having committed the disciplinary offense provided under art. 99 letter b) of Law no. 303/2004.

From the analysis of the provisions of art. 413 para. (1) point 1 Code of Civil Procedure, we note that the measure of suspension represents an incident in the course of the action and it has the effect of temporarily suspending the court proceedings due to circumstances desired by the parties or independent of their will. These provisions regulate a case of optional suspension of the trial, namely when the resolution of the case depends, in whole or in part, on the existence or non-existence of a right that is the object of another judgment.

According to the provisions of para. (2) of art. 413 Code of Civil Procedure "The suspension will last until the judgment pronounced in the case that caused the suspension becomes final", and according to art. 415 Code of Civil Procedure, applicable in this case (prior to the amendments introduced by Law no. 310/2018):
"The judgment of the suspended case is resumed:
1. by the reopening request made by one of the parties, when the suspension was ordered by the consent of the parties or due to their absence;
2. by request for reopening of the process, filed with the identification of the heirs, of the guardian or curator, of the person represented by the deceased trustee, the new trustee or, as the case may be, the interested party, the liquidator, the official receiver or the judicial liquidator, in the cases provided for in art. 412 para. (1) point 1-6;
3. in the cases provided for under art. 412 para. (1) point 7, after the pronouncement of the decision by the Court of Justice of the European Union;
4. by other methods as provided by law".

From the analysis of the legal provisions cited above, in relation to the particular circumstances of the case and taking into account those stipulated by the considerations of the Decision no. 52 of the 3rd of July 2017 of the High Court of Cassation and Justice – Panel of Judges for the resolving of certain legal issues, published in the Monitorul Oficial al României *[Official Gazette of Romania]*, Part I, no. 764 of the 26th September 2017, the Constitutional Court Decision no. 672 of the 6th of November 2018, published in the Monitorul Oficial al României *[Official Gazette of Romania]*, Part I, no. 220 of the 21st March 2019, the High Court retains that the retrial of the case in the context of art. 415 Code of Civil Procedure, is carried out at the request of the parties only in the cases mentioned in this article. Under point 3 of art. 415 of the Code of Civil Procedure in the form applicable to the present case, the legislator only provided for the retrial of the case also "by other means provided by the law".

Consequently, given the fact that, in this case, the judgment of the disciplinary action was suspended until the settlement of the appeal made against the Decision no. 1J/08th.02.2017 of the division for judges in disciplinary matters of the Superior Council of the Magistracy, and the disciplinary court assessed that the solution that was to be issued the High Court in the context of the other litigation was necessary for the fair settlement of the pending case, it follows that after the optional suspension ordered in such circumstances, the case had to be reinstated *ex officio* after the pronouncement of the High Court's decision on the mentioned appeal, this moment being equivalent to the cessation of the cause for suspension.

The court's obligation to order the reinstatement of the case, *ex officio*, does not remove the right of any of the parties to request the reopening of the procedure by formulating a request to resume the trial.

In fact, only in the case of voluntary suspension, regulated by art. 411 para. (1) Code of Civil Procedure, or in the case of legal suspension as provided for under art. 412 para. (1) points 1 - 6 of the Code of Civil Procedure., the trial can only restart if there is a request for reinstatement formulated by the parties. From the way in which the reopening of the case is regulated in the case of optional suspension, in para. (2) and (3) of art. 413 Code of Civil Procedure, it obviously results that this is no longer governed by the principle of disposition of the parties.

On the other hand, as noted in the case-law of the Supreme Court (Decision 2296 of the 5th of November 2020, Decision no. 686 of the 10th of March 2020, both pronounced by the High Court of Cassation and Justice, 1st Civil Division), when an act of procedure must be carried out *ex officio*, the parties cannot be blamed if the file remains inactive so that, finding that this condition

has been fulfilled together with the passing of a period of 6 months of the case remaining inactive, it will be possible to apply the procedural sanction of the application's obsolescence.

Therefore, in view of all the considerations set out in this section, the High Court will reject as unfounded the appeals filed by the appellants Association "Forum of Judges from Romania" and C. against the resolution of 28th of March 2018 issued by the division for judges of the Superior Council of Magistrates, in file no. x/2017.

5.2. Regarding the common criticisms directed against the resolution of 28th of March 2018 and Decision no. 9J of the 2nd of April 2018

· The criticisms developed by the appellant-defendant in support of the appeal filed against the resolution of the 28th of March 2018 and Decision no. 9J of 2nd of April 2018, from the perspective of the provisions of art. 488 para. (1) point 5 of Code of Civil Procedure and art. 6 of the European Convention on Human Rights, cannot be considered as founded, and will be removed, for the following reasons.

In support of this ground of appeal, the defendant-judge essentially criticizes the rejection, by the disciplinary court, of the formulated dilatory motion because of the impossibility of appearance of her elected defender at the court hearing of the 2nd of April 2018, as well as the evidence requested by the defendant-judge in her defence, and the failure to apply art. 222 para. (2) Code of Civil Procedure

As for the claim regarding the illegal rejection of the request for postponement of the trial in the case, considering the impossibility to appear of the elected defender of the appellant-defendant, the High Court finds it unfounded.

According to art. 222 Code of Civil Procedure:
"(1) The adjournment of the trial for lack of defence can be ordered, at the request of the interested party, only exceptionally, for well-grounded reasons that are not impugnable to the party or to its representative.
(2) When the court refuses to postpone the trial for this reason, it will postpone, at the party's request, the pronouncement so that written conclusions may be submitted."

At the same time, the High Court notes that art. 49 para. (7) of Law no. 317/2004 provides that the provisions of the law relating to the procedure for the settling of disciplinary actions are supplemented by the provisions of Code of Civil Procedure, as long as they are not incompatible with the special procedure.

As can be seen from the resolution of the 28th of March 2018 (page 31, last paragraph - file no. x/2017, Vol. IV), a new deadline was granted during that court hearing, to which both the defendant and the plaintiff's representatives have agreed.

Moreover, in the rubrum of the judgment (summary of the facts) challenged by this appeal (page 5 - file no. x/2017, Vol. VI), it was noted that the defendant was the one who requested the establishment of the date of Monday, the 2nd of April 2018, as the date of the next court hearing, and these aspects were not contested by the appellant-defendant.

The High Court also takes into account the fact that, on the 22nd of January 2022, the appellant-defendant was notified via e-mail of the Letter dated 18.01.2017, by which she was informed that the file no. x/2017 was reinstated *ex officio* under the conditions of art. 413 para. (2) Code of Civil

Procedure, in relation to the fact that, the Decision no. 1J/08th.02.2017 of the division for judges in disciplinary matters of the Superior Council of Magistracy remained final on the 13th.12.2017.

Later, on the 13th of February 2018, the appellant-defendant was served the summons by which she was informed on the *ex officio* change of the court hearing date from the 28th of February 2018, to the 28th of March 2018, at 10:00 a.m. hours.

At the hearing of the 2nd of April 2018, the defendant requested t\he granting of a new hearing, due to the impossibility of the elected defender to appear.

The deferral request was rejected, as the disciplinary court considered that the conditions provided under art. 222 Code of Civil Procedure were not met, as no exceptional circumstances were proved in the sense of the mentioned regulation. There was no evidence on the case file to confirm that the appellant's elected defender could not appear, also bearing in mind the context in which the hearing had been established.

The High Court notes that the disciplinary court observed both the provisions of the civil procedure text cited above as well as the procedural rights of the defendant, considering that it rejected the deferral request with a motivation, considering the lack of proof of the absolute and actual impossibility of the defender to appear on the established court hearing, moreover, the defendant had sufficient time at her disposal to hire an elected defender who could appear at the court hearing established on the date requested by the latter herself.

In relation to what was retained in the resolution and in the appealed decision and to the supplementary nature of the provisions of art. 222 para. (1) Code of Civil Procedure, the rejection of the dilatory motion due to the impossibility of presenting the chosen defender of the appellant at the deadline of 2nd of April 2018 cannot be impugned, from the perspective of non-legality, to the disciplinary court.

Also, the High Court notes, in agreement with the disciplinary court, that the defendant benefited, on the hearing of the 2nd of April 2018, from the assistance of Ms. Judge R., in accordance with the provisions of Law no. 317/2004.

With regard to the submission of the evidence in the case, which is criticized by the appellant-defendant because, in her opinion, some of her conclusive and pertinent evidence was rejected, the High Court notes that, from the provisions of art. 255 para. (1) Code of Civil Procedure it follows that the evidence must be admissible according to the law and lead to the settlement of the trial.

