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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**ROMANIA**

**DRAFT LAW N° 417 (\*)**

**AMENDING THE LAW N°304/2004  
ON JUDICIAL ORGANISATION**

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*(\*) received from the Presidential Administration of Romania on 14 May 2018*

**LAW**  
**amending and supplementing Law no. 304/2004 on the organisation of the judiciary**

**The Parliament of Romania adopts this law**

**Art. I.-** Law no. 304/2004 on the organisation of the judiciary, as republished in the Official Journal of Romania, Part I, no. 827 of 13 September 2005, as further amended and supplemented, shall be amended and supplemented as follows:

**1. Article 1 (1) shall be amended and shall read as follows:**

“(1) Justice shall be made through the High Court of Cassation and Justice and through the other courts of law as defined by law.”

**2. Article 2 (1) shall be amended and shall read as follows:**

“Art.2.- (1) Justice shall be made by judges in the name of law, and it is unique, impartial and equal for all”.

**3. A new paragraph, paragraph (3) shall be introduced under Article 7, after paragraph (2), and shall read as follows:**

“(3) The layout of the courtroom shall reflect the principle of equality of arms with regard to the seats of the judge, prosecutors and lawyers.”

**4. Article 9 shall be amended and shall read as follows:**

“Art.9. – The decision of the Chamber for Judges and the Chamber for Prosecutors of the Superior Council of Magistracy, in any situations other than those stipulated at Art. 134 par.(3) in the Constitution of Romania as republished where the Superior Council of Magistracy acts as a court of law in the matter of disciplinary accountability for judges and prosecutors, can be challenged before the administrative litigations chamber of the jurisdictional Court of Appeals, under common law.”

**5. A new paragraph, paragraph (3) shall be introduced under Article 16, after paragraph (2), and shall read as follows:**

“(3) Court decisions shall be drafted within 30 days at the most from the date of ruling. In thoroughly justified cases, the deadline may be extended by 30 days, two times at most.”

**6. Article 17 (2) shall be amended and shall read as follows:**

“(2) The dissenting-opinions panel shall be established by including the judge on duty in the panel.”

**7. Article 19 (2<sup>1</sup>) shall be amended and shall read as follows:**

“(2<sup>1</sup>) The Panel for solving the appeal in the interest of the law, the Panel for solving matters of law and panels of 5 judges operate within the High Court of Cassation and Justice.”

**8. Two new paragraphs, paragraphs (2) and (3) shall be introduced under Article 21, after paragraph (1), and shall read as follows:**

“(2) The decision to reject the request to submit the unconstitutionality exception, ruled by the highest court, may be appealed against by means of second appeal.

(2) Section I Civil cases, Section II Civil cases and the Administrative and Fiscal Section of the High Court of Cassation and Justice shall judge by a different panel the second appeal lodged against

decisions ruled by these sections, rejecting the request to seize the Constitutional Court.”

**9. A new paragraph, paragraph (2) shall be introduced under Article 24, after paragraph (1), and shall read as follows:**

“(2) The panels of 5 judges shall also solve second appeals lodged against the decisions to reject the requests to seize the Constitutional Court, ruled by another panel of 5 judges.”

**10. Article 28 (1) and (3) shall be amended and shall read as follows:**

“Art.28.- (1) The High Court of Cassation and Justice shall be managed by the President, 2 Vice-Presidents and the Management Board.

(3) The Management Board of the High Court of Cassation and Justice shall consist in the President, 2 Vice-Presidents and 2 judges from each section, elected for a 3-year period by the General Meeting of judges. The economic manager of the High Court of Cassation and Justice shall participate in the Management Board meetings and shall have an advisory role when economic, financial and administrative matters are debated. The presidents of the sections may participate in the Management Board meetings.”

**11. Article 29 (1), letters b) and c) shall be amended and shall read as follows:**

“b) Shall propose the section for judges of the Superior Council of Magistracy the judges who shall be part of the competition committees for the promotion to the position of judge of the High Court of Cassation and Justice;

c) Shall propose the section for judges of the Superior Council of Magistracy the appointment, promotion, transfer, suspension and termination of junior magistrates;”

**12. Article 29 (2) and (3) shall be amended and shall read as follows:**

“(2) The Management Board of the High Court of Cassation and Justice shall be chaired by the President and, in his/her absence, by a Vice-President.

(3) The Management Board of the High Court of Cassation and Justice shall convene quarterly or whenever necessary, as summoned by the President of the High Court of Cassation and Justice, by one of the Vice-Presidents or upon request of at least 3 of its members.”

**13. Article 30<sup>1</sup> (2) shall be amended and shall read as follows:**

“(2) The verification provided by paragraph (1) shall be carried out pursuant to the Regulation on the organisation and administrative functioning of the High Court of Cassation and Justice. The verification report shall be made public, by posting it on the official website of the High Court of Cassation and Justice.”

**14. Article 31 (1), letter b) shall be amended and shall read as follows:**

“b) For complaints against the decisions ruled by judges for rights and freedoms and preliminary chamber judges from the courts of appeal and from the Military Court of Appeal, the panel shall consist of 2 judges.”

**15. A new letter, letter h) shall be introduced under Article 31, after letter g), and shall read as follows:**

„h) For appeals against judgments whereby the courts of appeal and the Military Court of Appeal reject the requests to seize the Constitutional Court, the panel shall consist of 3 judges.”

**16. Article 31 (3) shall be amended and shall read as follows:**

“(3) If there are not sufficient judges to create the panel, the panel shall consist of judges from other sections, appointed by casting of lots, by the President or by one of the two VicePresidents of the High Court of Cassation and Justice.”

**17. Article 32 shall be amended and shall read as follows:**

“Art.32.- (1) At the beginning of each year, upon proposal by the President of VicePresidents of the High Court of Cassation and Justice, the Management Board shall approve the number and membership of the 5-judge panels.

(2) For criminal matters, the 5-judge panels shall consist of judges from the Criminal Section of the High Court of Cassation and Justice.

(3) For matters other than criminal matters, the 5-judge panels shall consist of specialist judges, according to the nature of the cases.

(4) The judges who are part of these panels shall be appointed by casting of lots, in public meeting, by the President or, in his/her absence, by one of the 2 Vice-Presidents of the High Court of Cassation and Justice. The members of the panels shall be replaced only in exceptional circumstances, against the objective criteria defined by the Regulation on the organisation and administrative functioning of the High Court of Cassation and Justice.

(5) The 5-judge panel shall be chaired by the President of the High Court of Cassation and Justice, by one of the two Vice-Presidents or by the section presidents, when they are part of the panel, appointed pursuant to paragraph (4).

(6) In case none of them was appointed to be part of the 5-judge panels, there shall be rotating chairmanship provided by each judge, by order of seniority in magistracy.

(7) The cases which fall under the scope of the 5-judge panels shall be allocated randomly using the IT system.”

**18. The text of Article 35, paragraph (2), shall be amended and read as follows:**

“(2) Depending on the complexity and number of their cases Courts of Appeals shall have Chambers or, as the case may be, specialist judicial panels for civil cases, professional litigation cases, criminal cases, juveniles and family cases, administrative and tax litigation cases, labor conflicts and social benefits cases, insolvency cases, unfair competition cases or other matters of law, as well as specialist judicial panels for maritime and waterways cases.”

**19. Article 36 (3) shall be amended and shall read as follows:**

“(3) According to the number and complexity of cases, tribunals include specialist sections or, as appropriate, specialist panels for civil matters, cases involving professionals, criminal matters, child and family law, administrative and fiscal law, cases on labour disputes and social insurance, insolvency, unfair competition or other matters, as well as specialist panels for maritime and shipping law.”

**20. Article 38 (2) shall be amended and shall read as follows:**

“(2) Localities which are part of the jurisdiction of courts of first instance within each county shall be established, upon endorsement of the Minister of Justice, by decision of the Plenum of the Superior Council of Magistracy, published in the Official Journal of Romania, Part I.”

**21. Article 41 (1) shall be amended and shall read as follows:**

“Art.41.- (1) The sections of the courts of appeal and of the courts attached to them shall be set up, upon proposal of the Management Board of each court, by decision of the Section for Judges of the Superior Council of Magistracy. The specialist panels of the sections within the courts of appeal and of courts attached to them shall be set up by the president of the court, upon proposal of the Management Board of each court.”

**22. Article 45 (1) shall be amended and shall read as follows:**

“Art.45. - (1) According to the workload and the complexity of the cases, in the courts of appeal, tribunals, specialist tribunals, courts of first instance located in county capitals, as well as in the courts of first instance in Bucharest Municipality, the president of the court may be assisted by 1-2 vice-presidents, and in the other courts of first instance, the president may be assisted by one vice-president.”

**23. Article 49 (2<sup>1</sup>) shall be amended and shall read as follows:**

“(2<sup>1</sup>) In case the number of judges is 5 or lower in courts of first instance or specialist tribunals, the duties of the Management Board shall be fulfilled by the president of the court.”

**24. A new paragraph, paragraph (2<sup>2</sup>) shall be introduced under Article 49, after paragraph (2<sup>1</sup>), and shall read as follows:**

“(2<sup>2</sup>) The provisions of paragraph (2<sup>1</sup>) shall apply accordingly in those cases where, due to objective reasons, the Management Board cannot be formed.”

**25. Article 50 (4) shall be amended and shall read as follows:**

(4) The General Meetings of judges may also be convoked by the Plenum of the Superior Council of Magistracy, by the section for judge of the Superior Council of Magistracy or by the Management Board of the court. ”

**26. Article 51 (e) shall be amended and shall read as follows:**

“e) Shall formulate opinions upon request of the Plenum or, as appropriate, of the sections of the Superior Council of Magistracy;”

**27. A new paragraph, paragraph (3) shall be introduced under Article 53, after paragraph (2), and shall read as follows:**

“(3) The system used for the random distribution of cases by panels shall undergo external audit every 2 years, led by the Ministry of Justice, with the involvement of civil society and professional organisations of magistrates. The conclusion of the audit shall be public.”

**28. Article 54 (1) and (1<sup>1</sup>) shall be amended and shall read as follows:**

“Art.54.- (1) The cases falling, according to law, under the jurisdiction of the courts of first instance, be they courts, tribunals or courts of appeal, shall be judged by 1-judge panels, except for labour disputes and social insurance cases. Pursuant to the provisions of Art.23 (1<sup>1</sup>) of Law no. 303/2004 on the statute of judges and prosecutors, as republished and further amended and supplemented, intern judges may participate, pursuant to law, in the hearings of panels consisting of tenured judges.

(1<sup>1</sup>) The complaints lodged against judgments ruled in criminal matters by courts of first instance and tribunals in the course of proceedings at first instance, by judges for rights and freedoms and by preliminary chamber judges shall be solved by 2-judge panels.”

**29. Paragraph (1<sup>2</sup>) of Article 54 shall be repealed.**

**30. Article 54 (2) shall be amended and shall read as follows:**

“(2) Appeals and second appeals shall be judged by 3-judge panels, except for cases when otherwise provided by law.”

**31. Paragraphs (2) and (3) of Article 58 shall be repealed.**

**32. Article 62 (3) shall be amended and shall read as follows:**

“(3) Prosecutors shall respects the fundamental rights and freedoms, the presumption of innocence, the right to a fair trial, the principle of equality of arms, the independence of courts and the binding nature of the final judgements. In public communication, prosecutor’s offices shall respect of presumption of innocence, the non-public nature of the prosecution and the non- discriminatory right to information.”

**33. Article 63 (k) shall be amended and shall read as follows:**

“k) Shall exercise the duties provided by the Administrative Law no. 554/2004, as further amended and supplemented;”

**34. A new letter, letter l) shall be introduced under Article 63, after letter k), and shall read as follows:**

“l) Shall exercise any other duties provided by law.”

**35. Article 64 (2), (3) and (5) shall be amended and shall read as follows:**

“(2) In the solutions reached, the prosecutor shall be independent, pursuant to law. The prosecutor may appeal against the intervention in the prosecution or decision-making processes of the hierarchically superior prosecutor, regardless its nature, with the section for prosecutors of the Superior Council of Magistracy, under the procedure for the verification of judges’ and prosecutors’ conduct.

(3) The solutions adopted by the prosecutor may be invalidated by the hierarchically superior prosecutor, when they are appreciated as unlawful or ungrounded.

(5) The prosecutor may appeal against the measure ordered pursuant to paragraph (4) by the hierarchically superior prosecutor with the section for prosecutors of the Superior Council of Magistracy, under the procedure for the verification of prosecutors’ conduct.”

**36. A new paragraph, paragraph (3<sup>1</sup>) shall be introduced under Article 66<sup>1</sup>, after paragraph (3), and shall read as follows:**

“(3<sup>1</sup>) Employees, informants or collaborators of the intelligence services, even undercover, may not hold the position of officer or agent of the Judicial Police. Prior to their appointment, they shall sign a handwritten declaration on own responsibility that they are not and have not been members of the intelligence services, that they are not and have not been collaborators of informers of the intelligence services.”

**37. Article 67 (2) shall be amended and shall read as follows:**

“(2) The prosecutor shall be free to present before the court the conclusions they seem grounded, pursuant to law, taking into account the evidence administered in the case. The prosecutor may appeal against the intervention of the hierarchically superior prosecutor for influencing in any way the conclusions, with the section for prosecutors of the Superior Council of Magistracy.”

**38. Article 69 (1) and (3) shall be amended and shall read as follows**

“Art.69.- (1) The Ministry of Justice, whenever they deem it necessary, upon its initiative or upon request of the Section for prosecutors of the Superior Council of Magistracy, shall exercise control over prosecutors, through prosecutors specifically appointed by the General Prosecutor of the Prosecutor’s Office attached to the High Court of Cassation and Justice or, as appropriate, by the Chief Prosecutor of the National Anti-Corruption Directorate, by the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism or by the Minister of Justice.

(3) The Minister of Justice may request the General Prosecutor of the Prosecutor’s Office attached to the High Court of Cassation and Justice or, as appropriate, by the Chief Prosecutor of the National Anti-Corruption Directorate, by the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism information on the activity of prosecutor’s offices and may provide written guidance on the actions to be taken for efficient crime prevention and combating.”

**39. Article 79 shall be amended and shall read as follows:**

“Art.79.- The Prosecutor’s Office attached to the High Court of Cassation and Justice shall develop annually an activity report, and shall present it to the section for prosecutors of the Superior Council of Magistracy and to the Minister of Justice, no later than the month of February of the following year. The Minister of Justice shall present the Parliament the conclusions on the activity report of the Prosecutor’s Office attached to the High Court of Cassation and Justice.”

**40. Article 79<sup>1</sup> (2), (3), (9)-(11) shall be amended and shall read as follows:**

“(2) The Directorate for Investigating Organised Crime and Terrorism shall employ prosecutors appointed by order of the Chief Prosecutor of this Directorate, with the endorsement of the section for prosecutors of the Superior Council of Magistracy, within the limits of the positions provided by the organisational chart, approved pursuant to law.

(3) In order to be appointed within the Directorate for Investigating Organised Crime and Terrorism, prosecutors must have had disciplinary sanctions, should have good professional training, flawless moral conduct, seniority of at least 8 years in the position of prosecutor or judge and should have been admitted following the interview organised by the committee created for this purpose.

(9) The prosecutors appointed within the Directorate for Investigating Organised Crime and Terrorism may be dismissed by order of the Chief Prosecutor of this Directorate, with the endorsement of the section for prosecutors of the Superior Council of Magistracy, in case of improper exercise of position-specific duties or in case of disciplinary sanctions.

(10) On the date of their termination of activity within the Directorate for Investigating Organised Crime and Terrorism, prosecutors shall return to the prosecutor's office he/she had worked for prior to their appointment.

(11) On the date of their return to the prosecutor's office they worked for prior to their appointment, prosecutors who worked within the Directorate for Investigating Organised Crime and Terrorism shall return to their professional level and salary as held previously or gained following their promotion, pursuant to law, while undertaking their activities in this Directorate."

**41. A new article, article art.79<sup>4</sup>, shall be introduced after Article 79<sup>3</sup>, and shall read as follows:**

"Art.79<sup>4</sup>.- The Directorate for Investigating Organised Crime and Terrorism shall develop annually an activity report, and shall present it to the section for prosecutors of the Superior Council of Magistracy and to the Minister of Justice, no later than the month of February of the following year. The Minister of Justice shall present the Parliament the conclusions on the activity report of the Directorate for Investigating Organised Crime and Terrorism."

**42. Article 86 (1) shall be amended and shall read as follows:**

"Art.86.- (1) Territorial units, services, offices and other divisions may be set up within the National Anti-Corruption Directorate, by order of the Chief Prosecutor of this Directorate, with the endorsement of the section for prosecutors of the Superior Council of Magistracy."

**43. Article 87 (1)-(3), (6), (8), (9) and (9<sup>1</sup>) shall be amended and shall read as follows:**

"Art.87.- (1) The National Anti-Corruption Directorate shall employ prosecutors appointed by order of the Chief Prosecutor of the National Anti-Corruption Directorate, upon proposal of the section for prosecutors of the Superior Council of Magistracy, following the competition organised for this purpose, within the limits of the positions provided by the organisational chart, approved pursuant to law.

(2) In order to be appointed within the National Anti-Corruption Directorate, prosecutors must have had disciplinary sanctions, should have good professional training, flawless moral conduct, seniority of at least 8 years in the position of prosecutor or judge and should have been admitted following the competition before the section for prosecutors of the Superior Council of Magistracy.

(3) The competition provided by paragraph (2) consists in:

a) An interview broadcasted live, before the section for prosecutors of the Superior Council of Magistracy;

b) A test consisting in the assessment of at least 5 randomly selected indictments, and of other documents drafted by the candidates and deemed relevant by them, from the last 5 years of their activity.

.....

(6) The assessment provided by paragraph (3) letter b) shall be performed by a committee appointed by the section for prosecutors of the Superior Council of Magistracy, consisting of 2 prosecutors from the de la National Anti-Corruption Directorate proposed by the Chief Prosecutor of the Directorate, 2 prosecutors of the Prosecutor's Office attached to the High Court of Cassation and Justice proposed by the General Prosecutor and a trainer proposed by the National Institute of Magistracy.

