

Brief considerations on the disciplinary liability of the French magistrates

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Abstract:

In a democratic society, the magistrate plays a very important role, considering that the state power is divided according to the principle of separation and the balance of powers in state, in the legislative, executive and judicial powers. The disciplinary liability of the French magistrates has a series of particularities against the common law, as well as in our domestic legal system. The present study aims a brief analysis of the disciplinary liability of the French magistrates, certain aspects being found also in our legislative system, others being necessary to be adopted by our legislation.

Keywords: *magistrates, France, liability, disciplinary deviation, disciplinary sanction*

As the French doctrine states A “the deepest modifications in the role of the judge in the democratic society must no longer be proven. Mainly, the role of the judge suffered a considerable amplification”.

The statute of the French magistrates is provided by the Ordinance No 58-1270 of 22 December 1958[1] regarding the organic law on the statute of magistrates. The Commission for reflection on ethics in magistracy has defined the discipline as being “the repressive part of the deontology, allowing the determination of the violations of the deontology repressed by disciplinary sanctions”[2].

The Superior Council of Magistracy may be notified, after 2011, by any justice seeker who considers that the attitude and behavior of a magistrate are susceptible of being disciplinary qualified. In 2012, the Superior Council of Magistracy was notified with 283 complaints against the magistrates (unlike 421 in 2011), but only 13 of them were considered as admissible[3].

The disciplinary liability of magistrates is stated by Chapter VII of the Ordinance No 58-1270/1958, named the *Statute of Magistrates*.

The disciplinary deviation is defined[4] as being any violation by a magistrate of the obligations sourcing from his statute, of the honor or dignity. The violation of the obligations is represented by the serious and deliberate violation of a rule of procedure representing an essential guarantee of the parties' rights, violation ascertained by a definitive court decision. The action shall be ascertained by a member of the prosecutor's office or by a magistrate of the central administration of the Ministry of Justice.

Other articles of the Statute mention the idea of disciplinary offence, even if in an indirect manner, thus, Art 6 regarding the oath made by the magistrates before entering the function, Art 10 regarding the political activities of magistrates and Art 79 regarding the obligation to abstain for honor of the magistrates. Legal regulations also state other article tangential to the idea of disciplinary offence, for instance the articles of the Statute regarding the incompatibilities with the magistracy (Art 8, 9, 9-1, 32) B.

The disciplinary sanctions applicable for magistrates[5] are:

- a) Reprimand registered in his personal file;
- b) Disciplinary reprimand;
- c) Withdrawal from certain positions;
- d) Interdiction to be appointed or assigned in positions as single judge for a period of maximum 5 years;
- e) Diminution of the level within the two degrees in which the magistrates are hierarchized;
- f) Temporarily exclusion from the function for a duration of maximum 1 year, with a total or partial diminution of the remuneration;
- g) Relegation;
- h) Ex officio retirement or the agreement to end his activity if the magistrate is not entitled to pension;
- i) Dismiss from the position.

Beside these disciplinary sanctions, Art 44 states the lightest disciplinary sanction, the warning. The warning is the only sanction which can be applied

without the performance of a disciplinary investigation. It can be applied by the chief inspector of the judiciary service, by the prime-presidents, general prosecutors and the directors or chiefs of service of the central administration, for the magistrates subordinated to them. The warning is also the only disciplinary sanction for which the Statute provides a term for erasure, precisely 3 years, if the magistrate does not receive another disciplinary sanction during this period.

The principle of the unicity of the disciplinary sanctions[6] states that a disciplinary deviation can be sanctioned only with one sanction and, moreover, if a magistrate is investigated in the same time for multiple deviations he shall be applied only one sanction. Though, the disciplinary sanctions, except the first two ones, can be accompanied by a complementary measure of relocation.

The disciplinary procedure is separately stated for judges and prosecutors, but, for the most part, is identical for the two categories of magistrates. The Minister of Justice, prime-presidents of the courts of appeal or the president of the superior tribunal for appeal (general prosecutors from the prosecutor's offices attached to the tribunals of appeal and the prosecutors of the Republic from the prosecutor's offices attached to the superior tribunals of appeal) notified by a complaint or informed about an action which could entail the disciplinary liability of the magistrate, if there is an emergency, they can request the approval of the Superior Council of Magistracy (SCM) for the prohibition of the investigated magistrate's positions until the adoption of a definitive decision. The SCM shall rule within maximum 15 days from its notification. If in maximum 2 months from the notification of this temporary interdiction, the SCM has not been notified about the commission of a disciplinary deviation, the interdiction ends *de jure*.

The notification of the SCM shall be possible in three means:

1. By the Minister of Justice, "the keeper of the seals";
2. By the prime-presidents of the courts of appeal or by the presidents of the superior tribunals of appeal, for the judges or general prosecutors from the prosecutor's offices attached to the courts of appeal or for the prosecutors of the

Republic from the prosecutor's offices attached to the superior tribunals of appeal.

