

Entering into force of the Civil Code of Romania

Within the plenary session on May 26th, 2011, the members of the Council discussed the necessary measures to be taken in order to prepare the judicial system for entering into force of the new Civil Code on October 1st, 2011.



Therefore an **inter-institutional Working Group** was established for implementing the new Code and the project "The Codes' Countdown!" has been launched. This Project is based on a Protocol concluded between the relevant institutions for the judicial system and the legal professions to facilitate the implementation of the new codes.

SCM as initiator of the Project, has drafted several brochures for the awareness of the public on the most important provisions of the New Civil Code.

One of the important achievements consists of the creation of a website www.iurispedia.ro

➤ The meetings within the project "The Codes' Countdown!" continued in the referred period.

➤ On November 9th 2011, the first Steering Committee of the Thematic Security Found within the bilateral Agreement of the Romanian Government and the Government of Swiss Confederation took place at the Swiss Embassy in Bucharest.

Among other topics on the agenda, the main theme was the project „Assistance for capacity building on training for judges and prosecutors for enforcing the new codes”, where SCM represents the executive authority for implementation and the beneficiary is the National Institute of Magistracy.

The general objective of the Project is to improve magistrates' capacity for implementing the new legislation, by the development of a training plan and of several adequate instruments for in service training and for developing training guidelines and other didactical instruments for magistrates and for other categories of personnel.

The positive recommendation of the Steering Committee and the sustainability of the Project shall lead to an approval in order for the Project to be enforced beginning with February / March 2012.

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THE COMPOSITION OF THE COUNCIL

President:

1. judge Nicolae Horațius DUMBRAVĂ

Vice president:

2. prosecutor George BĂLAN

Elected members, with permanent activity – Judges and prosecutors:

3. judge Bucurel Mircea ARON
4. judge Vasilică Cristi DANILEȚ
5. prosecutor Grațiana Daniela ISAC
6. judge Ana Cristina LĂBUȘ
7. prosecutor Dimitrie Bogdan LICU
8. judge Adrian Toni NEACȘU
9. prosecutor Oana Andrea SCHMIDT HĂINEALĂ
10. judge Alexandru ȘERBAN
11. judge Marius BADEA TUDOSE
12. judge Mona Maria PIVNICERU
13. judge Alina Nicoleta GHICA
14. prosecutor Florentina GAVADIA

Representatives of the civil society:

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

Ex officio members:

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



STRENGTHENING THE SCM CAPACITY

DISCIPLINARY LIABILITY OF JUDGES AND PROSECUTORS

On October 25th, 2011, SCM Plenum endorsed with majority of votes the proposals submitted by the President of the Superior Council of Magistracy for completing Law no. 303/2004 on the following aspect: magistrates who have been definitively convicted for crimes committed while exercising office duties, for corruption or for other crimes assimilated to corruption, intentionally committed, should not benefit from the service pension and should be obliged to return the service pension that they had benefited from until the moment of the definitive conviction. Moreover, these proposals also referred to the magistrates who have been excluded from the magistracy, by an irrevocable decision in disciplinary matters.

ANNUAL REPORT OF THE EUROPEAN COMMISSION ON THE PROGRESSES OF ROMANIA UNDER THE COOPERATION AND VERIFICATION MECHANISM (CVM).

By the decision no. 679/October 4, SCM Plenum approved the Action Plan comprising the guidelines for the Romanian authorities and bodies responsible for fulfilling the European Commission recommendations, by observing all the comments and observations of the institutions above mentioned and of the Ministry of Justice; the action plan should be assumed by all the authorities with responsibilities under the CVM.



According to the SCM decision, the fulfillment of the measures within the Action Plan shall be monitored by the Working Commissions of the Council according to their competences and periodical reports shall be presented to the Plenum. The first monitoring report is to be presented on November 15th and the second report will be presented in January 2012.

THE LEGISLATIVE PROPOSALS ON PROMOTING A NATIONWIDE UNITARY JURISPRUDENCE

Superior Council of Magistracy, together with the High Court of Cassation and Justice, the professional associations of magistrates and foreign experts have developed a project containing the legislative proposals on promoting a nationwide unitary jurisprudence within the PHARE Twinning Project RO/2007 - IB/JH/01 "Unification of jurisprudence courts and prosecutors' offices in Romania.

The project that started in 2009 was completed in 2010 when SCM Plenum approved the legislative proposals and then submitted these proposals to the Ministry of Justice (on May 31st 2010), to initiate the specific legislative procedures.

The proposals have not been supported by the Ministry of Justice as to become a draft law, having been considered too premature.

In the same time, the Association of Magistrates within Romania has submitted the same proposals to the Chambers of the Romanian Parliament.