.....

(8) The prosecutors appointed within the National Anti-Corruption Directorate may be dismissed by order of the Chief Prosecutor of the National Anti-Corruption Directorate, with the endorsement of the section for prosecutors of the Superior Council of Magistracy, in case of improper exercise of position-specific duties or in case of disciplinary sanctions.

(9) On the date of their termination of activity within the National AntiCorruption Directorate, prosecutors shall return to the prosecutor's office he/she had worked for prior to their appointment.

(9<sup>1</sup>) On the date of their return to the prosecutor's office they worked for prior to their appointment, prosecutors who worked within the National Anti-Corruption Directorate shall return to their professional level and salary as held previously or gained following their promotion, pursuant to law, while undertaking their activities in this Directorate."

**44. Article 88 shall read as follows:**

„Art.88.- The National Anti-Corruption Directorate shall develop annually an activity report, and shall present it to the section for prosecutors of the Superior Council of Magistracy and to the Minister of Justice, no later than the month of February of the following year. The Minister of Justice shall present the Parliament the conclusions on the activity report of the National Anti-Corruption Directorate.”

**45. A new section, Section 2<sup>1</sup> - Investigation of Offences in the judiciary, including articles 88<sup>1</sup> - 88<sup>9</sup>, shall be introduced after Article 88, and shall read as follows:**

*„ Section 2<sup>1</sup>  
Section for the Investigation of Offences in the Judiciary*

**Art.88<sup>1</sup>**

(1) The Section for the Investigation of Offences in the Judiciary shall be set up and operate within the Prosecutor's Office attached to the High Court of Cassation and Justice, and its exclusive jurisdiction consists in the prosecution of crimes committed by judges and prosecutors, including military judges and prosecutors and members of the Superior Council of Magistracy.

(2) The Section for the Investigation of Offences in the Judiciary shall maintain its jurisdiction for prosecution in cases where other persons are being investigated together with the persons provided by paragraph (1).

(3) The provisions of Art.56 (4) of Law no. 135/2010 on the Criminal Procedure Code, as further amended and supplemented, are not applicable in case of crimes committed by military judges and prosecutors.

(4) The Section for the Investigation of Offences in the Judiciary shall be managed by a Chief Prosecutor, assisted by a deputy chief prosecutor, appointed by the Plenum of the Superior Council of Magistracy, pursuant to this law.

(5) The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice shall solve the conflicts of jurisdiction arising between the Section for the Investigation of Offences in the Judiciary and the other structures or units within the Public Ministry.

**Art.88<sup>2</sup>**

(1) The Section for the Investigation of Offences in the Judiciary shall carry out its activities according to the principle of legality, of impartiality and of hierarchical control.

(2) Delegation or posting of prosecutors within the Section for the Investigation of Offences in the Judiciary shall be banned.

(3) The Section for the Investigation of Offences in the Judiciary shall operate with a maximum number of 15 prosecutors.

(4) The number of positions within the Section for the Investigation of Offences in the Judiciary may be modified, according to the workload, by order of the General Prosecutor, upon request of the Chief Prosecutor of the section, with the endorsement of the Plenum of the Superior Council of Magistracy.

**Art.88<sup>3</sup>**

(1) The Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary shall be appointed by the Plenum of the Superior Council of Magistracy, following a competition which consists in the presentation of a project on the exercise of the specific duties of that management position, with a focus on management skills, efficient resource management, capacity to assume decisions



and responsibilities, communication skills and resistance to stress, as well candidate integrity, the evaluation of his/her activity as a prosecutor and how they relate to the specific values of the profession, such as the independence of the judiciary or respect for fundamental rights and freedoms.

(2) The competition committee shall have the following membership:

a) 3 judges, who are members of the Section for judges and have worked for a court having at least the level of court of appeal, appointed by the Section for judges;

b) 1 prosecutor, who is a member of the Section for prosecutors and has worked for a prosecutor's office at least at the level of prosecutor's office attached to the court of appeal, appointed by the Section for prosecutors.

(3) The requirements a prosecutor should fulfil to hold the position of Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary are provided by Art.88<sup>5</sup> (3).

(4) Each candidate shall submit a curriculum vitae, the declarations provided by Art.48 (11) of Law no. 303/2004, as republished, and further amended and supplemented, a project regarding the exercise of the specific duties of the management position and any other documents he/she deems relevant to support his/her application.

(5) The documents submitted by each candidate shall be published on the webpage of the Superior Council of Magistracy, at least 10 days prior the competition.

(6) The competition committee shall propose the Plenum of the Superior Council of Magistracy the appointment of the Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary, after having evaluated the applications and the projects, following an interview broadcasted live.

(7) The Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary shall be dismissed by the Plenum of the Superior Council of Magistracy, in case of failure to fulfil the specific duties of his/her position or in case he/she has been applied a disciplinary sanction in the past 3 years, upon proposal of the committee provided by paragraph

(2)

(8) The Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary shall be appointed for a 3-year period, and may be reelected only once.

#### **Art.88<sup>4</sup>**

(1) The Deputy Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary shall be appointed by the Plenum of the Superior Council of Magistracy, upon motivated proposal by the Chief Prosecutor of the Section, from the prosecutors already appointed within the Section.

(2) The Deputy Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary shall be appointed for a 3-year period, and may be reelected only once.

(3) The Deputy Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary shall be dismissed by the Plenum of the Superior Council of Magistracy, upon motivated proposal by the Chief Prosecutor of the Section, in case of failure to fulfil the specific duties of his/her position or in case he/she has been applied a disciplinary sanction.

#### **Art.88<sup>5</sup>**

(1) The Section for the Investigation of Offences in the Judiciary shall employ prosecutors appointed by the Plenum of the Superior Council of Magistracy, following a competition, within the limits of the positions provided by the organisational chart, approved pursuant to law, for a 3-year period, who may continue their activity within the section for a total period which shall not exceed 9 years.

(2) The competition shall be before a competition committee organised according to Art.88<sup>3</sup> (2), where the Chief Prosecutor of the Section is a member by right.

(3) In order to participate in the competition for the appointment within the Section for the Investigation of Offences in the Judiciary, prosecutors shall cumulatively fulfil the following requirements:

- a) No disciplinary sanctions in the past 3 years;
- b) Hold at least the position of prosecutor with a prosecutor's office attached to a court of appeal;
- c) At least 18 years seniority as prosecutors;
- d) Good professional training;
- e) Flawless moral conduct.

(4) Any prosecutor who fulfils the requirements provided by paragraph (3) by the date set for the competition may participate in the competition.

(5) The competition provided by paragraph (2) shall consist in:

- a) An interview broadcasted live, on the webpage of the Superior Council of Magistracy, with the Plenum of the Superior Council of Magistracy;
- b) An assessment of the activity within the past 5 years;
- c) An assessment of professional documents drafted by the candidates within the past 3 years of activity.

(6) The interview consists in a verification of the professional training, of the capacity to make decisions and assume responsibility, of resistance to stress, and of other specific qualities. The Chief prosecutor of the section and a psychologist may participate in the interview and ask the candidates questions.

(7) The assessment provided by paragraph (5) letter b) shall be performed by two prosecutors and two judges from the Judicial Inspection, appointed by the Plenum of the Superior Council of Magistracy, upon proposal of the Chief Inspector. The score shall be granted following an analysis which shall also consider the duration and complexity of the cases worked by the prosecutor, the acquittal rate, referral back of cases, convictions, possible seizures submitted by the investigated persons and the solutions ruled for them.

(8) The assessment provided by paragraph (5) letter c) shall be performed by a committee appointed by the Plenum of the Superior Council of Magistracy, consisting of 2 prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice and 2 judges from the Criminal Section of the High Court of Cassation and Justice, proposed by their Management Boards, and of a trainer from the National Institute of Magistracy, proposed by its Scientific Board.

(9) The maximum score which may be granted for the competition tests is 100 points, allocated as follows:

- a) 60 points for the test provided by paragraph (5) letter a);
- b) 20 points for the test provided by paragraph (5) letter b);
- c) 20 points for the test provided by paragraph (5) letter c).

(10) The minimum score to be declared admitted after the competition is 70 points, but no less than the following scores for each test:

- a) at least 25 points for the test provided by paragraph (5) letter a);
- b) at least 15 points for the test provided by paragraph (5) letter b);
- c) at least 10 points for the test provided by paragraph (5) letter c).

(11) The appointment in the position of prosecutor with the Section for the Investigation of Offences in the Judiciary shall be made Plenum of the Superior Council of Magistracy, within the limits of vacancies and in the order of scores obtained.

(12) The procedures for the appointment, extended activity within the Section and dismissal from management and execution positions within the Section shall be detailed by a Regulation approved by the Plenum of the Superior Council of Magistracy.

#### **Art.88<sup>6</sup>**

(1) Upon expiry of the 3-year duration, the prosecutor may apply to continue his/her activity with the Section for the Investigation of Offences in the Judiciary for a new 3-year period, without exceeding a total period of 9 years of activity within the Section.

(2) 3 months before the expiry of the appointment, the Plenum of the Superior Council of Magistracy shall analyse the application submitted by the prosecutor to continue his/her activity with the Section and shall make a decision on the application, considering the prosecutor's activity in the past 3 years.

(3) On the date of their termination of activity within the Section for the Investigation of Offences in the Judiciary, the prosecutor shall return to the prosecutor's office he/she had worked for prior to their appointment.

(4) On the date of their return to the prosecutor's office they worked for prior to their appointment, prosecutors who worked within the Section for the Investigation of Offences in the Judiciary shall return to their professional level and salary as held previously or gained following their promotion,

pursuant to law, while undertaking their activities within the Section.

**Art.88<sup>7</sup>**

(1) The prosecutors appointed within the Section for the Investigation of Offences in the Judiciary may be dismissed by the Plenum of the Superior Council of Magistracy, upon motivated request of the Chief Prosecutor of the Section, in case of improper exercise of position-specific duties or in case of disciplinary sanctions.

(2) In case of dismissal, the prosecutor shall return to the prosecutor's office he/she had worked for and shall return to their professional level and salary as held previously or gained following their promotion, pursuant to law, while undertaking their activities within the Section.

**Art.88<sup>8</sup>**

(1) The duties of the Section for the Investigation of Offences in the Judiciary are as follows:

- a) To carry out prosecution, pursuant to Law no. 135/2010, as further amended and supplemented, for the offences falling under their jurisdiction;
- b) To seize courts of law to take all steps provided by law and to judge the cases provided by letter a);
- c) To create and update the database in the field of offences falling under its jurisdiction;
- d) To fulfil other duties as provided by law.

(2) Participation in hearings in cases falling under the jurisdiction of the Section shall be ensured by prosecutors from the Judiciary Section of the Prosecutor's Office of the High Court of Cassation and Justice or by prosecutors from the prosecutor's office attached to the court judging the case.

Art.88<sup>9</sup>.- The Section for the Investigation of Offences in the Judiciary shall develop annually an activity report, and shall present it to the Plenum of the Superior Council of Magistracy, no later than the month of February of the following year."

**46. Article 90 (2) shall be amended and shall read as follows:**

"(2) According to the nature and number of cases, specialist sections may operate within the prosecutor's offices attached to courts of law."

**47. Article 94 (1) shall be amended and shall read as follows:**

"Art.94.- (1) According to the workload and the complexity of the cases, in the prosecutor's offices attached to the courts of appeal, tribunals, courts of first instance located in county capitals, as well as in the prosecutor's offices attached to the courts of first instance in Bucharest Municipality, the General Prosecutor or, as appropriate, the chief prosecutor may be assisted by 1-2 deputies, and in the prosecutor's offices attached to the courts for child and family law and to the other courts of first instance, the chief prosecutor may be assisted by a deputy."

**48. Article 101 shall be amended and shall read as follows:**

"Art.101.- When the person investigated is active military personnel, prosecution shall be performed by the military prosecutor, regardless the rank of the person investigated."

**49. A new paragraph, paragraph (1<sup>1</sup>) shall be introduced under Article 103, after paragraph (1), and shall read as follows:**

"(1<sup>1</sup>) The National Institute of Magistracy may undertake cooperation activities with institutions for the training of judges and prosecutors from other countries, upon prior approval of the Superior Council of Magistracy. Pursuant to the requirements established by Government Decision, the National Institute of Magistracy may use funds from its own budget or, as appropriate, from external funds, to cover the expenditure for the participation of representatives of institutions from other countries in the cooperation actions undertaken in Romania."

**50. Article 106 (2) shall be amended and shall read as follows:**

“(2) The Director of the National Institute of Magistracy is a tertiary authorizing officer. ”

**51. Article 108 (3) shall be amended and shall read as follows:**

“(3) The hourly wages of the training staff of the National Institute of Magistracy shall be determined according to the activities undertaken and to the maximum gross monthly wages of a judge holding an execution position with the High Court of Cassation and Justice, with the highest seniority level, as follows:

a) In case of course or conference teaching activities, the teaching hours shall be multiplied by a coefficient of 2.5;

b) In case of seminar activities, as well as of other teaching activities or activities related to the initial and continuing training process, the working hours shall be multiplied by a coefficient of 1.5;

c) The other activities specific to initial and continuing training shall be measured according to a methodology approved by decision of the Scientific Board of the Institute.”

**52. One new article, article 113<sup>1</sup> shall be introduced after Article 113, and shall read as follows:**

“Art.113<sup>1</sup>.- (1) Judicial assistants are subject to assessments of the quality of their activities, every 2 years. The first assessment of the judicial assistants shall be performed one year after their appointment.

(2) The assessment provided by paragraph (1) shall be performed by the president of the tribunal where the judicial assistant undertakes his/her activity. The assessment criteria provided by law for the professional activity of judges and prosecutors shall apply accordingly to the judicial assistants as well, in relation to the duties they exercise pursuant to law.

(3) Judicial assistants who are dissatisfied with their appraisal may lodge a complaint with the Minister of Justice, within 30 days from the communication. In order to solve the complaint, the Minister of Justice may request the president of the tribunal any information deemed necessary and shall hear the judicial assistant.

(4) The judicial assistant whose appraisal was unsatisfactory after the assessment shall be dismissed for professional incapacity by the Minister of Justice.

(5) Judicial assistants may also be dismissed due to the decrease in the number of positions, according to the workload of the court.

**53. Two new paragraphs, paragraphs (6) and (7) shall be introduced under Article 120, after paragraph (5), and shall read as follows:**

“(6) The IT specialists from courts of law and prosecutor’s offices, from the Superior Council of Magistracy and the institutions under its coordination, from the Ministry of justice and from the Judicial Inspection shall benefit from the same salary rights as the specialists from the prosecutor’s Office attached to the High Court of Cassation and Justice pursuant to the legislation on the wages of personnel paid from public funds.

(7) The personnel provided by paragraph (2) shall benefit from the salary rights provided for the specialists from Art.116 (5) of this law.”

**54. Three new articles, articles 120<sup>2</sup>-120<sup>4</sup> shall be introduced after Article 120, and shall read as follows:**

“Art. 120<sup>2</sup>.- (1) For the purposes of expeditious and thorough investigation of economic, financial, fiscal and customs offences, officers and agents of the Judicial Police shall be posted to prosecutor’s offices attached to courts, within the limits of the positions approved pursuant to law.

(2) Officers and agents of the Judicial Police shall undertake criminal investigation activities in the cases provided by paragraph (1), where prosecution is mandatory and is performed by the prosecutor or where the prosecutor ordered commencement of prosecution, according to the provisions of Art.324 (2) of Law no.135/2010, as further amended and supplemented.

(3) Officers and agents of the Judicial Police provided by paragraph (1) may undertake criminal investigation activities in the cases referred by the prosecutor’s offices attached to tribunals to the prosecutor’s offices attached to the court of appeal.

(4) Officers and agents of the Judicial Police shall undertake solely the criminal investigation activities ordered by prosecutors, under their direct coordination, supervision and control.

(5) The orders issued by prosecutors are binding for the officers and agents of the Judicial Police, and the activities they undertake according to the written orders of the prosecutors are carried out on behalf of the latter.

Art.120<sup>3</sup>.- (1) Officers and agents of the Judicial Police provided by Art. 120<sup>2</sup> are posted with the prosecutor's offices, upon nominal proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, by the Minister of internal Affairs, for a period of 6 years at the most, which may be extended every three years, with their consent.

(2) Officers and agents of the Judicial Police shall be appointed with prosecutor's offices provided by Art.120<sup>2</sup> (1) by order of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(3) The posting of officers and agents of the Judicial Police may be ordered before the completion of the period provided by paragraph (1), by motivated order of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(4) Throughout their posting, officers and agents of the Judicial Police may not receive any task from their hierarchical superiors.

(5) Officers and agents of the Judicial Police posted pursuant to this article shall have the rights and the obligations provided by law for police officers, with the exceptions provided by law and shall benefit accordingly from the rights provided by Art.13 and 23 of the Government Emergency Ordinance no. 27/2006 on the wages and other rights of judges, prosecutors and other categories of personnel from the judiciary, as approved, amended and supplemented by Law no. 45/2007, as further amended and supplemented.

(6) The basic salary and the bonuses of posted officers and agents of the Judicial Police shall be those provided for the officers and agents of the Judicial Police within the National Anti-Corruption Agency, reduced by 20%.

(7) Salary rights are paid from the budget of the Public Ministry and shall be granted by the prosecutor's office where they are posted.

Art. 120<sup>4</sup>.- (1) The duties provided by law for the Minister of internal Affairs regarding the rights and responsibilities of posted officers and agents of the Judicial Police shall be exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(2) The duties regarding the granting of professional ranks for posted officers and agents of the Judicial Police shall be exercised by the Minister of Internal Affairs, upon proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(3) The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice shall assess the activity of posted officers and agents of the Judicial Police, on yearly basis, pursuant to law.

