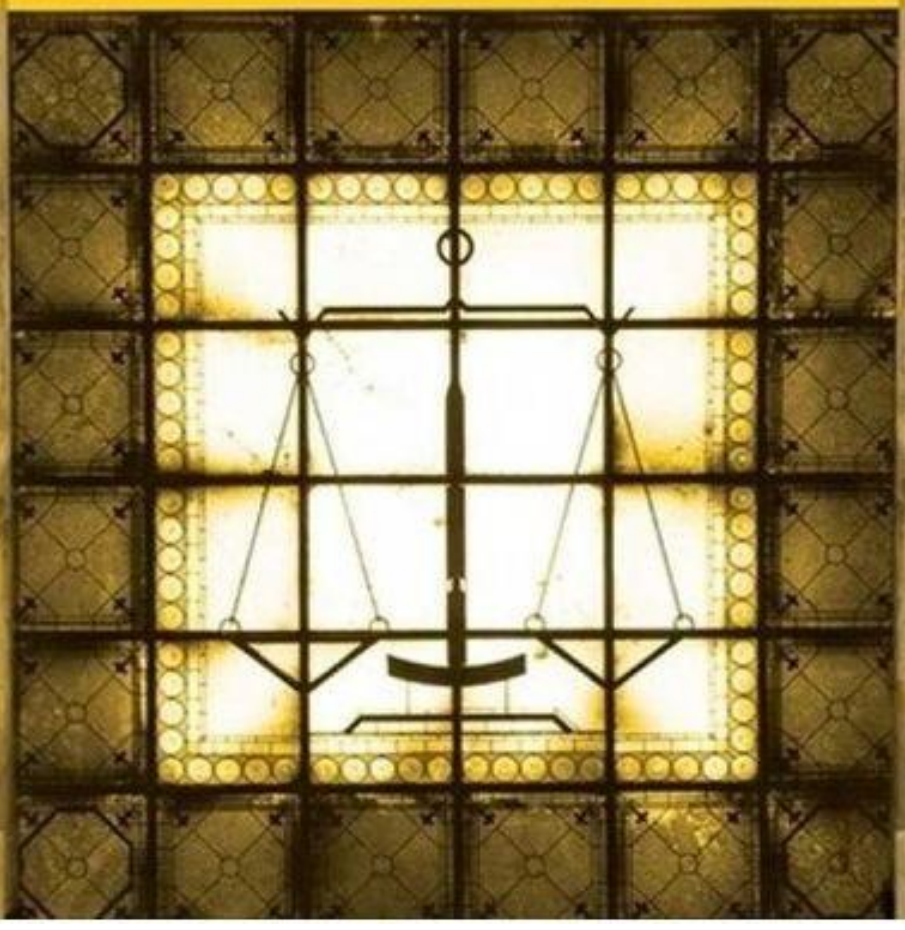
High Court of Review and Justice

Five-Justice Panel

Jurisprudence in the Area of Disciplinary Accountability of Judges and Prosecutors

2021



LIST OF ABBREVIATIONS

Civil Procedure Code	**–** Law no.134/2010 on the Civil Procedure Code
ECtHR	**–** European Court for Human Rights
Code of Ethics of Judges and Prosecutors	– the Code of Ethics of Judges and Prosecutors, as approved by Decision #328/2005 of the Higher Council of Magistrates' Plenum
HCM	– the Higher Council of Magistrates
Law #47/1992	**–** Law #47/1992 on the Organization and Operation of the Constitutional Court
Law #303/2004	– Law #303/2004 on the Status of Judges and Prosecutors
Law #304/2004	– Law #304/2004 on Judicial Organization
Law #317/2004	– Law #317/2004 on the Higher Council of Magistrates
Regulation of Courts	– Internal Regulation of Courts approved by Decision #1375/2015 of the Higher Council of Magistrates' Plenum
Regulation of Prosecutors' Offices of 2014	- Internal Regulation of Prosecutors' Offices, as approved by Justice Minister's Order #2.632/C/2014
Internal Regulation of DNA	**–** Internal Regulation of the National Anticorruption Department, as approved by Order #1643/2015 of the Minister of Justice
Regulation on Conducting Inspections	– Regulation on Rules for Conducting Inspections by the Judicial Inspection, as approved by Decision #1027/2012 of the Higher Council of Magistrates' Plenum

Note: The decisions underlying the drafting of this work are public and available on the website of the High Court of Review and Justice, under the section including the Five-Justice Panel's jurisprudence.

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I. DISCIPLINARY MISCONDUCT ACTS

Art. 99 item a) of Law #303/2004: "acts that harm professional honor or probity or the prestige of justice perpetrated during or outside the performance of job duties."

1. Judge. Interview in the media criticizing the judicial system. Balance between the right to freedom of expression and the duty of restraint required of magistrates. ECtHR's jurisprudence in the area of the duty of restraint of magistrates and of the freedom of expression of the media and of the political discourse.

Law #303/2004, Art. 99 item a), Art. 100 item b)

In examining the requirements for triggering the disciplinary liability for having perpetrated this misconduct, the court considers as reference the obligation imposed on magistrates to have, both in performing their job duties and in society, a conduct that, in the perception of a reasonable observer, ensures their professional honor and probity and the prestige of justice, which implies the acceptance and promotion of a behavior specific to the duty of restraint by magistrates.

Examining the case circumstances, the disciplinary court acknowledged the perpetration of a disciplinary misconduct stipulated by Art. 99 item a) of Law #303/2004, based on the fact that, in interviews published in the media, the judge made statements whereby he suggested that the rendering of justice in the territorial jurisdiction of the court with which he works is subordinated to a network of private interests, in which judges and lawyers are involved, expressed criticisms and brought allegations related to the credibility, independence and impartiality of the Judicial Inspection in the context of disciplinary proceedings conducted against him and his peer magistrates, counsels and public institutions, which clearly reflect his intent to present in the public space an image of the justice system characterized by a lack of professional probity and by subordination of the act of justice to interests incongruent with a judicial system specific to a rule of law state. The court established that the statements launched by the judge in the public space through the given interview were of nature to disturb the balance between the right to freedom of expression and the duty of restraint imposed on magistrates.

Given the case elements, the conduct of the magistrate was also examined based on ECtHR's jurisprudence, which highlighted the duty of restraint, which prohibits magistrates to act even in situations in which they are subject to media attacks (De Haes and Gijsels versus Belgium, Judgment of 24 February 1997, par. 37).

Referring to the right to freedom of expression as applied to magistrates, the court considered the elements acknowledged by the previous practice of the Five-Justice Panel (Decision #128 of 27 May 2019, Decision #62 of 18 May 2020), as well as the ECtHR's jurisprudence (Kudeshkina versus Russia, Judgment of 26 February 2009), in which the Court highlighted the special role of the judicial system in society, in its capacity as guarantor of justice, as a fundamental value in a rule of law state, establishing that what is at stake here in terms of protection of the judicial authority is the confidence the courts must instill in a democratic society to the general public/litigants, and public servants serving the judicial system must show restraint in using their freedom of expression in all cases that are likely to question the authority and impartiality of the judicial power.

