

CONSIDERATIONS ON PROFESSIONAL DIGNITY

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Abstract

Dignity is a polysemantic notion. According to the Dictionary of Neologisms, in a first sense, dignity means position, function, situation or high rank in a State, in a large organization. This approach refers to the concept of "dignitas" which in ancient Rome was associated with a public function and defined the duties of the one who occupies that function. Third parties have a general obligation to comply with that office or high rank in the State or ecclesiastical hierarchy, which is legally sanctioned. Our study analyses the legal provisions sanctioning attitudes and behaviours affecting the dignity of certain professions, such as lawyers and magistrates, referring also to the recent case law of the High Court of Cassation and Justice, Five judges Panels and the Constitutional Court.

Keywords: professional dignity; dignitas; disciplinary deviations; magistrates; jurisprudence

1. Introduction

Dignity is a polysemantic concept.

In the Anthological and synonyms dictionary of Romanian language of 1978, for the noun dignity we find the following meanings: dignity, honour, prestige, authority, prominence, good presence; seriousness, sobriety, reliability. Recognition, reputation, (good) name, fame, celebrity; glory, pride, greatness, praise. Value, price, merit. Significance, importance. Respect, respectability, compliance, esteem, honour, fairness, honorability (rare), appreciation, consideration, deference, condescendence. Pride, self-esteem.

According to the Dictionary of Neologisms¹, edited in 1986, the term dignity has the following meanings: 1) the quality of being dignified; prestige; seriousness, greatness; 2) *position, function, situation or high degree in a State, in a large organization.*

In the New Explanatory Dictionary of the Romanian Language², edited in 2002, the term dignity has the following meanings: 1) dignified character; competence; 2) dignified attitude; 3) dignified behaviour; *high rank in a State.*

In a first acception, dignity is associated with a position or high office in the State or in a large organization. This approach of dignity is considered in the specialty literature as representing the "*traditional approach*" because it refers to the concept of *dignitas* which in ancient Rome was associated with a public function, directly bearing certain particular obligations incumbent upon the person occupying that position related to the fact it represents the law, the public interest etc.³ On the other part, dignity implies a general

obligation of respect on the part of third parties to this rank or function - a legally sanctioned obligation⁴. Encountered in administrative contentious, violation of dignity in this first meaning in terms of chronology means the prejudice brought to the image of a function⁵.

This first meaning of the notion of dignity is different from the modern meaning, the equal dignity of all human beings, regardless of any particular additional status and exclusively related to the human nature of the individual. Art. 305 of the Law of National Education no. 1/2011 makes the distinction between the human and professional dignity of teachers: "The teaching staff and the students are protected in the academia by the authorities responsible with the public order.

They are protected against the person or the group of persons who affect the *human and professional dignity of the teaching staff* or who prevent the exercise of its rights and obligations. The protection is requested by the person authorized according to the University charter (s.n.)".

2. Professional dignity of the lawyer

Some examples in this respect: Art. 16 par. (2) of the Constitution mentions "public offices and dignities"; Law no. 161/2003 refers to public dignity offices; Art. 64 letter f) of Law no. 47/1992 provides that judges of the Constitutional Court shall be under an obligation to abstain from any activity or manifestation contrary to the independence or dignity of their office; art. 21 par. (2) letter f) of Law no.

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¹ Florin Marcu and Constant Maneca, *Dicționar de neologisme* (Bucharest: Academia, 1986), 124.

² *The new explanatory dictionary of the Romanian language* (Bucharest: Litera Internațional, 2002).

³ Girard, Charlotte and Henneute-Vauche, Stéphanie. "Introduction", in *La dignité de la personne humaine*, ed. Charlotte Girard, Stéphanie Henneute-Vauche, 24, Paris: PUF, 2008. For the evolution of the meaning of the notion, see Michel Pauliat, "De la Dignitas à la Dignité" in *Justice, éthique et dignité de la personne*, edited by Simone Gaboriau, Hélène Pauliat, 29-35, Limoges: Pulim, 2006.

⁴ Girard and Henneute-Vauche, "Introduction", 24.

⁵ Saint-James, Virginie. "La dignité en droit public français", in *La dignité de la personne humaine*, ed. Charlotte Girard, Stéphanie Henneute-Vauche, 161, Paris: PUF, 2008.

