

**QUESTIONNAIRE „B”**  
**THE ROLE OF TRAINING INSTITUTIONS IN THE RECRUITMENT**  
**AND ENTRY-LEVEL TRAINING OF JUDGES AND PROSECUTORS**

I. Art. 11 of Law no. 303/2004 on the statute of magistrates stipulates that „the recruitment of magistrates is by means of competitive examination, based on professional competence and skills, and on a good reputation.

Currently, there are mainly two ways to enter magistracy. The ordinary one is the admission to the National Institute of Magistracy (NIM) by passing the NIM entrance examination, the successful candidates becoming auditors of justice and attending, for 2 years, training courses at the NIM, at the end of which there is a graduation exam. Subsequently, the NIM graduates are trainee judges of prosecutors for a 3-year period. They become “definitive” (viz., fully qualified) judges/prosecutors after passing their capacity exam.

The second way to enter magistracy is by competitive examination to magistracy, organised in exceptional circumstances when a deficit is found out in the number of sitting magistrates. The law on the statute of magistrates stipulates the appointment to magistracy – based on participation in a competitive examination - of legal experts assimilated to magistracy, of lawyers, notaries, judicial assistants, legal advisers, and legal staff working with the Parliament, Presidential Administration, Government, Constitutional Court, Ombudsman, Court of Auditors or Legislative Council with minimum 5-year seniority. After being appointed magistrates, the successful candidates are required to attend, for 6 months, a professional training course at the NIM.

There are two exceptional cases for entering magistracy: university professors from the accredited higher education system and persons who worked as magistrates or assistant magistrates at the High Court of Cassation and Justice for no less than 5 years after their appointment, in compliance with the law and who had to stop their activity for reasons that are not imputable to them. They can be appointed to magistracy without competitive examination.

II. The competitive examination for admission to the NIM takes place annually in the August – September period. The number of places available for competition is determined according to 2 criteria: the number of magistrates needed in 2 years’ time from the competitive examination’s date (when the successful candidates graduate the NIM) and the training capacity of the NIM.

The examination for admission to magistracy is organised, as mentioned above, when deficit is found out in the number of sitting magistrates.

The Superior Council of Magistracy (further named SCM) is the institution that draws up the strategy in the judicial field and, consequently, determines the number of vacancies for each competitive examination.

III. The exam for admission to the NIM and that for admission to magistracy are organised by the NIM, under the SCM co-ordination. Certain aspects concerning the two

exams - such as the designation of the Board of Examiners and the Commission in Charge of the Exam Subjects, the exam date and place, the number of NIM trainees, the actual organisation of the admission exam - are decided upon by the SCM, on the proposal of the NIM Scientific Board.

a) Most of the members of the Board of Examiners and of the Commission in Charge of the Exam Subjects, are magistrates (judges and prosecutors). Prestigious academic staff or legal experts can also join them.

b) The selection procedure is based on criteria of professional competence, experience in the field, honesty and integrity of the future members of the Board of Examiners and Commission in Charge of the Exam Subjects. As the members of these commissions are highly qualified and very experienced jurists or academic staff, they do not attend any special training.

We would like to mention that the NIM has initiated an approach regarding the creation of an LSAT type test, one adapted to the NIM admission requirements in order to be an examination objective criterion. The test proposes to check the logical reasoning and synthesis capacity of the candidates.

IV. In order to apply to participate in the NIM admission competitive examination, the following requirements must be met:

a) be a Romanian citizen with residence in Romania and having a full exercise capacity;

b) have a degree in law;

c) have no criminal record, no fiscal record and enjoy a good reputation;

d) have a thorough command of Romanian;

e) be physically (viz., medically) fit to work as a magistrate and fulfil professional tasks.

As far as the competitive examination for admission to magistracy is concerned, the following can be appointed to magistracy after having passed this exam: legal experts assimilated to magistracy, lawyers, notaries, judicial assistants, legal advisers, and legal staff working with the Parliament, Presidential Administration, Government, Constitutional Court, Ombudsman, Court of Auditors or Legislative Council with minimum 5-year seniority. Certainly, the requirements listed earlier at letter a)- e) must be met in this case too.

V. There are two tests in the NIM admission examination. The first, a 100 questions' multiple-choice test (25 questions for each of exam subjects), is eliminatory and only the candidates who have scored 80 points are admitted in the second test. The second test is written paper in the following subjects: Civil Law, Civil Procedure Law, Criminal Law, and Criminal Procedure Law. To pass the exam, the candidates have to achieve the minimum 8.00 average (maximum average being 10.00) and have in each of the four subjects the minimum mark 5. The candidates are admitted according to the number of places available and in the decreasing order of the averages achieved. .