In analyzing the observance of the right to freedom of expression as applied to magistrates, the ECtHR's jurisprudence examining the observance of the media's freedom of expression (Lingens versus Austria, Judgment of 8 July 1986; De Haes and Gijsels versus Belgium, Judgment of 24 February 1997; Oberschlick versus Austria, Judgment of 23 May 1991) and of the political discourse (Jerusalem versus Austria, Judgment of 27 February 2001; Brasilier versus France, Judgment of 11 April 2006) is irrelevant.

In the case, a disciplinary sanction consisting of a *"decrease in the gross monthly basic salary by 25% for a period of 3 months*," stipulated by Art. 100 item b) of Law #303/2004, was applied to the magistrate.

HCRJ, Five-Justice Panel, Decision #223 of 7 June 2021

2. Prosecutor. Statements about the professional capabilities of his direct supervisor. Eugales

Law #303/2004, Art. 99 item a)

From the perspective of the disciplinary misconduct stipulated by Art. 99 item a) of Law #303/2004, the prosecutor is accused of having made statements related to the professional qualification of his direct supervisor in a message sent via electronic mail to all prosecutors of the prosecutors' unit and in a complaint filed under Art. 340 of the Criminal Procedure Code, stating that "*a managerial position is not a guarantee of professional superiority*" and that "*in this case, it is about the invalidation and closure of a case by a prosecutor who did not perform any criminal prosecution act in the invalidated case, and who did not take any exam for obtaining his professional degree or for holding a management position".*

Based on the case circumstances, the court established that the constitutive elements of the disciplinary misconduct do not exist, based on the fundamental arguments shown below.

The first statement is of general nature and is applicable in any situation. Therefore, it is not of nature to harm the unanimously accepted conduct standards and does not harm the reputation of the judicial system as a whole or of his direct supervisor. As a result, it cannot be qualified as an illicit conduct, of a nature to harm the honor, professional probity or prestige of justice in the meaning of Art. 99 item a) of Law #303/2004.

The second statement, inserted in the complaint filed under Art. 340 of the Criminal Procedure Code against the prosecutor's order invalidating the indictment, can be found in an argumentation, in which the prosecutor mentions that, in the Public Ministry, the professional hierarchy does not correspond to the hierarchy of positions and, as a result, the documents of a prosecutor with a higher professional degree can be invalidated by a prosecutor with a lower professional degree, but who holds a managerial position. This statement cannot be qualified either as defamatory or of nature to harm the honor and professional probity of his direct supervisor in the meaning of Art. 99 item a) of Law #303/2004.

HCRJ, Five-Justice Panel, Decision #171 of 10 May 2021

3. Prosecutor. Messages posted on the Facebook social network.

Law #303/2004, Art. 99 item a), Art. 100 item b)

Based on the evidence produced in the case, the prosecutor's conduct, materialized in exposure in the public space, by posting on the Facebook social network messages, in which he expressed himself in an unprincipled manner, improper to his magistrate status, and which contravenes to the duty of restraint and has the constitutive elements of a disciplinary misconduct stipulated by Art. 99 item a) of Law #303/2004.

Based on the case circumstances, the court established that the publication by the magistrate of information on the Facebook social network meets the legal requirements referring to the public nature because, on one hand, this network has the features of a virtual public space, intended to be accessed by the general public and, on the other hand, the opinions expressed by the magistrate were published with an intent to bring them to the knowledge of persons who accessed his page on the Facebook network.

Based on the circumstances, actual seriousness and consequences of the perpetrated act and on the gradual nature of application of disciplinary sanctions, for having perpetrated a disciplinary misconduct stipulated by Art. 99 item a) of Law #303/2004, the prosecutor received the disciplinary sanction stipulated by Art. 100 item b) of the same law, consisting of "*a decrease in the gross monthly basic salary by 25% for a period of 6 months*".

HCRJ, Five-Justice Panel, Decision #251 of 28 June 2021

Art. 99 item c) of Law #303/2004: "undignified attitude during the performance of job duties in relation with peers and other staff of the court or prosecutors' office with which the magistrate works, with judicial inspectors, lawyers, experts, witnesses, litigants or representatives of other institutions"

1. Judge. Undignified attitude towards the court staff.

Law #303/2004, Art. 4 para. (1), Art. 90 para. (2), Art. 99 item c), Art. 100 item d)
Regulation of Courts, Art. 5 para. (2) item b), d) and e)

In the meaning of the stipulations of Art. 99 item c) of Law #303/2004, "undignified attitude" means a behavior contrary to the obligations imposed on magistrates to have relations based on respect and good faith, to have a decent and civilized conduct, and to show calm, patience and politeness in their professional relations, as it results from the stipulations of Art. 4 para. (1) and Art. 90 para. (2) of Law #303/2004 and Art. 5 para. (2) item b), d) and e) of the Regulation of Courts.

In the case, the court acknowledged the perpetration of a disciplinary misconduct based on the fact that the produced evidence showed that the judge used a high tone of voice, offensive and humiliating language, and had a conduct characterized by violence/aggressiveness in his relations with persons in the court.

In individualizing the disciplinary sanction, the court considered the principle of gradual application of sanctions and the fact that the judge had been sanctioned previously for having perpetrated the misconduct stipulated by Art. 99 item t), second indent, of Law #303/2004, and a sanction stipulated by Art. 100 item b) of the same law ["decrease in the gross monthly basic salary"] was applied to him, which demonstrates that the preceding proceeding failed to achieve its purpose of preventing subsequent non-conform conducts.

In this context, the court decided that the purpose of a disciplinary proceeding can be achieved by applying a sanction stipulated by Art. 100 item d) of Law #303/2004, consisting of "*suspension from office for a period of 6 months*".

HCRJ, Five-Justice Panel, Decision #21 of 1 February 2021

2. Judge. Attitude shown in the relationship with the court staff under circumstances of legitimate requests in the context of grievances related to the calculation of salary rights.

Law #303/2004, Art. 99 item c)

For the existence of a disciplinary misconduct stipulated by Art. 99 item c) of Law #303/2004, the court needs to acknowledge that, in terms of the objective side, during the performance of his job duties, the magistrate had an undignified attitude – a disappointing, dishonoring conduct, having negative connotations in the interhuman relations, contrary to the conduct standards set by laws and regulations, and having a particular seriousness – towards one of the passive subjects expressly listed by law and, in terms of the subjective side, a conduct described this way must be exercised in a conscious, deliberate or accepted way.

Based on the case circumstances, the court established that the aggregate of behavioral acts of the judge during the discussions with the specialized staff of the court on setting the salary rights for medical leaves was justified by the existence of legitimate requests in the context of grievances related to the calculation of salaries and the absence of pay slips in a broader context of a tense situation at the court level and of communication deficiencies, and that the voice tone, words and expressions used, the reproaches and insistencies of the judge did not exceed the limits of discussions qualified as being reasonable. The subjective perception of the interlocutor is not sufficient and conclusive in order to automatically acknowledge the perpetration of a disciplinary misconduct because, according to the evidence produced in the case, the judge's behavior was not of nature to create for reasonable external observers a perception that he exceeded the power conferred to him by law. Under the circumstances, the court established that the constitutive

elements of the disciplinary misconduct do not exist, and the disciplinary action lodged by the Judicial Inspection was dismissed.

