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

**ROMANIA**

**DRAFT LAW N° 418 (\*)**

**AMENDING THE LAW N° 303/2004**

**ON THE STATUS OF JUDGES AND PROSECUTORS**

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*(\*) received from the Presidential Administration of Romania on 29 May 2018*



**LAW**

**amending and completing the Law no.303 / 2004 on the status of judges and prosecutors**

**The Romanian Parliament adopts this law**

Art.I- Law no. 303/2004 on the status of judges and prosecutors, republished in the Official Gazette of Romania, Part I, no.826 of 13 September 2005, as subsequently amended and supplemented, shall be amended and completed as follows:

**1. In Article 1, after paragraph (1), a new paragraph (2) shall be inserted, with the following wording:**

"(2) The career of the judge is separate from the career of the prosecutor, the judges being unable to interfere in the career of the prosecutors and the prosecutors in the judges'."

**2. In Article 2, paragraph (3) shall be amended and shall have the following content:**

"(3) Judges are independent and subject only to the law. Judges must be impartial having full freedom in settling the cases brought to justice in accordance with the law and impartially, respecting the equality of arms and the procedural rights of the parties. Judges have to make decisions without any restrictions, influences, pressures, threats or interventions, direct or indirect, from any authority, or even judicial authorities. Decisions on appeals do not fall under these restrictions. The purpose of judges' independence is also to ensure that every person has the fundamental right to have his case heard fairly on the basis of law alone. "

**3. In Article 3, paragraph (1) shall be amended and shall have the following content:**

"Art. 3. - (1) The prosecutors shall carry out their activity according to the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice. "

**4. In Article 3, after paragraph (1), two new paragraphs shall be inserted, para.(1<sup>1</sup>) and (1<sup>2</sup>), which shall read as follows:**

(1<sup>1</sup>) Prosecutors are independent in the settlement of the solutions, under the conditions stipulated by the Law no.304/2004, regarding the judicial organization, republished, with the subsequent amendments and completions.

(1<sup>2</sup>) Prosecutors nominated by the President of Romania enjoy stability.

**5. In Article 4, paragraph (2) shall be amended and shall have the following content:**

"(2) Prosecutors and judges must ensure, at all stages of a trial that individual rights and freedoms are guaranteed and that public order is protected."

**6. In Article 4, after paragraph (2), two new paragraphs (3) and (4) are inserted, with the following content:**

"(3) Judges and prosecutors must, as a rule, be and appear to be independent of each other.

(4) Judges may not refuse to judge on the grounds that the law does not provide, is unclear or incomplete."

**7. In Article 5, paragraphs (1) and (2) are amended and shall have the following content:**

Art. 5 (1) The positions of judge, prosecutor, assistant magistrate and judicial assistant are incompatible with any other public or private positions, except for teaching positions in the academic education system, as defined by the laws in force.

(2) Judges and prosecutors shall be obliged to refrain from any activity related to the act of justice in cases involving a conflict between their interests and the public interest in the performance of justice or the defence of the general interests of society. In other situations that go beyond the activity related to the act of justice, the conflict of interests shall be notified, in writing, to the management college of the court or prosecutor's office who appreciates its existence or non-existence.

**8. In Article 6, after paragraph (2), a new paragraph, paragraph (2i) shall be inserted with the following content:**

"(2<sup>1</sup>) Affiliation as a collaborator of the intelligence bodies, as political police, has the effect of releasing him from his office."

**9. Article 7 shall be amended and shall have the following content:**

"Art.7. - (1) The judges, the prosecutors, the magistrate-assistants, the specialized legal personnel assimilated to them, the related staff to the specialized staff of the courts and prosecutors' offices cannot be operative workers, including under cover, informants or collaborators of any intelligence service.

(2) The violation of the provisions of paragraph (1) leads to the dismissal of the position, including that of judge or prosecutor.

(3) The persons referred to in paragraph (1) shall fill out annually a handwritten statement on their own responsibility, according to the criminal law, indicating that they were not and are not operative workers, including under cover, informants or collaborators of any intelligence service. Statements are filed and archived at the human resources department.

(4) The intelligence services are forbidden to recruit the persons referred to in paragraph (1) as operative workers, including under cover, informants or collaborators. Violation of this prohibition is a crime against the independence of the justice and is punished by imprisonment for 5 to 10 years. If the offense is committed by a senior officer or by his instigation, the penalty limits shall be increased by half. The attempt is punished.

(5) The truthfulness of data mentioned in the statements set forth under para. (2) shall be checked every year, individually for each statement, by the Supreme National Defense Council, *sua sponte* or whenever it is notified by the Ministry of Justice, the Section for Judges or the Section for Prosecutors of the Superior Council of Magistracy, the concerned judge or prosecutor.