Therefore, the evidence must be conclusive and pertinent, which involves verifying the existing relationship between the claims made and the fact amenable to proof, as well as whether the requested evidence concern circumstances likely to lead to the settlement of the case.

From the perspective of the legal provisions as stated above, the High Court considers that the assessment of the need to submit evidence for the resolution of the case is the exclusive attribute of the court. This is because the evidence brought in the case serves the court in assessing the factual situation, and when the court believes it has understood the facts, it closes the debates as provided under art. 394 Code of Civil Procedure

Yet, while through the appealed resolution and decision, the disciplinary court analyzed the proposed evidence and motivated both the admission of some evidence and the rejection of

other requested evidence, as it appears from pages 31-32 of the resolution as well as from the pages 20 and 24 of the contested decision, the criticisms of the appellant-defendant with regard to these aspects will be rejected.

Equally, the criticism of the appellant-defendant is unfounded, by which she considers as illegal the non-postponement of the ruling by the disciplinary court, although, at the time of the rejection of the request to postpone the judgment, she was informed that the provisions of art. 222 para. (2) Code of Civil Procedure, and the Judge who assisted the defendant requested the adjournment for this purpose.

According to the express provisions of para. (2) of art. 222 Code of Civil Procedure., the court " will postpone the pronouncement at the party's request, in order for the latter to submit written conclusions".

By analyzing the rubrum of Decision no. 9J of 2nd of April 2018, the High Court finds that the claims of the appellant-defendant are not in accordance with those recorded therein.
Thus, in the motivation of the rejection of the dilatory motion in the trial due to the impossibility of appearing of the elected defender of appellant C., the disciplinary court considered that, "to the extent that the case will remain pending at this court hearing, the provisions of paragraph (2) of the same legal text can be invoked" (page 6 of the appealed decision - tab x - verso of file no. x/2017, Vol. VI), and the request to postpone the pronouncement, as the appellant-defendant also asserts, was formulated by Ms. Judge R., who assisted the defendant under art. 49 para. (1) of Law no. 317/2004, but this was not appropriated by the holder of the right to formulate the request, respectively by the defendant.

· Regarding to the appellant's criticisms on the non-legality of the disciplinary investigation, a ground for appeal as provided for in art. 488 para. (1) point 5 Code of Civil Procedure.

The High Court notes that the appellant's claims are devoid of veracity, in the sense that she was not effectively informed on the accusation, neither another file, nor any other document on which the applicant substantiates their claims were communicated to her, and she was not provided with the facilities of defence by becoming familiar with the file documents.

Thus, it was found that three consecutive invitations to participate in the disciplinary investigation in the work no. x/2016, on the 18th.01.2017, 10:00 a.m.; 14th.02.2017, starting at 10:00 a.m. - 15.02.20217 and, respectively, 06.03.3017, at 10:00 a.m.

However, the defendant-judge did not comply with any of the three invitations communicated by the judicial inspectors appointed to carry out the disciplinary investigation in question, as can be seen from the minutes drawn up regarding the judge's non-appearance at the disciplinary investigation, an aspect not disputed by the appellant.
According to the evidence from the pages x in the operation no. x/2016, the defendant-judge was informed, by phone call and electronic mail, about the invitation to participate in the disciplinary investigation on the 18th.01.2017, starting at 10:00 a.m., being also provided with scanned copies of the letter issued on the 16th of December 2016 by the Judicial Inspection (the invitation to participate in the disciplinary investigation from 18th.01.2017), of the resolution issued on the 12th of December 2016 regarding the initiation of the preliminary disciplinary investigation, of the closed envelope attached to the letter.

This being so, one cannot retain that, in the administrative stage of the disciplinary investigation against the defendant-judge, her right to defence was infringed in its component related to the

knowledge and communication of the file documents. At the same time, it should be noted that the defendant did not appear at the disciplinary investigation in order to be informed and to be notified of the documents drafted during the procedure, although the team of inspectors went three times to the headquarters of the Bucharest Court of Appeal, the place where the defendant was summoned for the carrying out of the disciplinary investigation in question.

Therefore, the infringement of the right to defence justified by the defendant's own fault cannot be retained, considering that, according to art. 46 para. (1) of Law no. 317/2004, within the disciplinary investigation "/.../ The hearing of the person in question and the verification of the defences of the Judge or Prosecutor under investigation are mandatory. The refusal of the Judge or Prosecutor under investigation to make statements or to appear at the investigations is established by minutes and does not prevent the conclusion of the investigation. .../".

Moreover, from the analysis of the documents and activities found in the disciplinary investigation file, the High Court notes that at this stage of the disciplinary liability, the defendant-judge formulated and submitted a series of extensive requests and memoranda in her defence, submitted evidence and filed documents. From their content, it is certain that she was aware of the act that formed the object of the preliminary verifications and of the disciplinary investigation.

In addition, the appellant showed the same conduct during the exercise of procedural rights and during the administrative-jurisdictional stage before the disciplinary court, as can be seen, for example, from the content of the resolution of 28th of March 2018 (pages 20 - 21, file no. x /2017), which records, following the assertions of the defendant regarding her lack of knowledge on the file, as it was not made available to her for study and she was not issued copies of the documents on the file:

"At the panel's request, the session clerk shows that the Judge Ms. C., defendant in this case, appeared in person on the 28th.03.2018 at the Divisions Registry Office in order to study the file. The entire file was made available to her, but she refused, saying that she only wanted to consult the disciplinary investigation file of the Judicial Inspection, being offered the 3 volumes to study. Concerning the defendant's request for a photocopy of the entire file, the defendant was offered the opportunity to obtain a scanned copy of the three volumes of the Judicial Inspection's disciplinary investigation file on electronic CD-type support, but the defendant refused on the grounds that it was not necessary, because she only checked whether the Judicial Inspection filed a request to reinstate the case".

At the same time, it must be emphasizes that, in front of the division for judges, the appellant-defendant had the opportunity to submit any admissible evidence, including testimonial evidence, which was actually approved, within the limits envisaged by the disciplinary court, including the testimonial evidence as requested by the appellant.

In this motivation for the appeal, the defendant also invokes the non-legality of the disciplinary investigation and, implicitly, the nullity of the resolution to start the disciplinary investigation, in light of the fact that it was issued by two judicial inspectors who are in a state of incompatibility, as well as the fact that the principle of confidentiality of the disciplinary investigation was infringed, given that she found out from a television station that a disciplinary investigation was being conducted against her.

The appellant in the present case criticizes the contested decision due to the disciplinary court's failure to analyze these exceptions.

The criticisms formulated by the defendant-judge cannot, however, be accepted, as the High Court remarked that the division for judges in disciplinary matters of the Superior Council of Magistracy rejected the defences of the defendant in a fair and reasoned way, carrying out an appropriate investigation of the documents and operations on file, in relation to the applicable legal and regulatory provisions.

Thus, from the documents in the file, it results that the disciplinary court analyzed both the Resolution of the 5th of January 2017 of the Chief Inspector of the Judicial Inspection (by which the latter rejected the request for reallocation of the work as formulated by Judge C., with the motivation that it does not result which would be the incident case of incompatibility), as well as the Resolution of 6th of March 2017 (by which the Chief Inspector rejected the request of abstention made by the two inspectors, ascertaining that the conditions stipulated by article 47, letter c) of the Judicial Inspection Regulation in conjunction with art. 73 para. (1) and para. (2) of Law no. 317/2004 and art. 69 para. (4) letter e) from the same normative act) were not met. The division rightly concluded that, in view of the alleged infringement of the provisions of art. 7 (the principle of impartiality and independence of judicial inspectors) from the Regulation on the rules for the performance of inspection operations by the Judicial Inspection approved by Decision no. 1027/2012 of the Plenary of the Superior Council of the Magistracy, the aspects related to the possible lack of impartiality and objectivity of the judicial inspectors were analyzed in compliance with the legal provisions applicable to the administrative procedure of the disciplinary investigation.

The High Court retains that the assessment of the disciplinary court, which was made following the investigation of all the evidence material submitted in the case, is also correct, with regard to the lack of any evidence to conclude that the information published in the press regarding the disciplinary investigation of the defendant was sent by the chief inspector of the Judicial Inspection or by another person within this institution.

With reference to the non-compliance with the principle of random allocation, the defendant invoked the fact that, from the documents of the disciplinary investigation file, no motivation results on why the complaint registered with the Judicial Inspection was randomly distributed to Ms. Inspector J. only five days after registration, and not immediately, thereby implying that, by this delay, the operation could have been directed to a certain judicial inspector.

As a preliminary, we retain that art. 73 para. (1) of Law no. 317/2004 states that "The method of allocation of referrals and disciplinary files to judicial inspectors is in compliance with the principle of random allocation."