The competitive examination for admission to magistracy consists in only one test, a written paper in the following subjects: Civil Law, Civil Procedure Law, Criminal Law and Criminal Procedure Law, judicial system organisation and case law of the European Court of Human Rights. To pass the exam (viz., to be admitted to magistracy),

the candidates have to achieve 7 minimum average and 5 minimum mark in each of the 6 subjects. The candidates are admitted according to the number of places available and in the decreasing order of the averages achieved. The exam is finalised after a physical check up (medical examination) which is eliminatory, as only those who are physically fit to work as magistrates and fulfil the professional tasks involved by this profession.

The training period is considered seniority in magistracy.

VI. The candidates who pass the NIM admission examination become auditors of justice. At the end of their training period at the NIM they have to pass a graduation examination. The auditor/auditors of justice who does/do not pass the graduation examination can sit again for this exam in the next session organized by the NIM. If the auditor/auditors of justice fails/ fail to attend the second session organized by the NIM without justification or does/do not pass the graduation exam in the second session, he/they cannot be appointed magistrate/magistrates and must pay back the monthly allowance they received and their training expenses.

After passing the graduation exam, the auditors of justice become, for 3 years, trainee magistrates. On finishing their post-NIM training period, the trainee magistrates sit for the capacity examination. The capacity examination for trainee magistrates is annually organised by the Superior Council of Magistracy through the National Institute of Magistracy.

If a trainee magistrate fails to pass the capacity exam, he/she must attend the next exam session. The unjustifiable absence from the capacity exam or the candidate's failure in two exam sessions entails the loss of trainee judge/prosecutor quality.

The candidates admitted further to passing the magistracy admission examination will be appointed as fully qualified magistrates ('definitive magistrates') and will not be required to pass another examination. Thus, their examination for admission to magistracy will count as a means of initiation to the professional career. The successful candidates will have to attend a 6-month training at the NIM.

VII. a) The social and political context in which the INM is carrying out its activity is very important and is reflected, every year, in the NIM policy on the entry-level and in-service training. Currently, Romania is involved in the *European Union accession process* and the Judiciary is faced with *a serious perception problem*, being accused of immobility, corruption and political influence.

Consequently, the entry-level training programme will reflect this context laying the emphasis on: opening towards Europe, the fight against corruption, the relationship with mass-media and civil society, the independence of professional training from the executive power's influence.

The fields for entry-level training are established every year based on the consultation of magistrates, of civil society, and on the evaluation of training actions from the previous year. The evaluation of the results is made from various points of view: of the auditors of justice, the NIM trainers, the presidents of courts where auditors of justice have been posted for practice, NIM graduates, as well as based on the objectives and priorities for the medium term (accession to European Union in 2007, the computerisation of the judicial system, etc.).

The entry-level training curriculum takes into account the competence *ratione materiae* of the courts where the auditors of justice will be posted after NIM graduation as well as the competence of trainee judges.

The training provided by the NIM aims to help magistrates gain and develop:

- thorough legal knowledge of substantial national and international law, of procedure law too, without repeating what they have studied at law faculty, offering a practical perspective on the various law institutions;
- techniques specific to the magistrate profession;
- a logical, structured reasoning;
- a European perspective on law;
- the awareness of belonging to this profession and an opening towards other fields of social life;
- the required knowledge of foreign languages used internationally and of information technology .

b) Entry-level training at the NIM takes 2 years ;

c) In selecting the entry-level trainers the following criteria are taken into account:

- Professional activity and experience in the field
- Teaching activity
- Works published
- Command of a foreign language used internationally

A transparent and objective procedure has been drawn up that will observe the following principles: transparency/publicity, objectivity, independence from political criteria, and the involvement of trainers and auditors of justice in the decision-making process. The selection procedure presupposes making public the intention to recruit trainers by advertising in central newspapers and posting on the NIM website, the creation, by decision of the NIM Scientific Council, of a candidate selection commission made up of one of the NIM directors, a NIM trainer, the NIM educational sciences/pedagogy specialist and a representative of the auditors of justice (for full-time trainers).

The candidates sit for an interview before the selection commission and, in the case of full-time trainers, hold a course in front of a group of auditors of justice. The selected candidates list, in the order set by the commission further to the criteria and tests presented above, is submitted to the NIM Scientific Council for approval. The latter will submit it to the SCM, the body authorised to appoint NIM trainers.

d) In compliance with the curriculum and the syllabi, the entry-level training takes 2 years.

In the first year, the emphasis is laid on thematic debates and practical works, such as mock trials and drawing up procedural acts.

The theoretical training has taken two main forms: lectures – mostly theoretical – and debates. During the latter, court cases are being discussed and practical works done. We have to specify that the lectures, though tackling theoretical topics, focus on practical issues encountered in the magistrates' activity. To make these debates more effective, the fundamental subjects are allocated 3 hours which allows the consolidation of theoretical aspects, of legislation and their practical application by using them for case study.

In the period 2004-2005, the total number of training hours for the 18 subjects in the 1<sup>st</sup> year curriculum is 912, of which 23% are allocated to lectures, and 77% to thematic debates.