(4) The provisions of Art. 6 of Law no. 364/2004 on the organization and functioning of the Judicial Police, as republished and further amended, shall be enforced accordingly, in relation to the activity of the officers and agents of the Judicial Police.

(5) The position of officer and agent of the Judicial Police provided by Art. 120<sup>2</sup> (1) is incompatible with any other public or private position, except for teaching positions in higher education.

(6) The number of officers and agents of the Judicial Police within the prosecutor's offices provided by Art. 120<sup>2</sup> (1), as their repartition shall be established, according to needs, by order of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice."

**55. Article 121 (2) shall be amended and shall read as follows:**

"(2) The number of staff of the Romanian Gendarmerie necessary for the enforcement of the provisions of paragraph (1) shall be established by Government Decision, upon proposal of the Minister of Justice and Minister of Internal Affairs, and of the President of the High Court of Cassation and Justice."

**56. Article 129 shall be amended and shall read as follows:**

"Art. 129.- By way of derogation from the provisions of the legislation on public finance, court presidents and prosecutor's office managers may delegate the capacity of authorising officer to the economic managers."

**57. Article 132 (6) shall be amended and shall read as follows:**

“(6) Draft annual budgets of the military courts shall be developed by the Military Court of Appeal, and those of the military prosecutor’s offices, by the section or unit within the Prosecutor’s Office attached to the High Court of Cassation and Justice, after consultations with military courts, and military prosecutor’s offices, and shall be submitted to the main authorising officer.”

**58. Article 133 (2) shall be amended and shall read as follows:**

“(2) The President of the High Court of Cassation and Justice and the presidents of courts of appeal, together with the Minister of Justice, the General Prosecutor of the Prosecutor’s Office attached to the High Court of Cassation and Justice or, as appropriate, the Chief Prosecutor of the National Anti-Corruption Directorate, the Chief Prosecutor of Directorate for Investigating Organised Crime and Terrorism shall analyse annually the workload of the courts and prosecutor’s offices and, based on the results of this analysis, shall take actions to supplement or decrease the number of positions, with the approval of the Section for judges or of the Section for prosecutors of the Superior Council of Magistracy, as appropriate.”

**59. Article 134 (2) shall be amended and shall read as follows:**

“(2) For the High Court of Cassation and Justice, the maximum number of positions shall be established by Government Decision, upon proposal of the Minister of Justice and of the President of the High Court of Cassation and Justice, with the endorsement of the Section for judges of the Superior Council of Magistracy.”

**60. Article 134<sup>1</sup> (2) shall be amended and shall read as follows:**

“(2) The number of temporary vacancies which may be filled in the cases provided by paragraph (1) shall be approved for each court of law or prosecutor’s office, as appropriate, by the appropriate Section of the Superior Council of Magistracy, upon proposal of authorising officers.”

**61. Article 135 shall be amended and shall read as follows:**

“Art.135.- (1) The list of positions and the organisation chart for the courts of appeal, tribunals, specialist tribunals, courts of first instance and prosecutor’s offices shall be approved by order of the Minister of Justice.

(2) The increase or decrease in the number of personnel for the courts of appeal, tribunals, specialist tribunals, courts of first instance and prosecutor’s offices shall be approved with the endorsement of the appropriate sections of the Superior Council of Magistracy, by order of the Minister of Justice.”

**62. Article 139 (2) shall be amended and shall read as follows:**

“(2) The internal Rules of Procedure of the courts of law shall be approved by the Section for judges of the Superior Council of Magistracy, by decision published in the Official Journal of Romania, Part I.”

**63. Article 140 (2) shall be amended and shall read as follows:**

“(2) The internal Rules of Procedure provided by paragraph (1) shall be approved by the Section for prosecutors of the Superior Council of Magistracy, upon proposal of the General Prosecutor of the prosecutor’s Office attached to the High Court of Cassation and Justice or, as appropriate, of the Chief Prosecutor of the National Anti-Corruption Directorate or of the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism, with the endorsement of the Minister of Justice.”

**Art. II.-** The Government Emergency Ordinance no. 78/2016 on the organisation and functioning of the Directorate for Investigating Organised Crime and Terrorism, and amending and supplementing certain laws shall be amended so as to be harmonised with the provisions of Section 2<sup>1</sup> - *Section for the Investigation of Offences in the Judiciary* in Law #303/2004, as republished, with subsequent amendments and supplements, as it has been amended and supplemented by this Law.

**Art. III.-** (1) The Section for the Investigation of Offences in the Judiciary shall start operating within 3 months from the date this law enters into force.

(2) Cases falling under the jurisdiction of the section registered with the competent prosecutor's offices, including those specialised prior to the date provided by paragraph (1), shall be referred to the Section for the Investigation of Offences in the Judiciary, as soon as it becomes operational.

**Art.IV. –** The stipulations in this Law concerning the trying of appeals in a panel of 3 judges shall apply to cases registered on court dockets after entry into force of this Law.

**Art. V.-** Prosecutors who, on the date this law enters into force, are appointed within the Directorate for Investigating Organised Crime and Terrorism and the National Anti-Corruption Directorate shall maintain the positions they hold within these structures.

**Art. VI.-** Law no. 304/2004 on the organisation of the judiciary, as republished in the Official Journal of Romania, Part I, no. 827 of 13 September 2005, as further amended and supplemented, and as amended and supplemented by this law, shall be republished in the Official Journal of Romania, Part I, and the texts shall be given new numbering.

**This draft law was adopted by Romanian Parliament, in compliance to the provisions of Article 75 and Article 76 (1) of the Romanian Constitution, as republished.**

**FOR THE PRESIDENT OF CHAMBER OF DEPUTIES**

**FOR THE PRESIDENT OF THE SENATE**

## THE PARLIAMENT OF ROMANIA

**LAW No. 304/2004 - on judicial organisation**

\*) re-published in the Official Journal of Romania, Part I, No. 827/13.09.2005  
as subsequently amended, by Law no. 247/2005 published in the Official Journal of Romania, Part I,  
No. 653/22.07.2005

*Judicial organization is established in order to ensure the observance of rights and fundamental freedoms of persons, as they are provided in the following documents: the International Charter of Human Rights, the Convention on the protection of human rights and fundamental freedoms, the UN Convention on the rights of the child and the European Union Charter of fundamental rights, as well as in order to safeguard the observance of the Constitution and of the country's laws.*

*Judicial organization has also the main goal of ensuring the respect of the right to a fair trial and the judgment of trials by the law courts impartially and independently from any outside influence.*

**TITLE I****General Provisions****Chapter I****The principles of the judicial organization**

**Article 1** – (1) The judicial authority is exercised by the High Court of Cassation and Justice and by the other judicial courts established by the law.

(2) The Superior Council of Magistracy is the guarantor of the independence of justice.

(3) The Public Ministry exercises its attributions through prosecutors organized in Prosecutors' Offices, according to the law.

**Article 2** - (1) Justice is carried out in the name of the law, is unique, impartial and equal for all.

(2) Justice is carried out through the following courts:

(a) The High Court of Cassation and Justice;

(b) The courts of appeal;

(c) The tribunals;

(d) The specialized tribunals;

(e) Military courts;

(f) The first instance courts.

**Article 3** – The competence of judicial bodies and the judicial procedure are established by the law.

**Article 4** – (1) In the judicial activity, the Public Ministry represents the general interests of society and defends legal order and the citizens' rights and freedoms.

(2) The Prosecutors' Offices operate attached to the judicial courts, conduct and supervise the activity of criminal investigation performed by the judiciary police, according to the law.



**Article 5** – (1) The Ministry of Justice ensures the proper organization and administration of justice as public service.

## **Chapter II Access to justice**

**Article 6** - (1) Any person can address justice for the defence of his/her rights, freedoms and legitimate interests.

(2) The exercise of this right cannot be restricted.

**Article 7** - (1) All persons are equal before the law, with no privileges and no discriminations.

(2) Justice is carried out equally for all, with no distinction of race, nationality, ethnic origin, language, religion, sex or sexual orientation, opinion, political affiliation, fortune, social origin or status or any other such discriminating criteria.

**Article 8** – International judicial assistance shall be requested or granted according to the law, to the international treaties to which Romania is a party, or, the case being, based on mutual recognition.

**Article 9** – The Plenum of the Superior Council of Magistracy shall operate as a law court for dealing with objections lodged by judges and prosecutors against decisions rendered by the sections of the Superior Council of Magistracy, except for those given on disciplinary matters.

## **Chapter III General provisions on the judicial procedure**

**Article 10** – All persons are entitled to a fair trial and to the resolution of cases within a reasonable time, by an impartial and independent court, set-up according to the law.

**Article 11** – The activity of judgement shall take place while observing the principles of random assignment of cases and of continuity, unless the judge is unable, for objective reasons, to partake in the trial.

**Article 12** – Court sessions shall be public, except for certain cases provided by the law. Judgements shall always be pronounced in public session, except for cases provided by the law.

**Article 13** – (1) Court sessions are recorded by video or audio technical devices.

(2) During court sessions, the court clerk takes notes on the proceedings. The parties can request to read the notes and their approval by the presiding judge.

(3) After the end of court sessions, the parties in the proceedings receive, upon request, a copy of the court clerk's notes.

**Article 14** – (1) Judicial procedure shall be conducted in Romanian.

(2) Romanian citizens belonging to national minorities have the right to express themselves in their native language before courts, according to the present law.

(3) In case one or several parties claim to express themselves in their native language, the court has to ensure, free of charge the use of an interpreter or an authorized translator.

(4) In case all the parties demand or agree to express themselves in their native language, the court has to ensure the exercise of that right, as well as the proper administration of justice with the respect of the principles of contradictory, oral and public proceedings.

(5) The requests and the procedural acts shall be drafted only in Romanian.

(6) Debates between parties in their native language shall be recorded, and written down in Romanian. Objections made by those concerned regarding the translations and their recording shall be solved by the law court until completion of main hearings for that case, and recorded in the court session conclusion.

(7) The interpreter or the translator shall sign all the drafted acts, for conformity, when these ones were drafted or recorded on the basis of the translation.

**Article 15** – The right to defence is guaranteed. Throughout the trial, the parties shall have the right to be represented or, as the case may be, assisted by a defender, chosen or appointed *ex officio*, according to the law.

**Article 16** –

(1) Court decisions shall be complied with and enforced under the terms of the law.

(2) Court decisions may be nullified or amended only in the appeal proceedings set forth by law and used as per the legal provisions.

**Article 17** –

(1) In case of a panel composed of 2 judges, if they fail to reach an agreement on the decision to be rendered, the case is reexamined by an uneven-number panel, under the terms of the law.

(2) An uneven-number panel is created by including the president or vice-president of the court, the section president or the judge in charge of planning the standby service in the judge panel.

**TITLE II**  
**Law courts**

**Chapter I**

**The High Court of Cassation and Justice**

*Section 1*

**Organization of the High Court of Cassation and Justice**

**Article 18** – (1) In Romania, there is only one Supreme Court, the High Court of Cassation and Justice, legal person with the headquarters in the capital city.

(2) The High Court of Cassation and Justice ensures the consistent interpretation and application of the law by the other law courts, according to its competence.

(3) The president of the High Court of Cassation and Justice has the quality of main chief credit accountant.

(4) The expenses required for the operation shall be financed from the state budget.

**Article 19** –

(1) The High Court of Cassation and Justice consists of: one president, 2 vice-presidents, 4 section presidents and judges.

(2) The High Court of Cassation and Justice is organized in 4 sections: - the First Civil Section, the Second Civil Section, the Criminal Section, the Section for Administrative and Fiscal Litigation, and the Joint Sections, having their own jurisdiction.

(2<sup>1</sup>) In the High Court of Cassation and Justice, a Judge Panel for the settlement of referrals in the interest of the law, a Panel for the clarification of law matters, as well as 4 or 5-judge panels operate.

(3) At the beginning of each year, the Managing Board of the High Court of Cassation and Justice, upon proposal by its president or vice-president, may approve the creation of specialized judge panels in the sections of the High Court of Cassation and Justice, depending on the number and nature of cases, the workload of each section, and the specialization of judges and the need to turn into capital their professional experience.

(4) Judges shall be appointed in the panels having jurisdiction to decide upon referrals in the interest of the law and in panels having jurisdiction to decide on referrals for a preliminary ruling for the clarification of law matters based on the specialization of the panels to which they belong.

**Article 20** – (1) Within the High Court of Cassation and Justice operate assistant-magistrates, established by the list of functions.

(2) The High Court of Cassation and Justice has in its structure the Chancellor's Office, departments, services and offices, with the personnel established by the list of functions.

## *Section II*

### **The competence of the High Court of Cassation and Justice**

**Article 21** – The First Civil Section, the Second Civil Section and the Section for Administrative and Fiscal Litigation of the High Court of Cassation and Justice examine second appeals filed against judgments rendered by courts of appeals and against other decisions, in the cases specified by law, as well as second appeals filed against non-final decisions or against judicial acts, of any nature whatsoever, that cannot be appealed by any other means, and the case examination was interrupted before the courts of appeals.

**Article 22** – The Criminal Section of the High Court of Cassation and Justice examines:

a) in first instance, cases and applications assigned by law under the first instance jurisdiction of the High Court of Cassation and Justice;

b) appeals against criminal judgments rendered in first instance by courts of appeals and by the Military Court of Appeals;

c) challenges against criminal judgments rendered in first instance by courts of appeals, by the Military Court of Appeals and by the Criminal Section of the High Court of Cassation and Justice;

d) appeals filed against non-final decisions or against judicial acts, of any nature whatsoever, that cannot be appealed by any other means, and the case examination was interrupted before the courts of appeals;

e) appeals in cassation against final decisions, under the terms set forth by law;

f) referrals for a preliminary ruling for the clarification of law matters.

**Article 23** – (1) The sections of the High Court of Cassation and Justice, according to their competence, shall solve:

a) Requests for displacement of case from a court to another, for the reasons provided in the procedure codes;

b) Conflicts of competence, in the cases provided by the law;

c) any Other requests provided in the law.

~~(2) The sections of the High Court of Cassation and Justice, shall solve also final appeals~~

~~(recourses) filed against non final decisions or court acts, of any nature, which cannot be appealed in any other way and the trial of which was interrupted before the courts of appeal.~~

**Article 24** – The 5-judge panels decide upon appeals filed against judgments rendered in first instance by the Criminal Section of the High Court of Cassation and Justice, appeals in cassation against decisions rendered in appeal by the 5-judge panels after admission in principle, decides upon challenges against court resolutions rendered during proceedings in first instance by the Criminal Section of the High Court of Cassation and Justice, decides on cases in the disciplinary area under the law, and on other cases assigned under their jurisdiction by law.

**Article 25** – The High Court of Cassation and Justice shall sit in Joint Sections for:

a) ~~repealed trying final appeals (recourses) in the interest of the law;~~ solving notifications with regard to changing the case law of the High Court of Cassation and Justice, according to the present law;

b) calling upon the Constitutional Court in view of examining the constitutionality of laws before their promulgation.

**Article 26** –Should a section of the High Court of Cassation and Justice consider necessary to review its own jurisprudence, shall interrupt the trial and call upon the Joint Sections of the High Court of Cassation and Justice, which shall adjudicate summoning the parties from the interrupted. After the Joint Sections decided upon the notification on changing the jurisprudence, the trial shall be resumed.

**Article 27** – (1) At the end of each year, the High Court of Cassation and Justice, in Joint Sections, shall establish which cases require improvement in the legislation and notifies them to the minister of justice.

(2) The president of the High Court of Cassation and Justice may allow judges to inform themselves at the courts’ seat about the aspects concerning the correct and consistent application of the law, making the jurisprudence of the High Court of Cassation and Justice known and establishing the situations which justify proposals for improvement of the legislation.

### ***Section 3***

#### **Leadership of the High Court of Cassation and Justice**

**Article 28** – (1) Leadership of the High Court of Cassation and Justice shall be exercised by the president of the High Court of Cassation and Justice, the vice- president and the Leading Board

(2) The president represents the High Court of Cassation and Justice in internal and international relations.

(3) The president, vice-president and 9 judges, elected for 3 years by the general assembly of judges, with representation of each section, shall make up the Leading Boards of the High Court of Cassation and Justice. When debating upon economic-financial and administrative issues, in the sessions of the leading board shall participate also the economic manager of the High Court of Cassation and Justice, who is entitled to a consultative vote. The section presidents may also participate in the sessions of the Leading Boards

**Article 29** – (1) The Leading Board of the High Court of Cassation and Justice shall have the following attributions:

a) to approve the Regulations on the organization and administrative operation of the High Court of Cassation and Justice, as well as the lists of functions and personnel of the High

Court of Cassation and Justice;

b) to propose to the Superior Council of Magistracy the judges who will be part of the contest committees for promotion to positions of judge with the High Court of Cassation and Justice;

c) to propose to the Superior Council of Magistracy the appointment, promotion, transfer, suspension and release from office of assistant-magistrates;

d) to organize and supervise the resolution of petitions, according to the law;

e) to propose the draft budget of the High Court of Cassation and Justice;

f) to exercise other prerogatives provided in the Regulation on the organisation and administrative operation of the High Court of Cassation and Justice.

(2) The Leading Board of the High Court of Cassation and Justice shall be chaired by the president and in his/her absence, by the vice-president.

(3) The Leading Board of the High Court of Cassation and Justice shall reunite on quarterly basis or whenever necessary, at the convocation of the president of the High Court of Cassation and Justice or upon request from at least three of its members.

(4) The decisions of the Leading Board of the High Court of Cassation and Justice shall be adopted with the majority of votes of the Leading Board members.

**Article 30** – The general assembly of judges of the High Court of Cassation and Justice shall meet for:

a) approving the annual activity report, which shall be published;

b) approving the budget of the High Court of Cassation and Justice, with the consultative endorsement of the Ministry of Public Finance;

c) electing the 2 members for the Superior Council of Magistracy, according to the law.

