

QUESTIONNAIRE “C”
THE ROLE OF TRAINING INSTITUTIONS IN THE IN-SERVICE TRAINING OF
JUDGES AND PUBLIC PROSECUTORS

I. The Regulation concerning the organisation of the in-service training courses for sitting magistrates and attestation of results achieved adopted by the Superior Council of Magistracy (further on called SCM) in 2004 stipulates that magistrates are entitled to ten workdays paid holiday per year to participate in courses or other types of training organised in Romania or abroad. .

II. Sitting magistrates are required to participate, at least once every 3 years, in in-service training programmes organised by the NIM, by higher education institutions in Romania or abroad, or in other types of professional development.

In-service training is both a right and an obligation for the magistrates, being a guarantee of their independence and impartiality in performing their functions.

III. Besides the general obligation of the magistrates to participate in a type of training, the law on the statute of magistrates (Law no. 303/2004) stipulates two situations when in-service training is compulsory: the first regards the magistrates who get the rating “unsatisfactory” or those who get “satisfactory” twice consecutively in evaluations, who are required to attend for a period of 3-6 months special courses organised at the NIM; the second regards magistrates who accede to the profession by competitive examination for admission to magistracy. Consequently, the law on the statute of magistrates stipulates that, after being appointed magistrates, the former candidates to magistracy are required to attend, for 6 months, an in-service training course at the NIM.

Besides these particular situations, training is also compulsory for magistrates who are going to work for a specialised court. The reform of the Romanian judicial system presupposes the creation of specialised courts in the field of commercial law, administrative and fiscal law, labour law, and in field of justice for minors and family law. The magistrates who are to work in such courts will be required to participate in a special training programme at the NIM.

IV. Currently, the NIM is in transition. The participants in in-service seminars used to be selected further notifications sent to the presidents of the Courts of Appeal close to the area where the seminar was held; the presidents consulted the magistrates from the area of the Courts of Appeal and sent the NIM a list of participants. Thus, the participants’ selection was, as a rule, according to the magistrates’ options and workload for the period during which the seminar was held. However, the final decision lay with the president of the court.

Starting 1 April 2005, registering for in-service training seminars can be done directly on the NIM website by filling in a form. Thus, in future, the in-service training will take place as follows: at the end of each year, the NIM will post on its website the seminars for the following year, and the magistrates will be able to register for the seminar/seminars that really interest them. To this effect, they will be able to use the 10 workday paid holiday stipulated by the Regulation concerning the organisation of the in-service training courses for sitting magistrates and attestation of results achieved to participate in courses or other types of training organised in Romania or abroad. .

Consequently, the magistrates will be able to inform the presidents of the courts – at the beginning of each year - what are the seminars they want to attend and when these are scheduled, so that the dates be taken into account when the court judgement sessions are planned. This will prevent the risk of being refused participation in the in-service training seminar/seminars by the presidents of courts.

When the number of registered participants in an in-service training seminar is too high (above the available places), the selection of the participants will take into account the following criteria: the *ratione materiae* competence of the court where the magistrate comes from, the number of seminars he/she has already participated in and the chronological order of the registering.

V. The Regulation concerning the organisation of the in-service training courses for sitting magistrates and attestation of results achieved stipulates that the responsibility for the in-service training of magistrates lies with the NIM, with the heads of courts and prosecutor's offices where the magistrates work and with each magistrate who is responsible for his/her own individual professional development.

The in-service training from budgetary funds is carried out both at the Institute and decentralised at the level of the Courts of Appeal and the prosecutor's offices attached to the Courts of Appeal. The Institute coordinates the magistrates' training from budgetary funds in compliance with the in-service training programme approved by the Superior Council of Magistracy.

The in-service training programme is approved by the NIM Scientific Council and that submitted to the SCM for approval.

VI. In 2003, the NIM organised 50 seminars and in-service training actions; in 2004, 112 in-service training seminars, and for 2005, 102 in-service seminars are planned. As the registration for seminar is still to be completed, the final number could be around 130 seminars. These seminars usually take 2-3 days. Exceptionally, in 2005 there are 18 seminars taking 5 days each. They are dedicated to those who passed the exam for admission to magistracy and, who, in compliance with the law, have to be trained at the NIM for a certain period.