The principle of random allocation of the works registered on the docket of the Judicial Inspection was regulated, at an infra-legislative level, at the time we are referring to in this case, by the provisions of the Regulation on the organization and operation of the Judicial Inspection, as approved by the Order of the Chief Inspector of the Judicial Inspection no. 24/2012 and of the Regulation regarding the norms for the carrying out of inspection operations, as approved by the Plenary Decision of the Superior Council of the Magistracy no. 1027/2012.

The reason for the establishment of the principle of random allocation of the operations registered on the docket of the Judicial Inspection, similar to the random allocation of the files registered with the courts of law, resides in the concern to eliminate any reprehensible possibility of the cases being directed to certain persons in consideration of interests incompatible with the purpose of the disciplinary procedure.

Yet, in relation to the criticisms formulated by the appellant, the High Court finds that the simple fact of the allocation of the operation at a later date than the one on which it was registered does not affect the random nature of the allocation and cannot, in itself, represent a vice capable of attracting the nullity of the procedure. In this case, there is no evidence to the effect that the interval between the date of registration of the complaint and the date of its allocation would have distorted the order of allocation of the operations to the inspectors and, consequently, cause the principle of random allocation to be infringed.

The criticisms formulated by the appellant are unfounded with regard to the reason for nullity invoked in terms of the appointment of the second judicial inspector based on the proposal made by the judicial inspector J. in the Report of the 13th December 2016, drawn up in the operation no. x/2016.

The incidental legal provisions are those of art. 47 para. (10) of the Regulation on the organization and operation of the Judicial Inspection, according to which:

"Art. 47. - [...]
(10) In the case of complex operations, the judicial inspector appointed to carry out the checks, based on a report addressed to the chief inspector, may request the assignment of the operation to the team of which he is a member".

In this case, pursuant to art. 11 paragraph (3) of the Regulation of the carrying out of inspection operations by the Judicial Inspection as approved by Decision no. 1027/2012 of the Superior Council of the Magistracy, by the report drafted by the judicial inspector J., the changing of the degree of complexity of the operation assigned to it was requested.

According to art. 11 paragraph (3) from the above-mentioned regulation:
"Through random assignment, the heads of the inspection departments appoint the judicial inspector or, in complex cases, the team of judicial inspectors who will carry out the checks and establish the deadline for solving the works".

As it results from the mentioned provisions, the proposal to change the degree of complexity of the operation is at the discretion of the judicial inspector and it is the exclusive attribute of the chief inspector of the Judicial Inspection to assess the existence of objective reasons to change the degree of complexity, so that no infringement of any legal and/or regulatory provision regarding the act in question may be retained.

At the same time, the defendant does not indicate the injury caused to the investigated magistrate by the changing of the degree of complexity. In this context, the appointment of the second judicial inspector can be seen as a beneficial measure for the magistrate under disciplinary investigation, given that the analysis of the conditions to exercise the disciplinary action is not carried out unilaterally, but by two people. Such an opinion can be received by analogy with the fact that, in the appeal and the second appeal, the number of judges who make up the panel is higher than in the case of the panel resolving the case in the first instance.

Thus, in this case, we can note that the appointment of the second inspector was carried out in compliance with the regulatory provisions.

5.3. Regarding the appeal filed by the defendant judge C. against the Decision no. 9J of the 2nd of April 2018 of the division for judges in disciplinary matters of the Superior Council of the Magistracy

· The reason for appeal regarding the illegal establishment of the division for judges in disciplinary matters of the Superior Council of the Magistracy during the court hearing of 2nd of April 2018 - art. 488 para. (1) point 1 Code of Civil Procedure

According to art. 49 para. (7) of Law no. 317/2004, the legal provisions regarding the procedure for the settling of the disciplinary action are supplemented with the provisions of the Code of Civil Procedure, however, even in the presence of this reference rule, the provisions of Code of Civil Procedure do not automatically become incident.

Thus, in the disciplinary procedure carried out before the Superior Council of Magistracy, as a disciplinary court, the provisions of art. 211 Code of Civil Procedure regarding the constitution of the court.

According to the case-law of the Panel of 5 Judges, the operations of the division for judges in disciplinary matters of the Superior Council of the Magistracy are carried out in compliance with the provisions of art. 27 para. (2) sentence II of Law no. 317/2004, "in the presence of the majority of their members" (for example, Decisions of the High Court of Cassation and Justice - Panel of 5 judges: no. 14/2017; no. 266/2017, points 64 - 66; no. 5/ 2018, point 41, no. 62/2019, no. 71/2019).

Contrary to the assertions of the appellant, the above-stated provisions also apply with regard to the operations carried out by the divisions of the Superior Council of the Magistracy in fulfilling its role as a court of law in the field of disciplinary liability of judges and prosecutors, as the provisions of art. 44 - art. 53 of Law no. 317/2004 do not including provisions derogating from those of art. 27 para. (2) from the same normative act.

An essential argument in support of the previously stated considerations is given by the fact that the divisions of the Superior Council of the Magistracy, when they operate as courts of law in the matter of disciplinary liability of judges and prosecutors, are not courts within the meaning of art. 126 para. (2) from the Constitution and the provisions of Law no. 304/2004; instead, they carry out an administrative-jurisdictional activity, being, consequently, administrative-jurisdictional bodies, as also held in the case-law of the Constitutional Court (Decisions no. 148 of 16th April, 2003 and no. 391 of 17th April 2007) .

Therefore, the assertions of the appellant formulated from the perspective of the ground for appeal provided under art. 488 para. (1) point 1 Code of Civil Procedure are unfounded for the reasons stated above.

· Criticisms according to which the appealed decision was pronounced in infringement of art. 426 para. (1) Code of Civil Procedure, because of its being drafted by the division registry office - the reason for appeal is provided by art. 488 para. (1) point 1, point 5 and point 6 Code of Civil Procedure
The appellant's criticisms regarding the fact that the contested decision was drawn up by an unauthorized person are unfounded. For the same considerations submitted in the analysis of the criticisms with regard to the illegal composition of the disciplinary court at the hearing of the 2nd of April 2018, we note that, in the case of the decision pronounced by the Superior Council of the Magistracy in disciplinary matters, as we deal with an administrative-jurisdictional act, and not with a decision pronounced by a court of law, it is not the provisions of art. 426 para. (1) Code of

Civil Procedure which apply, but the derogatory rules included in art. 13 para. (8) of the Regulation on the organization and functioning of the Superior Council of Magistracy, according to which "The decisions of the divisions by which the disciplinary action was resolved [...] are drawn up by the Registry Office of the Divisions [...]".

· Regarding the reason for appeal provided by art. 488 para. (1) point 6 Code of Civil Procedure

The criticisms circumscribed by the appellant-defendant to the ground of appeal as regulated by art. 488 para. (1) point 6 Code of Civil Procedure concern, on the one hand, the non-legality of the motivation, as a result of the drafting of the decision by a person who was not a member of the panel of judges, and, on the other hand, the way in which the disciplinary court understood to justify the retain against the defendant-judge the impugned disciplinary offense (references made by the Disciplinary Court on the rulings pronounced by the High Court of Cassation and Justice, Criminal Division, on the occasion of the resolution of file no. x/2015 by the Decision no. 255/A of the 5th of July 2017) and the criteria employed for the individualization of the sanction applied to the defendant.

With regard to the assertions of the appellant-defendant regarding the lack of motivation due to the fact that the drafting of the judgment was carried out by an unauthorized person, we retain the unfounded nature thereof, for the reasons set out above, on the occasion the analysis of the reason for appeal concerning the infringement of art. 426 para. (1) Code of Civil Procedure.

At the same time, the appellant's other criticisms related to the ground of appeal as provided under art. 488 para. (1) point 6 Code of Civil Procedure, are also unfounded.

This ground of non-legality takes into account the situation where the decision does not include the reasons on which it is based, or when it includes contradictory reasons or only reasons unrelated to the nature of the case.

The arguments invoked by the appellant under this aspect are not limited to the assumptions provided by the mentioned procedural rule, being contradicted by the content of the appealed decision, which meets the requirements of an appropriate motivation.

Thus, regarding the motivation, we fund that the disciplinary court exposed, in the considerations of the contested decision, as elements of the judicial syllogism, the factual and legal preconditions that led the court to adopt the solution in the operative part of the decision.

The High Court does not share the criticisms from the appeal, because the disciplinary court is not obliged to respond punctually to all the claims of the parties that can be systematized according to their logical connection, a requirement that is met by the contested decision in the case.