In the case of the second mean of notification, copies of the notification and the attached documents are also sent to the Minister of Justice who may initiate an investigation of the general inspection of the judicial services.

3. By any justice seeker who considers that during the judicial procedure, the behavior of the magistrate during the exercise of his function is susceptible of a disciplinary qualification. This notification does not represent a reason for recuse of the judge.

Thus, it is established, within this mean of notification, a procedure preliminary to the notification of the authority competent to conduct the disciplinary investigation in the SCM.

The notification is examined by a commission for approval of notification of the SCM, competent for judges or prosecutors. The notification may be rejected or admitted by the commission for the admission of notifications, case in which the magistrate concerned shall be informed about it.

The commission shall ask all useful information from the prime-presidents of the courts of appeal or from the presidents of the superior tribunals for appeal, for the judges or general prosecutors from the prosecutor's offices attached to the courts of appeal or for the prosecutors of the Republic from the prosecutor's offices attached to the superior tribunals of appeal. They shall request, in their turn, from the concerned magistrate to submit his own observations. The information and observations shall be sent within maximum 2 months from the submitted request to the commission for the admission of the notifications within the SCM and to the Ministry of Justice.

The commission for the admission of the notifications shall hear the magistrate concerned and, if it is necessary, the justice seeker who initiated the notification. If it is considered that the offences brought to the attention are susceptible of being disciplinary sanctioned, the commission for the admission of the notifications shall notify the council of discipline or the organ competent to

perform the disciplinary investigation of prosecutors. But if the commission considers that the facts are not disciplinary, the prerogative of the notification of the SCM for the actions emphasized by the justice seeker remains in the burden of the other persons competent to submit such notifications.

The decision of the commission for the admission of requests shall be communicated to interested persons, as well as to the Ministry of Justice and it cannot be appealed.

After the notification of the SCM using one of the three means previously mentioned, the magistrate has the right to receive the investigation file and the documents of the preliminary investigation, if such investigation has been performed.

Within the SCM it functions the council for discipline for disciplinary investigation of magistrates and a competent body for the disciplinary investigation of prosecutors.

The president of the body competent to perform the disciplinary investigation (prime-president of the Court of Cassation, for the disciplinary council) shall appoint a rapporteur among the members of the organ he is presiding. This rapporteur is in charged to perform an investigation to determine the aspects concerning the disciplinary liability.

During the investigation[7], the judge is heard by another judge with the rank at least equal to his. Also, shall be heard an expert for the clarification of certain aspects.

The judge may be assisted by another judge, by an attorney in front of the Council of State and of the Court of Cassation or by an attorney enlisted in the bar.

The magistrate is called in front of the disciplinary organ, regardless if there was or was not performed an investigation because it has been considered unnecessary or if this investigation has been performed, in order to exert his right to defense. The summoned magistrate must be present in person, but the judge may be assisted as mentioned before. If the magistrate is absent from the

hearings, except the *casus fortuitous*, the decision shall be taken in his absence and shall be compelling for him. The meeting of the disciplinary organ is public, but for the protection of the public order or of the right to private life, as well as if there are any circumstances prejudicing the interests of justice, a part of the meeting or the entire meeting shall be secret.

If the competent organ ascertains the existence of a disciplinary deviation, the opinion upon the sanction is issued with majority of votes. In case of equality of votes, the president's vote shall be preponderant. For prosecutors, if the Ministry of Justice considers that it must be applied a more serious sanction than the one proposed by the disciplinary investigation organ within the SCM, shall submit a motivated proposal to the latter one, which after the hearing of the prosecutor shall issue a new opinion about it.

The decision for sanctioning is communicated to the investigated magistrate and generates effects from its communication date.

Regarding the appeal of the decision for sanctioning, the legal regulations[8] state that it cannot be appealed by the person who submitted the notification, which implies that only the magistrate has the right to appeal it, without stating the conditions and the competent court.

References:

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- [1] Published in the Official Journal of the French Republic (OJFR) of 23 December 1958, modified and completed by numerous normative acts; in the preparation of present paper were considered the provisions in force on the 11 January 2014
- [2] Report of the Commission of reflection on the ethics in magistracy, November 2003, available at www.senat.fr
- [3] Report on the activity of the French Superior Council of Magistracy for 2012, in "Recueil Dalloz", No 33/7570 of 3 October 2013, p.2231
- [4] By Art 43 of the Statute of Magistrates (Ordinance No 58-1270 of 22 December 1958)
- [5] As are stated by Art 45 of the Statute of magistrates (Ordinance No 58-1270 of 22 December 1958)
- [6] As in our internal law, also the French legislation states this principle, the legal regulation being given by Art 46 of the Ordinance No 58-1270 of 22 December 1958.
- [7] Art 52 of the Statute establishes additional procedural rules for judges unlike the prosecutors.
- [8] Art 58, namely Art 66 of the Statute of Magistrates (Ordinance No 58-1270 of 22 December 1958)