The number of in-service training hours for each magistrate obtained by dividing the total number of in-service training hours organised in a year to the total number of magistrates is as follows:

2003: 0.16 hrs/magistrate

2004: 0.29 hrs/magistrate

2005: 0.45 hrs/magistrate

In 2004, 51 % of the in-service training value was represented by NIM budgetary funds, 49% being obtained from the cooperation with other national or international institutions or organisations whose objective was to provide in-service training for the magistrates.

VII. The in-service training is carried out by combining several methods/types. On the one hand, there are in-service training seminars, conferences, workshops in which there is a direct interaction between NIM trainers and the participating magistrates. On the other hand, due to financial reasons, the NIM has conceived other types of training to replace or complete classic ones, responding to the magistrates' professional development needs or wishes. New solutions have been found and applied such as: distance learning, posting training materials on the NIM website, manuals and other publications being printed by the NIM and distributed to the magistrates, the creation of discussion forums, etc.

1. In-service training actions like seminars, conferences, workshops involve the presence of participating magistrates in a limited space, a NIM training centre, a conference room, in the presence of NIM trainers, Romanian or foreign experts. Materials are provided to the participants and the methods are more or less interactive depending on the type of in-service training. The highest interactivity is to be found in workshops or seminars.

2. Distance learning: the NIM proposes the development of this type by using the Internet resources. To fulfill this project, the NIM will cooperate with higher education institutions that have already included in their curriculum this type of training.

3. Other types of in-service training: for an adequate understanding of the ECHR case law and of EC law – general and specialised fields in EC law (intellectual property, competition, EC business law) – the judges and prosecutors should be provided, *in a continuous manner*, with the materials that, on the one hand, may help them become familiar with the previously mentioned problems, and, on the other hand, be kept up-to-date with the latest developments in the field.

Within the framework of this in-service training approach, certain books by foreign authors could be translated, namely valuable books in the field of human rights or community law

focusing on relevant aspects; other issues could be tackled as well, such as money laundering, economic and computer crimes, as these topics are not frequently approached in internal law. As they are not available on the market in Romania, they could be translated and distributed free of charge to the judges and magistrates either in print or electronic format (delivered by electronic mail).

It would also be necessary to create, in collaboration with the Governmental Agent, the Ministry of European Integration, the Ministry of Foreign Affairs or the Ministry of Justice, an information bulletin/newsletter for judges and prosecutors concerning the latest developments of the case law of the ECHR and the European Court of Justice (ECJ), possibly with an evaluation of their impact on domestic law. Commentaries and summaries of the decisions will be added as well.

To fulfil these objectives, the NIM has recently published a volume on the *Case Law of the European Court of Human Rights* (following a volume previously published by the NIM), a volume that will be provided free of charge to all magistrates. In 2005, the NIM has also published the first issue of *Themis*, the journal of the NIM's auditors of justice. The journal has been very successful with auditors of justice, magistrates and jurists and the second issue is due to appear.

The NIM has also published within the framework of Phare Programme RO 02 IB/JH – 10 “*Continuation of assistance to the NIM and TCC*” 8 manuals in the following fields : the European Convention on Human Rights – civil aspects, intellectual property, the role of the magistrate in a democratic society, labour law, judicial cooperation in criminal matters, competition law, the European Convention on Human Rights – criminal aspects, and the preparation, teaching and learning of modern teaching methods.

These manuals have been provided to the magistrates participating in the in-service within the framework of Phare Programme and will be posted on the NIM website.

Protocols have been concluded by the NIM with the Courts of Appeal and attached prosecutor's offices for the distribution of these materials to the magistrates.

Another in-service training method used by the NIM is that of professional visits/study tours abroad. So far, visits have been organised to: France, Germany, Bulgaria, USA, etc. Visits are scheduled on the short -term to Germany, France, Spain, the Netherlands and other European states.

VIII. The in-service training actions are organised on the NIM premises in Bucharest, or in the regional in-service training centres in Timisoara, at the Timisoara Court of Appeal, in Bârlad, at the regional centre with the court of first instance in Bârlad and in Sovata. All these centres are equipped with computers, copiers, simultaneous translation facilities, and are fully functional. However, only the Sovata regional centre can provide accommodation. The other two centres will soon be provided with accommodation facilities, furniture and equipment.