155/2010 stipulates that the local police officer is forbidden to carry out activities likely to damage the honour and dignity of the local police officer or of the institution which he is a member of; the Code of Ethics of the bailiff provides certain standards for the bailiff's conduct as to be in line with the honour and dignity of his profession.

Non-compliance with the particular obligations incumbent on the persons occupying these positions shall entail their disciplinary liability in a range of professions, such as lawyers or magistrates. In this case, the sanction is aimed at that particular person whose conduct brings a prejudice to the dignity of the position he/she holds. In this respect, dignity protects the office, not the person occupying it.

The Code of Ethics of the Romanian lawyer presents 10 fundamental principles guiding the lawyer's morality: freedom and independence; legality and respect for the rule of law; respect for professional secrecy; preventing conflicts of interest; dignity, honour and probity; professionalism and loyalty towards the client; professional competence; respect for their colleagues and all the persons with whom the lawyer engages in professional relationships; autonomy and self-regulation of the profession of lawyer; loyalty to the profession. In line with Art. 8 par. (1) of the Code of Ethics, these principles are the values which the lawyer relies on and that he defends (in the exercise of his profession and in the social life) and in connection to which all the deontological norms and his/her conduct shall be interpreted. The principle of dignity, honour and probity requires the lawyer to comply with the highest standards of moral integrity. Whenever, through his/her conduct in the exercise of the profession or beyond it, he/she does not live up to these standards, the lawyer harms not only his/her reputation, but also that of his/her profession which may affect public confidence in the profession of lawyer. In line with Art. 13 par. (4) of the Code of Ethics, the lawyer shall abstain from formulating denunciations for the purpose of gaining legal advantages. Therefore, the lawyer's dignity means the adequacy of his/her personal qualities, image and conduct to the requirements of his/her profession.

In the exercise of the profession, the lawyer shall have to comply with the solemnity of the court hearing, not to use words or expressions likely to harm the dignity of the magistrates, his/her colleagues lawyers or the representatives of the parties involved in the trial, the non-compliance with these provisions being considered a serious disciplinary offense.

Can become a member of a bar in Romania, the person who cumulatively meets the conditions provided for by Art. 12 par. (1) of the Law no. 51/1995, namely: has the exercise of civil and political rights; is a graduate of a faculty of law; is medically fit for the exercise of the profession; is not found in any of the

cases of lack of dignity provided for by art. 14 of the law.

Art.14 of Law no. 51/1995 provides 4 cases of unworthy attitude: a) the person finally convicted by a court order to imprisonment for committing an intentional offense, such as to prejudice the prestige of the profession; b) the person who committed abuses which violated the human rights and fundamental freedoms, established by court decision, or has committed serious disciplinary offenses punishable by the exclusion from the profession as a disciplinary sanction; c) the person who was punished by the prohibition to practice the profession, during the period established by a court or by disciplinary decision and d) the person in charge of whom was found, on the basis of a final court decision or acts of the lawyers' profession, the act of having practiced or supported, in any form whatsoever, the unlawful practice by a person of the profession of lawyer.

Furthermore, Art. 15 of the Law no. 51/1995 provides for the incompatibility with the occupations damaging the dignity and independence of the lawyer's profession.

The status of the lawyer's profession, as adopted by Decision no. 64 of December 3, 2011 of U.N.B.R. (National Association of Romanian Bars) Council, dedicates subsection 3 of Chapter II, Section 1, to the dignity of the lawyer's profession. The aforementioned cases of lack of dignity shall be verified by the Bar Council upon admission to the profession of lawyer, on the occasion of re-enrolment in the list of lawyers with the right to practice the profession and throughout the practice thereof.