In the sense of the above said, the considerations of the European Court of Human Rights are illuminating, as these hold that the obligation to motivate their decisions, imposed to national courts under art. 6 paragraph 1 of the European Convention on Human Rights, does not require the existence of a detailed answer to each argument (in this sense, the judgments pronounced in the cases of Perez v. France and Van der Hurk v. the Netherlands, of the 19th of April 1994 are illuminating), and the notion of a fair trial supposes that a domestic court has, nevertheless, actually examined the essential issues submitted to it, and not just simply repeated the resolutions of a lower court (judgments in the cases of Helle v. Finland, dated 19th December 1997 and Albina v. Romania, dated 28th of April 2005).

In this context, we retain that the disciplinary court cannot be obliged to submit exhaustively the result of its analysis with regard to absolutely all the evidence and to respond punctually to all the assertions and arguments of the parties, as it is sufficient to state the evidence and the legal provisions according to which the requests of the parties were admitted / rejected. The appealed decision fulfills these requirements.

In the sense of these considerations, we note that the simple dissatisfaction of one of the parties due to the fact that the disciplinary court did not give to a certain means of proof or a certain defence, the relevance proposed by the party does not equate to a lack of motivation of the decision.

From the analysis of the challenged decision, it can be observed that the disciplinary court carried out a real and effective investigation of the case, in terms of legality and grounds, so that the criticisms cannot be accepted, by which the appellant tends to demonstrate either the lack of motivation of the decision or the lack of impartiality of the court, claiming that the disciplinary court did not submit the arguments for which it did not give the proposed relevance to some of the claims, defences or submitted evidence.

The fact is relevant that from the examination of the appealed decision it appears that the retained facts were analyzed to a sufficient extent, giving the possibility to draw conclusions in relation to the provisions of the legal texts that regulate the disciplinary offense analyzed in the case.

Also, from the content of the decision, we find that the facts were examined in the light of the circumstances resulting from the administered evidence material, taking into account the essential aspects for the pronouncement of the solution, so that the purely subjective assessments of the appellant will be rejected as unfounded, as they are aimed at retaining the disciplinary misconduct against it, in the light of the rulings issued by the High Court of Cassation and Justice, Criminal Division, by the Decision no. 255 of the 5th of July 2017, issued in the resolution of file no. x/2015; the use of criteria not provided by law for the individualization of the sanction, the infringement of art. 49 para. (6) of Law no. 317/2004; the lack of evidentiary support; an incorrect or illogical interpretation or substantiation based on unreal evidence.

Therefore, the arguments invoked by the appellant on the lack of motivation do not fit into the situations provided for by the procedural norm under art. 488 para. (1) point 6 of the Code of Civil Procedure, being contradicted by the content of the appealed decision, which does meet the requirements of a proper motivation.

· The reason for appeal according to which the appealed decision was issued in infringement or wrong application of the rules of substantive law - art. 488 para. (1) point 8 Code of Civil Procedure

After having analyzed the criticisms of non-legality formulated by the appellant in relation to the documents and operations on file, with the applicable legal and regulatory provisions, as well as in relation to the relevant case-law of the European Court of Human Rights, the High Court considers them to be unfounded.

The appellant's criticisms under this aspect are aimed, essentially, at the non-fulfillment of the elements of disciplinary liability, from the objective and subjective sides and the infringement or wrong application of art. 99 letter m) and letter o) of Law no. 303/2004.

According to art. 99 para. (1) letter o) of Law no. 303/2004, in the form applicable in this case, "The following are disciplinary offences: /.../ o) serious or repeated non-compliance with the provisions regarding the random allocation of cases;".

The infringement of the previously rendered provisions attracts the disciplinary liability of the magistrates only as determined by law, respectively if the conditions for the engaging of disciplinary liability are met.

Thus, in order to establish whether an act can be qualified as a disciplinary offence, it is necessary to check whether it meets the constituent elements thereof, namely: the object, the objective side, the subject and the subjective side, the generated consequence and the causal link between an act committed with guilt and the damaging result.

The objective side
The legal object of the disciplinary offense as provided under art. 99 letter o) of Law no. 303/2004 is represented by the social relations referring to the accomplishment of the justice activity, which supposes, in addition to the organization and functioning of the judicial bodies, also the correct enforcement of the act of justice.

Regarding the disciplinary offense impugned against the defendant-judge, case-law in matters of disciplinary liability of judges and prosecutors holds that, in order to constitute a disciplinary offense under the aspect of the material element of the objective side, the cumulative fulfillment of the following conditions is necessary: (i) the existence of a legal provision regarding the random allocation of cases; (ii) serious or repeated non-compliance with the provisions regarding the random allocation of cases.

Thus, the professional conduct of the Judge against whom the disciplinary investigation was ordered must be viewed from the perspective of the judge's obligations in the exercise of judicial powers, the general and special procedural provisions that govern the way cases are resolved and the legal norms incident to the litigation referred to in the complaint which was formed the basis for the initiation of the disciplinary procedure.

The case-law holds that the allocation of cases in a random manner represents a judicial norm ranking as a principle, as established by art. 11 and art. 53 of Law no. 304/2004, with the aim of conferring an additional guarantee on the functional independence of the Judge and the impartiality of the judicial act, the main method of random allocation being the computerized one. Art. 139 of the same law, however, does delegate to the Superior Council of the Magistracy the authority to adopt secondary norms in order to organize the enforcement of the law and gives it a certain margin of assessment in this sense, since, according to the Internal Order Regulation adopted by the Superior Council of the Magistracy, the following are established, according to paragraph (1) letter b) from the mentioned article, "the manner and criteria for the allocation of cases to panels of judges, in order to ensure the compliance with the principles of random allocation and continuity" (Decision no. 5103 of November 1, 2011 of the High Court of Cassation and Justice, administrative and fiscal litigation division).

The High Court retains that, when analyzing the disciplinary offense regulated under art. 99 letter o) of Law no. 303/2004, the following legal and regulatory provisions must be taken into account:

- art. 124 para. (1) of the Romanian Constitution:
"Justice is carried out in the name of the law"
- art. 2 para. (3) and art. 4 of Law no. 303/2004:

"Art. 2. - (3) Judges are independent; they are subject only to the law/.../" "Art. 4. - (1) Judges and prosecutors are obliged, throughout their entire activity, to ensure the supremacy of the law,/ .../, to respect the Code of Ethics of judges and prosecutors/.../."

- art. 11 and art. 53 of Law no. 304/2004:
"Art. 11. - The judicial activity is carried out in compliance with the principles of random allocation of files and continuity, except for situations in which the Judge cannot participate in the trial for objective reasons." "Art. 53. - (1) The allocation of cases to panels of judges is done randomly, in a computerized system. (2) The cases assigned to one panel cannot be transferred to another panel except under the conditions provided by law."

- art. 5 para. (2) letter b) and art. 101 of the Internal Order Regulation of Courts of Law:

"Art. 5. - (2) Judges have the following duties:/.../; b) to comply with the legal provisions, the rules of the ethical code, the regulations, the decisions of the Superior Council of the Magistracy given in accordance with the law, the decisions of the general assemblies and the governing colleges;"
"Art. 101. - (1) The allocation of cases will be carried out by means of a computer system through the ECRIS program. (2) If the allocation in the computer system cannot be operated for objective reasons, the allocation of cases will be carried out using the method of the cyclic system. (3) The random allocation in the computer system is carried out only once, - in situations where procedural incidents occur during the process, the rules established in this regulation must be applied (4). Requests related to a randomly assigned file are judged by the same panel, unless the law provides otherwise. - taking into account the matters in which they judge, the specialization of the panels and the procedural stage the cases are in. Changing the number of panels or changing the judges that compose them will only be possible for objective reasons, in the conditions of the law. (6) All changes made to the composition of the trial panel or the allocation of files under the terms of this regulation will be highlighted in the computer programs for random allocation. (7) In cases where the composition of the panel of judges is changed, copies of the resolutions, of the rulings of the Governing Board and of the minutes are to be kept in separate folders./.../."

- art. 7 and art. 12 of the Code of Ethics of Judges and Prosecutors:

"Art. 7. - Judges and prosecutors have the duty to promote the rule of law, the state subject to the rule of law and to defend the fundamental rights and freedoms of citizens."
"Art. 12. - Judges and prosecutors are obliged to perform their professional duties in a competent and correct manner, to observe the administrative duties as established by laws, regulations and service orders".

- point no. 24 of the Recommendation CM/Rec (2010) 12 of the Committee of Ministers to the member states regarding the judges - independence, efficiency and responsibilities:

"The allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case".