#### Article 30<sup>1</sup>

(1) On a half-yearly basis, or whenever this is necessary, the President of the High Court of Cassation and Justice or one of the judges appointed by him/her for this purpose shall check the application of technical surveillance in the National Center for Communication Interception specified by Art. 8 para. 2 of Law no. 14/1992 on the Organization and Operation of the Romanian Intelligence Service, as subsequently amended, by the criminal prosecution bodies appointed by it specifically for this purpose.

(2) The check specified at para. (1) shall be conducted under the terms stipulated by the Regulation for the Administrative Organization and Operation of the High Court of Cassation and Justice.

### **Section 4** **The panels of judges**

#### **Article 31**

(1) In the criminal area, judge panels are composed as follows:

a) in cases assigned under the law under the first instance jurisdiction of the High Court of Cassation and Justice, the judge panel is composed of 3 judges;

b) in respect of challenges against judgments rendered by judges of rights and liberties and preliminary chamber judges of courts of appeals and of the Military Court of Appeals, the judge panel is composed of one judge;

c) in respect of appeals filed against judgments rendered in first instance by courts of appeals and by the Military Court of Appeals, the judge panel is composed of 3 judges;

d) in respect of challenges against judgments rendered by judges of rights and liberties and by preliminary chamber judges of the High Court of Cassation and Justice, the judge panel is composed of 2 judges.

e) in respect of challenges against court resolutions rendered during proceedings in first instance by courts of appeals and the Military Court of Appeals, the judge panel is composed of 3 judges.

f) in respect of challenges provided for under Art. 2501 para. (1) of the Criminal Procedure Code filed against court resolutions rendered during the case examination in appeal by courts of appeals and the Military Court of Appeals, the judge panel is composed of 3 judges.

g) for the examination of appeals in cassation against judgments rendered in appeal by courts of appeals and by the Criminal Section of the High Court of Cassation and Justice, after admission in principle, the judge panel is composed of 3 judges.

(2) In the other areas, judge panels are composed of 3 judges of the same section.

(3) If the number of judges required to create a judge panel cannot be secured, such panel shall be composed of judges of other sections, appointed by the President or Vice-president of the High Court of Cassation and Justice, by drawing lots.

#### Article 31<sup>1</sup>

Preliminary chamber proceedings are conducted by a judge of the judge panel specified by Art. 31 para. (1) item a).

#### Article 32

(1) At the beginning of each year, 5-judge panels are established in the criminal area, which comprise only judges of the Criminal Section of the High Court of Cassation and Justice.

(2) In areas other than the criminal one, two 5-judge panels are established at the beginning of each year.

(3) As a rule, specialized judges are included in the composition of judge panels specified under para. (2), depending on the case nature.

(4) The Managing Board of the High Court of Cassation and Justice approves the number and composition of the 5-judge panels, upon proposal by the President Criminal Section. Judges who are part of such panels are appointed by drawing lots, in public session, by the President or, in his/her absence, the Vice-president of the High Court of Cassation and Justice. Members of judge panels may be replaced in exceptional situations, based on objective criteria established by the Regulation for the Administrative Organization and Operation of the High Court of Cassation and Justice.

(5) A 5-judge panel is chaired by the President or Vice-president of the High Court of Cassation and Justice, when he/she is part of the judge panel, according to para. (4), by the President of the Criminal Section or by the oldest judge, as applicable.

(6) The cases falling under the jurisdiction of the judge panels specified at para. (1) and (2) shall be randomly assigned through a computerized system.

#### Article 33

(1) The President of the High Court of Cassation and Justice or, in his/her absence, one of the Vice-presidents shall chair the Joint Sections, the Judge Panel for the settlement of referrals in the interest of the law, as well the Panel for the clarification of law matters, the 5-judge panel, and any panel in the section, when he/she participates in the case examination.

(2) *Repealed*

(3) Section presidents may chair any judge panel of that section, while the other judges chair by rotation.

**Article 34** – If the High Court of Cassation and Justice tries in Joint Sections, at least two thirds of the number of sitting judges need to partake in the trial. The decision can be made only with the majority of votes of those present.

## **Chapter II**

### **Courts of appeal, tribunals, specialized tribunals and first instance courts**

#### **Section I**

#### **The organization of the courts of appeal, tribunals, specialized tribunals and first instance courts**

**Article 35**– (1) The courts of appeal are courts with legal capacity, in the jurisdiction of which several tribunals and specialized tribunals operate, according to the annex to the present law.

(2) Courts of appeals include sections or, as applicable, judge panels specialized in civil cases, irrespective of their subject matter or the capacity of the parties, criminal cases, family and juvenile cases, administrative and fiscal disputes, employment and social insurance disputes, disputes related to companies, the Trade Registry, insolvency, unfair competition or in other areas, as well as, based on the nature and number of cases, judge panels specialized in maritime and fluvial law cases.

**Article 36** – (1) Tribunals are courts with legal capacity, organized at the level of each county and the city of Bucharest and as a rule have their premises in the city-residence of the county.

(2) The jurisdiction of each tribunal includes all first instance courts in the county or, as the case may be, in the city of Bucharest.

(3) Tribunals include sections or, as applicable, judge panels specialized in civil cases, irrespective of their subject matter or the capacity of the parties, in criminal cases, family and juvenile cases, administrative and fiscal disputes, employment and social insurance disputes, disputes related to companies, the Trade Registry, insolvency, unfair competition or in other areas, as well as, based on the nature and number of cases, judge panels specialized in maritime and fluvial law cases.

**Article 37** - (1) In the fields provided in Article 36 paragraph (3), specialized tribunals may be set up.

(2) Specialized tribunals are courts without legal personality, which may operate at county level and at the level of the City of Bucharest and are usually seated in the city-residence of the county.

(3) Specialized tribunals take over cases that are of the competence of tribunals in the fields in which they operate.

(4) Cases pending on the date when specialized tribunals start to operate pursuant to Art. 142 para. (1) shall be sent to them through administrative ways, *ex officio*, for settlement. Specialized tribunals have jurisdiction also on cases that are sent for reexamination.

**Article 38** – (1) The courts of first instance are courts with no legal capacity, established in counties and in the sectors of the city of Bucharest, according to the annex to the present law.

(2) The territorial jurisdictions of first instance courts in each county shall be established by Government decision, on the proposal of the Minister of Justice, with the endorsement of the Superior Council of Magistracy.

**Article 39** – (1) According to the nature and amount of cases, specialized sections or panels may be set up in first instance courts.

(2) In first instance courts, specialized sections or panels for minors and family shall be set up.

**Article 40** – (1) Specialized panels and sections for minors and family, as well as specialized tribunals for minors and family shall try both offences committed by minors, as well as offences committed against minors.

(2) When there are several defendants in one case, some being minors and others adults, and severance is impossible, the competence belongs to the specialized tribunal for minors and family.

(3) The provisions of the Criminal Procedure Code shall apply accordingly

#### **Article 41**

(1) Upon proposal by the Managing Board of each court, sections of courts of appeals and of courts under their territorial jurisdiction are created based on a decision of the Superior Council of Magistracy. Specialized judge panels of the sections of courts of appeals and of courts under their territorial jurisdiction are created by court presidents, upon proposal by the Managing Board of each court.

(2) The composition of specialized panels and sections shall be established by the leading board of the court, according to the workload and taking account of the judges' specialization.

(3) Exceptionally, if a panel cannot be set up in a certain section, the leading board of the court may ordain participation of judges from other sections.

**Article 42** – According to the workload, to the nature and complexity of cases brought to justice, permanent secondary seats can be established for courts of appeal, tribunals and first instance courts, in other localities in the county or in the city of Bucharest.

#### **Article 42<sup>1</sup>**

In maritime and fluvial law cases, the territorial jurisdictions of Constanța and Galați Tribunals are as follows:

a) Constanța Tribunal: Constanța and Tulcea Counties, the territorial sea and the Danube River up to marine mile 64, including;

b) Galați Tribunal: the other counties, the Danube River from marine mile 64 upstream up to kilometer 1,075.

### *Section 2*

#### **The leadership of law courts**

**Article 43** – (1) Every law court shall be run by a president who exercises management duties in view of effective organisation of the court's activity.

(2) Presidents of courts of appeal and tribunals shall exercise also tasks of co-ordination and control of the administration of the court where they exercise their office, as well as of the courts in their jurisdiction.

(3) Presidents of first instance courts and specialised courts shall also exercise attributions of court administration.

#### **Article 44**

(1) Court of appeal presidents are secondary credit chief accountants, and tribunal



presidents are tertiary credit chief accountants.

(2) For military courts, the Directorate for Military Courts of the Defense Ministry is a tertiary budget manager.

**Article 45** – (1) According to the workload and the complexity of the cases, in courts of appeal, tribunals and specialised tribunals, the president can be assisted by 1-2 vice-presidents and in first instance courts, the president can be assisted by one vice-president.

(2) At Bucharest court of appeal and Bucharest tribunal, the president can be assisted by 1-3 vice-presidents.

**Article 46** – (1) Law court presidents and vice-presidents take measures for the organisation and proper functioning of the courts they have charge of and, as the case may be, of the courts in their jurisdiction, ensure and verify the observance of the law and regulations by the judges and the auxiliary specialised personnel.

(2) Verifications performed personally by presidents or deputy-presidents or those performed through judges expressly designated, must observe the principles of the independence of judges and of their subjection only to the law, as well as the authority of *res judicata*.

(3) The duties, provided by the law, of the court's presidents or vice-presidents cannot be transferred to the courts Leading Boards.

**Article 47** – The presidents of courts shall designate the judges who are to perform, according to the law, other attributions than the judicial ones.

**Article 48** –The sections of law courts shall be headed by a section president.

**Article 49** – (1) In every law court there shall operate a leading board, which shall decide upon the general issues relating to running the court and fulfil the tasks provided in Article 38.

(2) Leading boards are composed of an odd number of members as follows:

a) in courts of appeal and tribunals: the president and 6 judges, elected for 3 years by the general assembly of judges;

b) in specialised tribunals and first instance courts: the president and 2-4 judges, elected for 3 years by the general assembly of judges;

(2<sup>1</sup>) In case of the number of judges from the first instance courts or the specialised tribunals is smaller than 3, the prerogatives of the leading board shall be exercised by the president.

(3) Decisions of the leading board shall be adopted with the vote of the majority of its members.

(4) Section presidents may also participate in the sessions of the leading boards.

(5) In courts of appeal and tribunals, when the leading board is debating upon economic-financial or administrative issues, its sessions shall also be attended by the court's economic manager, who shall be entitled to a consultative vote.

(6) Depending on the issues on debate, to the sessions of the leading boards of courts of appeal, of tribunals and of specialised tribunals may also be invited judges from other courts, who shall not vote.

(7) Elected members of the leading boards may be revoked by the general assemblies in case of inappropriate exercise of the duties provided in the law.

**Article 50** – (1) In law courts, general assemblies of judges shall be organised annually or at any time necessary.

(2) General assemblies of judges shall be convoked, as follows:

- a) the general assembly of the court of appeal and the general assembly of judges within its jurisdiction - by the court of appeal president;
  - b) the general assembly of the tribunal and the general assembly of judges within its jurisdiction - by the tribunal president;
  - c) the general assembly of the specialised tribunal – by the president of that court;
  - d) the general assembly of judges – by the first instance court president;
- (3) General assemblies of judges shall be convoked also at the request of one third of their members.
- (4) General assemblies of judges may be convoked also by the Plenum of the Superior Council of Magistracy or by the leading board of the court.

**Article 51** – General assemblies of judges provided in Article 50 paragraph (1), shall have, the following attributions:

- a) to debate the annual court activity;
- b) to elect , according to the law, the members of the Superior Council of the Magistracy;
- c) to debate about law issues;
- d) to analyse draft normative acts, upon request from the minister of justice or the Superior Council of Magistracy;
- e) to express points of view upon request from the Superior Council of Magistracy;
- f) electing and revoking members of the leading boards;
- g) initiating the revocation procedure regarding the members of the Superior Council of Magistracy, according to Law No.317/2004 on the Superior Council of Magistracy”.
- h) to carry out other attributions provided by law or regulations.

### **Section 3** **The panels of judges**

**Article 52** – (1) The leading boards shall establish the composition of panels at the beginning of every year, with a view to ensuring the continuity of panels. Panel members may be changed only in exceptional cases, based on the objective criteria set forth in the Interior Regulation of law courts.

(2) A judgement panel shall be chaired, by rotation, by one of its members.

**Article 53** – (1) The assignment of cases to panels of judges shall be carried out randomly, in computerised system.

(2) The cases assigned to a panel cannot be transferred to another panel, except under the conditions laid down in the law.

**Article 54** - (1) Cases that the law ascribes to the first instance competence of first instance courts, tribunals and courts of appeal shall be tried by panels of one judge, except for cases relating to labour conflicts and social insurance.

(1<sup>1</sup>) Challenges against judgments rendered in the criminal area by judges of rights and liberties and by preliminary chamber judges of district courts and tribunals are decided upon by a panel composed of one judge.

(1<sup>2</sup>) Challenges against judgments rendered during the judicial proceedings in the criminal area in first instance by district courts and tribunals are decided upon by a panel composed of one judge.

(2) Appeals on points of fact shall be tried by panels of 2 judges, and appeals on points of law by panels of 3 judges, unless the law provides otherwise.

(3) ~~Repealed For the panels of 2 judges, if they fail to reach an agreement upon the decision to be handed down, the case shall be tried again in a divergence panel, according to the law.~~

(4) ~~Repealed The divergence panel shall be created by including the court president or deputy president, the section president or the judge in the permanence time table, into the panel.~~

#### **Article 55**

(1) The judge panel for the settlement of employment and social insurance disputes in first instance is composed of one judge and 2 judicial assistants. The provisions of Art. 11 and Art. 52 para. (1) shall apply accordingly.

(2) Judiciary assistants shall take part in the deliberations with a consultative vote and shall sign the decisions pronounced. Their opinion shall be recorded in the decision and the separate opinion shall be reasoned.

(3) ~~Repealed In case the judges who compose the panel do not reach an agreement on the decision to be delivered, the lawsuit shall be tried again in a divergence panel, the stipulations of Article 54 paragraphs (3) and (4) being applicable.~~

### **Chapter III Military Courts**

**Article 56 -** (1) Military courts are:

a) Military tribunals;

~~b) The Military Territorial Tribunal of Bucharest;~~

b) The Military Court of Appeal in Bucharest.

(2) The jurisdictions of military courts are provided in Annex No.2 which is part of this Law.

(3) Each military court shall have the statute of a military unit, with its own registration number.

**Article 57 -** (1) Military courts shall try at their headquarters. For serious reasons, the court may ordain that the trial should take place somewhere else.

(2) Military courts may try also on the territory of other States, Romanian troops who are members of a multinational force, provided that, according to an international convention, the receiving State allows the exercise of Romanian jurisdiction.

**Article 58 –** (1) In court sessions, military judges and prosecutors shall be obliged to wear the military uniform.

(2) When the defendant is an active member of the military, the president of the judgement panel, as well as the prosecutor who partakes in the trial must be part of at least the same category of ranks.

(3) When the rank of a prosecutor is not of the same category as the rank of the defendant, he/she shall be assisted by other prosecutor having a rank of the corresponding category appointed by the prosecutors' office with which the case is registered.

**Article 59 -** (1) In the cities of Bucharest, Cluj-Napoca, Iași and Timișoara, military tribunals operate.

(2) Military tribunals shall try cases and claims that are falling under their competence, according to the law.

(3) A military tribunal shall be run by a president assisted by one deputy- president. Articles 49-51 shall apply accordingly, the leading boards being composed of the president and two judges.

**Article 60 – Repealed** ~~(1) In the City of Bucharest there operates the Military Territorial Tribunal of Bucharest.~~

~~(2) The Military Territorial Tribunal of Bucharest shall be run by a president aided by one deputy-president. Articles 49-51 shall apply accordingly and the leading board shall be composed of the president and two judges.~~

~~(3) The president of the Military Territorial Tribunal of Bucharest shall be tertiary credit chief accountant.~~

**Article 61 –** (1) The Military Court of Appeal shall operate in the City of Bucharest, as a single court, with legal personality, run by a president assisted by one deputy-president. Articles 49-51 shall apply accordingly and the leading board shall be composed of the president and two judges.

~~(2) Repealed The president of the Military Court of Appeal of Bucharest shall be secondary credit chief accountant.~~

### **TITLE III** **The Public Ministry**

#### **Chapter I Attributions of the Public Ministry**

**Article 62 -** (1) The Public Ministry shall exercise its prerogatives according to the law and shall be run by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice. (2) Prosecutors shall carry out their activity according to the principles of legality, impartiality and hierarchic control, under the authority of the minister of justice.

(3) Prosecutors exercise their office according to the law, observe and protect human dignity and defend the rights of persons.

(4) Prosecutors' Offices are independent in their relation with law courts, as well as with other public authorities.

**Article 63 –** The Public Ministry shall exercise through prosecutors the following attributions:

- a) to carry out criminal proceedings in the cases and under conditions provided by the law and take part , according to the law, in the resolution of conflicts by alternative methods;
- b) to conduct and control the activity of the judicial police, conduct and control the activity of other bodies of criminal investigation;
- c) to call upon law courts for judging criminal cases , according to the law;
- d) to take civil action, in the cases provided by the law;
- e) participates, according to the law, in court sessions;
- f) to file appeals against court decisions, according to the conditions provided by the law;
- g) to defend the rights and legitimate interests of under age, of persons placed under interdiction, of missing persons and of other persons, according to the law;
- h) to act to prevent and fight criminality, under the co-ordination of the minister of justice, for the consistently accomplishment of the state criminal policy;

- i) to study the causes that generate and favour criminality, elaborate and present to the minister of justice proposals for eliminating them, as well as for improving legislation in the field;
- j) verification of the observance of the law in the places of preventive detention;
- k) to exercise any other attributions provided by the law.

**Article 64** – (1) The orders of the hierarchically superior prosecutor, given in writing and in accordance with the law shall be binding.