HCRJ, Five-Justice Panel, Decision #352 of 22 November 2021

Art. 99 item i) Law #303/2004: "non-observance of the duty to abstain where judges or prosecutors are aware of the existence of causes stipulated by law for their abstention, as well as repeated and unjustified requests to abstain in the same case, which result in delays in proceedings"

1. Prosecutor. A criminal complaint and a complaint sent to the Judicial Inspection in relation to the manner in which he handled a criminal case. Participation of the prosecutor in the preliminary chamber proceeding in the relevant case until the time of admission of the recusal application filed against him.

Law #303/2004, Art.67 para. (3), Art. 99 item i)
Regulation of Prosecutors' Offices of 2014, Art. 20 items c) and d), Art. 89 items a), f) and g)

The act imputed to the prosecutor who handled the case during the criminal prosecution stage, i.e., that of having participated in the preliminary chamber proceeding until the time when the court admitted a recusal application filed against him by one of the defendants, a decision based on the fact that a disciplinary action filed against the prosecutor was pending with the Judicial Inspection in relation to his criminal prosecution activity performed in the case, which represents an objective element of nature to undermine the appearance of impartiality, does not have the constitutive elements of the disciplinary misconduct stipulated by Art. 99 item i) of Law #303/2004.

In this respect, the court established that the prosecutor participated in the preliminary chamber proceeding based on an order and approval from the management of the prosecutors' unit, by observing the stipulations of Art. 67 para. (3) of Law no.304/2004, under which "*In criminal proceedings, the hearing is attended by the prosecutor who conducted or supervised the criminal investigation or by another prosecutor appointed by the head of the prosecutors' office."* and the stipulations of Art. 89 items a), f) and g), corroborated with the stipulations of Art. 20 items c) and d) of the Regulation of Prosecutors' Offices of 2014, under which: "*perform criminal investigation in cases assigned by law under the competence of the Prosecutors' Office under the Tribunal"; "draft ... responses to applications and objections sent by defendants or to objections raised ex officio by the prosecutors' office under the preliminary chamber proceeding"; "participate in court hearings," and "participate in the settlement of challenges filed against the settlement of applications and objections (...) in the preliminary chamber proceeding"*.

At the same time, the court established that the existence of a disciplinary complaint or of a criminal complaint does not represent *eo ipso* a ground for incompatibility, because such situation implies a risk to be turned into a way through which the parties could determine the removal of the magistrate to whom the case is assigned.

In the case, the interpretation and application of the stipulations of Art. 99 item i), first indent, of Law #303/2004 in respect of the prosecutor's conduct before the admission of the recusal application is not concerned by the decision rendered afterwards on the recusal application. Otherwise, it would mean that, in case of a decision to admit a recusal application, the previous conduct of the magistrate, materialized through the acts performed and the steps ordered previously in the case in which the recusal application was filed, has the constitutive elements of a disciplinary misconduct automatically and with no analysis under a disciplinary proceeding.

HCRJ, Five-Justice Panel, Decision #23 of 1 February 2021

2. Prosecutor. Handling of a criminal case at the in rem criminal prosecution stage. The magistrate's impartiality under the stipulations of Art. 64 para. (1) item f) of the Criminal Procedure Code.

Law #303/2004, Art. 99 item i), first indent
Criminal Procedure Code, Art. 64 para. (1) item f)

The prosecutor is imputed to have perpetrated a disciplinary misconduct stipulated by Art. 99 item i), first indent, of Law #303/2004 for the fact that, in a criminal case, he ordered, by a ruling, the initiation of an *in rem* criminal prosecution for the4 perpetration of an offence in relation to a court hearing attended by him.

The court established that the constitutive elements of the disciplinary misconduct do not exist, based on the following arguments: **(i)** in that case, the prosecutor performed activities only at the stage of *in rem* criminal prosecution, at the stage of the act investigation, without having a prejudiced party, the act perpetrators being unidentified, and the criminal prosecution acts were performed for the purpose of collecting evidence necessary to prove the offence existence; **(ii)** at the relevant criminal prosecution stage, since neither the prejudiced parties nor the presumptive authors of the offence were identified, we cannot speak about incompatibility on the ground set forth by Art. 64 para. (1) item f) of the Criminal Procedure Code; **(iii)** ECtHR's jurisprudence (Judgment of 17 December 2004, Pedersen and Baadsgaard versus Denmark, point 44) and the jurisprudence of the Constitutional Court (Decision no.141/1999; Decision no.236/2016, points 50-51) established that one cannot speak about processual safeguards related to the right to a fair trial, which include also the impartiality of the magistrate, before the perpetrator has a standing capacity as accused or defendant as a result of an official notification on actions taken against him by the judicial authorities. In the same sense, ECtHR established that one cannot speak about a lack of impartiality in situations where a magistrate conducted only the "questioning of witnesses, without assessing the evidence and without drawing any conclusion" (Bulut versus Austria, pct. 33-34) or rendered formal and procedural judgments, such issue being brought into discussion under the proceeding stages in which "the magistrate decided on the guilt of the accused" (Gomez de Liano y Botella versus Spain, points 67-72). The above-indicated jurisprudence is fully applicable to the case circumstances, since the acts performed by the prosecutor in the criminal case are activities carried out for the purpose of collecting evidence to prove the offence existence and of identifying the persons having perpetrated it, these being procedural acts performed prior to the official notification of persons having standing capacity as accused parties.

HCRJ, Five-Justice Panel, Decision #53 of 1 March 2021

Art. 99 item j) Law #303/2004: "non-observance of the secrecy of deliberations or of the confidentiality of works of such nature, and of information of the same nature of which one becomes aware in performing his/her job duties, except for information of public interest, under the law"

1. Prosecutor. Publication of an indictment in the intranet network of a prosecutors' unit. Initiation of discussions with peer prosecutors on an indictment through a message sent through the work electronic mail addresses.

Law #303/2004, Art. 4, Art. 99 item j)
Code of Ethics of Judges and Prosecutors, Art.15

Based on the disciplinary misconduct stipulated by Art. 99 item j) of Law #303/2004, the court analyzed the act of the prosecutor consisting, on one hand, in sending from the electronic mail address configured at his disposal in the institution to all peer prosecutors in the unit a message asking them to

examine by themselves an indictment that had been invalidated by his direct supervisor and, on the other hand, in the publication of the indictment on the intranet network of the prosecutors' unit.

According to this disciplinary misconduct, after having examined the compliance with the obligation to observe the confidential nature for works based on the stipulations of Art. 4 of Law #303/2004 and Art. 15 of the Code of Ethics of Judges and Prosecutors, the court established that this obligation is breached by bringing to the knowledge of persons who are not entitled or of the general public data or information contained in confidential works, with a consequence of undermining the confidence and respect of the public in/for the magistrate position, affecting this way the image and prestige of justice as a whole.