The Constitutional Court ruled in its case law in the matter, Decision no. 629 of 27 October 2016⁶, that "the regulation in the matter of the lawyer's unworthy attitude is a normal one, giving the assurance that the persons practising this honourable profession have an impeccable moral profile, and it is inconceivable that persons with (serious) criminal convictions take part in the act of justice. The legislator understood to place under the incidence of this maximum sanction - exclusion from the profession - only the commission of intentional offenses, thus excluding the involuntary offenses, considering that, if there is no intention on the part of the lawyer, it cannot be said that his/her probity and fairness are affected". In the recitals of the same decision, the constitutional contentious court holds that the disciplinary sanction of exclusion from the profession of lawyer reflects the principle of the dignity and honour of the lawyer's profession, thus representing a guarantee of the morality and probity of the members of the lawyers' bar association. Thus, the legislation in the matter is governed by certain principles and rules that ensure a good, normal and lawful conduct of the lawyer's activity, the latter having the obligation to abstain from committing acts that would cast a negative light on him/her.

⁶ Published in the Official Gazette no. 36 of January 12, 2017.

The Constitutional Court, by Decision no. 225 of April 4, 2017⁷, found that the phrase “likely to prejudice the prestige of the profession” of lawyer in Art. 14 letter a) of Law no. 51/1995 is unconstitutional and violates Art.1 par. (5) of the Constitution because its drafting lacks clarity and accuracy, by not clearly defining intentional offenses that may prejudice the prestige of the profession of lawyer. The Constitutional Court held that “the express non-circumstantiality of offenses committed which are likely to prejudice the prestige of the lawyer's profession leaves some room for arbitrariness, making thus possible to apply the sanction of exclusion from the profession in a differentiate manner, depending on the subjective consideration of the structures of the profession of lawyer able to reflect on the case of lack of dignity”. The lack of clarity, accuracy and predictability of the aforementioned phrase created prerequisites for being applied in a different, discriminatory manner as a result of arbitrary judgments. Or, the predictability of law also implies the precise drafting of normative texts⁸. According to the Constitutional Court, Decision no. 1 of January 10, 2014, any normative act shall comply with certain qualitative conditions, including predictability, which implies that the normative act must be sufficiently clear and accurate in order to be applied, the formulation with sufficient precision of the normative act allowing those interested, who may call upon the advice of a specialist, if necessary, to provide, in the reasonable extent, the circumstances of the case, the consequences which may result from a given action.

3. The professional dignity of the judge and the prosecutor

It was rightfully stated that “the dignity of justice in the singular is first and foremost an image, an appearance, in the eyes of those who observe it. But, as it can only be observed through the eyes of the persons serving it, the dignity of justice is confused with that of the magistrates themselves. In other words, the consideration, the esteem, the respect that citizens have towards justice are precisely those of the magistrates themselves”⁹. Magistrates must be respected not only for the office they occupy, but also for their competence and irreproachable conduct, therefore they have to show self-control in public situations. As stated, judges and prosecutors have to comply with high standards, both in their private and public life, because their conduct affects the entire judicial system. Consequently, the standards of conduct for the employees in the judicial system (judges and

prosecutors) are much higher than those required of an ordinary citizen.

The Code of Ethics of Judges and Prosecutors¹⁰ contains their conduct standards in accordance with the honour and dignity of the profession and is structured in seven chapters with regard to the independence of justice, the promotion of supremacy of law, the impartiality of judges and prosecutors, the exercise of professional duties, dignity and honour of the profession of judge and prosecutor and activities incompatible with the judge or prosecutor position. The Code includes a special chapter, Chapter VI, generically entitled “The Dignity and Honour of the profession of Judge or Prosecutor” (Articles 17-20) which has to be understood in connection with Art. 90 par. (1) of the Law no. 303/2004¹¹ which states that “Judges and prosecutors are obliged to refrain from any actions or deeds likely to compromise their dignity in their profession and in society”. With regard to the conduct of judges and prosecutors within the judicial system in general and in courts, respectively the prosecutor's offices where they operate, Art.18 par. (1) of the Code provides that “the relations of judges and prosecutors within the collective community where they carry out their duties must be fair, based on respect and good faith, regardless their seniority in the profession and their position.” If the conduct of a judge or prosecutor towards his/her colleagues is inappropriate, this will also give rise to a doubt as regards his/her attitude towards his/her own profession. According to the following paragraph the judges and prosecutors cannot state their opinion on the moral and professional probity of their colleagues. Furthermore, Art. 19 of the Code states that judges and prosecutors can publicly express their opinion in exercising the right to reply, if defamatory assertions addressed to them were published in mass media. Finally, Art. 20 of the Code stipulates that judges and prosecutors cannot perform actions that, by their nature, financing origin or execution, could, in any way, infringe upon the fulfilment of their professional duties, with impartiality, honesty and within legal terms. With reference to Chapter VI, the “*Practical Guide of Professional Ethics for Judges and Prosecutors*”¹² which explains the regulations in the Code shows that judges and prosecutors are permanently in the public eye, therefore they must accept in their personal lives certain limitations that may be considered as burdensome for ordinary citizens and they must do so freely and with good will. In other words, the judge and the prosecutor must behave in accordance with the dignity of their profession.