- point no. 14 of the Fundamental Principles of the Independence of the Judiciary, an act adopted at the 7th United Nations Congress on the Prevention of Crimes and the Treatment of Offenders, which took place in Milan from the 26th of August to the 6th of September 1985 and was approved

by the General Assembly resolutions 40/ 32 of the 29th November 1985 and 40/146 of the 3rd of December 1985:
"The allocation of cases to judges within the court is an internal matter related to the judicial administration"
- point 30 of the Declaration on the Principles of Judicial Independence, adopted by the Conference of Supreme Courts of Central and Eastern Europe, Brijuni, Croatia, the 14th October 2015:
"…/…The allocation of cases to judges must be done randomly or on the basis of clear, objective and transparent criteria, predetermined by a panel of court judges".

According to the legal and regulatory provisions, the following can be active subjects of the disciplinary offense impugned to the defendant: judges, judicial inspectors, assistant magistrates of the High Court of Cassation and Justice and judicial assistants.

Contrary to the assertions of the appellant-defendant, which point out that the prerequisite situation for the disciplinary offense provided for under art. 99 para. (1) letter o) of Law no. 303/2004 would not be fulfilled in this case - given that the investigated magistrate did not carry out any operation on the ECRIS computer system, she does not have the authority to modify the records in the computer application and she never tried to connect fraudulently to make changes on files, the actual operation of intervention in the computer system being carried out by another person -, the High Court notes, in agreement with the disciplinary court, that the infringement of the principle the random allocation of cases does not necessarily imply the allocation of the file to another panel of judges than the one to which it was randomly allocated, but it may also imply the hypothesis where a judge assigned to a panel of judges for a single court hearing remains to build a case pending before that panel, although s/he no longer has a legal basis to ensure the continuity on that panel (Judgment no. 1J of the 20th February 2013, the division for judges in disciplinary matters of the Superior Council of the Magistracy, final by Decision no. 340 of the 17th of June 2013 of the High Court of Cassation and Justice - Panel of 5 Judges; Decision no. 16J of the 27th of October 2010, the division for judges in disciplinary matters of the Superior Council of the Magistracy, final by Decision no. 57 of the 14th of March 2011 of the High Court of Cassation and Justice - Panel of 5 Judges).

From the analysis of the evidentiary material submitted in the case, the High Court finds that the disciplinary court correctly retained the factual situation in this case, namely that file no. x/2015 registered on the docket of the Bucharest Court of Appeal, 2nd Criminal Division, was randomly assigned to the panel composed of Ms. Judge D., a judge who was unable to participate only in the hearing of 22nd.01.2016, in this sense was also issued the Decision no. 10 of 14th.01.2016 of the Governing Board of the Bucharest Court of Appeal.

However, at the hearing of 22nd.01.2016 granted in file no. x/2015, the Judge Ms. C. proceeded to hear three witnesses, after which she adjourned the case for a week, to the C7 Continuity Panel, and not to the C7F panel, the latter did not have a trial session until 12th.02.2016. At the court hearing of 02nd.02.2016, the defendant judge granted the floor in the debates, postponing the ruling for 02nd.11.2016, when the reinstatement of the case was ordered, establishing a new court hearing for 22nd.02.2016. After five other court hearings, namely on 25th.04.2016, the judgement remained reserved. The ruling was postponed twice consecutively, for the 10th.05.2016 and 11th.05.2016, when the case was resolved by the criminal sentence no. 90 of the 11th of May 2016 of the Bucharest Court of Appeal, 2nd Criminal Division.

The evidence brought in the case did not reveal the existence of a decision of the Governing Board of the Bucharest Court of Appeal, which would have changed the composition of the C7F

panel of judges, whose presiding judge was Ms. Judge D., and for other court hearings except the one of 22nd.01.2016.

According to the evidentiary material submitted in the case, the panel composed of Ms. Judge D. resolved the case in the preliminary chamber (*directions hearing*), and subsequently ordered the start of the judicial investigation, proceeding to the hearing of the defendants, the resolution of the requests made by them, the approval of the evidentiary material.

As correctly assessed by the disciplinary court, the defendant's defences cannot be retained, whereby she claims that in file no. x/2015, in resolving the conflict between the principle of random allocation and the principle of direct submission of evidence, she gave priority to the second, applying the standards of the European Court of Human Rights from the cases of Cutean and Beraru v. Romania, in compliance, at the same time, with the provisions of art. 354 para. (2) - (3) Code of Criminal Procedure, since the two cited decisions concern situations which were different from the one in the present case.

Thus, in the Case of Cutean v. In Romania, the European Court of Human Rights found that the change of the trial panel at the court of first instance (merits), considering that the defendant and the witnesses were not heard before the new panel of judges entrusted with solving the case, as well as the fact that the judicial control courts did not hear the plaintiff and the witnesses amounts to depriving the plaintiff of the right to a fair trial. Moreover, the Court observed that the higher courts motivated this decision based on the testimonial evidence retained by the Judge of the case, without a direct hearing.

In the case of Beraru v. Romania, the Court, pronouncing the conviction decision against Romania, took into account the overall fairness of the procedure, resulting not only from the observance of the rule of immediacy, but especially from the right to defence, in terms of the possibility of contesting the authenticity of the evidence (recordings of conversations) and to oppose to their use.
The Court considered that the issue of changing the composition of the panel of judges must be examined in relation to the possible consequences on the fairness of the process as a whole, taking into account the manner in which the right to defence is observed (par. 75), giving a particular importance to the fact that the applicant's lawyers were only able to obtain direct access to the case file at a later stage, after initially not having been provided with any copy of the indictment and, moreover, they were unable to obtain a copy of the wiretap transcripts or a recorded copy of the wiretaps used as evidence in the case (para. 71).

Of great importance in the provided solution was also the fact that, despite the problem raised by the national regulation at that time regarding the surveillance of telephone conversations, and despite the fact that the court itself had ascertained the need to draw up a technical expertise report in order to establish the authenticity of the recordings, nevertheless, at the end of the trial, it changes its mind on to the ordered evidence, considering that the expert report was useless, although in the end INEC had submitted a technical expert report which stated that there were doubts about the authenticity of the recordings. Therefore, the Court found that "domestic courts not only based their judgments on recordings of contested authenticity, but also did not respond to the applicant's arguments that he was not given with the transcripts and therefore did not know their content ".

All these detected procedural defects led to the Court's resolution that art. 6 of the Convention had been infringed, and by no means just the simple fact of not re-submitting the evidence before the panel in its new composition.

Moreover, the Court explicitly indicated that these vices could have been remedied directly by the legal remedy, however, that had not happened.

Also, the High Court notes that neither the case-law of the European Court of Human Rights as invoked by the defendant-appellant in the appeal request (for example, the Cases of Albert and Le Compte v. Belgium, Deweer v. Belgium, Neumesister v. Austria, Le Compte, Van Leuven and De Meyere v. Belgium, Colozza v. Italy, Mellors v. the United Kingdom, P.K. v. Finland, etc.) do not refer to situations similar to the one in the case analyzed within the present appeal.

Moreover, the High Court notes, in agreement with the disciplinary court, that the defendant's arguments showing that, at the time of the retention for resolution of file no. x/2015 after the court hearing of 22nd.01.2016, took into account the rulings of the ECHR in the judgments pronounced in the cases of Cutean and Beraru v. Romania are contradicted by the evidence in the case file. The existence of this motivation of the defendant at the time of the retention of the file, by the measure ordered on the 22nd.01.2016, does not appear in the resolution of the session as signed by the magistrate nor in other documents of the respective case and is contradicted by the statement of the witness heard in the case, Ms. H.

From the evidentiary material submitted in the case, it follows, as the disciplinary court rightly found, that the presiding magistrate of the panel, Ms. Judge D., had resolved the case in the preliminary chamber *(directions hearing)*, she had ordered the start of the judicial investigation, she had heard the defendants, she had approved the evidence, she had resolved the requests made by the defendants but was unable to participate in only one court hearing, namely the one of 22nd.01.2106, so that, obviously, precisely in consideration of the case-law as invoked by the appellant, the latter had the legal obligation not to retain the case for settlement.

The appellant's criticisms regarding the disciplinary court's wrong assessment of the serious nature of the misconduct committed by it are unfounded.

The fundamental principle of random allocation enshrined in Romanian legislation corresponds to the rigors imposed by art. 6 of the European Convention on Human Rights, which enshrines and guarantees the right to a fair trial.