(6) The results of such checks are communicated *ex officio* to the Superior Council of Magistracy, the concerned judge or prosecutor, and to any other person, upon request.

(7) The document issued by the Supreme National Defense Council specified under para. (6) may be appealed in court within **3 months** as of the date when one becomes aware of it, by any person who justifies a legitimate interest, according to Law no. 554/2004. The provisions of Art. 7 of Law no. 554/2004 are not applicable.

(8) Inaccurate answers are sanctioned under the law.

(9) As an exception to the provisions of Art. 12 of Law no.544/2001 on Free Access to Information of Public Interest, as subsequently amended, the information concerning the Statute of judges and prosecutors, the judicial organization and the organization and operation of the Superior Council of Magistracy, the international cooperation between courts and prosecutors' offices, on one hand, and any other public authority, on the other, and to other judicial administrative documents issued or concluded by or between public authorities that affect the conducting of judicial procedures represents information of public interest, to which free access is guaranteed.

(10)The provisions of Articles 8-12, 33 and 76 of this Law shall also apply to magistrate-assistants."

**10. In Article 8, paragraph (1), point (c) shall be amended and shall have the following content:**

“(c) to have the shareholder quality or member in the management, administration or control bodies at the companies, credit or financial institutions, insurance or reinsurance undertakings, national companies or self-governing administrations;”

**11. In Article 8, a new paragraph, paragraph 1<sup>1</sup> shall be inserted after paragraph 1, with the following content:**

(1<sup>1</sup>) In the event of the acquisition by inheritance of the status of associates or shareholders in companies, credit or financial institutions, insurance / reinsurance companies, national companies, national societies or self-governing administrations, magistrates are obliged to take the necessary measures that quality shall cease within a maximum of one year from the date of its actual acquisition.

**12. In Article 9, a new paragraph (3) shall be inserted after paragraph (2) with the following content:**

"(3) Judges and prosecutors are obliged, in the exercise of their duties, to refrain from defamatory manifestation or expression, in any way, against the other powers of the state - legislative and executive".

**13. In Article 14, paragraph (2), point e) shall be amended and shall have the following content:**

e) is fit, physically and psychologically, to perform the function.

**14. In Article 15, paragraphs (1) to (7) shall be amended and shall have the following content:**

"Art.15. - (1) The admission contest is organized annually at the date and place established by the National Institute of Magistracy, with the approval of the Superior Council of Magistracy. The date, the place, the manner of holding the admission contest and the number of places put on the contest shall be published in the Official Gazette of Romania, Part III, on the website of the Superior Council of Magistracy and of the National Institute of Magistracy, at least 6 months before the date set for the contest.

(2) The Superior Council of Magistracy through the corresponding sections shall determine each year the number of students, separately, for judges and prosecutors, depending on the positions of the vacant judges and prosecutors, as well as those that will be established.

(3) After the publication of the data referred to in paragraph (1), the fulfilment of the condition of good reputation and the condition of being psychologically and physically fit for the performance of the position is checked, for persons expressing their intention to participate in the contest. In view of the psychological evaluation, the person concerned pays a fee, the amount of which is determined by a decision of the Superior Council of Magistracy. The condition of being medically fit is proved by a medical certificate issued by a specialist in occupational medicine at the request of each candidate.

4) The "passed" grade obtained in the psychological evaluation is also valid for the admission contests at the National Institute of Magistracy or for the admission to the magistracy afterwards, if from the date of the psychological evaluation until the date of publication of the announcement of organizing the competition in the Official Gazette of Romania, Part III, have not passed more than 2 years.

(5) Persons who fulfil the condition of good reputation and are psychologically and physically fit for the exercise of their position may enrol in the contest provided in paragraph (1). To enrol in the contest, the candidate pays a fee, the amount of which is set by decision of the Superior Council of Magistracy, depending on the expenses necessary for organizing the contest.

(6) The procedure for organizing and conducting the contest referred to in paragraph (1), including the competition commissions and their establishment, the contest tests and the way of establishing and challenging the results, shall be established by the regulation provided by Art. 106 point a).