For the 2004 – 2005 curriculum, the magistrates' opinions and those of the civil society representatives have been invited and considered, as well as the results of the evaluation of the entry-level training made by the auditors of justice.

Consequently, the curriculum has been altered. The following subjects have become optional: fiscal law, constitutional law, intellectual property law, consumer protection law, environmental law and competition law.

The 2<sup>nd</sup> year of entry-level training is mainly dedicated to practice with courts and prosecutor's offices. The auditors of justice carry out 33 weeks of practice, divided on 4 weeks, in the second year. The future judges carry out their practical training at the courts of first instance in the 6 Sectors of Bucharest, during the first 3 stages (27 weeks on the whole). Of the 27 weeks, 2 represent practical stages with prosecutor's offices attached to the courts of first instance. The future prosecutors carry out the first 3 practice stages at prosecutor's offices attached to the courts of first instance, that is 27 weeks on the whole. Of the 27 weeks, 2 are allocated for practice at the courts of first instance in the Sectors of Bucharest.

Each of the 3 stages is concluded with an evaluation exam.

The fourth practice stage takes place in other institutions with jurisdictional activities or involved in the functioning of the judicial system, based on options made by the auditors of justice: the Bucharest Court of Appeal, Bucharest Tribunal, Governmental Agent, the Ministry of Foreign Affairs, the Police General Inspectorate, the Department for Probation, the Association of Notaries Public, and Mayoralty.

Starting with the next year, the practice stages will also take place outside Bucharest in courts of first instance from: Timisoara, Iasi, Brasov, Craiova, Cluj and Constanta. The posting will be according to the choices made by the auditors of justice.

e) The curriculum has been adjusted and completed to suit the medium- and long-term objectives of the NIM, from the perspective of Romania's joining the EU. The curriculum for the first year includes: Civil Law, Civil Procedure Law, Criminal Law, Criminal Procedure Law, Commercial Law, EC Law, Family Law and Child Protection, the European Convention on Human Rights, Ethics and Deontology, elements of Constitutional Law, Administrative Law, Fiscal Law, Intellectual Property Law, Environmental Law, Consumer Protection Law, Competition Law, IT and foreign languages. The following are optional: Fiscal Law, Constitutional Law, Intellectual Property Law, Consumer Protection Law, and Competition Law.

The second year, which is mainly dedicated to practice, also includes training at the NIM. The second year curriculum includes subjects which have not been studied in the first year, such as: Forensic Medicine, Judicial Psychology, Rhetoric, Justice for Minors, reports or examinations required by the prosecutor or the court, changes of the Criminal and Criminal Procedure Codes, fight against discrimination from the perspective of the Romanian judicial system. The modules are organised once a week, on a single day. Beginning with the next academic year, compact periods of practice are envisaged alternating with theoretical modules at the NIM.

Regarding the relation to the university curriculum, the NIM entry-level curriculum does not repeats the courses at Law Faculty. The training at the NIM has a theoretical component which is necessary for the practical application of knowledge acquired.

VIII. ) On graduating the NIM, the auditors of justice sit for an exam comprising written tests that are theoretical and practical in order to assess that they possess the knowledge required by a judge's or prosecutor's position.

As a rule, the auditors of justice who pass the graduation exam will be appointed, in compliance with the law, judges or prosecutors according to their options in the first year at the NIM.

The auditor/auditors of justice who does/do not pass the graduation examination can sit again for this exam in the next session organized by the NIM. If the auditor/auditors of justice fails/ fail to attend the second session organized by the NIM without justification or does/do not pass the graduation exam in the second session, he/they cannot be appointed magistrate/magistrates and must pay back the monthly allowance received and the training expenses.

According to the Regulation concerning the entrance and the graduation examinations at the National Institute of Magistracy, the graduation exam commission is appointed by the SCM, on the NIM's proposal, and it is made up of 3 members of the NIM staff and 3 magistrates from courts and prosecutor's offices.

IX. For the NIM graduates, there are no provisions concerning the designation of a tutor for each magistrate in the first years of his/her career.

However, there are tutors designated for practice in the second year at the NIM. Currently, the practical training with each court/prosecutor's office is lead by two practice coordinators who guide, supervise and assess the performance of the auditors of justice.

For the magistrates who enter magistracy by extraordinary exam for admission to magistracy, and who become fully qualified judges/prosecutors, the NIM has asked all the heads of courts/prosecutor's offices where these magistrates work, to designate training period coordinators. The coordinators will offer support and guidance during the training period, alternating with the seminars organized at the NIM.

Before starting the project, these tutors in charge of the practical guidance of judges/prosecutors directly appointed to fully-qualified judicial positions participate in a meeting with the tutors coordinating the practice of the auditors of justice in the second year of entry-level training. Thus, they can learn more about the goals to be pursued, the departments of courts and activities that the new judges have to become familiar with.