The NIM uses a fourth centre in Amara. This belongs to the General Department of Penitentiaries. The NIM has an agreement with the latter so it may use the centre in Amara for its in-service training programmes. The centre in Amara is fully equipped and has accommodation facilities.

Occasionally, the NIM organizes in-service training seminars at the Courts of Appeal.

IX. As we have already mentioned, in 2004 the NIM organized 112 in-service training seminars for 1460 de magistrates, in the following fields: commercial law (20), justice for minors (6), labour law (15), ECHR (10), administrative and fiscal law (4), criminal law and criminal procedure law (19), competition law (5), environmental law (1), ethics and deontology (10), the relation magistrate – mass-media (1), intellectual property(2), judicial cooperation (4), EC Law (10), Law no. 544/2001 concerning the access to public interest information (2), training of trainers (2) and teaching skills (1).

For 2005, the NIM Scientific Council has set the following priorities:

- in-service training of magistrates who acceded to the profession based on the magistracy admission exam ;

- in-service training on the legislative changes intervened (in particular the modifications in the Criminal Code and the Law on Adoption);
- in-service training in the field of EC Law .

Other fields in which the NIM provides in-service training in 2005: ethics and deontology, justice for minors, ECHR, alternative ways to solve conflicts - mediation, communication in court – court management, judicial cooperation in criminal matters, the relation judge - mass-media, labour and social protection law, international cooperation in fighting organised crime, consumer protection, competition law, commercial law, insolvency, fight against corruption, human beings trafficking , etc.

X. Regarding in-service training for magistrates who want to change their field, for the time being, the NIM can offer specialised courses only to magistrate who work in specialised courts – commercial law, administrative and fiscal law, labour law and justice for minors and family - and to members of court management structures, concerning modern methods for court management. . As magistrates appointed to management positions have to properly manage the court’s/prosecutor’s office’s internal activity and the relations with the parties to the trial, the press and civil society, the NIM provides specialised training in: court management, relations with the mass-media, communication in court, etc.

XI. At the end of each seminar the participants receive a questionnaire on the organisation and contents of the seminar. The questionnaire does not have to be signed. Thus the magistrates are consulted on the degree of interest of the topic approached, and are asked to assess the duration and the way in which the seminar has been organised.

The magistrates can also suggest other topics or manners of organising subsequent seminars.

The results are collected and monitored by the NIM and the suggestions and opinions expressed are used to improve the in-service training.

To make the in-service training seminars more effective and to have a better image of their relevance for the future developments, the participants are asked to send materials (practical cases they encountered in which they applied the knowledge they acquired in the seminars) to the NIM. The most interesting materials will be included in the booklet published on that particular field at the end of the year.

The magistrates are also consulted when the in-service training programme is devised for the following year, when the NIM asks for suggestions from courts and prosecutor’s offices, concerning the fields and topics the magistrates would like to find in the NIM in-service training. All the suggestions are collected and considered in drawing up the in-service training programme.

XII. The trainers are evaluated by the participants in the seminars by means of a questionnaire and given marks from 1 to 5 (from poor to very good).

The future trainers who participate in trainers’ training programmes are evaluated – when holding seminars – by the Romanian and foreign experts providing the training. The evaluation criteria focus on: the legal contents of the presentation, structure of the presentation, examples used, images used, practical cases, manner of presentation, manner of chairing the group’s discussions, good time/programme management, etc.

XIII. In order to check if the magistrates meet the professional competence requirements, their performance is evaluated annually. The criteria are the following: their efficiency in finalising works, cassation practice, number of judgements quashed, *the participation in in-service training*, conduct at work and relations with colleagues, fulfilment of other duties in compliance with the law.

XIV. The NIM is currently involved in the creation of a data base comprising all the magistrates. Besides the relevant information on their professional careers (promotions, management positions, teaching degrees, and academic titles) the data base will also include all the

in-service training activities in which the magistrates participated. Thus, a centralised record of the in-service training activity of each magistrate will be provided.

XV. As shown earlier, (see point IV), it is envisaged that each magistrate will register for the in-service training seminars provided by the NIM, according to his/her own priorities and interests. Each magistrate may choose one or several in-service seminars in the fields in which he/she wants to specialise or enhance his/her knowledge .

Consequently, the magistrate will be able to create his/her own professional development programme adapted to his/her own needs.