(7) The results of the contest shall be displayed at the headquarters of the National Institute of Magistracy and

shall be published on the website of the Superior Council of Magistracy and of the National Institute of Magistracy. "

**15. In Article 15, paragraph (8) shall be abolished.**

**16. After article 15, a new article, article 15<sup>1</sup> is introduced with the following content:**

"Art.15<sup>1</sup>.- The admission to the positions of legal specialists assimilated to the judges and prosecutors of the Superior Council of Magistracy and of the coordinated or subordinated institutions, to the Public Ministry, as well as to the Ministry of Justice and to the coordinated or subordinated institutions, is made through the admission contest to the National Institute of Magistracy. Those positions shall be shown separately. "

**17. In Article 16, paragraph (3) shall be amended and shall have the following content:**

"(3) The duration of the professional training courses of the justice auditors is 4 years. After the first year of courses, the auditors will follow six-month practical training sessions at: courts, prosecutors' offices, prisons and law offices. In the last year of internship, trainees will also practice internships at other institutions relevant for professional training. The institutions where the internships will take place and their duration will be determined by the plenum of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy, for each educational cycle. The internships will be organized on the basis of collaborative protocols between the National Institute of Magistracy and institutions relevant to vocational training. "

**18. In Article 16, paragraph (4) shall be amended and shall have the following content:**

"(4) During the practical training sessions, the justice auditors shall assist in all the activities specific to the institutions and professions, under the conditions established by the Regulation for organizing, conducting and evaluating the training sessions provided for in paragraph (5)."

**19. In Article 16, after paragraph (4), a new paragraph (4<sup>1</sup>) shall be inserted, with the following content:**

"(4<sup>1</sup>) At the end of each internship, the practice tutors established by the Regulations on the organization, conduct and evaluation of internships shall carry out an assessment of the capacity of each auditor to serve as a judge or prosecutor.

**20. In Article 16, paragraph (5) shall be amended and shall have the following content:**

"(5) The regulations for organizing, conducting and evaluating the practice traineeships and the professional training program of the auditors of justice are approved by the plenum of the Council Superior of Magistracy, at the proposal of the National Institute of Magistracy."

**21. In Article 17, after paragraph (3), three new paragraphs, paragraphs (3<sup>1</sup>) - (3<sup>3</sup>), shall be inserted, with the following content:**

"(3<sup>1</sup>) Auditors of justice shall receive the payment of the teaching materials, subject to and within the limit of a monthly limit established by the Regulation of the National Institute of Magistracy. Justice auditors shall receive free accommodation in the accommodation spaces of the National Institute of Magistracy within the limits of the available places under the conditions established by the Regulation of the National Institute of Magistracy. Maintenance costs are borne by the Institute.

(3<sup>2</sup>) In the case of exhaustion of the available places in the accommodation places of the National Institute of Magistracy, as well as in the cases where the justice auditors perform their training outside the municipality of Bucharest, they have the right to rent settlement up to a limit to 50% of the amount that would be due, under this title, to the magistrates, according to the law.

(3<sup>3</sup>) Auditors of justice shall receive free of charge medical care, medicines and prostheses, subject to compliance with the statutory provisions on the payment of social security contributions and the payment of maternity, maternal risk and child-raising allowances during holidays concerned. "

**22. In Article 17, paragraph (4) shall be repealed.**

**23. In Article 17, three new articles, Art. 17<sup>1</sup> - 17<sup>3</sup>, shall be inserted, with the following content:**

"Art.17<sup>1</sup> - The legal provisions on the incompatibilities and interdictions of judges and prosecutors also apply to auditors of justice.

Art. 17<sup>2</sup>. - The auditors of justice have the rights provided by Art. 79 par. (3) and Art. 80, as well as the duties stipulated in Art.90 and Art.91 par. (2).

Art.17<sup>3</sup>.- The transport costs of the training personnel of the National Institute of Magistracy who do not have their domicile or residence in Bucharest, who participate in the initial professional training activities organized by the National Institute of Magistracy, shall be borne by the budget of this institution. "

**24. In Article 18, paragraph (2) shall be amended and shall have the following content:**

"(2) There are considered discipline misconducts:

a) attitudes that violate good morals or public order, irreverent attitudes towards colleagues, training and leadership personnel of the National Institute of Magistracy, as well as to the persons they come into contact with during the traineeship;

b) unjustified absences from the compulsory activities set out in the training program if they exceed 8 hours in a month;

(c) the acts referred to in Article 99, point (a), (b), (d), (j), (l), (n) and (q), dispositions which are applied correspondingly."

**25. In Article 18, paragraph (4) is abolished.**

**26. In Article 18, paragraphs (5) and (8) shall be amended and shall have the following content:**

"(5) The sanctions provided in paragraph (3) shall be applied by the Scientific Council of the National Institute of Magistracy after the disciplinary investigation. Disciplinary liability is prescribed within one year of the act.

(8) The disciplinary investigation procedure and the application of disciplinary sanctions shall be established by the Regulation of the National Institute of Magistracy. "

**27. In Article 18, after paragraph (8), three new paragraphs (9) - (11) are inserted, with the following wording:**

"(9) The disciplinary investigation shall be suspended when the trial against the justice auditors was ordered for the same offence.

(10) The criminal investigative body is obliged to communicate immediately to the National Institute of Magistracy the act by which the justice auditor was ordered to trial.