According to the rulings of the European Court of Human Rights, the notion of "court established by law" implies the ensuring of guarantees regarding the organization and composition of the tribunal, it reflects a "principle of the rule of law inherent in any system of the Convention" (Judgment in the case of Lavents v. Latvia, 28th of November 2002; Engel and others v. the Netherlands, 8th of June 1976), and the notion of "law" considered by art. 6 par. 1 is extensive, it concerns "not only the legislation relating to the establishment and competence of judicial bodies, but also any other provision of domestic law, the non-compliance of which would be likely to lead to the finding of the irregularity of the participation of a member of the trial panel in the settlement of a case" (Cases of Lavents v. Latvia; Coeme v. Belgium; Rossi v. France).

From this perspective, non-compliance with the principle of random assignment of cases may pose a problem of infringement of the provisions of art. 6 par. 1 of the European Convention on Human Rights.

Regarding the appellant's criticism, according to which the judicial inspectors who carried out the disciplinary investigation in the case intervened in the judicial activity of the High Court of Cassation and Justice, on whose docket was registered the appeal filed against the criminal

sentence pronounced by the defendant in file no. x/2015, the High Court considers that a distinction must be made between the infringement of the provisions regarding the random allocation of cases, on the one hand, a mistake which may be censured either through judicial control, or at the time of the evaluation of the professional activity of the magistrate, by the evaluation commission, as opposed to disregarding these provisions in a disciplinary context.

Last but not least, it is necessary to underline the fact that the disciplinary court did not take into account exclusively, as the appellant unfoundedly claims, the considerations of Decision no. 255/A of the 5th of July 2017 of the High Court of Cassation and Justice, Criminal Division, the appealed decision being pronounced following an overall analysis of the evidence brought in the case.

The High Court notes the fact that, according to the generally valid rule in the matter of evidence assessment, evidence does not have a predetermined value (art. 264 para. (2) Civil Procedure Code).

There being no legal provision that imposes the plurality of heard witnesses as a condition for the submission of evidence thus carried out, the High Court makes a reference to the provisions of art. 324 Code of Civil Procedure, which provide that, in assessing the witness statements, the court will take into account their sincerity and the circumstances in which they became aware of the facts that are the subject of the respective statement.

With regard to what was specifically reported by the witness heard in front of the division for judges, the appellant-defendant's criticism of the disciplinary court's decision is nothing more than a simple denial, lacking the ability to remove the evidence value resulting from the witness's statement, in the absence of any other argument able to highlight the lack of credibility of the heard witness, their error with regard to what was reported, etc.

As shown above, the evidence value of the witness statement derives from the judge's assessment, specifically, from the veracity and plausibility of the aspects told by the witness, by taking into account all the subjective and objective circumstances of the case, so that, if the Judge is under the obligation to remove the testimonial evidence brought in the case only with a motive (as well as any other means of evidence), equally the party interested in challenging the evidence value of the statement of one or of several witnesses has the obligation to "motivate" their criticism, a simple disagreement with regard to what the witness reported is not sufficient for the removal from the entire evidentiary material of the respective statements (Decision no. 251 of the 28th of June 2021, pronounced by the High Court of Cassation and Justice - Panel of 5 Judges).

In view of the considerations above, the High Court notes that the appellant-defendant has seriously infringed the provisions governing the random allocation of cases, thus being achieved the material element of the objective side of the disciplinary offense as provided for under art. 99 letter o) of Law no. 303/2004.

From the subjective side, in agreement with the disciplinary court, we hold that the act was committed with direct intention, resulting from the conduct of the defendant who, knowingly, although she had been appointed by decision of the Governing Board of the Bucharest Court of Appeal to replace the presiding judge of the C7F Panel exclusively for the court hearing of 22nd.01.2022 - when the latter was unable to participate to the panel, she postponed the trial for a week for the submission of evidence already approved by Ms. Judge D., ordering at the same time the supplementing of this evidence, although the C7F panel did not have a court hearing set

up on the 29th.01.2016, and the presiding judge of the panel was to be in court starting from 01st.02.2016.

All the steps taken by the defendant, embodied in the case management method, set out in detail in the contested decision, prove the clear intention of the appellant-defendant to create an appearance of legality in order to justify the act of infringing the rules of random assignment.

The subjective side, as a constitutive element of the disciplinary offense, represents the mental attitude of the person, in the case of a magistrate, who committed an illegal act, towards that act and its consequences.

In order to detect the attitude of the author of the illegal act, the intellectual and volitional foundation of their action must be examined, and then make the connection with their act and the generated consequences. Practically, a link must be established between a subjective element and an objective element, which, taken together, outline the conduct of the person in question.

This is also the reason why, in the contested decision, in the analysis of the existence of the magistrate's guilt, the disciplinary court took into account both the objective and subjective elements, the particularities of the investigated misconduct determining a close interdependence between them.

Regarding the intellectual element, it concerns the representation of the social consequences of their act in the person's consciousness and the prediction (or at least the possibility of prediction) of the consequences of the committed illegal act. This factor supposes the actual ability of the perpetrator to understand the meaning of their conduct and to correctly evaluate its consequences.

The volitional element refers to the deliberation and decision on one's own conduct and the reasons that can lead a person to commit an illegal act, disciplinary liability being committed if the author has chosen a conduct which is criminalized as a disciplinary offense.

By relating these theoretical considerations to the particularities of the case, we note the correctness of the resolution regarding the subjective side, as retained in the contested decision, considering the cumulative existence of the intellectual and volitional factors, which outline the guilt as a subjective element in the perpetrating the act.

The manner in which the x/2015 file was taken over, by the appellant C., excludes her good faith.

First of all, it must be reiterated that, in relation to the situation of file no. x/2015 on the 22nd.01.2016, the principle of immediacy not only did not justify the disregard of the first allocation, but, on the contrary, required the compliance therewith considering that judge D. had started the judicial investigation, heard the defendants whom, later, the appellant was in the situation of rehearing, precisely in order to observe the principle of immediacy.

Anyway, even if the randomly assigned judge had not ordered any measure in the file, there would still be no grounds for the Judge, appointed by the Court's Governing Board to replace them at a single court hearing, to keep the file also for the subsequent hearings. The issue of compliance with the principle of immediacy had to be resolved by the initially appointed judge, who had the possibility of re-submitting the necessary evidence for this purpose.

The interpretation submitted by the appellant is a personal one, which was not reflected in the practice of other judges, the provided explanations being, for this reason, unconvincing. The situation of the appellant is not to be confused with the situation in which a judge who is randomly assigned a case continues to judge it if the judicial investigation has begun even if he is no longer a regular member of the initial panel.

Secondly, we note that the resolution drafted on the occasion of the first postponement of the case, from 22nd.01.2016 to 29th.01.2016, does not contain any reference to the reasons for the changing, in the future, of the composition of the panel of judges and no reference to the ECHR case-law. The appellant states that she communicated to the parties in the courtroom that she would keep the file for resolution if she hears the witnesses, but the High Court notes that a distinction must be made between simple oral observations of the court and a concrete justification of the resolution. The measure of changing the composition of the panel of judges is one of particular importance, as it is hard to believe that, had she acted in good faith, the appellant would not have included, in the motivation of the resolution, explicit arguments to support the need for a measure by which the principle of random assignment was defeated.

Moreover, we can observe that, initially, the appellant tried to solve the case in an excessively short period, before the return of Judge D. to the court, for this purpose, a hearing was granted in one week. Later, as the resolution of the file within the given timeframe proved impossible, the appellant proceeded to reinstate it and to continue the trial. Also with regard to this unrealistic deadline, the appellant's explanations as provided in the judicial administrative phase, asserting that in this way the operations in the file were fresher for her, are unconvincing.

The conclusion can only be that the appellant wanted to solve said cause even though she knew that she was not legally appointed. Yet, even if the reason was a purely professional one, related to the nature of the crimes that were the subject of the file, the appellant showing interest in matters of money laundering crimes, this interest could only be manifested in a legal framework, otherwise the credibility of the judicial act being compromised.

As for the fact that it was not the plaintiff who proceeded to modify the records in the Ecris System, the High Court finds this aspect irrelevant both for the objective side and for the subjective side of the disciplinary offense. The change in the system occurred as a result of the granting, on the 22nd.01.2016, of a one-week deadline. The decision to grant this term rested with the appellant, and the person who made the change in the Ecris system only had the administrative task of registering this deadline decided by the judge, without having the authority to censor the court's measure.