Both the Higher Council of Magistrates, acting as disciplinary court, and the High Court of Review and Justice decided that the case circumstances do not have the constitutive elements of a disciplinary misconduct, because one cannot establish the guilt of the prosecutor in the form of intent or fault. In this sense, the court established that the imputed act occurred after the following facts: after legal opinions were expressed by several prosecutors in the management of the prosecutors' unit on the law matter concerned by the indictment, at the request of the chief prosecutor; after extracts of that indictment appeared on an internet site; after the prosecutor subsequently submitted a request to the chief prosecutor to be communicated a copy of the prosecutor's order invalidating the indictment, about which he had learned from the media; after the relevant prosecutor's order had been fully published on an internet site.

In conclusion, the court established that, based on an analysis of evidence and of the factual context, the information contained by the indictment was not brought to the knowledge of unauthorized persons through the act imputed to the prosecutor, i.e., that of having sent the document to his peers through the electronic mail. Instead, this happened before, when the document was published in the media. On the other hand, it established that the fact that the manner in which a law matter was decided upon was brought into a professional debate by his peers, about which the prosecutor stated that it may change the practice of the institution, cannot represent a disciplinary misconduct. In this respect, the court took into account the fact that each prosecutor of that prosecutors' unit had unrestricted access to any indictment issued by another prosecutor, as it results from the produced evidence. In such context, in which the natural conclusion is that indictments invalidated or reviewed in terms of their lawfulness and founded nature were not confidential for the other prosecutors of the unit, since any prosecutor has an obligation of confidentiality in respect of all cases of the institution with which they work.

HCRJ, Five-Justice Panel, Decision #171 of 10 May 2021

Art. 99 item m) of Law #303/2004: "unjustified non-observance of orders or decisions of administrative nature issued in compliance with the law by the head of the court or of the prosecutors' office or of other administrative obligations stipulated by the law or regulations"

1. Prosecutor. Work documents sent from the electronic mail address allocated by the prosecutors' unit to the personal electronic mail address. Personal data protection.

Law #303/2004, Art. 99 item m)
Convention, Art. 8
Law #677/2001, Art. 1
Law #190/2018

From the perspective of the disciplinary misconduct stipulated by Art. 99 item m) of Law #303/2004, the prosecutor is imputed that he transferred a series of documents pertaining to his cases from his work electronic mail address to his personal electronic mail address, breaching this way the stipulations of Art. 1-4 of Order #81/2016 issued by the prime deputy of the general prosecutor of the Prosecutors' Office under the High Court of Review and Justice and Art. 147 of the Internal Regulation of DNA.

Based on the case circumstances, the court established that the perpetration of the imputed act was not proven, since the means of evidence proving the existence of the material element of the objective side of the disciplinary misconduct is illegal, as acknowledged by a ruling of the Section for Prosecutors in the

disciplinary area, because it contravenes to the stipulations of Art. 1 of Law #677/2001 on the Protection of Persons with regard to the Processing of Personal Data and the Free Movement of such Data[1], for the following reasons: the list of messages pertaining to the work electronic mail address was printed and attached to the disciplinary file following termination of the work as prosecutor with the prosecutors' unit; the list of messages pertaining to the work electronic mail address contains both information regarding electronic mail addresses belonging to other persons or institutions and information on the subject matter of the electronic mail message, which fall within the scope of the concepts of "mail" and "personal data," and the electronic mail was accessed without informing the user in advance; even though the electronic mail address is allocated by the employer, employees should have a guarantee of protection of electronic mail at work, according to Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and of the provisions of Law #190/2018 on Steps for the Implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

HCRJ, Five-Justice Panel, Decision #171 of 10 May 2021

Art. 99 item r) of Law #303/2004: "failure by a prosecutor to draft or sign court judgments or judicial documents within the terms stipulated by law for imputable reasons"

1. Judge. Repeated non-observance of deadlines set for drafting court judgments for imputable reasons.

Law #303/2004, Art. 99 item r), Art. 100 item b)

The court established that the constitutive elements of the disciplinary misconduct stipulated by Art. 99 item r) of Law #303/2004 exist, since the circumstances of the case reveal the fact that, for imputable reasons, the judges subject to disciplinary investigation had: a) 277 non-drafted judgments, in which the deadline set forth by law was exceeded, with delays in over 200 judgments between 100 and 911 days; b) 405 non-drafted judgments, in which the deadline set forth by law was exceeded, with delays in over 224 judgments between 100 and 935 days.

Under Art. 100 item b) of Law #303/2004, the court applied a disciplinary sanction consisting of "a decrease in the gross monthly basic salary by 20% for a period of 6 months".

HCRJ, Five-Justice Panel, Decision #1 of 18 January 2021

Art. 99 item t) of Law #303/2004: "performance of job duties in bad faith or by gross negligence"

1. Judge. Failure to observe the deadline set by law for the preliminary chamber proceeding. An application to supplement a judgment was adjudicated within a term of two months after its registration.

Law #303/2004, Art. 99 item t), second indent, Art. 99[1] para. (2)
Criminal Procedure Code, Art. 342-343
Civil Procedure Code, Art. 444 para. (2)

[1] Law no.677/2001 on the Protection of Persons with regard to the Processing of Personal Data and the Free Movement of such Data was repealed by Law no.129/2018 amending and supplementing Law no. 102/2005 on the Creation, Organization and Operation of the National Supervisory Authority for Personal Data Processing, and repealing Law no. 677/2001 on the Protection of Persons with regard to the Processing of Personal Data and the Free Movement of such Data, published in Part I of Official Journal of Romania no. 503 of 19 June 2018.

Based on the disciplinary misconduct stipulated by Art. 99 item t), second indent, corroborated with Art. 99^1 para. (2) of Law #303/2004, the judge is imputed that, in a criminal case, he decided to notify the Constitutional Court, but failed to set a date for the continuation of the preliminary chamber proceeding by the hearing ruling, and failed to order any measures for a period of 1 year and 4 months, in breach of the stipulations of Art. 342 and Art. 343 of the Criminal Procedure Code.

The fact that, in the case, the proceedings were not continued for the time period mentioned above reveals a blatant breach of the term set forth by Art. 343 of the Criminal Procedure Code regarding the length of the preliminary chamber proceeding, and a disregard of the processual law norm was imputable to the judge, who did not make the efforts required to monitor the works in the case. The requirement regarding the serious consequences caused by such conduct is also met, as the case adjudication was delayed for a long period, a situation that is incompatible to the obligation of speedy settlement of any criminal allegation brought against any person, in general, and within the term expressly set forth by law for the preliminary chamber proceeding, in particular.

However, the court established that the requirement referring to the blatant, unquestionable and unjustified nature of the non-conform conduct is not met because, from an analysis of the produced evidence, one can infer that, in the above-mentioned time interval, the judge was convinced that the trial was suspended until the rendering of the decision by the Constitutional Court. This aspect is confirmed by the fact that, during the relevant time interval, the session clerk requested for information from the Constitutional Court, a fact recorded in the phone notices dated 29.06.2018 and 18.12.2018, attached to the case file. Therefore, the serious breach of the criminal processual norm is justified by the erroneous belief of the judge that the trial was suspended until the settlement of the constitutional challenge.