(11) The suspension of the disciplinary investigation shall be ordered by the director of the National Institute of Magistracy and shall operate until the decision pronounced in the case that motivated the suspension has become final. The final decision is immediately communicated to the National Institute of Magistracy. During the suspension of disciplinary investigation, the course of prescription of disciplinary liability is suspended. "

**28. After article 18 a new article, article 18<sup>1</sup> is added, with the following content:**

"Art.18<sup>1</sup>.- (1) During the courses at the National Institute of Magistracy, the auditors of justice must meet the conditions stipulated in Art. 14, para. (2), point (a), (c) and (e).

(2) The failure to fulfil the conditions stipulated in paragraph (1) shall be established by the Scientific Council of the National Institute of Magistracy and shall entail the expulsion, as well as the obligation to restitution of the scholarship and of the professional training expenses, in those situations attributable to the auditors. The Scientific Council is notified by the Director of the National Institute of Magistracy ex officio or

at the request of any interested person.

(3) The procedure for verifying the fulfilment of the conditions provided in paragraph (1) shall be established by the Regulation of the National Institute of Magistracy.

(4) The provisions of Article 18, para. (6) shall apply accordingly.

(5) By way of exception to the provisions of paragraph (2), the final conviction of the auditors for a wrongful offense or the postponement of punishment for the same type of offense, as well as the waiver of the criminal prosecution or the waiving of the punishment by a final decision, does not lead to expulsion, if it is appreciated by the Scientific Council that the offense committed does not undermine the dignity of the judicial auditor or the image of the Institute. "

**29. Article 19 shall be amended and shall have the following content:**

"Art.19.- (1) After the completion of the courses at the National Institute of Magistracy, the auditors of justice shall undergo a graduation exam which verifies the acquisition of the knowledge, skills and abilities necessary for the exercise of the position of judge, respectively prosecutor, as well as a psychological test.

(2) A theoretical and practical examination commission shall be composed of 7 persons: 3 judges, 2 prosecutors, one counsel and one professor, appointed by the Plenum of the Superior Council of Magistracy from among judges, prosecutors or counsels having a seniority in the profession of at least 12 years, and from among the teaching staff of law schools who obtained the professor degree at least 5 years ago.

(2) The psychological examination will be held in front of a board made up of 3 psychologists, who will mark the candidate with "fit" or "unfit".

(3) Against the "unfit" rating, the candidate may appeal within 5 days of display, to be resolved by a panel of 5 psychologists with a different composition than the previous panel. The final "unfit" rating will result in the candidate being declared rejected to the graduate exam of the National Institute of Magistracy.

(4) Justice auditors who do not pass the graduation exam may be presented once again for its passing at the next session organized by the National Institute of Magistracy. If the auditor does not unduly submit to the exam, or does not pass the examination in the second session, he cannot be appointed as a judge or prosecutor and is required to reimburse the scholarship and scholarship expenses, except in the cases provided for in paragraphs (3) and (4).

(5) The composition of the boards referred to in paragraphs (3) and (4) shall be determined by the Section for Judges or the Prosecutor's Section of the Superior Council of Magistracy, as the case may be.

(6) The final graduation mark of the National Institute of Magistracy is composed of the average of the graduation exam referred to in paragraph (1), which will have a weight of 60%, and the average resulting from the evaluations carried out during the studies at the Institute National of Magistracy, which will have a weight of 40%."

**30. Article 20 shall be amended and shall have the following content:**

"Art.20.- (1) The graduates of the National Institute of Magistracy are obliged to fulfil the position of judge or prosecutor for 10 years.

(2) If a graduate of the National Institute of Magistracy is dismissed before the expiration of the 10-year period, on his own initiative or for reasons attributable to him, he is obliged to return the judicial auditor's scholarship and expenses for training carried out with his training, in proportion to the time remaining until the deadline referred to in paragraph (1). "

**31. Article 21 shall be amended and shall have the following content:**

"Art.21- (1) The justice auditors shall choose the places for trainee judges and prosecutors who have been admitted to the competition, and their assignment shall be based on the final graduation note of the National Institute of Magistracy provided for in Article 19 paragraph (7). The options are made before the National



Institute of Magistracy, which will forward the table with the distribution proposals made in this way to the corresponding sections of the Superior Council of Magistracy for appointment.

(2) The trainee judges and trainee prosecutors shall be distributed and appointed by the appropriate sections of the Superior Council of Magistracy, on the basis of the options expressed in accordance with paragraph (1).

(3) In the districts of the courts and prosecutor's offices where a national minority has a share of at least 50% of the population, in equal environments, priority shall be given to candidates who know the language of that minority.

(4) The candidate who has not exercised the right to choose the position within the time limit stipulated in paragraph (2) shall be offered a position, ex officio, by the Superior Council of Magistracy. The refusal to accept the proposal is considered a resignation.