⁷ Published in the Official Gazette no. 36 of 12 January 2017.

⁸ In this respect, Dan Claudiu Dănișor, *Constituția României comentată*. Title I. General Principles (Bucharest: Universul Juridic, 2009), 40.

⁹ Louvel, Bertrand. “Dignité et Dignités”, in *Justice, éthique et dignité*, edited by Simone Gaboriau, Hélène Pauliat, 37, Limoges: Pulim: Limoges, 2006.

¹⁰ Decision no. 328 of 24 August 2005 of the Superior Council of Magistracy published in the Official Gazette no. 815 of 8 September 2005.

¹¹ Law no. 303/2004 on the statute of judges and prosecutors (L.S.J.P.) as republished in the Official Gazette no. 806 of 13 September 2005.

¹² Approved by the Plenum of the Superior Council of Magistracy (C.S.M.) in session of November 22, 2016.

Judges and prosecutors respond from a disciplinary point of view for deviations from professional duties as well as for actions that affect the prestige of justice, disciplinary deviations being expressly provided for by art. 99 let. a) - t) of Law no. 303/2004. In the sense of Art. 44 par. (1) of the Law no. 317/2004¹³, the Superior Council of Magistracy fulfils, through its sections, the role of a court in the field of disciplinary liability of judges and prosecutors. According to art. 44 par. (2) of the same normative act, the section for judges also acts as a disciplinary court for the assistant magistrates of the High Court of Cassation and Justice. Against the decisions of the sections of the Superior Council of Magistracy for settling the disciplinary action, an appeal may be lodged within 15 days of the notification by the sanctioned judge or prosecutor or, as the case may be, by the judicial inspection, and the competence to settle the appeal belongs to the 5 Judges Panel of the High Court of Cassation and Justice, according to the provisions of art. 51 par. (3) of Law no. 317/2004.

It is of interest for this study the disciplinary offense provided for by art. 99 letter a) of Law no. 303/2004 which consists of “manifestations which affect the honour or professional probity or the prestige of justice, committed in the exercise or outside of the exercise of the professional duties”. The content of this deviation is represented by the standards of conduct imposed on magistrates by the provisions of: Art. 90 of Law no. 303/2004, Art. 17, 18 and 20 of the Code of Ethics for judges and prosecutors, as well as Art. 104 of the Law no.161/2003¹⁴ which stipulates: “Magistrates are forbidden any manifestation contrary to the dignity of their position or which may affect its impartiality or prestige.”¹⁵ These provisions are corroborated with the provisions of Art. 4 paragraph (1) of Law no. 303/2004, which states: “Judges and prosecutors are obliged, through their entire activity, to ensure the supremacy of law, to respect the rights and freedoms of individuals as well as their equality before the law and to ensure non-discriminatory legal treatment to all participants in judicial proceedings, regardless of their quality, to comply with the Code of Ethics of Judges and Prosecutors and to participate in continuing professional training”. Furthermore, Bangalore Principles on Judicial Conduct (2002), with respect to value no. 3 entitled “Integrity”, state that the judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer, thus reaffirming the people’s faith in the integrity of the judiciary. Furthermore, as regards value no. 4, the term “goodwill” states that the judge will avoid violating the

rules of goodwill or the appearance of its lack in all his/her activities, and his/her conduct must be in accordance with the dignity of the magistrate position. Last but not least, the Declaration on Judicial Ethics¹⁶ adopted by the General Assembly of the European Network of Legal Councils, within the meeting in London in 2010 stipulates the obligation of probity of the magistrate and the obligation to a worthy attitude and honour.