On September 7, 2010 the General Secretariat of the Chamber of Deputies of the Romanian Parliament sent the legislative proposal on promoting the unitary jurisprudence and for amending and supplementing Law 304/2004 on judicial organization, the Code of civil Procedure and the Code of criminal Procedure to the Superior Council of Magistracy, for approval.

On 16th of September, 2010 SCM Plenum endorsed the draft law on promoting the unitary jurisprudence. The legislative proposal was then tacitly approved by the Chamber of Deputies.

On 31 October 2011, the Romanian Senate rejected the draft law, expressing a political will contrary to the efforts of the judicial system to assure a unitary nationwide jurisprudence and in the same time to fulfill one of the most important tasks instituted within MCV and one of the most important challenges that Justice has to cross over for becoming more efficient and more trustful.



HUMAN RESOURCES WITHIN THE JUDICIARY

Exam for admission to the National Institute of Magistracy

The exam for admission to the National Institute of Magistracy was organized during August – September 2011. 200 positions of justice auditors were open for competition (100 for judge position and 100 for prosecutor position).

During the referred period the medical examination and the examination of the good reputation took place. The final results shall be validated by the SCM Plenum.

Exam for admission to the National School of Clerks

The exam for admission to the National Institute of Magistracy was organized during August – September 2011. 200 positions of justice auditors were open for competition (100 for judge position and 100 for prosecutor position).

During the referred period the medical examination and the examination of the good reputation took place. The final results shall be validated by the SCM Plenum.

Capacity exam for judges and prosecutors

The capacity exam is organized during August - December 2011 for the junior judges and prosecutors. 165 candidates applied for this exam (64 judges, 98 prosecutors and 3 personnel assimilated to judges and prosecutors).

During 5th – 6th November candidates will participate at the written tests.

New competition for appointment into leading positions at courts and prosecutors' offices

By the Decision no. 638/September 22nd 2011 SCM Plenum approved the contest/exam for appointment in leading positions to be organized during September 23rd – December 14th 2011.

The number of leading positions open for contest is the following:

- 102 vacant positions of president and vice-president at courts of appeal, tribunals, specialized tribunals and courts of first instance;
- 123 vacant positions of general prosecutors, deputy general prosecutors, chief prosecutor and deputy chief prosecutor at the prosecutors' offices attached to courts of appeal, to tribunals and to courts of first instance.

170 candidates applied for this exam/contest (76 judges and 94 prosecutors).

Procedure is ongoing. During 6th -14th November 2011 the first examination will take place representing the psychological testing, evaluation of the capacity of taking decisions, assuming responsibilities and stress resistance.



Exam for admission to the National School of Clerks

On September 4th 2011 took place the exam for admission to NSC. The number of positions open for competition was 105, out of which 75 for courts and 30 for prosecutors' offices. The results of the exam were validated by the SCM Plenum within the session meeting on November 1st 2011.

New exam for admission into magistracy - for candidates with at least 5 years of legal seniority

By the Decision no. 640/September 27th 2011, SCM Plenum approved the exam for admission into magistracy to be organized on November 13th 2011 for a number of 20 vacant positions of judge at courts of first instance and of 20 vacant positions of prosecutor at prosecutors' offices attached to courts of first instance (these positions have not been chosen among the options of the justice auditors).

1357 candidates applied for this contest, out of which: 615 at the tribunals and 742 at the prosecutors' offices attached to tribunals.

PROFESSIONAL TRAINING

NATIONAL SCHOOL OF CLERKS

By the Decision no. 703/04.10.2011 SCM Plenum approved the structure and the curricula for the professional training program for clerks;

By the Decision no. 704/04.10.2011 SCM Plenum approved the network of trainers for NSC.

NATIONAL INSTITUTE OF MAGISTRACY

By the Decision no. 716/11.10.2011 SCM Plenum approved the new member within the NIM Scientific Council as representing the professional associates of magistrates as.

PROFESSIONAL TRAINING OF JUDICIAL INSPECTORS

Judicial Inspection continued the regular professional meetings during the referred period.

PROMOTION TO THE HIGH COURT OF CASSATION AND JUSTICE

There is an important shortage of personnel at the level of the HCCJ, especially at the level of the Criminal Section.

A draft law on modifying the current procedure was initiated by the GoR and endorsed by the SCM. This draft was rejected by the Senate, as decisional chamber, on October 5th, 2011

Having regarded the failure of the draft law initiated by the MoJ, the promotion procedure will continue in accordance with the regulation adopted by the SCM, which contains transparent and objectives criteria and procedures of selection, based on professional experience and capacity, as well as on an integrity assessment.

The procedure launched on September 29th is ongoing.

The deadline for submitting the candidacies was October 31st 2011.

A total number of 30 candidates applied for this procedure, out of which 24 magistrates applied for the Criminal Section and 6 magistrates applied for the Civil Section.

The interviews in front of the SCM Plenum are scheduled to be held on December 13th 2011.