(2) In the solutions that they ordain, prosecutors are independent, according to the law. Prosecutors may object with the Superior Council of Magistracy, within the proceedings for checking the conduct of judges and prosecutors, against any interventions from the hierarchically superior prosecutors, occurring either in the criminal prosecution or in the adoption of a solution.

(3) Solutions adopted by the prosecutor may be invalidated in a reasoned manner by the hierarchically superior prosecutor, when they are deemed as illegal.

(4) a prosecutor assigned work may be transferred to another prosecutor only in the following situations:

- a) in case of suspension or of cessation of a prosecutor's capacity, according to the law;
- b) in his or her absence if there are objective reasons to justify the emergency and that prevent his recalling.
- c) in case of leaving aside a work for more then 30 days;

(5) Prosecutors may object with the Superior Council of Magistracy, within the proceedings for checking the conduct of judges and prosecutors, against measures, from paragraph (4), ordained by the hierarchically superior prosecutor.

**Article 65** – (1) Prosecutors of each Prosecutors' Office are subordinated to the head of that Prosecutors' Office.

(2) The head of a Prosecutors' Office is subordinated to the head of the hierarchically superior Prosecutors' Office from the same jurisdiction.

(3) The control exerted by the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice, by the Chief Prosecutor of the National Anticorruption Directorate, by the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism Offences or by the General Prosecutor of prosecutors' offices under courts of appeals over the prosecutors under their supervision can be direct or through prosecutors appointed for this purpose.

#### **Article 66**

(1) The Public Ministry is authorized to hold and use adequate means to obtain, check, process store and discover information referring to offences assigned under the jurisdiction of prosecutors' offices under the law.

(2) Judicial police bodies perform their criminal investigation activities directly, under the coordination and supervision of the prosecutor, and have an obligation to implement the orders issued by him/her.

(3) Services and bodies specialized in collecting, processing and archiving information have an obligation to make available forthwith to the relevant prosecutors' office, at its premises, all unprocessed data and information held in relation to the perpetration of crimes.

(4) The non-compliance with the obligations specified at para. (2) and (3) triggers the legal liability according to the law.

#### **Article 66<sup>1</sup>**

(1) For the performance of activities set forth under Art. 142 para. (1) of the Criminal Procedure Code, judicial police officers or agents may work in the Public Ministry, based on secondment, under the direct coordination and control of prosecutors, within the limits of the positions approved under the law.

(2) The secondment of judicial police officers and agents is ordered by the Minister of Home Affairs, upon request by the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice, for a time period of maximum 3 years, with a possibility to extend such period once in 3 years.

(3) The judicial police officers and agents specified at para. (1) are appointed by an order of the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice.

(4) The secondment termination of judicial police officers and agents can be ordered prior to the expiry of the period set forth under para. (2) by a reasoned order of the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice.

(5) During their secondment, judicial police officers and agents may not receive any tasks from their hierarchically higher bodies.

(6) The orders of prosecutors are mandatory for police officers and agents. The works prepared by them based on a written order of the prosecutor are prepared on the latter's behalf.

(7) The judicial police officers and agents set forth under para. (1) have the rights and obligations provided for by the law for police officers and agents, except for the situations specified by this law, and benefit accordingly from the rights listed under Art. 11 and 23 of Government Emergency Ordinance no. 27/2006 on the Remuneration and other Rights of Judges, Prosecutors and other Categories of Personnel in the Justice System, as approved with amendments by Law no. 45/2007, as subsequently amended.

(8) Judicial police officers and agents seconded under the terms of para. (1) shall keep the salaries they had on the secondment date.

(9) The duties and prerogatives set forth by law for the Minister of Home Affairs in respect of the rights and liabilities incumbent on seconded judicial police officers and agents shall be enforced by the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice. The duties and prerogatives related to the award of professional ranks to seconded judicial police officers and agents shall be enforced by the Minister of Home Affairs, upon proposal by the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice.

(10) The provisions of Art. 6 of Law no. 364/2004 on the Organization and Operation of Judicial Police, as republished and subsequently amended, shall apply accordingly, depending on the activity of judicial police officers and agents.

(11) To judicial police officers and agents seconded in the Directorate for the Investigation of Organized Crime and Terrorism Offences and the National Anticorruption Directorate, the provisions contained in the special laws applicable to them shall apply.

**Article 67** – (1) Prosecutors take part in trials according to the law and have an active role in finding the truth.

(2) Prosecutors shall be free to utter in court the conclusions that they deem as well-founded, according to the law, while taking account of the evidence provided in the case. Prosecutors may object with the Superior Council of Magistracy against any interventions by the hierarchically superior prosecutors, which are aimed at influencing the conclusions in any manner.

(3) In criminal proceedings, the prosecutor who conducted or supervised the criminal prosecution or other prosecutor appointed by the head of the prosecutors' office shall participate in the court hearing.

**Article 68** – Prosecutors take according to the law, the means of appeal against court decisions that he/her deem unfounded and unlawful.

**Article 69** – (1) The Minister of Justice, whenever he/she deems necessary, at his/her own initiative or upon request by the Superior Council of Magistracy, exerts control over prosecutors through prosecutors appointed for this purpose by the General Prosecutor of the

Prosecutors' Office under the High Court of Cassation and Justice or, as applicable, by the Chief Prosecutor of the National Anticorruption Directorate, by the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism Offences or by the Minister of Justice.

(2) Control shall consist of checking the manner in which prosecutors fulfil their working obligations and in which the working relations carry on between them and the litigants and the other persons involved in the work of prosecutors' offices. Control may not concern measures ordained by prosecutors in the course of criminal prosecution and the decisions that they adopt.

(3) The Minister of Justice may request that the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, as the case may be, the General Prosecutor of the National Anti-Corruption Prosecutor's Office inform him or her of the activity of prosecutors' offices and he or she may provide written advice on the measures to be taken so as to efficiently prevent and fight criminality.

## **Chapter II**

### **The organisation of the Public Ministry**

#### *Section 1*

#### **The Prosecutor's Office attached to the High Court of Cassation and Justice**

**Article 70** – (1) The Prosecutors' Office attached to the High Court of Cassation and Justice coordinates the activity of the subordinated Prosecutors' Offices, carries out the attributions provided by the law, enjoys legal personality and manages the budget of the Public Ministry.

(2) The Prosecutors' Office attached to the High Court of Cassation and Justice shall be run by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, assisted by one prime-deputy and one deputy.

(3) In his or her activity, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice shall be assisted by 3 advisers.

(4) The General Prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice is main chief credit accountant.

**Article 71** – The general prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice represents the Public Ministry in relations with the other public authorities and with any natural or legal persons in the country or abroad.

**Article 72** - The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice shall, either directly or through prosecutors expressly designated, exercise control over all prosecutors' offices.

**Article 73** – (1) The General Prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice shall take part in the sessions of the High Court of Cassation and Justice in Joint Sections, as well as in any of its panels, when he/she deems necessary.

(2) If he/she cannot attend, the general prosecutor shall delegate the prime- deputy or the deputy or another prosecutor to take part, in his/her place, in the sessions of the High Court of Cassation and Justice, provided by paragraph (1).

**Article 74** – The general prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice shall designate, from among the prosecutors of this prosecutor's office the prosecutors to partake in sessions of the Constitutional Court, in the cases provided by the law.

**Article 75** The Prosecutors' Office under the High Court of Cassation and Justice has in its structure sections headed by chief prosecutors, who can be assisted by deputies. Services and offices can operate in the sections, which are headed by chief prosecutors.

**Article 76** – In performing his/her function, the general prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice shall issue orders of an internal nature.

**Article 77** – (1) Within the Prosecutor's Office attached to the High Court of Cassation and Justice, operates the leading board, which shall decide on general matters regarding the leadership of Public Ministry.

(2) The leading board of the Prosecutors' Office attached to the High Court of Cassation and Justice shall be composed of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, his or her prime-deputy and 5 prosecutors elected by the general assembly of prosecutors.

(3) Article 49 paragraphs (3) - (7) shall apply accordingly.

**Article 78** – (1) The general assembly of prosecutors in the Prosecutor's Office attached to the High Court of Cassation and Justice shall be convoked by the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, annually or whenever necessary.

(2) Article 51 shall apply accordingly.

**Article 79** – The Prosecutors' Office attached to the High Court of Cassation and Justice shall elaborate an annual report on its own activity and present it to the Superior Council of Magistracy and to the Minister of Justice, no later than February, the following year. The Minister of Justice shall present to Parliament his or her conclusions on the activity report of the Prosecutors' Office attached to the High Court of Cassation and Justice

SECȚIUNEA 1<sup>1</sup>: The Directorate for the Investigation of Organized Crime and Terrorism Offences

Article 79<sup>1</sup>

(1) The Directorate for the Investigation of Organized Crime and Terrorism Offences operates within the Prosecutors' Office under the High Court of Cassation and Justice, as a structure specialized in fighting organized crime and terrorism.

(2) The Directorate for the Investigation of Organized Crime and Terrorism Offences is staffed with prosecutors appointed by an order of the Chief Prosecutor of this directorate, based on an endorsement from the Superior Council of Magistracy, within the limits of positions specified in the staff establishment approved under the law.

(3) In order to be appointed with the Directorate for the Investigation of Organized Crime and Terrorism Offences, prosecutors must have an impeccable professional qualification, moral conduct, a seniority of at least 6 in a judge or prosecutor position, and must have been declared admitted following an interview organized by a commission created for this purpose.

(4) Any prosecutor meeting the requirements listed under para. (3) may participate in the interview.

(5) Such interview consists of a verification of professional knowledge, of the capacity to make decisions and to take responsibility, of the resistance to stress, and of other specific qualities.

(6) In assessing the applicants, one shall consider also their activity as prosecutors, their proficiency in speaking a foreign language and their PC operation proficiency.



(7) The commission specified at para. (3) is appointed by an order of the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism Offences and comprises 3 prosecutors of the Directorate. Specialists in psychology, human resources and other areas can be also part of the commission.

(8) On a yearly basis, the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism Offences upraises the results obtained by prosecutors of the Directorate for the Investigation of Organized Crime and Terrorism Offences.

(9) Prosecutors appointed with the Directorate for the Investigation of Organized Crime and Terrorism Offences may be revoked by an order of the Chief Prosecutor of this directorate, based on an endorsement from the Superior Council of Magistracy, in case of improper performance of the duties and prerogatives specific to their positions or in case of application of a disciplinary sanction.

(10) On the date of termination of their activity with the Directorate for the Investigation of Organized Crime and Terrorism Offences, prosecutors return to the prosecutors' office to which they belong or to other prosecutors' office where they have a right to work under the law.

(11) Starting from the date when they return to the prosecutors' office to which they belong or to other prosecutors' office where they have a right to work under the law, prosecutors who worked with the Directorate for the Investigation of Organized Crime and Terrorism Offences shall reacquire the professional executive rank and the salary corresponding to it to which they were entitled before or they obtained as a result of promotion, under the terms of the law, during the time period while they worked with this directorate.

(12) The duties and prerogatives, jurisdiction, structure, organization and operation of the Directorate for the Investigation of Organized Crime and Terrorism Offences are established by a special law.

(13) The provisions of Art. 48 para. (10) and (11) of Law no. 303/2004 on the Statute of Judges and Prosecutors, as republished and subsequently amended, shall apply accordingly.

Article 79<sup>2</sup>

(1) A Managing Board operates in the Directorate for the Investigation of Organized Crime and Terrorism Offences, which decides on the general management aspects of this directorate.

(2) The Managing Board of the Directorate for the Investigation of Organized Crime and Terrorism Offences comprises the Chief Prosecutor, one of his/her deputies and 5 prosecutors elected in the general meeting of prosecutors.

(3) The provisions of Art. 49 para. (3) - (7) shall apply accordingly.

Art. 79<sup>3</sup>

(1) The general meeting of prosecutors of the Directorate for the Investigation of Organized Crime and Terrorism Offences is convened by the Chief Prosecutor of this directorate annually or whenever this is necessary.

(2) The provisions of Art. 51 shall apply accordingly.

## *Section 2*

### **The National Anticorruption Prosecutor's Department**

**Article 80** - (1) The National Anti-Corruption Prosecutor's Office specialises in fighting offences of corruption, according to the law, exercises its duties throughout Romanian territory, and operates attached to the High Court of Cassation and Justice.

(2) The National Anticorruption Prosecutor's Office shall be organized as an autonomous structure within the Public Ministry and shall be coordinated by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(3) The National Anticorruption Prosecutor's Office shall have legal personality and shall be seated in the city of Bucharest.

**Article 81** - (1) The National Anti-Corruption Prosecutor's Department shall work according to the principles of legality, of impartialness and of hierarchical control.

(2) The National Anticorruption Prosecutor's Office is independent in relations with the law courts and the prosecutors' offices attached to these, as well as in relations with the other public authorities, exercising its attributions only under the law and to ensuring its observance.

**Article 82** - (1) The National Anti-Corruption Prosecutor's Department shall be run by a General Prosecutor, assimilated to the prime-deputy to the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, assisted by two deputies, assimilated to the deputy to the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(2) In his activity, the General Prosecutor of the National Anti-Corruption Prosecutor's Office shall be assisted by two advisers assimilated to the advisers to the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(3) The general prosecutor of the National Anticorruption Prosecutor's Office shall be secondary credit chief accountant.

(4) Financing of current and capital expenses of the National Anticorruption Prosecutor's Office shall be provided from the State budget.

**Article 83** – (1) Within the National Anticorruption Prosecutor's Office operates the leading board that shall decide on general matters regarding leading this prosecutor's office.

(2) The leading board of the National Anti-Corruption Prosecutor's Office shall be composed of the General Prosecutor, his or her deputies and 5 prosecutors elected by the general assembly of prosecutors.

(3) Article 49 paragraphs (3)-(7) shall apply accordingly.

**Article 84** – (1) The general assembly of prosecutors in the National Anticorruption Prosecutor's Department shall be summoned by the General Prosecutor of this prosecutor's office, annually or whenever necessary.

(2) Article 51 shall apply accordingly.

**Article 85** – In performing the function, the general prosecutor of the National Anticorruption Prosecutor's Office shall issue internal orders.

**Article 86** – (1) Within the National Anticorruption Prosecutor's Office, territorial services, services, offices and other activity units may be set up by order of the general prosecutor of this prosecutor's office.

(2) The premises of the territorial services and their jurisdictions shall be established by the General Prosecutor of the National Anti-corruption Prosecutors' Office, usually, in the locations of the premises of the prosecutors' offices attached to the courts of appeal and in relation to the latter's' jurisdiction.

**Article 87** - (1) The National Anti-Corruption Prosecutor's Office shall be provided with prosecutors appointed by order of the General Prosecutor of the National Anti-Corruption Prosecutor's Office, with the endorsement of the Superior Council of Magistracy, within the limits of the offices provided in the personnel establishment approved according to the law.

(2) In order to be appointed with the National Anti-Corruption Prosecutor's Office, prosecutors must enjoy good professional training, impeccable moral conduct, at least 6 years' length of service as prosecutors or judges and they must have passed the interview held by a

board set up to this end.

(3) Any prosecutor who meets the requirements in paragraph (2) may participate in the interview.

(4) The interview shall consist of verifying the professional training, the ability to make decisions and to assume one's own responsibility, the resistance to stress, as well as other specific qualities.

(5) When evaluating the candidates, one shall take account also of the activity performed by the prosecutors, of the knowledge of a foreign language and of the PC operation knowledge.

(6) The board in paragraph (2) shall be appointed by order of the General Prosecutor of the National Anti-corruption Prosecutor's Office and shall be composed of 3 prosecutors from the National Anti-Corruption Prosecutor's Office. The board may include also specialists in psychology, human resources and other fields.

(7) Every year, the General Prosecutor of the National Anti-corruption Prosecutor's Office shall evaluate the results obtained by the prosecutors of the National Anti-Corruption Prosecutor's Office.

(8) The prosecutors appointed with the National Anti-Corruption Prosecutor's Office may be revoked by order of the General Prosecutor of the National Anti-corruption Prosecutor's Office, with the endorsement of the Superior Council of Magistracy, in case of inappropriate exercise of the duties that are specific of their office or in case of application of a disciplinary sanction.

(9) At the date when he completes his activity with the National Anti- Corruption Prosecutor's Office, a prosecutor shall return to the prosecutor's office where he came from or to another prosecutor's office where he is entitled to work, according to the law.

(9<sup>1</sup>) Starting from the date when they return to the prosecutors' office to which they belong or to other prosecutors' office where they have a right to work under the law, prosecutors who worked with the National Anticorruption Directorate shall reacquire the professional executive rank and the salary corresponding to it to which they were entitled before or they obtained as a result of promotion, under the terms of the law, during the time period while they worked with this directorate.

(10) The duties, competence, structure, organisation and operation of the National Anti-corruption Prosecutor's Office shall be set forth in a special law.

(11) Article 48 paragraphs (10) and (11) of Law No.303/2004 on the statute of judges and prosecutors, as subsequently amended and supplemented, shall apply accordingly.

**Article 88** – The National Anti-Corruption Prosecutor's Office shall elaborate an annual report on its own activity and present it to the Superior Council of Magistracy and to the Minister of Justice, no later than February, the following year. The Minister of Justice shall present to Parliament his or her conclusions on the activity report of the National Anti-Corruption Prosecutor's Office.

### ***Section 3***

#### **Prosecutors' Offices attached to courts of appeal, tribunals, juvenile and family tribunals and first instance courts**

**Article 89** – (1) Attached to each court of appeal, tribunal, juvenile and family tribunal, a prosecutor's office shall operate.

(2) The Prosecutors' Offices have the premises in the same localities where the courts they are attached to operate and have the same jurisdiction as those courts.

(3) The Prosecutors' Offices attached to the courts of appeal and those attached to

tribunals have legal personality. The prosecutors' offices attached to juvenile and family tribunals and prosecutor' offices attached to first instance courts have no legal capacity.

**Article 90** – (1) The Prosecutors' Offices attached to the courts of appeal and tribunals shall have in their structure sections, where services and bureaus can operate. The prosecutors' offices attached to the courts of appeal shall also include each a juvenile and family section.