It should be outlined that in order to be considered a disciplinary offense, an action must be illicit in nature and meet the following constitutive elements: the object, the objective side, the subject and the subjective side.

The legal object of the disciplinary deviation as provided for by Art. 99 let. a) of Law no. 303/2004 is represented by the professional obligations or the norms of conduct established by laws, decisions or regulations, which all judges and prosecutors have to observe, in the consideration of their profession, and which are prejudiced by the unlawful deed¹⁷.

With regard to the material element of the objective side, it consists of the manifestations of the active subject which prejudice the honour or professional probity or the prestige of justice. In the New Explanatory Dictionary of the Romanian Language¹⁸ (2002), for the term honour we find the following meanings: 1. Moral dignity, which characterizes conduct; honesty. 2. Moral authority that someone enjoys. 3. Self-esteem. 4. Distinctive sign that is given to someone for acknowledged merits; honesty. Honour is not only about interiority, but it has a social character; to lose one’s honour, is to lose the consideration of his/her peers, thus resulting the connection between honour and reputation¹⁹. The Declaration on Judicial Ethics states in point 2.2 that professional honour implies the fact that the judge must ensure that through his/her professional practice and his/her person does not jeopardize the public image of the judge, the court or the system of justice. According to point 2.1 of the same international document, professional probity requires the judge to refrain from any tactless or indelicate behaviour, and not just the behaviour which is contrary to law. Last but not least, the doctrine defines the prestige of justice as being the positive public appreciation of the judicial system as a whole. As it has been shown, this global assessment is made in relation to the magistrates’ professional honour

¹³ Law no. 317/2004 regarding the Superior Council of Magistracy as published in the Official Gazette no. 628 of September 1, 2012.

¹⁴ See, Tamara Manea, Despre abaterea disciplinară a magistraților privind manifestările care aduc atingere onoarei sau probității profesionale sau prestigiului justiției www.juridice.ro.

¹⁵ Law no.161/2003 regarding certain measures for ensuring transparency of public dignitaries, public positions and within the business environment, corruption prevention and its sanction published in the Official Gazette no. 279 of 21 April 2003.

¹⁶ Available on <https://www.juridice.ro/wp-content/uploads/2010/12/etica-judiciara-Londra.doc>.

¹⁷ Ioan Gârbuleț, *Abaterile disciplinare ale magistraților* (Bucharest: Universul Juridic, 2016), 112.

¹⁸ <https://dexonline.ro/definitie/onoare>.

¹⁹ Andreas Bucher, *Personnes physiques et protection de la personnalité* (Basel: Helbing&Lichtenhahn, 2009), 129.

and probity as a result of their individual public assessments²⁰.

With regard to incrimination as a disciplinary deviation of the conduct of judges and prosecutors consisting in manifestations that may prejudice the honour or professional probity or the prestige of justice, Art. 99 letter a) of Law no. 303/2004 enshrines, in fact, the obligation of reserve incumbent upon them. This obligation expresses a practical synthesis of the general principles of professional deontology consisting of independence, impartiality, integrity and involves a certain moderation and restraint in professional, social and private life. The obligation of reserve must also be looked into in the light of the need for the magistrate to comply his/her conduct in accordance with the moral and ethical principles as recognized by society and to act in all circumstances in good faith, with fairness and decency.

The variety of situations that may arise in practice made the legislator not to be able to draw up an exhaustive list of manifestations of the kind to prejudice honour, professional probity or the prestige of justice.

In the case law, based on the evidence presented, the discipline court inferred the existence of the objective side of the deviation as provided for under Art. 99 letter a) of Law no. 303/2004 as republished, with subsequent amendments and supplements, being thus demonstrated beyond any doubt the inappropriate attitude and improper behaviour which the defendant public prosecutor has manifested in the public place, within a restaurant, materialized in the use of threatening expressions addressed to a waiter, in the unjustified presentation of the prosecutor's card, followed by contacting by phone a police officer to whom he requested assistance in order to "organize an operation for catching in the act (...) for the offense of abuse of service", as he had previously left the restaurateur without paying the entire price of the products ordered²¹.