Yet, the High Court established that, in the case, the fact that the requirements specific to the disciplinary misconduct were not cumulatively met does not minimize, in terms of the serious consequence of the term by which the preliminary chamber proceeding was delayed, the lack of diligence shown by the judge in managing the case works, and anticipated that the disciplinary proceeding will make the magistrate show further diligence in the future in adjudicating the cases assigned to him.

In light of the same disciplinary misconduct, the judge is imputed a breach of the stipulations of Art. 444 para. (2) of the Civil Procedure Code, which stipulate that an application to supplement a judgment is settled on an emergency basis, because he settled such application within two months after its registration, and the case was sent to appeal after other two months.

The High Court decided that the constitutive elements of the disciplinary misconduct did not exist because the disregard of the processual law norms did not cause serious consequences, and do not represent a serious guilt or a macroscopic error, which would demonstrate, in the meaning of the previous jurisprudence of the High Court, the performance of job duties by gross negligence.

HCRJ, Five-Justice Panel, Decision #21 of 1 February 2021

2. Judge. Shallow conduct showing a lack of diligence and rigor. Rendering a judgment in public hearing without any deliberation and without conducting any required checks.

Law #303/2004, Art. 99 item t), second indent, Art. 99^1 para. (2), Art. 100 item a)
Civil Procedure Code, Art. 395 para. (1), Art. 416 para. (1) and para. (2), Art. 417

In concluding that the constitutive elements of the disciplinary misconduct stipulated by Art. 99 item t), second indent, corroborated with Art. 99^1 para. (2) of Law #303/2004, exist, the court acknowledged the non-observance of the stipulations of Art. 416 para. (1) and para. (2) and Art. 417 of the Civil Procedure Code, as a result of the judge's shallow conduct, lacking diligence and rigor, who raised, *ex officio*, an obsolescence objection and, even though he had unclear aspects about the punctual circumstances of the case, and had a possibility to withdraw for deliberations under the terms of Art. 395 para. (1) of the Civil Procedure Code, in order to conduct the required checks, he preferred to render the obsolescence decision on the spot, in public hearing, even though the case file contained an application for the case re-docketing, which had been lodged before the expiry of the obsolescence term, on which the court had not decided. The judge is imputed a lack

of rigor and a shallowness of his conduct, not the fact that he did not physically withdraw from the courtroom for deliberations, because, indeed, the law does not provide such obligation, the breach of which would represent a breach of a procedure norm.

In terms of the subjective side, the working manner adopted by the judge is an expression of gross negligence in performing his job duties, since the court could not establish any circumstance able to justify this breach of the mandatory and clear legal norms, as well as a lack of judicial reasoning able to prove that the judgment was rendered by considering all particular circumstances of the case.

Based on the circumstances of the case, the judge was applied a disciplinary sanction consisting of a "warning," stipulated by Art. 100 item a) of Law #303/2004.

HCRJ, Five-Justice Panel, Decision #283 of 20 September 2021

II. ADMINISTRATIVE-JURISDICTIONAL PROCEDURE

1. Resolutions on initiating a disciplinary investigation issued under Art. 45 para. (5) of Law #317/2004 – time of initiation of a disciplinary investigation – admissibility of complaints filed with HCM under Art. 52 para. (1) of Law #317/2004. Resolutions on initiating a disciplinary investigation not reasoned as of the date of ordering a measure of suspension of the magistrate from office – unfounded nature of a measure of suspension from office.

Law #317/2004, Art. 52 para. (1)

According to Art. 52 para. (1) of Law #317/2004:

„Art. 52. – (1) During a disciplinary proceeding, the relevant section of HCM*, ex officio* or based on a proposal from a judicial inspector, may order suspension from office of magistrate until the final adjudication of the disciplinary action, if the further performance of his/her job duties could affect the impartial conducting of disciplinary proceedings or if the disciplinary proceeding is of nature to seriously prejudice the prestige of justice. A suspension measure can be reconsidered at any time during the examination of the disciplinary action, until the decision rendering by the relevant section."

Complaints filed with HCM under Art. 52 para. (1) of Law no.7/2004 for ordering a measure of suspension from office of a magistrate until the final adjudication of the disciplinary action are admissible in situations in which such complaints are filed following the resolution issued by a judicial inspector under Art. 45 para. (5) of Law #317/2004, even if the relevant resolution is reasoned after the date when the disciplinary investigation is initiated.

In case of a resolution issued by a judicial inspector under Art. 45 para. (5) of Law #317/2004 ["*if he/she establishes that there is probable cause regarding the perpetration of a disciplinary misconduct, the judicial inspector orders, by a resolution, the initiation of a disciplinary investigation*"]. A disciplinary investigation is deemed to be initiated on the date of issuance of the relevant resolution, not on that when the resolution is subsequently reasoned. In this respect, the court considered the fact that the lawmaker does not condition the initiation of a disciplinary investigation by the existence of a written and reasoned resolution, as stipulated, for example, in other situations, such as the one stipulated by Art. 45 para. (4) of Law #317/2004, under which "if following the conducting of preliminary enquiries, it is found that there are no indications regarding the perpetration of a disciplinary misconduct, the complaint will be closed, and the result will be communicated directly to the person who filed the complaint and to the person concerned by the complaint. A closure resolution is subject to confirmation by the chief inspector. The resolution can be invalidated, only once, by the chief inspector, who can order, through a written and *reasoned resolution,* further enquiries."

The notification of HCM *ex officio* by the Section for Judges in the disciplinary area under Art. 52 para. (1) of Law #317/2004 for discussing a measure of suspension from office of a magistrate until the final adjudication of the disciplinary action is unfounded if both on the date of the Section convening and on that when the suspension decision is rendered, the resolution on the initiation of a disciplinary investigation is not reasoned.

In this respect, the court established that, in the absence of elements that need to be contained by a reasoned resolution for the initiation of a factual disciplinary investigation, according to Art. 31 para. (3) of the Regulation on Conducting Inspections, one cannot detect the elements required to establish whether the suspension from a judge position will lead to the achievement of the purpose sought after by the lawmaker by Art. 52 para. (1) of Law #317/2004. In this respect, the court also considered the jurisprudence of the Constitutional Court, which established that "*the purpose sought after by the lawmaker by a measure of suspension of a magistrate from office during a disciplinary investigation is that of ensuring the unbiased conducting of disciplinary proceedings and of protecting the prestige of justice, such measure of suspension from office being justified both by a need to protect the interests of the public authority/institution involved, which falls within the objective of setting of guilt of the involved magistrate, and to prevent a conduct of the magistrate of nature to influence the conducting of disciplinary proceedings*" (Decision of the Constitutional Court #679 of 31 October 2019, paragraph 27).

HCRJ, Five-Justice Panel, Decision #209 of 24 May 2021

2. Principle of random assignment of works at the level of the Judicial Inspection. Legal qualifications. Limits of enquiries conducted by HCM and HCRJ.

Law #317/2004, Art. 73 para. (1)

Art. 73 para. (1) of Law #317/2004 stipulates that "*Disciplinary complaints and cases are assigned to judicial inspectors by observing the principle of random assignment*".