(5) In equal environments, the candidate having the domicile within the jurisdiction of the court or Prosecutor's office for which he has opted, or the one who has a longer seniority in magistracy, shall have priority in the election of the position in the following order.

(6) The distribution of positions shall be displayed at the headquarters of the Superior Council of Magistracy, the courts and prosecutors' offices, shall be communicated to the persons concerned and published on the website of the Superior Council of Magistracy.

(7) The period between the passing of the graduation examination and the appointment by the Superior Council of Magistracy as a trainee judge or prosecutor, as well as the period in which a person was a trainee judge or a prosecutor, if he had passed the examination of capacity provided for Article 28, constitutes seniority as a judge or prosecutor.

(8) Trainee judges and trainee prosecutors enjoy stability. "

**32. In Article 22, paragraph (1) shall be amended and shall have the following content:**

"Art.22.- (1) The length of the traineeship is 2 years."

**33. In Article 23, paragraph 1 shall be amended and shall have the following content:**

"Art.23.- (1) The judges judge:

- (a) the possession actions, the applications for the registrations and the rectifications in civil status registers;
- b) property disputes related to the payment of a sum of money or the transfer of a good, if the value of the object of the dispute does not exceed 10,000 lei;
- c) complaints against the minutes of finding contraventions and applying contravention sanctions, if the maximum sanctioning sanction stipulated by the law is 10,000 lei;
- d) the low value claims, provided in Art. 1.026 - 1.033 of Law no. 134/2010 on the Civil Procedure Code, republished, as subsequently amended;
- e) applications for the replacement of the contravention penalty with the sanction of performing a community service activity;
- f) requests for abstention and dismissal, as well as requests for revision and appeals for annulment in cases falling within their competence;
- g) the rehabilitation;
- h) finding the intervention of amnesty or pardon;
- i) the offenses provided by the Law no.286 / 2009 on the Criminal Code, as subsequently amended and supplemented, and the special laws for which the criminal proceedings are initiated at the preliminary

complaint of the aggrieved party, except for the offenses provided in Art. 218 para. (1) and (2), Art.219 paragraph (1), Art.223, Art.226 and 227, as well as Art.239-241 of the Law no.286 / 2009, with subsequent amendments and completions, including the complaints against solutions regarding non-prosecution or not-suing, requests for confirmation of solutions for the waiver of criminal prosecution and applications for confirmation of the reopening of criminal prosecution in cases involving such offenses. "

**34. In Article 23, after paragraph (1), two new paragraphs (1<sup>1</sup>) and (1<sup>2</sup>) are inserted, with the following wording:**

"(1<sup>1</sup>) The trainee judges shall also assist in court hearings other than those provided for in paragraph (1), by rotation, to the panel courts of final judges established by the President of the court. In the cases in which he / she assists, the trainee judge produces a consultative report on the case and may draft the decision at the request of the president of the panel.

(<sup>1/2</sup>) The manner of participation in such panels shall be determined by decision of the managing board."

**35. In Article 23, paragraph (2) shall be amended and shall have the following content:**

"(2) The trainee prosecutors have the right to make judgments, carry out and sign law and procedural documents, under the coordination of a final prosecutor."

**36. In Article 23, after paragraph (2), two new paragraphs (2<sup>1</sup>) and (2<sup>2</sup>) are inserted, with the following content:**

"(2<sup>1</sup>) The trainee prosecutor issues an advisory opinion that motivates and resolves the work assigned to him by the first prosecutor of the prosecutor's office attached to the court.

"(2<sup>2</sup>) Trainee judges and prosecutors shall not have the right to impose privative or imprisonment measures."

**37. In Article 24, paragraph (2) shall be abolished.**

**38. Article 26 shall be amended and shall have the following content:**

"Art.26.- (1) The capacity examination consists of the support of a written test and of an oral test, respectively the evaluation of the training material, each having equal weights in the final average.

(2) The capacity test will seek to acquire practical skills and aptitudes during the internship period.

(3) The capacity examination is organized at the end of each internship, based on the regulations developed by the corresponding sections of the Superior Council of Magistracy, through the National Institute of Magistracy.

(4) The examination shall be carried out by the boards referred to in Article 28.

(5) The manner of passing the examination, the criteria for its assessment, the procedure and the evaluation criteria of the internship material shall be established by Regulations proposed by the National Institute of Magistracy and approved by the Judicial Section, respectively the Prosecutor's Section of the Superior Council of the Magistracy. "

**39. Article 27 shall be amended and shall have the following content:**

"Art.27.- (1) The date, place and manner of carrying out the capacity examination shall be published in the Official Gazette of Romania, Part III, as well as on the website of the Superior Council of Magistracy and that of the Institute National Magistrates and shall be notified to the courts and prosecutor's offices attached to them, at least 90 days before the date set for the capacity examination.