In one case, it was noted that the objective side of the disciplinary deviation we refer to is outlined by several elements, namely: i) the defendant proceeded to hearing his colleague prosecutor as a witness in a tactless, distinct, singular manner, given the fact that the hearing was made in the presence of an ex officio lawyer who was not requested as a witness and a chief police commissioner, as an assistant witness; ii) the ex officio lawyer who attended the hearing mentioned in the witness statement given in this disciplinary proceedings that Mrs. Prosecutor D was clearly affected by this situation; iii) Mrs prosecutor, heard as a witness, qualified the questions raised by the defendant prosecutor as having a teasing character and

were likely to prejudice his authority before the two persons who assisted in making the statement, as she was asked questions about the start date of her activity in the prosecutor's office and about the position she occupied in the department where she carries out her activity, unimportant aspects from the perspective of the subject of evidence or the credibility of the witness; iv) the presence at the hearing, as a subscribing witness, of a police officer is likely to affect the report of authority specific to the supervision relationship of the criminal investigation carried out by the criminal prosecution authorities, and v) the defendant proceeded to the hearing of his colleague using the institution of the subscribing witness, which was provided by the old Code of Criminal Procedure, but which is no longer regulated by the current Code, an institution which in practice was used by the criminal prosecution bodies to hear as witnesses uneducated persons who could not write or read²².

In another case, it was noted that a magistrate, like any other person, cannot be deprived of the freedom of expression, but this right is not an absolute right as the State can legally intervene in order to limit it, according to the conditions provided for by Art.10 par. 2 of the European Convention on Human Rights. Furthermore, it has been shown that although the status of magistrate does not deprive the judge of the protection provided for by Art. 10 of the text of the Convention, the responsibility for maintaining the image and status of the position requires caution and moderation in expression. In the present case, the manner of expression the defendant judge chose to express his opinions regarding the activity of the judicial system, through the statements made on his personal blog, thus explicitly formulating certain suspicions and fears about the alleged criminal offenses committed by the two dignitaries, about the alleged influences on public institutions, thus suggesting the existence of a potential social danger as a result of their release, constitutes a violation of the obligation of reserve, given the fact that the defendant's statements exceeded the limits of the freedom of expression stipulated by par. (2) of Art. 10 of the text of the Convention²³.

Under this disciplinary deviation, the immediate consequence is affecting the public image not only the image of the judge or prosecutor concerned, but also of justice as a public system and service.

Relating to the aspect of the subjective side, the disciplinary deviation provided for by Art. 99 letter a) of Law no. 303/2004 may be committed intentionally or unintentionally. The guilt of the judge or of the prosecutor shall be assessed in relation to the standards of conduct set out in the aforementioned normative provisions and in relation to the requirements of the

²⁰ In this regard, Tamara Manea, Despre abaterea disciplinară a magistraților privind manifestările care aduc atingere onoarei sau probității profesionale sau prestigiului justiției or the prestige of justice) on www.juridice.ro.

²¹ Decision no. 9P of 5 July 2017, Section for prosecutors of Superior Council of Magistracy, made final by the decision no. 41 of 12 March 2018 of the High Court of Cassation and Justice, 5 judges Panel.

²² Decision no. 11P of September 20, 2017, Section for prosecutors of Superior Council of Magistracy, made final by the decision no.133 of June 25, 2018 of the High Court of Cassation and Justice, 5 judges Panel.

²³ Decision no. 69 of April 2, 2018 of the High Court of Cassation and Justice, 5 judges Panel.

society embodied in complying with certain values that are unanimously accepted.

According to Art. 99 letter c) of Law no. 303/2004, disciplinary deviation is represented by “attitudes that are not worthy in the exercise of their duties towards their colleagues, the other personnel of the court or the prosecutor’s office, judicial inspectors, lawyers, experts, witnesses, the persons subject to trial in a court of law, or the representatives of other institutions”.

In the case of this disciplinary deviation, the material object is identified with the passive subject (the judge’s or the prosecutor’s colleagues, the other staff of the court or the prosecutor’s office, judicial inspectors, lawyers, experts, witnesses, the persons subject to trial in a court of law or the representatives of other institutions).