The principle regarding the random assignment of works pending with the Judicial Inspection is regulated, at an infra-legislative level, by the provisions of the Regulation for the Organization and Operation of the Judicial Inspection, approved by Order #134/2018 of the Chief Inspector of the Judicial Inspection, of the Regulation on Conducting Inspections and of other administrative documents issued at the level of the Judicial Inspection.

An analysis concerning the observance of the principle of random assignment cannot be performed in an absolute manner, in the sense that any potential non-conformity leads *eo ipso* to nullity, without having to demonstrate the existence of a prejudice caused to the party's rights or legitimate interests, which could be remedied only through a cancellation of the whole proceeding.

The jurisprudence of the Five-Justice Panel (Decision no.126/2019) established that a proceeding for establishing the disciplinary liability of judges and prosecutors includes three stages: **(i)** *the administrative stage*, conducted by the Judicial Inspection, which includes two phases: the preliminary enquiry phase (Art. 45 of Law #317/2004, regulated under Section 1 of Chapter II of the Regulation on Conducting Inspections), and the disciplinary investigation phase (Art. 46 of Law #317/2004, regulated under Section 2 of Chapter II of the Regulation on Conducting Inspections); **(ii)** *the administrative and jurisdictional stage*, which consists in the settlement of disciplinary actions filed by the Judicial Inspection by the Higher Council of Magistrates, through its sections (Art. 49 of Law #317/2004); **(iii)** and *the judicial stage*, which consists in the settlement of appeal filed against decisions rendered by the Council of Magistracy, through its sections, in the area of disciplinary liability of judges and prosecutors by the Five-Justice Panel of the High Court of Review and Justice (Art. 51 of Law #317/2004).

Under the administrative stage of a disciplinary proceeding, the preliminary enquiry phase is finalized: **(i)** either by the initiation of a disciplinary investigation, ordered by the judicial inspector by a resolution, according to Art. 45 para. (5) of Law #317/2004; **(ii)** or by a case closure resolution issued by the judicial inspector, which is subject to confirmation by the chief inspector, according to Art. 45 para. (4) of Law #317/2004; a case closure resolution can be appealed by a complaint lodged with the chief inspector; the resolution of the chief inspector whereby he/she dismisses a complaint, and a case closure resolution can be appealed with the Administrative and Tax Litigation Chamber of the High Court of Review and Justice, according to Art. 45^1 para. (3) of Law #317/2004. Hence, it results that a document whereby a disciplinary proceeding is finalized under the preliminary enquiry phase by a complaint closure is an administrative document subject to review by the court for administrative litigation.

Also, under the administrative stage of a disciplinary proceeding, according to Art. 47 para. (1) of Law #317/2004, the disciplinary investigation phase can be finalized: **(i)** either by admission of the complaint, initiation of a disciplinary action and notification of the relevant section of the Higher Council of Magistrates; **(ii)** or by dismissal of the complaint, if the court establishes, after a disciplinary investigation is conducted, that the requirements for filing an action are not met.

According to Art. 47 para. (5) of Law #317/2004, a resolution dismissing a complaint can be challenged by the person who filed the complaint with the Administrative and Tax Litigation Chamber of Bucharest Court of Appeals, without having to perform a preliminary procedure. In such case, it is also established that the document whereby a disciplinary proceeding is finalized at the disciplinary investigation phase by dismissal of the complaint is an administrative document subject to review by the court for administrative litigation. Therefore, it results that the documents finalizing administrative proceedings by the closure or dismissal of complaints are administrative documents subject to review by the court for administrative litigation.

In addition to the two situations presented above, finalized by the issuance of administrative documents, a third possible situation is regulated, in the order of the proceeding stages, by Art. 45 para. (5)

and Art. 47 para. (1) item a) of Law #317/2004, and refers to a situation in which the proceeding conducted at the level of the Judicial Inspection is finalized by admission of the complaint, initiation of a disciplinary action and notification of the relevant section of the Higher Council of Magistrates. This third situation is materialized by a resolution on filing a disciplinary action, as a document to notify the Higher Council of Magistrates.

Similarly to the other two possible documents (complaint closure resolutions and complaint dismissal resolutions) for the finalization of a proceeding conducted in front of the Judicial Inspection, resolutions on filing a disciplinary action also have the legal nature of an administrative document whereby the extra-judicial court, i.e., the Higher Council of Magistrates, is vested with the settlement of the administrative and jurisdictional proceeding.

The presented arguments demonstrate that a resolution on filing a disciplinary action issued under the proceeding regulated by the special law is an administrative document issued under a special proceeding, and is not a sue petition as such in the meaning of the provisions of the Civil Procedure Code.

Dealing with administrative documents, the legality review conducted under the administrative contentious law implies both a check of the conformity of the document with the provisions having a higher power, and the prejudice caused to the law subject in terms of its rights or legitimate interests.

Both under the administrative and jurisdictional stage conducted before HCM and under the judicial stage conducted in front of HCRJ, only aspects related to the random assignment of the work registered with the Judicial Inspection that is the subject matter of the disciplinary case may be subject to review. A review of the manner in which the random assignment procedure was performed in cases other than the one subject to the disciplinary case with which HCM and HCRJ are vested represents a breach of the stipulations of Art. 9 para. (2) of the Civil Procedure Code, under which "*The subject matter and limits of a case are established by the parties' applications and defense arguments*".

HCRJ, Five-Justice Panel, Decision no.130 of 12 April 2021,
Decision #223 of 7 June 2021

3. The principle of impartiality in the activity of the Judicial Inspection. Activities performed by the Judicial Inspection. Legal qualification. Applicability of the provisions of the Civil Procedure Code and of ECtHR's jurisprudence in the area of court impartiality.

Law #317/2004, Art. 72, Art. 73 para. (1) and para. (2) item d)
Regulation on Conducting Inspections, Art. 7

In respect of the principle of impartiality in the activity of the Judicial Inspection, the following legal and regulatory provisions are of relevance:

- Art. 72 and Art. 73 para. (1) and para. (2) item d) of Law #317/2004:

"Art. 72. - (1) Judicial inspectors carry out their activities independently and impartially.

(2) Judicial inspectors may not conduct a disciplinary investigation or any other works concerning judges or prosecutors of courts or prosecutors' offices with which they worked previously. In such situation, cases are randomly assigned to other judicial inspector, by observing the provisions of Art. 73.

Art. 73. - (1) Disciplinary complaints and cases are assigned to judicial inspectors by observing the principle of random assignment.

(2)Works randomly assigned to judicial inspectors may be reassigned only in the following situation, by applying para. (1): […]

d) in any case in which, due to the capacity of the person subject to investigation, the impartiality of a disciplinary investigation could be affected."

- Art. 7 of the Regulation on Norms for Conducting Inspections by the Judicial Inspection, approved by Decision #1027/2012 of HCM's Plenum, under which:

"Art. 7. - (1) In performing their specific job duties, judicial inspectors have an obligation to adopt an objective, equidistant and unbiased attitude, of nature to eliminate any suspicions related to a lack of impartiality.

(2) In order to secure the unbiased and independent nature of activities, judicial inspectors may not conduct disciplinary investigations or any other works concerning judges or prosecutors of courts or prosecutors' offices with which they worked previously.