(2) The applications for enrolment in the capacity examination, accompanied by the traineeships materials and other documents required by the regulations on the capacity examination of the trainee judges, respectively of the trainee prosecutors, shall be submitted to the Superior Council of Magistracy within 60 days of when the date of the exam is published. "

**40. Article 28 shall be amended and shall have the following content:**

"Art.28.- (1) The Judicial Capacity Review Board and the Board for appeal solving shall be composed of judges from the High Court of Cassation and Justice and judges from the Courts of Appeal appointed by decision of the Section for Judges of Superior Council of Magistracy.

(2) The prosecutors' capacity examination board and the appeal board shall be made up of prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice and prosecutors from the Prosecutor's Offices attached to the Courts of Appeal appointed by decision of the Section for Prosecutors of the Superior Council of Magistracy.

(3) The competition boards are appointed by decision of the corresponding sections of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

**41. Article 29 shall be amended and shall have the following content:**

"Art.29.- (1) The results of the capacity examination shall be displayed at the headquarters of the National Institute of Magistracy and shall be published on the website of the Superior Council of Magistracy and that of the National Institute of Magistracy.

(2) Appeals regarding each of the two subjects shall be sent to the National Institute of Magistracy, within 72 hours from the display of the results, by the candidates, the courts of appeal or the prosecutor's offices attached to them. Appeals are settled within 3 days. The decision of the appeal panel is final, the provisions of paragraph (4) being applicable accordingly.

(3) The appeal of the oral test shall be settled by the Appeals Board by analysing the audio-video recording of the subject sustained by the candidate.

(4) After drawing up the classification table of candidates, each of the sections of the Superior Council of Magistracy shall validate the capacity examination in the first session following the display of the results.

(5) The sections of the Superior Council of Magistracy may invalidate, in whole or in part, the capacity examination in cases where it finds that the conditions stipulated by the law or regulation on the organization of the examination have not been complied with or that there is evidence of fraud. "

**42. Article 30 shall be repealed.**

**43. At Article 31, paragraph (3) shall be amended to read as follows:**

"(3) The President of Romania may not refuse the appointment of judges and prosecutors set forth under para. (1)."

**44. At Article 31, paragraph (4) shall be repealed.**

**45. In Article 33, paragraph 1 shall be amended and shall have the following content:**

"Art.33.- (1) In the magistracy there can be appointed, on the basis of a contest, if they fulfil the conditions stipulated in Art. 14 paragraph (2), former judges and prosecutors who have ceased their activity for non-imputable reasons, legal specialty staff stipulated in Art. 87 para. (1), lawyers, notaries, judiciary assistants, legal advisors, bailiffs with legal higher education, probation officers with legal higher education, judicial police officers with higher legal education, court clerks with legal higher education, persons who have fulfilled legal specialty positions in the apparatus of the Parliament, the Presidential Administration, the Government, the Constitutional Court, the People's Advocate, the Court of Accounts or the Legislative Council, the Institute of Legal Research of the Romanian Academy and the Romanian Institute for Human Rights, the accredited higher education teachers, as well as magistrates- assistants with a seniority of at least 5 years. "

**46. In Article 33, paragraph (2<sup>1</sup>) shall be amended and shall have the following content:**

(2<sup>1</sup>) The provisions of Art. 15 shall apply accordingly.

**47. In Article 33, paragraphs 11 shall be amended to read as follows:**

“(11) The President of Romania may not refuse the appointment of judges and prosecutors set forth under para.(1).”

**48. At Article 33, paragraph 12 shall be repealed.**

**49. After article 33 a new article, article 33/1, shall be inserted, with the following content:**

"Art.33/1.- Persons who have been at least 10 years as judge or prosecutor and magistrate-assistant, who have not had any disciplinary sanction, have only the grading "very well "in all evaluations and have ceased their activity for non-imputable reasons, may be appointed, without contest or examination, to vacant positions of judge or prosecutor, to courts or prosecutors' offices of the same rank as those in which they functioned or to lower courts or prosecutor's offices. "

**50. In Article 35, paragraphs 1 and 2 shall be amended and shall have the following content:**

"Art. 35. - (1) The continuous professional training of judges and prosecutors is the guarantee of independence and impartiality in the exercise of their office. Initial and continuous training is a right and duty for the judge.