Also irrelevant are the discussions that the appellant claims to have had, in an informal setting, with the randomly assigned judge or with the management of the Division or of the Court of Law. The legal norms were clear and they excluded an interpretation in the sense that the Judge appointed to replace a colleague who was not present in court at a certain time had the possibility, by their own decision, to assign the case to themselves on the grounds that they submitted part of the evidence. This is all the more so since part of the evidence had already been administered by the randomly assigned judge (which led to the necessity of their re-submission) and, anyway, the file was not finalized on the date on which the Governing Board ordered the replacement of the presiding judge of the panel, but the judicial investigation continued during several hearings. The resolution can only be the one as retained by the Superior Council of the Magistracy in the sense that, by this informal way of approaching the problem, the appellant sought to give an appearance of legality to her acts, being, however, aware that

neither the legal norms nor the existing practice within the criminal courts does not support her approach.

For this reason, the information by the appellant of the president of the division, regarding the situation of the file, cannot be retained either, since this was done in an informal context, at a time when Ms. Judge D. had not yet returned to the court, creating the false impression that it was about the possibility of the appellant to resolve the case during the hearing to which she was assigned according to the regulation. There is no evidence to show that the president of the court was aware of the retention of the file by the appellant C. after January 2016. In any case, negligence on the part of the division president or his light treatment of the information provided by the appellant C. is not sufficient to justify the measures ordered by the appellant in file no. x/2015, nor to exonerate her from responsibility for her own act.

Finally, regarding the fact that the parties did not object to the retention of the file by the appellant, the High Court notes that, in file no. x/2015, the appellant proceeded to request some information from the Office of the Public Notary A., the person who filed the complaint with the Judicial Inspection in the present disciplinary procedure and who, in file no. x/2015, did not have the status of defendant. Later, by the sentence pronounced in the respective file, the appellant ordered the confiscation of some sums of money from A. and the establishment of a seizure on his assets. Under these conditions, the applicant A. could not raise any objection regarding the composition of the panel before the moment when she became aware of the criminal sentence pronounced in file no. x/2015, as she had no quality in that file.

The criticism by which it was argued that the disciplinary court did not analyze the evidence on file, from which it would appear that the defendant did not commit the offense, yet it retained the disciplinary offense against the defendant in the light of the rulings given by the High Court of Cassation and Justice in the Decision no. 255/A of the 5t of July 2017 issued in file no. x/2015, is also unfounded.

It is obvious that the reasons retained by a court of judicial investigation, as ground for the annulment of a decision pronounced by a judge, cannot represent, in themselves, grounds for the disciplinary sanction of that judge. The infringement of substantive or procedural law rules found by a court of judicial review must reach a certain severity, and in the disciplinary investigation one must establish, as in the present case, the bad faith of the judge, respectively knowingly infringing the law, pursuing or accepting the generated consequences.

The High Court notes that the disciplinary court carried out an exhaustive analysis of all the evidence brought, both during the disciplinary investigation and during the trial in front of the division for judges in disciplinary matters, referring to them in the content of the contested decision and punctually verified the defences formulated by the defendant, which it rejected with reasons, as it results from the analysis of the considerations of the appealed decision.

Even with regard to the specific consequences, the arguments of the author of this appeal do not have the assigned relevance and cannot lead to the admission of the filed legal remedy.

From the literal, logical and teleological interpretation of the provisions of the cited incriminating text, it follows that the specific, immediate consequence does not condition the existence of a disciplinary misconduct and consists in affecting the image of justice, as a system and public service, leading to the deterioration of the trust and respect of public opinion towards the position of a magistrate.

As for the factual circumstances invoked in the defence, which are not likely to defeat the mandatory nature of the provisions regarding the random allocation of cases, they were taken into account by the disciplinary court, which, in a fair manner, considering the circumstances of the case and the protected social value, assessed that they are not likely to remove the judge's disciplinary liability.

The High Court retains, therefore, that the facts reproached to the appellant-judge within the scope of regulation of the provisions of art. 99 letter o) of Law no. 303/2004, as justly established by the disciplinary court, with the contested decision correctly highlighting the existence of the facts, the illegal conduct, the guilt, the harmful consequences and the causal link between the illegal act and the produced result, which supports the legality of their inclusion in the disciplinary offense provided for by the mentioned legal text.

· The appellant's criticisms regarding the fulfillment of the limitation period for the disciplinary action - grounds for appeal being provided under art. 488 para. (1) point 8 Code of Civil Procedure

According to the provisions of art. 46 para. (7) of Law no. 317/2004, republished, with subsequent amendments and additions "disciplinary action can be exerted within 30 days after the completion of the disciplinary investigation, but no later than 2 years from the date on which the act was committed."

The High Court finds that, from the evidence brought in the case, it undoubtedly results that the act recognized as a disciplinary offense took place between 22nd January, 2016 and 11th May 2016, as it had a continuous character, so that the exertion of the disciplinary action by the Judicial Inspection, on the 21st of March 2017 (date of registration of the disciplinary action on the docket of the division for judges), was done in compliance with the term of two years after the commission of the offense, as provided for under the above-cited legal text, as well as within the deadline of 30 days after the date of completion of the disciplinary investigation – 17th of March 2017.

The assertion of Appellant C., in the sense that the two-year term would include the completion of the disciplinary action, therefore its resolution, both on the merits and on the appeal, is without foundation and is to be removed.

The fairness of the disciplinary court's motivation is based primarily on the terminological aspect, the text of the law explicitly regulating the "exertion" of the disciplinary action, and not its "completion". In the examination of this issue, due to its concordance, the content of the notion of extinguishing statute of limitations is relevant, this being defined as "the way of removing civil liability, consisting in extinguishing the material right to action not exerted within the term established by law".

The interpretation of the mentioned norm, in the context of the other regulations in the economy of the same law, is also able to deny the assertion of the appellant-defendant, in the sense that the law does not contain provisions on the matter or that the principle according to which the limitation periods cover the judicial liability as a whole would be infringed, and not the deadlines of the statute of limitations on the basis of which the respective liability is established.

By the Decision no. 71 of the 11th of May 1999, invoked by the appellant-defendant within this ground of appeal, the Constitutional Court of Romania essentially retained that the statute of limitations for the disciplinary liability "constitutes, on the one hand, a measure of protection of

employees against the arbitrary application of a sanctioning regime, and on the other hand, they ensure the stability of legal labor relations".

Equally, the European Court of Human Rights has established that the deadlines of the statute of limitations serve several important purposes, namely to ensure legal certainty and finality, to protect potential defendants from belated complaints that may be difficult to challenge, and to prevent any injustice that may result if the courts were required to rule on events that took place in the distant past on the basis of evidence that may have become uncertain and incomplete due to the passage of time (see Stubbings and Others v. the United Kingdom, 22nd October 1996, §51, Reports of Judgments and Decisions 1996 IV). Statutes of Limitations are a common feature of the domestic legal systems of the contracting states with regard to criminal, disciplinary or other offenses (Case of Oleksandr Volkov v. Ukraine, application no. x, para. 137).

Yet, in the case of judges and prosecutors, by Law no. 317/2004 and by the secondary norms in the matter, a disciplinary procedure was established which ensures additional guarantees of observance of the rights of the concerned magistrate, through the separate regulation of a prior disciplinary investigation procedure, carried out by the Judicial Inspection, which cannot itself impose a sanction, but in this sense invests, - by a disciplinary action -, the corresponding division within the Superior Council of the Magistracy. After an administrative-jurisdictional procedure characterized by adversarial nature, the vested division pronounces a decision by which, if necessary, it admits the action and applies a disciplinary sanction. The disciplinary sanction thus applied is not final, because the decision is subject to appeal, which has a suspensive effect on the execution, according to art. 51 para. (4) of Law no. 317/2004.

Therefore, the disciplinary procedure applicable in the case of magistrates includes several stages that cannot reasonably be included in a fixed term of two years after the commission of the act, the legal relationship within which the disciplinary liability is exercised being exhausted after the resolution of the appeal according to the rules contained in the Code of Civil Procedure. Therefore, the interpretation proposed by the appellant-defendant cannot be accepted, in the sense that the deadline provided under art. 46 para. (7) of Law no. 317/2004 would concern the statute of limitations of the application of the disciplinary sanction, and not of the right to disciplinary action.

Considering the special status of judges and prosecutors, regulated in a distinct manner by a law containing express provisions on the matter, one cannot retain the applicability, in addition or by analogy, of the general provisions contained in art. 252 of the Labor Code or in art. 77 para. (5) of Law no. 188/1999 regarding the status of civil servants, also invoked by the appellant-defendant.