(3) The wording "courts and prosecutors' offices with which an inspector worked previously" means the last court or prosecutors' office with which the judicial inspector worked prior to his/her appointment.

(4) The impartiality and independence in the performance of job duties by judicial inspectors are ensured by the random assignment of works.

(5) Randomly assigned works may be reassigned only in the cases limitedly stipulated by law and the Regulation for the Organization and Operation of the Judicial Inspection."

According to the provisions quoted above, impartiality is secured by the random assignment of works, a procedure that is not applicable to the job duties and prerogatives of the chief inspector related to the confirmation/invalidation of resolutions drafted by judicial inspectors in cases assigned to them.

The above-quoted provisions expressly regulate a single situation presumed to be of nature to generate doubts on the impartiality of judicial inspectors, also applicable to those holding management positions, namely the performance of job duties in respect of magistrates of courts or prosecutors' offices with which the inspector worked previously. The regulation of this situation sought to eliminate suspicions related to the lack of impartiality that could cast doubts on a judicial inspector in light of his/her collegiality relationship with the magistrate against whom a disciplinary proceeding is conducted.

In respect of the activity of the Judicial Inspection, neither the provisions of the Civil Procedure Code nor ECtHR's jurisprudence in the area of court impartiality are applicable *tale quale*, because the Judicial Inspection carries out an administrative activity, not an activity specific to a court. The elements identified in the domestic or ECtHR's judicial practice concerning the court's impartiality are applicable to the Judicial Inspection only to the extent that they are compatible to the administrative proceeding conducted at the level of this public institution.

Under a proceeding for establishing the disciplinary liability of judges and prosecutors, the Judicial Inspection acts as an administrative body, which is in an antagonistic position to that of the magistrate against whom a disciplinary enquiry/investigation is conducted. As such, the fact that, in performing his/her job duties, the chief inspector seeks to obtain a decision sanctioning the magistrate against whom the disciplinary proceeding is conducted does not automatically demonstrate a lack of impartiality of the chief inspector. To accept a contrary theory is equivalent, *ad absurdum*, to accepting a possibility for the conducting of an administrative disciplinary proceeding against a magistrate who expresses allegations against the Judicial Inspection in the media.

Even in a context in which the chief inspector would confirm a resolution on filing a disciplinary action against the conduct of a magistrate directed against him/her, such circumstance cannot be deemed a lack of impartiality, because the chief inspector does not perform a judicial activity; instead, it acts, *mutatis mutandis*, as the plaintiff, which refers the disciplinary conflict to the administrative and jurisdictional examination conducted by HCM and, afterwards, to the court (HCRJ) for review. In other words, the Judicial Inspection cannot be imputed a lack of impartiality on the ground that, through its activity, it seeks to have magistrates sanctioned, as this is precisely its role conferred by law. *Per a contrario,* we need to highlight once again the fact that the incompatibility situation regulated by the provisions quoted above refers to a presumed bias to the benefit of, not against, the magistrate against whom a disciplinary proceeding is conducted.

The same arguments are valid also for analyzing the observance of the principle of impartiality of members of HCM's Sections for Judges/Prosecutors in the disciplinary area, because, *ad absurdum*, one would make it impossible for HCM to settle disciplinary actions against magistrates who launch in the media negative opinions about members of the HCM , the only entity authorized by law to settle disciplinary disputes. In other words, to accept that the impartiality of HCM members is impaired by the fact that magistrates subject to disciplinary investigations express negative opinions about them in the media is equivalent to recognizing for such magistrates subject to a disciplinary investigation a possibility to fraudulently use, to their benefit, as a result of their unilateral actions, the principle of impartiality in a way that would make it impossible for the only competent administrative and jurisdictional body to decide on disciplinary actions.

HCRJ, Five-Justice Panel, Decision #223 of 7 June 2021

4. Resolution on filing a disciplinary action. Legal qualification.

Law #317/2004, Art. 45, 46, 47, 49, 51

The jurisprudence of the Five-Justice Panel (Decision no.126/2019) established that the proceeding for the disciplinary liability of judges and prosecutors includes three stages: **(i)** *the administrative stage*, conducted by the Judicial Inspection, which includes two phases: the preliminary enquiry phase (Art. 45 of Law #317/2004, regulated under Section 1 of Chapter II of the Regulation on Conducting Inspections), and the disciplinary investigation phase (Art. 46 of Law #317/2004, regulated under Section a 2-a of Chapter II of the Regulation on Conducting Inspections); **(ii)** *the administrative and jurisdictional stage*, which consists in the settlement of disciplinary actions filed by the Judicial Inspection by the Higher Council of Magistrates, through its sections (Art. 49 of Law #317/2004); **(iii)** and *the judicial stage*, which consists in the settlement of appeals filed against decisions rendered by the Higher Council of Magistrates, through its sections, in the area of disciplinary liability of judges and prosecutors by the Five-Justice Panel of the High Court of Review and Justice (Art. 51 of Law #317/2004).

Under the administrative stage of the disciplinary proceeding, the preliminary enquiry phase is finalized: **(i)** either by the initiation of a disciplinary investigation, ordered by the judicial inspector by a resolution, according to Art. 45 para. (5) of Law #317/2004; **(ii)** or by a case closure resolution issued by the judicial inspector, which is subject to confirmation by the chief inspector, according to Art. 45 para. (4) of Law #317/2004; a case closure resolution can be appealed by a complaint lodged with the chief inspector; a resolution of the chief inspector whereby he/she dismisses a complaint, and a case closure resolution can be appealed with the Administrative and Tax Litigation Chamber of the High Court of Review and Justice, according to Art. 45^1 para. (3) of Law #317/2004. Therefore, it results that a document whereby a disciplinary proceeding is finalized under the preliminary enquiry phase by the complaint closure is an administrative document subject to review under the terms of the administrative litigation law.

Also, under the administrative stage of a disciplinary proceeding, according to Art. 47 para. (1) of Law #317/2004, a disciplinary investigation phase can be finalized: **(i)** either by admitting the complaint, filing a disciplinary action and notifying the relevant section of the Higher Council of Magistrates; **(ii)** or by dismissing the complaint, if, following a disciplinary investigation, it is established that the requirements for filing an action are not met.

According to Art. 47 para. (5) of Law #317/2004, a complaint dismissal resolution can be challenged by the person who filed the complaint with the Administrative and Tax Litigation Chamber of Bucharest Court of Appeals, without having to perform any preliminary procedure. In this case, one can also see that a document whereby a disciplinary proceeding is finalized at the disciplinary investigation stage by the complaint dismissal is an administrative document subject to review under the terms of the administrative litigation law. Therefore, it results that documents finalizing an administrative proceeding by the complaint closure or dismissal are administrative documents subject to review under the terms of the administrative litigation law.

In addition to the two situations presented above, finalized by the issuance of administrative documents, a third possible situation is regulated, in the order of the proceeding stages, by Art. 45 para. (5) and Art. 47 para. (1) item a) of Law #317/2004, and refers to a situation in which the proceeding conducted at the level of the Judicial Inspection is finalized by admitting the complaint, filing a disciplinary action and notifying the relevant section of the Higher Council of Magistrates. This third situation is materialized by a resolution on filing a disciplinary action, as a document notifying the Higher Council of Magistrates.