(2) Continuous vocational training must take into account the dynamics of the legislative process and consists mainly in the knowledge and deepening of the internal legislation, the European and international documents to which Romania is a party, the jurisprudence of the courts and the Constitutional Court, the jurisprudence of the European Court of Human Rights and the European Court of Justice, comparative law, deontological norms, the multidisciplinary approach of novelty institutions, as well as the knowledge and deepening of foreign languages and computer operation. "

**51. In Article 37\1 after paragraph (1), a new paragraph (P) shall be inserted, with the following content:**

"(11) The accommodation and meal expenses of foreign judges and prosecutors, trainees or representatives of other foreign training institutions participating, within cooperation programs, in training activities organized by the National Institute of Magistracy may be borne by the budget of this institution. "

**52. In Article 371, paragraph (2) shall be amended and shall have the following content:**

"(2) The maximum limit of the expenditures provided for in paragraphs (1) and (P) shall be established by decision of the president of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy. The accommodation of the participants under the conditions of paragraphs (1) and (11) may be carried out in the tourist reception facilities within the maximum limit established by decision of the president of the Superior Council of Magistracy, regardless of their classification. "

**53. In Article 38, paragraphs (P) to (1<sup>3</sup>) shall be amended and shall have the following content:**

"(11) The costs of organizing the activities provided for in paragraph (1), including accommodation, meals and transport of training staff and participants, shall be borne by the budget of the court of appeal or, where appropriate, of the Prosecutor's Office attached to the Court of Appeal. In the case of the training personnel of the National Institute of Magistracy who participate, under the Institute's proposal, in this quality, in accordance with the annual program of continuous professional training of judges and prosecutors approved by the Superior Council of Magistracy, for the activities referred to in paragraph (1) regarding accommodation, meals and transportation is covered by the budget of the National Institute of Magistracy.

(12) The maximum limit of the expenditures stipulated in paragraph (11) shall be established by order of the Minister of Justice, respectively of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice. In the case of the training personnel of the National Institute of Magistracy who participate, under the Institute's proposal, in this quality, in accordance with the annual program of continuous professional training of judges and prosecutors approved by the Superior Council of Magistracy, for the activities referred to in paragraph (1), the limit of the maximum expenditure shall be determined in accordance with the provisions of Article 37/1, paragraph (2).

(1) The salary costs of the training staff participating in the activities referred to in paragraph (1) shall be borne by the budget of the court of appeal or, where appropriate, of the prosecutor's office attached to the court of appeal. The provisions of Art.108 paragraph (3) of Law no.304 / 2004, republished, as subsequently amended and supplemented, shall apply accordingly. In the case of the training staff engaged by payment per hour of the National Institute of Magistracy who, on the proposal of the Institute, participate in this capacity, according to the annual program of continuous professional training of judges and prosecutors approved by the Superior Council of Magistracy, to the activities stipulated in paragraph (1), the salary costs of the training staff shall be borne by the budget of the National Institute of Magistracy. "

**54.Article 39 shall be amended and shall have the following content:**

"Art. 39. - (1) In order to verify the fulfilment of the professional competence and performance criteria, judges and prosecutors are subject to regular evaluation of the quality of the activity, efficiency, integrity and obligation of continuous professional training, and in the case of the judges and prosecutors appointed in leadership functions, and how to perform managerial duties.

(2) In relation to seniority in the position of judge or prosecutor respectively, the assessment shall be carried out as follows:

- a) once every two years, for judges and prosecutors with a seniority between one and 5 years;
- b) every three years, for judges and prosecutors with a seniority between 5 and 10 years;
- c) once every four years, for judges and prosecutors with a seniority between 10 and 15 years;
- d) once every 5 years, for judges and prosecutors with a seniority older than 15 years.

(3) The evaluation provided for in paragraph (1) shall be made by committees set up separately for judges and prosecutors consisting of the president of the court or the head of the prosecutor's office of which the assessed person belongs and 2 or more judges or prosecutors from the court or the hierarchically superior prosecutor's office, appointed by the governing board of that court or prosecutor's office, with the same specialization as the judge or prosecutor assessed. The evaluation of the president of the court and of the vice-president is made by a commission consisting of the president of the higher court, the president of the department responsible for the specialization of the assessed judge, as well as a judge from the higher court, appointed by the governing board. The evaluation of the head of the Prosecutor's Office, his deputy and the chief prosecutor of the department is carried out by a commission from the higher hierarchical prosecutor's office, which includes the head of the prosecutor's office, a prosecutor with a leading position corresponding to the specialization of the prosecutor evaluated and another prosecutor appointed by the governing college. The evaluation of the presidents, vice-presidents and section presidents from the courts of appeal or the Military Appeal Court is made by a commission composed of judges from the High Court of Cassation and Justice designated by the governing board of that court and the evaluation of the prosecutors General, Deputy General Prosecutors and Heads of Section from the Prosecutor's Offices attached to the Courts of Appeal or the Prosecutor's Office attached to the Military Appeal Court is made by a commission composed of Prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, nominated by the governing board of this Prosecutor's Office. The evaluation of the president and vice-presidents of the High Court of Cassation and Justice is made by a commission composed of judges, elected members of the Section for Judges of the Superior Council of Magistracy, with at least a court of appeal rank, appointed by the Judicial Section of the Superior Council of Magistracy. The evaluation of the Prosecutor General of the

Prosecutor's Office attached to the High

Court of Cassation and Justice and the Chief Prosecutors of the specialized directorates is made up of a commission composed of prosecutors, elected members of the Prosecutor's Section within the Superior Council of Magistracy, with at least a county court rank, appointed by the Prosecutor's Section of the Superior Council of Magistracy.