(2) ~~Repealed-According to the nature and number of cases, maritime and fluvial sections can operate in prosecutors' offices attached to first instance courts.~~

(3) The bureaus, services or other specialised units within the Prosecutors' Offices shall be established by the general prosecutor of the Prosecutors' Office attached to the High Court of Cassation and Justice, upon endorsement (*aviz*) of the minister of justice.

**Article 91** – In the locality where the secondary seats of tribunals and first instance courts operate, secondary premises of prosecutors' offices shall be established, with permanent activity and the same jurisdiction as the secondary seats of courts they are attached to.

**Article 92** – (1) The Prosecutors' Offices attached to the courts of appeal are run by general prosecutors.

(2) The Prosecutors' Offices attached to tribunals, juvenile and family tribunals and first instance courts are run by prime-prosecutors.

(3) The general prosecutors of prosecutors' offices attached to courts of appeal and prime-prosecutors from prosecutors' offices attached to tribunals shall exercise also attributions of co-ordination and control of the administration of the prosecutor's office where they operate, as well as of the prosecutors' offices in their jurisdiction.

(4) The prime-prosecutors from prosecutors' offices attached juvenile and family tribunals and prime-prosecutors from prosecutors' offices attached to first instance courts shall exercise also attributions of co-ordination of the prosecutor's office.

(5) The provisions of article 46 paragraph (3) shall apply accordingly.

**Article 93** – The general prosecutors of prosecutors' offices attached to courts of appeal shall be secondary credit chief accountant and the prime- prosecutors attached to tribunals shall be tertiary credit chief accountant.

**Article 94** – (1) According to the workload, in prosecutors' offices attached to courts of appeal and tribunals, the general prosecutor or, as the case may be, the prime-prosecutor can be assisted by 1-2 deputies and in prosecutors' offices attached to juvenile and family tribunals and first instance courts, prime- prosecutors can be assisted by one deputy.

(2) At the prosecutors' offices attached to the Bucharest Court of Appeal and at the prosecutors' offices attached to the Tribunal of Bucharest, the general prosecutor or the case being, the prime-prosecutors can be assisted by 1-3 deputies.

**Article 95** – (1) The sections, services and bureaus in prosecutors' offices attached to courts are run by chief prosecutors.

(2) The person in charge of each prosecutor's office shall assign prosecutors into sections, services and bureaus, according to their training, specialisation and aptitudes.

(3) The person in charge of each prosecutor's office shall assign cases to prosecutors, taking into account their specialisation.

**Article 96** – (1) Leading boards operate within prosecutors' offices, endorsing general issues regarding the leading of prosecutors' offices.

(2) The leading boards of prosecutors' offices attached to courts of appeal, tribunals, juvenile and family tribunals and first instance courts shall be made up of prosecutors who hold offices of the level of those provided by Article 49 paragraph

(2) for the leading boards of courts.

(3) Article 49 paragraphs (2)-(7) shall apply accordingly.

**Article 97**– Article 50 and Article 51 shall apply accordingly also for the organisation and proceedings of the general assemblies of prosecutors.

#### **Section 4**

#### **Organisation of military prosecutors' offices**

**Article 98** - (1) A military prosecutors' office operates under each military court. The Military Prosecutors' Office under Bucharest Military Court of Appeals operates under this court, and prosecutors' offices under military tribunals operate under such tribunals.

(2) The jurisdictions of military prosecutors' offices are provided in Annex No.2 that is part of this Law.

(3) The military prosecutors' offices in paragraph (1) shall each have the statute of a military unit, and its own registration number.

**Article 99** - (1) Military prosecutors' offices are run by a military prime- prosecutor assisted by a deputy to the military prime-prosecutor.

(2) The Bucharest General Military Prosecutors' Office shall be run by a military general prosecutor, assisted by a deputy to the military general prosecutor.

**Article 100** – (1) Military prosecutors' offices shall exercise, through the military prosecutors, the duties in Article 63, which shall apply accordingly.

(2) Military prosecutors' offices shall perform criminal prosecution in cases that regard criminal acts committed by members of the Romanian armed forces who are assigned to other States, as part of multinational forces, provided that, according to an international convention, the receiving State allows the exercise of Romanian jurisdiction. Military prosecutors shall partake in court sessions that take place according to Article 57.

(3) Military prosecutors' offices shall have the judiciary police at their disposal and other bodies of criminal investigation at their service, with regard to which they shall exercise the prerogatives in Article 63 b).

(4) Articles 96 and 97 shall apply accordingly.

**Article 101** - (1) If the defendant is an active member of the armed forces, the military prosecutor performing the criminal prosecution must belong to at least the same category of ranks.

(2) When the rank of a prosecutor is not of the same category as the rank of the defendant, he/she shall be assisted by other prosecutor having a rank of the corresponding category appointed by the prosecutors' office with which the case is registered.

**Article 102** – (1) In the Prosecutors' Office attached to the High Court of Cassation and Justice in the National Anti-Corruption Prosecutor's Office there shall operate sections or services of combating offences committed by members of the military, each of such sections or services having the statute of a military unit and its own registration number.

(2) For the prevention and fight against crime, and for establishing the causes that generate or favor crime among militaries and civil employees of militarized structures, the military prosecutors' offices and the sections specified by para. (1) shall organize and perform, according

to their jurisdiction, joint activities of military prosecutors with bodies of the Ministry of National Defense, the Ministry of Home Affairs, and of other military structures, based on protocols.

#### **TITLE IV**

### **The organisation and the functioning of the National Institute of Magistracy**

**Article 103** - (1) The National Institute of Magistracy is a public institution with legal personality, placed under the coordination of the Superior Council of Magistracy, and which handles the initial training of judges and prosecutors, the in- service training of active judges and prosecutors, as well as the training of trainers, according to the law.

(2) The National Institute of Magistracy shall not be part of the national education system and it shall be not subject to the legal provisions in force regarding the accreditation of superior education institutions and the recognition of diplomas.

(3) The premises of the National Institute of Magistracy shall be located in the City of Bucharest.

**Article 104** - (1) The National Institute of Magistracy is run by a scientific council composed of 13 members: one judge from the High Court of Cassation and Justice, one prosecutor from the Prosecutors' Office attached to the High Court of Cassation and Justice, one judge from the Court of Appeal of Bucharest, one prosecutor from the Prosecutors' Office attached to the Court of Appeal of Bucharest, all designated by the Superior Council of Magistracy, 3 university professors, recommended by the Faculty of Law of the University of Bucharest, by the Faculty of Law of the University "Alexandru Ioan Cuza" in Iași and by the Faculty of Law of the University "Babeş-Bolyai" in Cluj-Napoca, 3 elected representatives of the training personnel of the Institute, one representative of the auditors of justice, one representative of the legally created professional associations of judges and prosecutors, as well as the director of the National Institute of Magistracy, who is *de jure* member of the council and chairs it.

(2) The director of the National Institute of Magistracy and his/her two deputies are appointed and revoked by the Superior Council of Magistracy. The director of the National Institute of Magistracy and his/her two deputies are appointed from among the legal training personnel of the Institute, judges and prosecutors or from among the teaching staff of the legal academic education accredited under the law.

(3) The duration of the term of office for the members of the Scientific Board shall be 3 years, and it may be renewed, except for the term of office of the representative of the auditors of justice, who shall be elected for one year.

(4) The capacity as member of the scientific council of the National Institute of Magistracy is incompatible to the capacity as member of a political party.

**Article 105** – The Scientific Board of the National Institute of Magistracy shall propose the draft budget and decide on the issues regarding the organisation and operation of the Institute, upon proposal of the director of this institution.

**Article 106** – (1) The National Institute of Magistracy shall be financed from the state budget, through the budget of the Superior Council of Magistracy, according to the law.

(2) The director of the National Institute of Magistracy shall be secondary credit chief accountant.

**Article 107** – (1) The maximum number of positions for the National Institute of Magistracy shall be established by Government decision.

(2) The organisational structure and the lists of functions and personnel of the National Institute of Magistracy shall be approved by the Superior Council of Magistracy.

**Article 108** – (1) The training personnel of the National Institute of Magistracy shall be provided usually from among active judges and prosecutors who may be assigned according to the present law, with their consent, to the Institute, with the endorsement of the Institute’s Scientific Council.

(2) The National Institute of Magistracy may also use, according to the law, professors at law from the institutions legally accredited, other Romanian and foreign specialists, as well as the legally specialised personnel provided in Article 87 paragraph (1) of Law No.303/2004 as subsequently amended and supplemented, in view of ensuring the process of professional training.

(3) The training personnel of the National Institute of Magistracy shall be remunerated according to the number of hours of seminar or course held, to the gross monthly remuneration for the office of judge with the High Court of Cassation and Justice and to the didactical norm set according to Article 80 paragraph (2) of Law No.128/1997 on the Statute of Didactic Personnel.

**Article 109** - A decision of the Government may set up, under the subordination of the Ministry of Justice and of the Public Ministry, regional in- service training centres for clerks and other categories of specialised personnel.

## **TITLE V**

### **Judiciary assistants**

**Article 110** – Judiciary assistants shall be appointed by the minister of justice, upon proposal of the Economic and Social Council, for a period of 5 years, from among the persons having at least 5 years’ standing in juridical offices, who meet each and every one of the following conditions:

- a) they are Romanian citizens, they live in Romania and have full capacity of exercise;
- b) they are Bachelors in law and have appropriate theoretical training;
- c) they have no criminal record, no fiscal record, and enjoy good reputation;
- d) they speak Romanian;
- e) they are able, medically and psychologically, to exercise the office.

**Article 111** – (1) Judiciary assistants shall enjoy stability for the duration of their term of office and shall be subject only to the law.

(2) The legal provisions on the obligations, interdictions and incompatibilities of judges and prosecutors shall apply also to judiciary assistants.

(3) The provisions on paid leave, free medical assistance and free transportation, which are provided in the law for judges and prosecutors, shall also apply to judiciary assistants.

(4) Judiciary assistants shall take the oath according to the legal provisions on the oath of judges and prosecutors.

(5) The total number of positions for judiciary assistant and the distribution of these positions to the courts, depending on the workload, shall be established by order of the minister of justice.

**Article 112** – Judiciary assistants shall exercise the attributions provided by Article 55 paragraph (2), as well as other attributions provided in the Regulations on the Internal Regulation of Law Courts.

**Article 113** – (1) To judiciary assistants shall apply the legal provisions on disciplinary transgressions and sanctions, as well as the grounds for removal from office provided in the law for judges and prosecutors.

(2) Disciplinary sanctions shall be applied by the minister of justice.

(3) Against the sanctions applied according to paragraph (2), an objection may be lodged within 30 days from notification of the sanction, with the administrative and fiscal contentious section of the court of appeal in the jurisdiction of which the sanctioned person performs his function. ~~The decision of the court of appeals shall be final.~~

(4) Judiciary assistants may be discharged from office also in case of reduction of the number of positions, according to the court workload.

(5) The sanctions applied to judiciary assistants and their discharge from office shall be notified to the Economic and Social Council by the minister of justice.

**Article 114** – Upon proposal of the Economic and Social Council and of the Ministry of Justice, a Government Decision shall establish the following:

a) the conditions, the procedure for selection and nomination of candidates by the Economic and Social Council, for appointment as judiciary assistants by the minister of justice;

b) the conditions for delegation, assignment and transfer of judiciary assistants.

**Article 115** – Counselling magistrates sitting at the date when this law enters into force shall *de jure* be appointed into offices as judiciary assistants and shall continue their activity within the labour and social insurance tribunals or, as the case may be, within the specialised sections or panels.

## TITLE VI

### The specialised auxiliary units in courts and prosecutors' offices

**Article 116** – (1) All law courts and all prosecutors' offices shall have in their structure the following specialised auxiliary units:

a) records office;

b) clerk's office;

c) archive;

d) information and public relations office;

e) library.

(2) Law courts and prosecutors' offices may have also other units established by the Regulations provided by Article 139 paragraph (1) and Article 140 paragraph (1).

(3) Courts of appeal, the Prosecutors' Offices attached to these courts, the High Court of Cassation and Justice, the Prosecutors' Office attached to the High Court of Cassation and Justice, the National Anticorruption Prosecutors' Office, and the Directorate for the Investigation of Organized Crime and Terrorism Offences shall include also a documentation unit and a legal IT unit. IT units may be organised also in tribunals, specialised tribunals, first instance courts and the prosecutors' offices attached to these courts.

(4) Military courts and prosecutors' offices shall include a department of classified documents.

(5) Specialists in the economic, financial, banking, customs, IT and other areas may be appointed in prosecutors' offices by an order of the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice for the clarification of technical aspects encountered in the criminal prosecution activity.

(6) The specialists listed under para. (5) have the status of public servants.

(7) A position of specialist in prosecutors' offices is incompatible to any other public



or private position, except for teaching positions in the academic education.

**Article 117** – (1) The information and public relations office shall ensure the contacts of the court or the Prosecutors' Office with the public and the media, in order to ensure transparency in the judicial activity, according to the law.

(2) This Bureau shall be run by a judge or prosecutor designated by the president of the court or, as the case may be, by the person in charge of the prosecutor's office, or by a graduate of a faculty of journalism or a specialist in communication, appointed by (competitive) examination. He shall act also as spokesperson.

**Article 118** – (1) The specialised auxiliary personnel shall be hierarchically subordinated to the heads of the courts and prosecutors' offices where they work.

(2) The court president or the general prosecutor or, as the case may be, the prime prosecutor of the prosecutor's office shall handle the assignment of personnel in specialised auxiliary units.

(3) In courts of appeal, tribunals, specialised tribunals and the prosecutors' offices attached to these, the units for the auxiliary personnel shall be run by prime-clerks, and in the sections of the Prosecutors' Office attached to the High Court of Cassation and Justice, in the sections of the National Anticorruption Prosecutors' Office and of the Directorate for the Investigation of Organized Crime and Terrorism Offences, in first instance courts and in prosecutors' offices attached to these, by chief clerks.

(4) The IT personnel shall be subordinated administratively to the president of the court and professionally to the Directorate for the exploitation of information technology within the Ministry of Justice.

(5) The auxiliary personnel in military courts and prosecutors' offices, in sections or services within the Prosecutors' Office attached to the High Court of Cassation and Justice and the National Anti-Corruption Prosecutor's Office may be hired also from among active members of the armed forces.

**Article 119** – (1) Court clerks who participate in court sessions or in performing acts of criminal proceedings shall be obliged to make all the records regarding the course of these proceedings and to fulfil any other tasks ordered and controlled by the president of the panel or, as the case may be, by the prosecutor.

(2) In court sessions, court clerks shall be obliged to wear the attire that is appropriate for the court where they perform their function. The attire shall be established by Government decision and provided for free of charge.

(3) In court sessions, military court clerks shall be obliged to wear the military uniform.

**Article 120** - (1) In view of automation of the work of law courts and prosecutors' offices, the President of the High Court of Cassation and Justice, the Minister of Justice, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, as the case may be, the general prosecutor of the National Anti-Corruption Prosecutor's Office and the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism Offences shall take measures for the proper technical endowment of these institutions.

(2) The number of information officers shall be established by the court president or, as the case may be, by the person in charge of the prosecutor's office, with the endorsement of the specialised directorate in the Ministry of Justice, and respectively of the information compartment within the Prosecutors' Office attached to the High Court of Cassation and Justice.

(3) For the High Court of Cassation and Justice, the National Anti-Corruption Prosecutor's Office and the Directorate for the Investigation of Organized Crime and Terrorism Offences, the endorsement in paragraph (2) is not necessary.

(4) In view of creating a unitary and functional computer system, the institutions of the judicial system are obliged to carry out the measures provided in the strategy for automation of the judicial system, which shall be approved by Government decision, on proposal by the Ministry of Justice.

(5) The technical endowment required for the automation of military courts, of the section or service within the Prosecutors' Office attached to the High Court of Cassation and Justice, or the case may be, of the National Anti-Corruption Prosecutors' Office as well as of military prosecutors' offices, shall be ensured by the Ministry of National Defence.

Article 120<sup>1</sup> Specialists in the economic, financial, banking, customs, IT and other areas may work in prosecutors' offices for the clarification of technical aspects encountered in the criminal prosecution activity.

## TITLE VII

### Security in law courts and prosecutors' offices and the protection of magistrates

**Article 121** – (1) The security of the premises of law courts and prosecutors' offices, of the assets and values belonging to these, supervision of access and maintenance of Internal Regulation required for a normal activity in these premises shall be provided, free of charge, by the Romanian Gendarmerie, through its specialised structures.

(2) The number of gendarmes hired by contract shall be established by Government decision, upon proposal from the minister of justice and the minister of Administration and the Interior, as well as from the president of the High Court of Cassation and Justice.

(3) The work of the personnel provided by paragraph (2) shall be coordinated by the court president or by the head of the prosecutor's office.

**Article 122** – (1) Military courts and prosecutors' offices shall have the military police placed at their service by the Ministry of National Defence, free of charge. The required military police personnel will be established by Government decision, on proposal by the Ministry of Justice and by the Ministry of National Defence.

(2) The military police made available to military courts and prosecutors' offices shall be subordinated to the presidents and prime-prosecutors of these institutions.

(3) The security of military courts and prosecutors' offices, of the other premises used by them, of the assets and valuables that belong to them, the surveillance of access and the task of maintaining the interior order required for a normal activity shall be ensured free of charge by the Military Police.

(4) The personnel required for each court or prosecutor's office shall be established by the Minister of Justice, at the proposal of the President of the Military Court of Appeal and of the section or service within the Prosecutors' Office attached to the High Court of Cassation and Justice.

**Article 123** – The Romanian Police and the Romanian Gendarmerie shall be obliged to provide the required support, according to the legal duties, to military courts and prosecutors' offices, to the sections or services within the Prosecutors' Office attached to the High Court of Cassation and Justice and within the National Anti-Corruption Prosecutor's Office, for the proper development of criminal trials, upon request from these institutions.