JUDICIAL INSPECTION

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

Strengthening the role of the Judicial Inspection

- By the **Decision no. 572/September 13th, 2011, SCM Plenum** approved the Activity Report of the Judicial Inspection for the first semester of 2011 and the proposals for the second semester of 2011.
- In the current period the Service of Judicial Inspection for Judges elaborated the final control report on monitoring the cases pending for more than one year within the judiciary system; the report is to be presented to the Section for Judges; the Service of Judicial Inspection for Prosecutors has elaborated the final control report on monitoring the cases pending for more than one year at the Prosecutors' Office attached to Targoviste Court of First Instance and at the Prosecutors' Office attached to Cluj-Napoca Court of First Instance.
- Also, the Section for Judges approved the report of the Judicial Inspection on assessing the situation of requests repetitively submitted as a mean of avoiding the system for random distribution of cases and decided on improving ECRIS system in order to for similarities to be identified by the system.

Disciplinary actions

- Within the current period the Disciplinary Commission for Judges exercised one disciplinary action for repeatedly non-observing legal provisions in terms of celerity in solving cases and for exercising the office with serious negligence (art. 99 lt. e and h, These II, Law no. 303/2004);
- Within the current period the Disciplinary Commission for Prosecutors exercised one disciplinary action for violation of legal provisions regarding interdictions (art. 99 lt. a, These II, Law no. 303/2004);

Disciplinary sanctions exercised by the disciplinary commissions

- *The Section for Judges* delivered six disciplinary actions; the sanctions applied were the following:
 - "warning" for one judge for repeatedly non-observing legal provisions of celerity in solving cases (art. 99 lt. e Law no. 303/2004);
 - "decreasing the initial gross monthly salary with 15% for 3 months" for one judge for violation of legal provisions regarding incompatibilities and interdictions for judges and prosecutors (art. 99 lt. a, Law no. 303/2004);
 - "decreasing the initial gross monthly salary with 15% for 3 months" for one judge for repeatedly non-observing legal provisions of celerity in solving cases (art. 99 lt. e Law no. 303/2004);
 - "exclusion from the magistracy" for one judge for unjustified refusal of fulfilling a professional duty, for exercising the office with serious negligence and for unjustified delays in exercising the office and unjustified absences from the office (art. 99 lt. g, h Theses II, i and j Law no. 303/2004);
 - "exclusion from the magistracy" for one judge for exercising the office with bad faith an non/observing the provisions on the randomly distribution of cases (art. 99 lt. h, These I and m Law no. 303/2004);
 - "exclusion from the magistracy" for one judge for exercising the office with bad faith an non/observing the provisions on the randomly distribution of cases (art. 99 lt. h, These I and m Law no. 303/2004).
- *The Section for Prosecutors* delivered one disciplinary action; the sanction applied was the following:
 - "warning" for one prosecutor for violation of legal provisions regarding incompatibilities and interdictions for judges and prosecutors (art. 99 lt. a, Law no. 303/2004).

Recruitment of the judicial inspectors

By the **Decision no. 677/September 27th 2011, SCM Plenum** launched **a new recruitment procedure** for a number of 8 inspector positions within the Service of Judicial Inspection for Judges and for a number of 3 inspector positions within the Service of Judicial Inspection for Prosecutors.

The interviews for the recruitment of new inspectors were set for 29 and 30 November 2011.



INTERNATIONAL COOPERATION AND EU AFFAIRS

Public communication

SCM continued to present information regarding its current activities on the communication platform – www.infocsm.ro – and through the Infoletters / Newsletters.

Tender JUST/2010/JCIV/PR/0016/A4 – for development of training modules regarding European legislative instruments for cross-border cooperation in civil matters.

In May 2011, Academy of European Law (ERA) invited Superior Council of Magistracy to support the initiative within the above mentioned European project/tender, as becoming partner. Participation within this Project required the designation of one judicial trainer/expert in civil justice cooperation. Superior Council of Magistracy agreed upon this partnership and selected the national expert to be part within the future project.

On November 4th 2011, the Directorate A Civil Justice within the European Commission communicated to ERA that it had been selected as for carrying out the **Project for development of training modules regarding European legislative instruments for cross-border cooperation in civil matters** together with its partners, Superior Council of Magistracy being one of them.

EUROPEAN DAY OF CIVIL JUSTICE

On October 25th, Superior Council of Magistracy celebrated the European Day of Civil Justice through the annual event called "Open Doors Day", an opportunity to invite the interested public to discover the specific activities within the technical body of the Council. The participants (students, justice auditors, future clerks studying at NSC, interested public) had the occasion to meet and discuss with the SCM members and to receive information on the activity of SCM and on the functioning of the judicial system.

Such activities were organized within all the courts and prosecutors' offices across the country.

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