Similarly to the two other possible documents (a complaint closure resolution and a complaint dismissal resolution) finalizing proceedings conducted in front of the Judicial Inspection, a resolution on filing a disciplinary action also has the legal nature of an administrative document whereby the extra-judicial court, i.e., the Higher Council of Magistrates, is vested to settle the administrative and jurisdictional proceeding.

The arguments presented above demonstrate that a resolution on filing a disciplinary action issued under the proceeding regulated by the special law is an administrative document issued under a special proceeding, and is not a sue petition *per se* in the meaning of the provisions of the Civil Procedure Code.

HCRJ, Five-Justice Panel, Decision #130 of 12 April 2021,

5. Civil Procedure Code. Compatibility of provisions of the Civil Procedure Code to the proceeding for the settlement of disciplinary actions conducted in front of HCM.

5.1. Art. 264 para. (2) and Art. 324 of the Civil Procedure Code. Assessment of testimonial evidence. Testis unus, testis nullus.

Civil Procedure Code, Art. 264 para. (2), Art. 324

The stipulations of Art. 264 para. (2) and Art. 324 of the Civil Procedure Code are applicable in the proceeding for the settlement of disciplinary actions.

Based on the Roman law adage "*testis unus testis nullus*," pieces of evidence do not have a pre-established value, and their assessment is regulated by the stipulations of Art. 264 para. (2) and Art. 324 of the Civil Procedure Code, and there is no legal provision that requires a plurality of heard witnesses as a condition for the production of evidence.

The probative value of witness depositions derives from an assessment performed punctually by a judge in terms of the truthfulness and plausibility of aspects presented by witnesses, by considering all subjective and objective circumstances of the case. Therefore, if a judge has an obligation to set aside testimonial evidence produced in a case only on a reasoned basis (just like any other means of evidence), to the same extent, the party interested to challenge the probative value of the statement of one or more witnesses has an obligation to justify its criticisms, as a mere disagreement with the aspects presented by the witness is not sufficient to remove the depositions in question from the evidence.

HCRJ, Five-Justice Panel, Decision #251 of 28 June 2021

5.2. Applicability of the stipulations of Art. 319 of the Civil Procedure Code in the administrative proceeding conducted in front of the Judicial Inspection.

Civil Procedure Code, Art. 319
Law #317/2004, Art. 49 para. (1) and (7)

The stipulations of Art. 319 of the Civil Procedure Code regarding the taking of the oath by witnesses are not applicable at the administrative phase of prior enquiries and of disciplinary investigation conducted in front of the Judicial Inspection. Therefore, the hearing minutes drafted at this stage does not have the value of witness statements in the meaning of the Civil Procedure Code.

The reference norm, specified by Art. 49 para. (7) of Law #317/2004, refers to the administrative and jurisdictional proceeding conducted in front of the HCM Sections, as expressly stipulated by para. (1) of the same article, not to the preliminary enquiry phase and the disciplinary investigation conducted in front of the Judicial Inspection.

A hearing minutes drafted by a judicial inspector or by one of the members of the team of judicial inspectors in compliance with the stipulations of Art. 30 para. (5) of the Regulation on Conducting Inspections represents evidence admissible in a disciplinary proceeding.

HCRJ, Five-Justice Panel, Decision #21 of 1 February 2021
Decision #251 of 28 June 2021

6. Competence of the HCM to establish the legal classification of an act that is the subject matter of a disciplinary action filed by the Judicial Inspection. The principle of party disposition regulated by Art. 9 para. (2) of the Civil Procedure Code.

Civil Procedure Code, Art. 9 para. (2)
Law #317/2004, Art. 50 para. (1) item a)

The legal classification of an act notified by a resolution on filing a disciplinary action is the prerogative of the Higher Council of Magistrates, in acting as court of law in the area of disciplinary liability of judges and prosecutors, as it expressly results from the stipulations of Art. 50 para. (1) item a) of Law #317/2004, under which:

"*Art. 50. - (1) The Sections of the Higher Council of Magistrates settle disciplinary actions by a decision that mainly contains the following elements:*

a) a description of the act representing a disciplinary misconduct and its legal classification."

In case of applicability of the special provisions of Law #317/2004, in cases where HCM legally reclassifies an act with which it was vested through a disciplinary action lodged by the Judicial Inspection, one cannot acknowledge a breach by the disciplinary court of the principle of party disposition regulated by Art. 9 para. (2), by reference to Art.32 para. (1) item c) of the Civil Procedure Code.

HCRJ, Five-Justice Panel, Decision #21 of 1 February 2021

7. Inapplicability of the provisions of Law #571/2004 in the proceeding for establishing the disciplinary liability of judges and prosecutors.

Law #571/2004, Art. 2 para. (1), Art. 3 item c)

The provisions of Law #571/2004 on the Protection of Staff of Public Authorities, Public Institutions and other Units Reporting Breaches of Law do not apply to courts of law. Instead, they apply to "public authorities and institutions of the central public administration, the local public administration, the Parliament's staff, the working staff of the Presidential Administration, the working staff of the Government, to autonomous administrative authorities, culture, education, health, and social assistance public institutions, national companies, autonomous administrations of national and local interest, as well as to state-owned national companies" [according to Art. 2 para. (1) of the law]. In the same sense, according to Art. 3 item c) of the law, the capacity as whistleblower is recognized only to persons who submit a report in the meaning of the provisions of the normative act who are "*employees of one of the public authorities, public institutions or units listed under Art. 2*" of the law.

HCRJ, Five-Justice Panel, Decision #223 of 7 June 2021

III. JUDICIAL PROCEEDING

1. Constitutional challenge raised during the interval while a judgment rendering is adjourned. Inadmissibility.

Law no.47/1992, Art. 29 para. (1)
Civil Procedure Code, Art. 394

A constitutional challenge may be raised under Art. 29 para. (1) of Law #47/1992 until the time of closure of debates, while an application notifying the Constitutional Court lodged with the case file after this procedural moment, meaning the interval while the judgment rendering is adjourned, is inadmissible.

In this respect, the court considered the following arguments: **(i)** Art. 29 para. (1) of Law #47/1992, which allows the parties to raise constitutional challenges at any phase of a litigation, takes into account the existence of a litigation pending with a court of law. The wording *"the case settlement at any phase of the litigation"* refers to the proceeding status of a litigation - examination in first instance, in ordinary and extraordinary appeal – which can be interpreted only by corroboration with the stipulations of Art. 394 of the Civil Procedure Code on the closure of debates in first instance; **(ii)** while para. (1) of Art. 394 of the Civil Procedure Code regulates the moment of closure of debates, namely the moment when all factual circumstances and legal grounds of the case have been fully clarified, para. (3) of the same article stipulates that "*After the closure of debates, the parties may no longer lodge any document with the case file, under the sanction that such document may not be considered."*

HCRJ, Five-Justice Panel, Decision #173 of 10 May 2021