In the doctrine, the phrase “unworthy attitudes” takes two meanings:

– *lato sensu*, it designates any manifestation of a judge or prosecutor that is contrary to the standards of conduct required by the laws, the decisions and the regulations governing their activity, and

– in a narrow sense, it designates the gestures, words, attitudes, expressions, etc. out of the civilized and decent behaviour that should govern social relations²⁴.

In this context, we should mention that in Decision no. 708 of November 15, 2018 regarding the exception of unconstitutionality of the provisions of art. 90 par. (1) and Art. 99 letter c) of Law no. 303/2004 on the status of judges and prosecutors and Art. 51 par. (3) of Law no. 317/2004 regarding the Superior Council of Magistracy, the Constitutional Court found that the legislator did not violate the requirements of clarity and predictability of the law by using the phrases “actions or deeds likely to compromise the professional dignity” and “unworthy attitudes” because the significance of the two phrases can reasonably be understood by magistrates acting as recipients of the rules. As correctly retained by the Constitutional Court, the legislator could not provide an exhaustive list of actions and deeds likely to prejudice the dignity of magistrates in their profession and in society, just as it could not draw up an exhaustive list of unworthy attitudes while exercising their professional duties. Thus, adapting the conduct of the magistrates to the prescriptions of the norm shall be analysed in relation to the concrete circumstances, characteristic to each factual situation.

For the existence of the disciplinary deviation provided for by art. 99 letter c) of Law no. 303/2004, in terms of the material element, two conditions have to be met cumulatively:

1. the unworthy attitude of the judge or the prosecutor to be achieved by an action or lack of action towards one of the passive subjects;
2. the unworthy attitude of the judge or the prosecutor shall be achieved during the exercise of his/her professional duties.

In the case of law, it was considered to be included in the disciplinary deviation under analysis, the attitude of defendant Judge A, who, given a tense atmosphere, during the deliberations following the session of March 16, 2016, addressed using a raised voice and throwing a file to judge C who attended the deliberations. In the present case, the veracity of the defendant’s improper conduct was confirmed by corroborating the evidence administered in the case, namely the statements of Judge C, the statements of Judges E and F, and the content of the mobile phone recording made by Judge C, from which it results that the defendant judge implicitly acknowledges her unworthy attitude²⁵.

In one case, it was noted that the manner in which the defendant judge acted in the court sessions of November 2, 2015, April 4, 2016, June 6, 2016, September 12, 2016, October 24, 2016, by using inappropriate expressions, by initiating dialogues without any legal relevance, by expressing criticism towards her fellow magistrates and the solutions delivered by the judicial control court fulfils the legal premise of the unworthy attitude²⁶.

In another case, it was held the objective aspect of the disciplinary offence stipulated by art. 99 letter c) of Law no. 303/2004 as it was demonstrated beyond any doubt that during the settlement of file no. x/212/2014, the defendant judge had inappropriate behaviour towards the injured parties and their lawyers, making inappropriate judgments and thus understanding to impose her point of view by initiating a dialogue without any legal relevance, perceived as a genuine interrogation with each of the present civil parties, insisting on bringing the minor children before the court, without showing any concern or respect towards their feelings, which was likely to incite doubts about the magistrate’s concern to ensure respect for the interests of the minors in terms of hearing which does not affect them emotionally²⁷.

The immediate consequence of this disciplinary offence is the deterioration of confidence and respect for the magistrate’s function, with the consequence of affecting the image and prestige of justice as a public system and service.

Regarding the subjective side, the disciplinary offence stipulated by art. 99 letter c) of Law no.

²⁴ In this regard, see Gărbuleț, Abaterile disciplinare ale magistraților, 175-76.

²⁵ Decision no. 8J April 6, 2017, Section for judges of the Superior Council of Magistracy, made final by the decision no.5 of January 29, 2018 of the High Court of Cassation and Justice, 5 Judges Panel.

²⁶ Decision no. 25J of June 28, 2017, Section for judges of the Superior Council of Magistracy, made final by decision no. 176 of October 8, 2018 of the High Court of Cassation and Justice, 5 Judges Panel.

²⁷ Decision no. 6J of March 28, 2017, Section for judges of the Superior Council of Magistracy, final by decision no. 333 of December 11, 2017 of the High Court of Cassation and Justice, 5 Judges Panel.

303/2004 may be committed with a direct or indirect intent.

