

INFORMATIVE NOTE

Tirana, on 11.10.2021

Regarding the request of the High Inspector of Justice for disciplinary proceedings with the measure “Salary reduction of up to 40%, for up to 1 year” against judges P.A. and N.T.

High Inspector of Justice has finalized the disciplinary investigation against magistrates P.A. and N.T., serving as judges at the Vlora Court of Appeal, based on the decision of the High Judicial Council to return to the High Inspector of Justice for investigation the decision to archive the investigation against the two magistrates by the Inspectorate of the High Council of Justice.

Context: This case is part of the complaints that the High Inspector of Justice has inherited from other institutions (the High Judicial Council in this case), which are being processed as a priority to avoid a culture of impunity or forgetfulness regarding violations of judges or prosecutors.

Citizen J. XH., at whose initiative the disciplinary investigation was initiated, appealed on 26.09.2018 the decision of the Inspectorate of the High Council of Justice to archive the complaint submitted by him against magistrates P.A. and N.T. The temporary Commission of the High Judicial Council for the review of appeals against decisions of the Inspectorate of the High Council of Justice, on 16.07.2019 decided to accept the appeal, thereby overturning the decision of the Inspectorate of the High Council of Justice to archive the complaint against the judges of the Vlora Court of Appeal and to send the case file to the High Inspector of Justice upon the establishment of this institution.

Within the framework of the disciplinary investigation, it was established that against R.A., in 2015, the security measure of “imprisonment” had been imposed, which was not executed. On 21.08.2016, his defense counsel requested the replacement of the measure, a request examined by a judge *on duty* and not by the judicial panel examining the case. On 22.08.2016, the Vlora District Court replaced the measure with “obligation to appear”. This decision was upheld by the Vlora Court of Appeal on 22.09.2016, while the Prosecution filed an appeal in cassation requesting the reinstatement of the measure of “imprisonment”.

From the disciplinary investigation conducted by High Inspector of Justice, it is proven that:

- Magistrates P.A. and N.T. incorrectly applied the criminal procedural law, a violation also established by a higher court.
- They violated Article 260, paragraph 4 of the Code of Criminal Procedure, by failing to respect the competence of the court examining the case for the revocation or replacement of the security measure.
- The violations were assessed as having been committed with direct intent, since the magistrates maintained a position contrary to the law and did not properly examine and reason the requests of the prosecutor, despite their education and experience.
- Their actions resulted in consequences for the administration of justice and undermined the obligation to rigorously apply the law and procedural rules.
- Their conduct undermined the image of justice and public trust in the judiciary.

The investigative report concludes that the actions/omissions undertaken by the magistrates constitute a “Serious disciplinary violation” and therefore has proposed to the High Judicial Council the imposition upon magistrate N.T., judge at the Vlora Court of Appeal, and magistrate P.A., judge at the Vlora Court of Appeal (suspended), of the disciplinary measure “*Temporary salary reduction of up to 40% for a period not exceeding one year*”, provided for by Article 105,

paragraph 1, letter “c”, subparagraph “i” and Article 108 of Law No. 96/2016 “On Status”, as amended.