According to art. 252 of the Labor Code,
"(1) The employer orders the application of the disciplinary sanction by a decision issued in written form, within 30 calendar days from the date of becoming aware of the commission of the disciplinary offense, but no later than 6 months from the date of the commission of the act.
(2) Under the penalty of absolute nullity, the decision must include:
a) the description of the act constituting a disciplinary offense;
b) specifying the provisions of the staff statute, the internal regulation, the individual employment contract or the applicable collective employment contract that were infringed by the employee;
c) the reasons for which the defences formulated by the employee were removed during the preliminary disciplinary investigation or the reasons for which, under the conditions provided for in art. 251 para. (3), no research was conducted;
d) the legal basis on which the disciplinary sanction is applied;

e) the term in which the sanction can be challenged;
f) the competent court to which the sanction can be appealed.
(3) The sanctioning decision is communicated to the employee in no more than 5 calendar days from the date of issuance and takes effect from the date of communication.
(4) The communication shall be delivered personally to the employee, with signature of receipt, Yet, in case of refusal of receipt, by registered letter, at the domicile or residence communicated by him.
(5) The sanctioning decision can be appealed by the employee to the competent courts within 30 calendar days from the date of communication."
Regarding the disciplinary regime applicable to civil servants, art. 77 para. (5) of Law no. 188/1999 provides that "disciplinary sanctions are applied within no more than 1 year from the date of complaint to the disciplinary commission regarding the commission of the disciplinary offense, but no later than 2 years from the date of the commission of the disciplinary offense". According to art. 80 of the same law, "the public official dissatisfied with the sanction applied can address the administrative litigation court, requesting the annulment or modification, as the case may be, of the sanctioning order or provision".

It is easy to see that in both situations, unlike the way in which the disciplinary liability of magistrates is exercised, the disciplinary sanction is applied through a unilateral legal act of the employer himself or of a body established at his level, which produces its effects from the date of communication to the addressee, the law not providing for a suspensive legal effect of the appeal addressed to the competent court. This difference in legal regime creates an incompatibility of the regulations that excludes the possibility of their application in this case.

The legal issue of the inapplicability of the general provisions of the Labor Code regarding the statute of limitations of the disciplinary liability of judges and prosecutors was resolved, in similar terms, by the Decision no. 269 of the 23rd October 2017 of the High Court of Cassation and Justice - Panel of 5 Judges, by which the appeal against the resolution of the 13th of January 2016 was rejected and by the Decision no. 20J of the 31st of October 2016, issued by the Superior Council of the Magistracy, the division for judges in disciplinary matters, in file no. x/2015, as well as by the Decision no. 336 of the 13th December 2017 of the same court, which rejected the second appeals filed by the same appellants from the present case against the Decision no. 1/J of the 8th of February 2017, pronounced by the Superior Council of the Magistracy, the division for judges in disciplinary matters, in file no. x/2016.

Nor does the case law argument resulting from the Decision of the European Court of Human Rights in the Case of Oleksandr Volkov v. Ukraine (application no. 21722-11) have the significance given by the appellant-defendant, as both the national regulations and the factual circumstances are different.

In that ruling, the European Court of Appeal found that the Ukrainian domestic law "does not provide for any statute of limitations regarding the procedures for the removal from office of a judge for breach of oath" and did not consider it necessary to indicate which should be the length of the limitation period, but considered that such a limited approach to the disciplinary measures applicable to judges seriously endangers the security of legal relations (par. 139).

The European Court of Human Rights reached this resolution in a context where the facts examined by the Superior Council of Magistracy in 2010 dated from 2003 - 2006, the party being placed in a difficult position, as it had to build its defence with regard to certain events that happened in the distant past (par. 138). The situation is not similar to the one in the present litigation, given the fact that the disciplinary action was filed within the two-year term provided

under art. 46 para. (7) of Law no. 317/2004, the time interval elapsed from the date of the act being committed (January - August 2016) and the entire context of the circumstances of the case are not likely to limit the possibilities of ensuring an effective defence of the appellant - defendant.

Consequently, the method of calculating the statute of limitations, as established by the division for judges, as a disciplinary court, by reference to the provisions of art. 46 para. (7) of Law no. 317/2004 and at the time of completion of the act, is legal, and the disciplinary liability of Judge C. for the act that constitutes the object of the disciplinary action exerted in this case by the Judicial Inspection is not subject to the statute of limitations.

Moreover, it should be emphasized that the duration of the disciplinary proceedings was influenced by procedural incidents (suspension of the administrative-jurisdictional phase and referral to the Court of Justice of the European Union from the judicial phase) as well as by numerous applications with dilatory effect submitted by the appellant on time or sent by fax or e-mail even during the court session aiming at surprising the opposing party and at delaying, in this way, the resolution of the case.

· Criticisms regarding the individualization of the sanction - the grounds for appeal being provided by art. 488 para. (1) point 6 and point 8 Code of Civil Procedure

The High Court retains that the disciplinary sanctioning of magistrates has a double purpose, on the one hand, to determine the correction of the magistrate who committed a disciplinary act and, on the other hand, to constitute a means of prevention, both for the sanctioned magistrate and for the body of magistrates.

As shown above, the High Court found that the facts reproached against the appellant-judge fall within the regulatory scope of the provisions of art. 99 letter o) of Law no. 303/2004, as was rightly held by the disciplinary court, the contested decision correctly highlighting the existence of the act, of the illegal conduct, the guilt, the harmful consequences and the causal link between the illegal act and the caused result, which supports the legality of their inclusion in the disciplinary offense as provided under the mentioned legal text.

At the same time, the supreme court notes that the sanction applied by the disciplinary court was correctly individualized in relation to the concrete actual circumstances of the case, the particular severity of the act and its consequences, the immediate follow-up of the act as provided under art. 99 letter o) of Law no. 303/2004 residing in the deterioration of the public opinion's trust and respect for the position of a magistrate, with the consequence of affecting the image of justice, as a system and a public service.

From the entire evidentiary material submitted in the case, it follows with certainty that magistrate C. knowingly infringed the legal rules governing the random allocation of cases, pre-constituting at the same time justifications for the committed act, so as to give an appearance of legality of her acts, an aspect which attaches a particularly high severity to the act.

Taking into account the circumstances of the act, its actual severity, as well as the generated consequences, the disciplinary court correctly made the individualization of the sanction, noting that significant consequences of the impugned act were highlighted, while also xamining , at the same time, the real and personal circumstances of the defendant-judge.

The severity of the sanction is justified, first of all by the severity of the consequences of the act committed by the appellant. By assigning the case to herself in the non-procedural manner described above, the appellant not only affected the credibility of the judgment pronounced in the resolved case (where the applicant A. had good reasons to doubt the lack of bias of a judge who, out of the desire to adjudicate a particular case, was willing to go beyond the rules of random allocation), but affected public confidence in the overall activity of the courts, also causing a shadow of doubt to fall over the entire activity of the appellant.

Second, the sanction of exclusion from the magistracy is also justified by the existence of another sanction, that of the disciplinary transfer to the Court of Appeal of Târgu Mureş, as results from the Decision no. 336 of the 13th December 2017 of the High Court of Cassation and Justice - Panel of 5 Judges. It is true that this is not a sanction for an identical misconduct, but, on the other hand, the High Court finds that even the previous disciplinary procedure also concerned an act that could cast doubt, at the level of public perception, on the independence and objectivity of the judge, retaining that the appellant had infringed the regime of incompatibilities by providing a remunerated activity to a public institution which was a party in a case settled by the appellant c.

For all the considerations set out above, the High Court finds that the re-individualization of the sanction, as requested by the appellant-defendant in subsidiary, is not justified, as the disciplinary court correctly retained that the appellant no longer meets the requirements imposed in order to appropriately exercise of the position of judge.

For all the presented reasons, not having identified any reasons for reformation in the sense of the provisions of art. 488 para. (1) Code of Civil Procedure, based on the provisions of art. 49 para. (7) of Law no. 317/2004 on the Superior Council of the Magistracy, republished, in conjunction with those of art. 496 para. (1) second sentence of Code of Civil Procedure, the appeals filed by C. and by the Association "Forum of Judges from Romania" against the decision of 28th of March 2018, issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, in file no. x/2017, will be rejected as unfounded, as well as the appeal declared by C. against the Decision no. 9J of 2nd of April 2018 and against the resolution of 28th of March 2018 issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, within the same file.

FOR THESE REASONS
IN THE NAME OF THE LAW
DECIDES

Rejects the appeal filed by C. as well as the appeal filed by the Association "Forum of Judges from Romania" against the resolution of 28th of March 2018 issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, in file no. x/2017, as unfounded.

Rejects the appeal filed by C. against the Decision no. 9J of the 2nd of April 2018 and against the resolution of 28th of March 2018 issued by the division for judges in disciplinary matters of the Superior Council of the Magistracy, in file no. x/2017, as unfounded.

Final.

Pronounced in public session, today, the 12 of April 2022.