**Article 124** – The manner of using the police personnel for ensuring the security of judges and prosecutors and the manner of using the personnel of the Romanian Gendarmerie for ensuring security of the premises of law courts and prosecutors' offices, of their assets and valuables, the

surveillance of access and the maintenance of interior order shall be established by protocol concluded between the High Court of Cassation and Justice, the Prosecutors' Office attached to the High Court of Cassation and Justice, the National Anti-Corruption Prosecutor's Office, the Directorate for the Investigation of Organized Crime and Terrorism Offences or, the case being, the Ministry of Justice and the Ministry of Administration and the Interior.

## **TITLE VIII**

### **Economic-financial and administrative management of courts and prosecutors' offices**

#### **CHAPTER I**

#### **Organisation of the economic-financial and administrative department**

**Article 125** – (1) The High Court of Cassation and Justice, the Prosecutors' Office attached to the High Court of Cassation and Justice, the National Anticorruption Prosecutor's Office, the Directorate for the Investigation of Organized Crime and Terrorism Offences, the courts of appeal, the prosecutors' offices attached to them, the tribunals and the prosecutors' offices attached to tribunals, shall include in their structure each one economic-financial and administrative department, run by an economic manager.

(2) The economic manager shall be subordinated to the court president or, as the case may be, to the head of the prosecutor's office where he works.

(3) The economic-financial and administrative departments in tribunals and prosecutors' offices attached to them shall ensure the economic, financial and administrative activity also for the specialised tribunals and the first instance courts or, as the case may be, for the prosecutors' offices in their jurisdiction.

(4) The provisions of para. (1) and (2) shall apply also to budget managers for military courts and prosecutors' offices.

**Article 126** – (1) A person can be appointed economic manager if he/she has succeeded in the contest held for this purpose by:

a) the High Court of Cassation and Justice, for the economic manager of this court;  
b) the courts of appeal, for the economic manager of courts of appeal and of tribunals;  
c) the Prosecutors' Office attached to the High Court of Cassation and Justice, for the economic manager of this prosecutor's office and for the economic manager of the prosecutors' offices attached to courts of appeal and tribunals;

d) the National Anticorruption Prosecutor's Office, for the economic manager of this prosecutor's office.

e) The Directorate for the Investigation of Organized Crime and Terrorism Offences, for the economic manager of this directorate.

(2) The competitive examination under paragraph (1) may be taken by persons who have higher economic education and at least 5 years' specialised length of service.

(3) The persons who succeeded in the examination provided by para.(1) shall be appointed in the office of economic manager by order of the head of the court or, as the case may be, the head of the prosecutor's office that organizes the examination.

(4) The personnel in the economic-financial and administrative department shall be hired by the President of the High Court of Cassation and Justice, by the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, by the general prosecutor of the National Anticorruption Prosecutor's Office, by the Chief Prosecutor of the Directorate for the Investigation of Organized Crime, by the president of the court of appeal or, as the case may be, by the general prosecutor of the prosecutor's office attached to the court of appeal, based on a contest or a practical test.

- (5) The contest provided by paragraph (1) and paragraph (4) shall be held according to a regulation approved by the president of the High Court of Cassation and Justice, by the minister of justice, by the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, by the general prosecutor of the National Anticorruption Prosecutor's Office, or, as the case may be, by the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism Offences.

**Article 127** – The economic managers shall have the following main attributions:

a) to run the economic-financial and administrative department of the court or prosecutor's office where he performs his function;

b) to be responsible for the economic-financial management of courts or prosecutors' offices with no legal personality in the jurisdiction of the court or prosecutor's office where he performs his function;

c) to perform all the attributions provided by the law for credit chief accountants, based on delegation from them;

d) organising the elaboration, substantiation and presentation to the competent bodies of the draft annual budgets, within the deadlines and on the conditions set forth by the Law on Public Finance No.500/2002, as subsequently amended and supplemented;

e) to coordinate the activity of administration of the premises of courts and prosecutors' offices and take measures to ensuring the material conditions required for the proper operation of courts and prosecutors' offices;

f) to take measures for the elaboration and substantiation of drafting for the current and major restoration of premises and investment objectives, supervise and be responsible for their accomplishment;

g) to organise the registration of all buildings owned or administered by the courts or, as the case may be, by the prosecutors' offices, as well as of all other assets in their property.

h) following up on and being accountable for the effective use of funds received from the State budget, from the budget of State social insurance or from the budgets of special funds, as well as of those coming from its own revenues, according to the law;

i) organising the daily bookkeeping for the court and the prosecutor's office in the jurisdiction of which they operate and checking the correct carrying out of all financial-accounting operations in the specific documents, as well as the compilation and presentation within the appointed deadlines of financial reports on the administered property, according to the Accountancy Law No.82/1991, as republished;

j) coordinating the activity of administration of the premises of the courts and prosecutors' offices in the jurisdictions where they work, establishing measures to ensure the material conditions for the proper course of their activity. Also, ensuring the order, cleanliness and security of assets inside the premises of the courts, including measures to prevent and extinguish fires.

**Article 128** – The economic managers and the specialised personnel within the financial-accounting activity in the local offices for technical and accounting judicial expertise shall have the capacity of public servants, with the rights and duties provided by Law No. 188/1999 on the Statute of public servants, with its subsequent amendments and supplements.

**Article 129** – Presidents of courts and heads of prosecutors' offices may delegate their capacity of budget coordinators to the economic managers.

**Article 130** – (1) Military courts that are not seated in Bucharest and the prosecutors' offices attached to these shall have an economic-administrative compartment in their structure.

(2) The auxiliary personnel in the economic-administrative compartment shall have the following main duties:

- a) prepares the documentation for public procurement, for the services and work required for the activity of the courts;
- b) ensuring the supply of maintenance and household materials, fixed assets and inventory articles or other goods required for the optimal course of activity in the courts;
- c) ensuring the maintenance and operation of buildings, technical-sanitary heating installations, of the other fixed assets and inventory objects in the endowment;
- d) ensuring order, cleanliness and security for the goods in the premises of courts;
- e) taking measures to prevent and extinguish fires, and to remove the consequences of certain disasters

## **CHAPTER II**

### **The budgets for courts and Prosecutors' Offices**

**Article 131** – (1) The activity of courts and prosecutors' offices shall be financed by the State budget.

(2) The budget of courts of appeal, tribunals, specialised tribunals and 1<sup>st</sup> instance courts shall be managed by the Ministry of Justice, the ministry of justice being main chief credit accountant.

(3) The budget for prosecutors' offices attached to courts of appeal, tribunals, specialised tribunals and 1<sup>st</sup> instance courts shall be managed by the Prosecutors' Office attached to the High Court of Cassation and Justice.

(4) The budget of military courts and prosecutors' offices shall be managed by the Ministry of National Defence, as the Minister of National Defence is the main chief credit accountant.

**Article 132** – (1) Courts of appeal and the prosecutors' offices attached to the courts of appeal shall elaborate the annual draft budgets for the courts or, as the case may be, the Prosecutors' Offices in their jurisdiction.

(2) The draft budgets elaborated according to paragraph (1) shall be sent to the Ministry of Justice or, as the case may be, to the Prosecutors' Office attached to the High Court of Cassation and Justice.

(3) The Prosecutors' Office attached to the High Court of Cassation and Justice, the National Anticorruption Prosecutor's Office, and the Directorate for the Investigation of Organized Crime and Terrorism Offences shall elaborate their own draft annual budgets. The budget of the Prosecutors' Office attached to the High Court of Cassation and Justice shall include also the budgets of the prosecutors' offices attached to the other law courts.

(4) The draft budgets elaborated according to paragraphs (1) and (3) shall be subject to conformity endorsement (*aviz conform*) by the Superior Council of Magistracy.

(5) The budget of the High Court of Cassation and Justice shall be subject to approval by the general assembly of the judges of this court, with the consultative endorsement of the Ministry of Public Finance.

(6) Annual draft budgets of military courts are prepared by the Directorate for Military Courts of the Defense Ministry, and those for military prosecutors' offices, by the section or service of the Prosecutors' Office under the High Court of Cassation and Justice, based on consultations with military courts and military prosecutors' offices, and are transmitted to the main budget manager.

(7) Every year, the Government of Romania shall include into the budget of the Ministry

of National Defense the funds required according to Article 131 paragraph (4).

**Article 133** – (1) Each court and each prosecutor's office shall be provided for with the necessary number of judges or, as the case may be, prosecutors, as well as of specialized auxiliary personnel and personnel in the economic-financial and administrative department.

(2) The President of the High Court of Cassation and Justice and the presidents of courts of appeals, together with the Minister of Justice, the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice or, as applicable, the Chief Prosecutor of the National Anticorruption Directorate, the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism Offences review annually the workload of courts and prosecutors' offices and, depending on the results of such review, take steps to supplement or diminish the number of positions, based on an approval from the Superior Council of Magistracy.

**Article 134** – (1) The maximum number of positions for courts and prosecutors' offices shall be established by Government decision, upon proposal of the minister of justice, with the endorsement of the Superior Council of Magistracy.

(2) For the High Court of Cassation and Justice, the maximum number of positions shall be established by Government decision, on proposal of the minister of justice and the president of the High Court of Cassation and Justice, with the endorsement of the Superior Council of Magistracy.

(3) For military courts and prosecutors' offices, the maximum number of posts shall be approved, according to paragraph (1), with the consultative endorsement of the Minister of National Defence.

#### **Article 134**<sup>1</sup>

(1) In situations where the proper operation of courts or prosecutors' offices is seriously affected by a large number of temporary vacancies, these can be filled for an unlimited term, under the law, in cases where positions became vacant as a result of:

- a) appointment in management positions;
- b) appointment as prosecutor with the Directorate for the Investigation of Organized Crime and Terrorism Offences or the National Anticorruption Directorate;
- c) secondment;
- d) election as member of the Superior Council of Magistracy;
- e) suspension from the position under Art. 62 of Law no. 303/2004, as republished and subsequently amended;
- f) for other causes, for a time interval exceeding one year.

(2) The number of temporary vacancies that can be filled in the situations listed under para. (1) are approved for each court or, as applicable, for each prosecutors' office by the Superior Council of Magistracy, upon proposal by budget managers.

(3) Following cessation of the situations listed under para. (1), in the event that a judge or prosecutor returns to the court or prosecutors' office where he/she worked previously, the main budget manager has an obligation to secure him/her forthwith a vacant position from the reserve fund provided for at para. (4) and (5), in cases where there are no vacancies in that court or prosecutors' office.

(4) In order to ensure the required positions of judge or prosecutor, upon cessation of the situations listed under para. (1), a reserve fund of 150 judge positions and 50 prosecutor positions shall be created through the state budget. The number of positions of the reserve fund may be updated annually, by a government decision.

(5) The positions set forth at para. (4) shall be distributed to courts and prosecutors' offices by an order of the Minister of Justice, in situations where in the courts or prosecutors' offices with which a judge or prosecutor who requested to return in his/her position there are no vacancies.

(6) In the event that positions become vacant subsequently in the relevant court or prosecutors' office, temporarily or permanently, the judge or prosecutor positions distributed under the terms of para. (4) shall be re-included automatically, starting from the date when positions became vacant in courts or prosecutors' offices, in the reserve fund, and a judge or prosecutor who has held such position is deemed employed in the position that becomes vacant. The inclusion of a position that became vacant in the reserve fund shall be acknowledged by an order of the Minister of Justice, upon proposal by the Superior Council of Magistracy, within 15 days after such position becomes vacant.

(7) The money amounts corresponding to the funding of non-filled positions specified at para. (1) shall be transferred to the state budget at the end of each calendar year.

**Article 135** – (1) The list of functions and personnel for courts of appeal, tribunals, specialised tribunals, 1<sup>st</sup> instance courts and prosecutors' offices shall be approved, with the conformity endorsement (*aviz conform*) of the Superior Council of Magistracy, by order of the minister of justice.

(2) Statele de funcții and de personal pentru fiecare instanță militară and prosecutors' office de pe lângă aceasta se aprobă prin ordin comun al of the Minister of Justice and al ministrului apărării, cu avizul conform al Superior Council of Magistracy.

~~**Article 136**– *Repealed* Beginning with 1 January 2008, the duties of the Minister of Justice as regards the management of the budget of courts of appeal, of tribunals, of specialised tribunals and of first instance courts shall be taken over by the High Court of Cassation and Justice.~~

## **TITLE IX**

### **Transitory and final provisions**

**Article 137** – The following structures shall operate attached to the law courts, according to the law:

- a) social recovery and supervision services;
- b) trade register offices;
- c) other structures established by special laws.

**Article 138** – (1) The State shall be obliged to provide the buildings and the other material and financial resources required for the proper functioning of the activity of courts and prosecutors' offices.

(2) The Government, the General Council of the City of Bucharest, the county councils and the local councils shall, with the support of prefectures, make available to the High Court of Cassation and Justice, to the Ministry of Justice, to the Prosecutors' Office attached to the High Court of Cassation and Justice, to the National Anticorruption Prosecutor's Office and to the Directorate for the Investigation of Organized Crime and Terrorism Offences the buildings required for the proper functioning of law courts and prosecutors' offices.

(3) The valuables and pecuniary rights of the personnel in military courts and prosecutors' offices and the material resources, including the vehicles, required for the operation of military courts and prosecutors' offices, of the section or service within the Prosecutors' Office attached to the High Court of Cassation and Justice and of the section or service within the National Anticorruption Prosecutor's Office shall be provided by the Ministry of National Defence.

**Article 139** – (1) The Regulations on the Internal Regulation of Law Courts shall establish:

- a) the administrative organisation of law courts, of tribunals, of specialised tribunals and of first instance courts;

- b) the manner and criteria for assigning cases to judgement panels, in view of ensuring the

observance of principles of random assignment and continuity;

c) the attributions of presidents, deputy-presidents, judges-inspectors, section presidents, judges and other categories of personnel;

d) the organisation and operation of the Leading Boards of law courts and of the general assemblies of judges;

e) the judicial recess;

f) the organisation, operation and attributions of the specialised auxiliary units;

g) the organisation, operation and attributions of the economic-financial and administrative department.

(2) The Regulations of Internal Regulation of law courts shall be elaborated by the Superior Council of Magistracy and the Ministry of Justice and shall be approved by decision of the Superior Council of Magistracy, which shall be published in the Official Journal of Romania, Part I.

**Article 140** – (1) The Regulations on the Internal Regulation of Prosecutors' offices shall establish:

a) the administrative organisation of the Prosecutors' Office attached to the High Court of Cassation and Justice, of the National Anticorruption Prosecutor's Office, of the prosecutors' offices attached to: courts of appeal, tribunals, juvenile and family tribunals and first instance courts;

b) the attributions of general prosecutors, of their prime-prosecutors and deputies, of prosecutors-inspectors, of chief prosecutors and of prosecutors, as well as other categories of personnel;

c) the organisation and operation of the Leading Boards of prosecutors' offices and of the general assemblies of prosecutors;

d) the hierarchy of administrative positions within the Public Ministry;

e) the organisation, operation and attributions of the specialised auxiliary units of prosecutors' offices;

f) the organisation, operation and attributions of the economic-financial and administrative units in prosecutors' offices.

(2) The Administrative Regulations for interior organisation provided in paragraph (1) shall be approved, with the endorsement of the Superior Council of Magistracy, by order of the Minister of Justice, at the proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, the case being, of the general prosecutor of the National Anti-Corruption Prosecutor's Office. **Article 141** – References to the Supreme Court of Justice contained in normative acts currently in force shall be deemed as relating to the High Court of Cassation and Justice.

**Article 142** – (1) The dates on which the specialized tribunals will start to operate, the counties in which they will start to operate, their names, as well as the areas in which they will operate shall be established gradually by an order of the Minister of Justice, based on an assent from the Superior Council of Magistracy.

(2) The provisions of this law that concern the economic managers of courts and prosecutors' offices shall apply from 1 July 2005.

(3) The office of economic manager shall be assimilated with that of executive director.

(4) Until the beginning of operation of the Tribunal of Ilfov and of the prosecutor's office attached to this court, the cases that are of their competence shall be solved by the Tribunal of Bucharest and, respectively, by the Prosecutors' Office attached to the Tribunal of Bucharest.



**Article 143** – (1) The provisions of Article 53 paragraph (1) on the distribution of cases by means of a computerised system shall be applied gradually, this action shall be concluded by the year 2007.

(2) Until the year 2007, in courts that do not have a computerised system, cases shall be distributed randomly, according to the conditions stated by the Regulations on the Internal Regulation of Law Courts.

**Article 144** – (1) On the date of entry into force of the present law, the following shall be repealed:

a) Article 1-5, Article 7-11, Article 17-26, Article 27-35, Article 44-54, Article 56 and Article 57 of the Law of the Supreme Court of Justice No.56/1993, republished in the Official Journal of Romania, Part I, No.56 of 8 February 1999, with its subsequent amendments and supplements;

b) Article 1, Article 2 paragraphs (1), (3) and (4), Article 4-9, Article 10- 16, Article 17 paragraphs (1<sup>1</sup>)-(1<sup>3</sup>) and paragraphs (3)-(5), Article 18-25, Article 26-41, Article 69<sup>1</sup>-69<sup>5</sup>, Article 70-85, Article 132, Article 133 paragraphs (1) and (3), Article 134, Article 136-160 of Law No.92/1992 on judicial organisation, republished in the Official Journal of Romania, Part I, No.259 of 30 September 1997, with its subsequent amendments and supplements.

(2) The provisions of Article 135 of Law No.92/1992 on the organisation of the Judiciary, as republished and as subsequently amended and supplemented, that concern economic directors shall be repealed from 1 July 2005.

#### **Note**

The following articles II-IV, art VII and Art. VIII from Title XVI of Law no. 247/2005, which are not included in the supplemented body of Law 304/2004, are still applied as own provisions of Law no 247/2005

**Article II** – (1) At the date when this law enters force, the offices of judge- inspector and prosecutor-inspector shall be closed down, and the posts shall be converted into posts of judges and respectively prosecutors.