For the purposes of Art. 99 letter s) of Law no. 303/2004, shall constitute a disciplinary offence “the use of inappropriate expressions in court judgments or judicial acts of the prosecutor, or the obvious reasoning contrary to the legal reasoning, such as to affect the prestige of justice or the dignity of the magistrate function”.

It should be emphasized that the regulation of the disciplinary offence stipulated by art. 99 letter s) of Law no. 303/2004 does not concern the establishment of control over court judgments, but it shall sanction the judge for a certain conduct; court decisions are subject to legal remedies under the law.

The disciplinary offence under analysis has no material object.

The passive subject is the State, directly interested in complying with the normative provisions on the content of court judgments or judicial acts of the prosecutor.

The disciplinary offence provided for by Art. 99 letter s) of Law no. 303/2004 can be implemented in two ways, namely:

- the use of inappropriate expressions in court judgments or judicial acts of the prosecutor, likely to affect the prestige of justice or the dignity of the magistrate function;
- the statement of reasons clearly contradicts the legal reasoning of court decisions or judicial acts of the prosecutor, such as to affect the prestige of justice or the dignity of the magistrate function.

Therefore, in one case, it was noted that the expressions used in the judgments, in which the magistrate edited explicit criticisms regarding decisions delivered by the court of judicial control, recorded as rhetorical questions, in relation to their own professional experience, reveals a subjective, biased attitude and constitute elements contrary to an impartial judgment, so that they can be considered inadequate both from the perspective of the judge's reserve obligation and the content of the considerations of the court judgments, as regulated by Art. 425 par. (1) letter b) of the Civil Procedure Code. According to the 5 Judges Panel of the High Court of Cassation and Justice, the content of the personal assessments thus expressed, which essentially puts into question the professionalism and impartiality of judges from the judicial control court, is likely to cause a negative public judgment regarding the judicial system as a whole²⁸.

We also agree with the opinions expressed in the literature that the immediate consequence is conditional

for the existence of the disciplinary deviation stipulated in Art. 99 letter s) of Law no. 303/2004, because the use of inappropriate expressions in court judgments or judicial acts of the prosecutor or the reasoning obviously contrary to the legal reasoning of court judgments or judicial acts of the prosecutor will constitute disciplinary deviation only if the prestige justice or dignity of the magistrate function²⁹ is affected.

The disciplinary offence under analysis may be committed with direct or indirect intent.

4. Conclusions

In this sense, dignity implies particular obligations incumbent upon those who occupy a position. Magistrates are required to refrain from any acts or deeds that might compromise their dignity in office and in society.

With regard to the duty of respect incumbent upon third parties, we can exemplify it by the offense of violating the solemnity of the hearing (Art. 278 of the Criminal Code), which incriminates offensive or obscene manifestations during a court proceedings for the purpose to protect the solemnity of the court hearing and the respect due to the judicial authority and the incrimination of the offense of contempt of the court (Art. 279 of the Criminal Code). As stated in the Explanatory Memorandum of the Criminal Code, the justification of the incrimination of the offense for contempt of the court consists in the fact that “by the will of the law, the judge, the prosecutor or the lawyer have the most important judicial powers, and the manner in which they are performed decisively depends the good conduct of a trial and its outcome, so that providing increased protection against any form of violence exerted on them is, from this perspective, justified”. Furthermore, the irreverent manifestations of the parties, witnesses, experts, interpreters or of any other person towards the judge or the prosecutor shall constitute a legal offense according to Art. 283 par. (4) letter i) of the Criminal Procedure Code. For the purposes of Art. 188 par. (1) of the Civil Procedure Code it shall constitute a legal offence the non-observance by either party or by other persons of the measures taken by the court to ensure the order and the solemnity of the court hearing. This first meaning of the notion of dignity is different from the modern meaning, the equal dignity of all human beings, regardless of any particular additional status and exclusively related to the human nature of the individual, which we will address in a next study.

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²⁸ Decision no. 25J of June 28, 2017, Judges Section of SCM, final by decision no. 176 of October 8 2018 of the HCCJ, 5 Judges Panel.

²⁹ Gărbuleț, *Abaterile disciplinare ale magistraților*, 458.

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