(2) The activities that are ongoing with judges-inspectors and with prosecutors-inspectors shall be continued by judges or prosecutors designated by the heads of the law courts or prosecutors' offices.

**Article III** – This law's provisions on the recording of court sessions, as well as those on the appointment with the offices of information and public relations of graduates of a faculty of journalism or of specialists in communication, shall apply from 1 July 2006.

**Article IV** – (1) The venues of military prosecutors' offices in the Cities of Bacău, Braşov, Constanţa, Craiova, Oradea, Ploieşti and Târgu-Mureş that are being closed down by the entry into force of this law, shall be redistributed according to the venues of the military courts in these cities, according to Annex No.2 to this law.

(2) The offices reduced following the reorganisation of military courts and prosecutors' offices, according to this law, shall be transferred to the personnel establishments of the Ministry of Justice and of the Public Ministry, while taking the funding measures by transferring the appropriate funds from the budget of the Ministry of National Defence to these institutions.

(3) The premises and the material endowment of the military prosecutors' offices closed down shall be taken over by the military prosecutors' offices that will be assigned the venues of

the closed down units.

(4) The civil and military auxiliary personnel in the military courts and prosecutors' offices who choose to be transferred to civil courts and prosecutors' offices or whose offices have been reduced, shall be transferred, taking into account the options they express, to the civil courts and prosecutors' offices in the same jurisdiction as their domicile or in other places.

(5) When transferring the civil and military auxiliary personnel from military courts and prosecutors' offices to civil courts or prosecutors' offices, one shall take account, according to the law, the length of service and the professional activity. In this case, the placement in reserve or the direct withdrawal of military auxiliary personnel is obligatory.

**Article VII** – The Regulations provided in this law shall be updated and adopted within 60 days from the entry into force of this law and shall be published in the Official Journal of Romania, Part I.

**Article VIII** – (1) Within 90 days from the entry into force of this law, elections shall be held for the leading boards of courts and prosecutors' offices.

(2) The duties of the current members of leading boards shall cease upon expiry of the deadline in paragraph (1).

## ANNEX No.1

### A. FIRST INSTANCE COURTS, PROSECUTORS' OFFICES AND THEIR PLACE

OF RESIDENCE COUNTY	COURT	PLACE OF RESIDENCE
Alba	Alba Iulia	municipiul Alba Iulia
	Câmpeni	oraşul Câmpeni
	Aiud	municipiul Aiud
	Blaş	municipiul Blaş
	Sebeş	municipiul Sebeş
Arad	Arad	municipiul Arad
	Ineu	oraşul Ineu
	Lipova	oraşul Lipova
	Gurahonţ	comuna Gurahonţ
Argeş	Chişineu-Criş	oraşul Chişineu-Criş
	Piteşti	municipiul Piteşti
	Câmpulung	municipiul Câmpulung
	Curtea de Argeş	municipiul Curtea de Argeş
Bacău	Costeşti	oraşul Costeşti
	Topoloveni	oraşul Topoloveni
	Bacău	municipiul Bacău
	Oneşti	municipiul Oneşti
	Moineşti	municipiul Moineşti
Bihor	Podu Turcului	comuna Podu Turcului
	Buhuşi	oraşul Buhuşi
	Oradea	municipiul Oradea
	Beiuş	municipiul Beiuş
	Marghita	municipiul Marghita
Bistriţa-Năsăud	Aleşd	oraşul Aleşd
	Salonta	municipiul Salonta
	Bistriţa	municipiul Bistriţa
	Năsăud	oraşul Năsăud
Botoşani	Beclean	oraşul Beclean
	Botoşani	municipiul Botoşani
	Dorohoi	municipiul Dorohoi
	Săveni	oraşul Săveni
Braşov	Darabani	oraşul Darabani
	Braşov	municipiul Braşov
	Făgăraş	municipiul Făgăraş
	Rupea	oraşul Rupea
Brăila	Zărneşti	oraşul Zărneşti
	Brăila	municipiul Brăila
	Făurei	oraşul Făurei
Buzău	Însurăţei	oraşul Însurăţei
	Buzău	municipiul Buzău
	Râmnicu Sărat	municipiul Râmnicu Sărat
	Pătârlagele	oraşul Pătârlagele
Caraş-Severin	Pogoanele	oraşul Pogoanele
	Reşiţa	municipiul Reşiţa

Călărași	Caransebeș	municipiul
	Oravița	Caransebeș orașul
	Moldova	Oravița
	Nouă	orașul Moldova
	Bozovici	Nouă comuna
	Bocșa	Bozovici orașul
	Călărași	Bocșa
	Oltenița	municipiul
	Lehliu-Gară	Călărași
		municipiul
	Oltenița orașul	
	Lehliu-Gară	
Cluj	Cluj-Napoca	municipiul Cluj-Napoca
	Turda	municipiul Turda
	Dej	municipiul Dej
	Huedin	orașul Huedin
Constanța	Gherla	municipiul Gherla
	Constanța	municipiul Constanța
	Medgidia	municipiul Medgidia
	Hârșova	orașul Hârșova
	Mangalia	municipiul Mangalia
	Cernavodă	orașul Cernavodă
Covasna	Băneasa	orașul Băneasa
	Sfântu Gheorghe	municipiul Sfântu Gheorghe
	Târgu Secuiesc	municipiul Târgu Secuiesc
Dâmbovița	Intorsura Buzăului	orașul Intorsura Buzăului
	Târgoviște	municipiul Târgoviște
	Găești	orașul Găești
	Pucioasa	orașul Pucioasa
	Răcari	orașul Răcari
Dolj	Moreni	municipiul Moreni
	Craiova	municipiul Craiova
	Băilești	municipiul Băilești
	Filiași	orașul Filiași
	Șegarcea	orașul Șegarcea
	Calafat	municipiul Calafat
Galați	Bechet	orașul Bechet
	Galați	municipiul Galați
	Tecuci	municipiul Tecuci
	Târgu Bujor	orașul Târgu Bujor
Giurgiu	Liești	comuna Liești
	Giurgiu	municipiul Giurgiu
	Bolintin-Vale	orașul Bolintin-Vale
Gorj	Comana	comuna Comana
	Târgu Jiu	municipiul Târgu Jiu
	Târgu Cărbunești	orașul Târgu Cărbunești
	Novaci	orașul Novaci
Harghita	Motru	municipiul Motru
	Miercurea-Ciuc	municipiul Miercurea-Ciuc
	Odorheiu Secuiesc	municipiul Odorheiu Secuiesc
	Toplița	municipiul Toplița
Hunedoara	Gheorgheni	municipiul Gheorgheni
	Deva	municipiul Deva
	Hunedoara	municipiul Hunedoara
	Petroșani	municipiul Petroșani
	Orăștie	municipiul Orăștie

Ialomița	Brad	municipiul Brad
	Hațeg	orașul Hațeg
	Slobozia	municipiul Slobozia
	Urziceni	municipiul Urziceni
	Fetești	municipiul Fetești
Iași	Iași	municipiul Iași
	Pașcani	municipiul Pașcani
	Hârlău	orașul Hârlău
Ilfov	Răducăneni	comuna Răducăneni
	Buftea	orașul Buftea
Maramureș	Cornetu	comuna Cornetu
	Baia Mare	municipiul Baia Mare
	Sighetu Marmăției	municipiul Sighetu Marmăției
	Vișeu de Sus	orașul Vișeu de Sus
	Târgu Lăpuș	orașul Târgu Lăpuș
Mehedinți	Dragomireș	comuna
	ti Șomcuta	Dragomirești
	Mare	orașul Șomcuta
	Drobeta-Turnu	Mare
	Severin	municipiul Drobeta- Turnu
	Strehaia	orașul Strehaia
Mureș	Orșova	municipiul Orșova
	Vânju Mare	orașul Vânju Mare
	Baia de Aramă	orașul Baia de Aramă
	Târgu Mureș	municipiul Târgu Mureș
	Sighișoara	municipiul Sighișoara
	Reghin	municipiul Reghin
Neamț	Târnăveni	municipiul Târnăveni
	Luduș	orașul Luduș
	Sângeorgiu de	orașul Sângeorgiu de Pădure
	Pădure	
	Piatra-Neamț	municipiul Piatra-Neamț
Olt	Roman	municipiul Roman
	Târgu-Neamț	orașul Târgu-Neamț
	Bicaz	orașul Bicaz
	Slatina	municipiul Slatina
Prahova	Caracal	municipiul Caracal
	Corabia	orașul Corabia
	Balș	orașul Balș
	Scornicești	orașul Scornicești
	Ploiești	municipiul Ploiești
Satu Mare	Câmpina	municipiul Câmpina
	Vălenii de Munte	orașul Vălenii de Munte
	Mizil	orașul Mizil
	Sinaia	orașul Sinaia
Sălaj	Urlați	orașul Urlați
	Satu Mare	municipiul Satu Mare
	Carei	municipiul Carei
Sibiu	Negrești-Oaș	orașul Negrești-Oaș
	Zalău	municipiul Zalău
	Șimleu Silvaniei	orașul Șimleu Silvaniei
	Jibou	orașul Jibou
	Sibiu	municipiul Sibiu
	Mediaș	municipiul Mediaș
	Agnita	orașul Agnita

Suceava	Avrig	oraşul Avrig
	Sălişte	oraşul Sălişte
	Suceava	municipiul Suceava
	Câmpulung	municipiul Câmpulung
	Moldovenesc	Moldovenesc
Teleorman	Rădăuţi	municipiul Rădăuţi
	Fălticeni	municipiul Fălticeni
	Vatra Dornei	municipiul Vatra Dornei
	Gura Humorului	oraşul Gura Humorului
	Alexandria	municipiul Alexandria
Timiş	Roşiori de Vede	municipiul Roşiori de Vede
	Turnu Măgurele	municipiul Turnu Măgurele
	Videle	oraşul Videle
	Zimnicea	oraşul Zimnicea
	Timişoara	municipiul Timişoara
Tulcea	Lugoş	municipiul Lugoş
	Deta	oraşul Deta
	Sânnicolau Mare	oraşul Sânnicolau Mare
	Făget	oraşul Făget
	Jimbolia	oraşul Jimbolia
Vaslui	Tulcea	municipiul Tulcea
	Babadag	oraşul Babadag
Vâlcea	Măcin	oraşul Măcin
	Vaslui	municipiul Vaslui
	Bârlad	municipiul Bârlad
Vrancea	Huşi	municipiul Huşi
	Murgeni	oraşul Murgeni
	Râmnicu Vâlcea	municipiul Râmnicu Vâlcea
	Drăgăşani	municipiul Drăgăşani
Bucureşti	Horezu	oraşul Horezu
	Brezoi	oraşul Brezoi
	Bălceşti	oraşul Bălceşti
	Focşani	municipiul Focşani
	Panciu	oraşul Panciu
Bucureşti	Adjud	municipiul Adjud
	Judgesa sectorului 1	municipiul Bucureşti
	Judgesa sectorului 2	municipiul Bucureşti
	Judgesa sectorului 3	municipiul Bucureşti
	Judgesa sectorului 4	municipiul Bucureşti
	Judgesa sectorului 5	municipiul Bucureşti
Judgesa sectorului 6	municipiul Bucureşti	

**B. TRIBUNALS, PROSECUTORS' OFFICES ATTACHED TO THESE AND THEIR PLACE OF RESIDENCE**

COUNTY	TRIBUNAL RESIDENCE	PLACE OF
Alba	Alba Iulia	municipiul Alba Iulia
Arad	Arad	municipiul Arad
Argeş	Argeş	municipiul Piteşti
Bacău	Bacău	municipiul Bacău
Bihor	Bihor	municipiul
Oradea	Bistriţa-Năsăud	Bistriţa-Năsăud
	municipiul Bistriţa	Botoşani Botoşani
	municipiul Botoşani	
Braşov	Braşov	municipiul Braşov
Brăila	Brăila	municipiul Brăila
Buzău	Buzău	municipiul Buzău
Caraş-Severin	Caraş-Severin	municipiul Reşiţa
Călăraşi	Călăraşi	municipiul Călăraşi
Cluj	Cluj	municipiul Cluj-Napoca
Constanţa	Constanţa	municipiul Constanţa
Covasna	Covasna	municipiul Sfântu Gheorghe
Dâmboviţa	Dâmboviţa	municipiul Târgovişte
Dolj	Dolj	municipiul Craiova
Galaţi	Galaţi	municipiul Galaţi
Giurgiu	Giurgiu	municipiul Giurgiu
Gorj	Gorj	municipiul Târgu Jiu
Harghita	Harghita	municipiul Miercurea-Ciuc
Hunedoara	Hunedoara	municipiul Deva
Ialomiţa	Ialomiţa	municipiul Slobozia
Iaşi	Iaşi	municipiul Iaşi
Ilfov	Ilfov	oraşul Buftea
Maramureş	Maramureş	municipiul Baia Mare
Mehedinţi	Mehedinţi	municipiul Drobeta-Turnu Severin
Mureş	Mureş	municipiul Târgu Mureş
Neamţ	Neamţ	municipiul Piatra-Neamţ
Olt	Olt	municipiul Slatina
Prahova	Prahova	municipiul Ploieşti
Satu Mare	Satu Mare	municipiul Satu Mare
Sălaj	Sălaj	municipiul Zalău
Sibiu	Sibiu	municipiul Sibiu
Suceava	Suceava	municipiul Suceava
Teleorman	Teleorman	municipiul Alexandria
Timiş	Timiş	municipiul Timişoara
Tulcea	Tulcea	municipiul Tulcea
Vaslui	Vaslui	municipiul Vaslui
Vâlcea	Vâlcea	municipiul Râmnicu Vâlcea
Vrancea	Vrancea	municipiul Focşani
Bucureşti	Bucureşti	municipiul Bucureşti

**C. COURTS OF APPEAL, PROSECUTORS' OFFICES ATTACHED TO THESE, THEIR CIRCUMSCRIPTION AND THE PLACE OF RESIDENCE**

Court of appeal	Tribunals from the circumscription of Court of Appeal	Place of Residence
<b>1. Alba Iulia Court of Appeal</b>	<b>Alba Sibiu Hunedoara</b>	<b>Alba Iulia</b>
<b>2. Piteşti Court of Appeal</b>	<b>Argeş Vâlcea</b>	<b>Piteşti</b>

<b>3. Bacău Court of Appeal</b>	<b>Bacău Neamț</b>	<b>I Bacău</b>
<b>4. Oradea Court of Appeal</b>	<b>Bihor Satu Mare</b>	<b>Oradea</b>
<b>5. Suceava Court of Appeal</b>	<b>Suceava Botoșani</b>	<b>Suceava</b>
<b>6. Brașov Court of Appeal</b>	<b>Brașov Covasna</b>	<b>Brașov</b>
<b>7. București Court of Appeal</b>	<b>București Călărași Giurgiu Ialomița Ilfov Teleorman</b>	<b>București</b>
<b>8. Cluj Court of Appeal</b>	<b>Cluj Bistrița-Năsăud Maramureș Sălaj</b>	<b>Cluj-Napoca</b>
<b>9. Constanța Court of Appeal</b>	<b>Constanța Tulcea</b>	<b>Constanța</b>
<b>10. Craiova Court of Appeal</b>	<b>Dolj Gorj Mehedinți Olt</b>	<b>Craiova</b>
<b>11. Galați Court of Appeal</b>	<b>Galați Brăila Vrancea</b>	<b>Galați</b>
<b>12. Iași Court of Appeal</b>	<b>Iași Vaslui</b>	<b>Iași</b>
<b>13. Târgu Mureș Court of Appeal</b>	<b>Mureș Harghita</b>	<b>Târgu Mureș</b>
<b>14. Ploiești Court of Appeal</b>	<b>Prahova Buzău Dâmbovița</b>	<b>Ploiești</b>
<b>15. Timișoara Court of Appeal</b>	<b>Timiș Arad Caraș-Severin</b>	<b>Timișoara</b>

## **ANNEX No. 2**

The circumscription of military courts, of the prosecutors' offices attached to these and the places of residence

<b>No.</b>	<b>Military court and place of residence</b>	<b>Military prosecutor's office and place of residence</b>	<b>Circumscription</b>
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<b>I.1</b>	<b>Bucharest Military Tribunal</b> Seated in: Bucharest City	<b>Prosecutors' Office attached to the Bucharest Military Tribunal</b> Seated in: Bucharest City	Argeş Călăraşi Giurgiu Ialomiţa Ilfov Olt Teleorman Vâlcea City of Bucharest Constanţa Tulcea Brăila Buzău Dâmboviţa Prahova
<b>I.2</b>	<b>Cluj Military Tribunal</b> Seated in: Cluj-Napoca City	<b>Prosecutor's Office attached to the Cluj Military Tribunal</b> Seated in: Cluj-Napoca City	Braşov Covasna Sibiu Alba Bistriţa-Năsăud Cluj Sălaj Harghita Mureş Bihor
			Maramureş Satu-Mare
<b>I.3.</b>	<b>Iaşi Military Tribunal</b> Seated in: Iaşi City	<b>Prosecutor's Office attached to the Iaşi Military Tribunal</b> Seated in: Iaşi City	Bacău Neamţ Suceava Vrancea Botoşani Galaţi Iaşi Vaslui
<b>I.4</b>	<b>Timișoara Military Tribunal</b> Seated in: Timișoara City	<b>Prosecutors' Office attached to the Timișoara Military Tribunal</b> Seated in: Timișoara City	Dolj Gorj Hunedoara Mehedinţi Arad Caraş-Severin Timiş

II.	<b>Bucharest Territorial Military Tribunal</b> Seated in: Bucharest City	<b>Military Prosecutors' Office attached to the Bucharest Territorial Military Tribunal</b> Seated in: Bucharest City	General venue
III.	<b>Bucharest Military Court of Appeal</b> Seated in: Bucharest City	<b>Military Prosecutors' Office attached to the Bucharest Military Court of Appeal</b> Seated in: Bucharest City	General venue