(4) The Prosecutors' Evaluation Committees at the Prosecutor's Office attached to the High Court of Cassation and Justice, including those within the Directorate for the Investigation of Organized Crime and Terrorism and the National Anticorruption Directorate, shall include the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice or its first deputy or deputy, the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism and the Chief Prosecutor of the National Anticorruption Directorate or their deputies, the Chief Prosecutors of the Section, as well as the appointed prosecutors, as the case may be, by the leading college of the Prosecutor's Office attached to the High Court of Cassation and Justice, by the leading college of the National Anticorruption Directorate or by the leading college of the Directorate for the Investigation of Organized Crime and Terrorism.

(5) For the judges and county courts and, respectively, for the prosecutor's offices attached thereto, the commissions provided for in para. (4) shall be constituted by decision of the management board of the court of appeal or of the prosecutor's office attached to it. For the courts of appeal and for the prosecutor's offices attached to them, the evaluation commissions are constituted by a decision of the management board of the High Court of Cassation and Justice. For the High Court of Cassation and Justice, the evaluation committee is constituted by a Judge's Section decision of 3 judges appointed from among the elected members of the Section for judges, with at least a court of appeal rank. For the Prosecutor's Office attached to the High Court of Cassation and Justice, the Evaluation Board is constituted by a decision of the Prosecutor's Section of three prosecutors, appointed from among the elected members of the Prosecutor's Section, at least with a county court rank.

(6) The Regulation on the evaluation of the professional activity of judges and prosecutors shall be approved by decision of each of the respective sections of the Superior Council of Magistracy. "

**55. In Article 40, paragraphs 1, 3 and 4 shall be amended and shall have the following content:**

"Art.40.- (1) By the evaluation report of the professional activity of the judge or prosecutor drawn up by the committees provided for in Art. 39 para. (4) or (5), one of the following qualifiers may be awarded: 'very good', 'good', 'satisfactory' or 'unsatisfactory'.

(3) In the settlement of the appeal, the sections of the Superior Council of Magistracy may request from the head of the court or the prosecutor's office or from the commissions or persons referred to in Art.39 paragraphs (4) and (5) any information they deem necessary and the summons of the judge or prosecutor for hearing is mandatory.

(4) The decisions of the sections may be appealed with appeal, at the administrative and fiscal contentious division of the court of appeal, within 15 days from the communication, without going through the preliminary procedure. The court of appeal's decision is final. "

**56. In Article 41, paragraph (3) shall be amended and shall have the following content:**

"(3) The courses referred to in paragraphs (1) and (2) shall be concluded by an examination organized by the Superior Council of Magistracy through the National Institute of Magistracy."

**57. A new chapter, Chapter IV<sup>1</sup>, comprising Article 42<sup>1</sup>, shall be inserted after Article 42, with the following wording:**

"CHAPTER IV1  
Periodic psychological evaluation

Art.42<sup>1</sup>.- (1) Judges, prosecutors, magistrate-assistants and legal specialists assimilated to judges and prosecutors shall be subjected every five years to a psychological assessment.

(2) If following the psychological evaluation, the judge, the prosecutor, the assistant magistrate or the legal professional staff assimilated to judges and prosecutors receives the qualification "unfit", he / she is obliged to follow a psychological counselling program lasting up to 6 months, and the judge or prosecutor will be subject to a new assessment.

(3) The psychological evaluation / re-evaluation procedure, including the way of setting up the psychological evaluation commissions, the payment of their members and the conduct of the psychological counselling program shall be established by a decision of the Plenum of the Superior Council of Magistracy. "

**58.Article 43 shall be amended and shall have the following content:**

"Art.43.- The contest for the promotion of judges and prosecutors is organized annually or whenever necessary by the corresponding sections of the Superior Council of Magistracy, through the National Institute of Magistracy."

**59.Article 44 shall be amended and shall have the following content:**

"Art.44.- (1) There can participate in the promotion contest at the immediately higher courts or prosecutor's offices the judges and prosecutors who have had the " very good "rating at the last evaluation, have not had any disciplinary sanction in the last 3 years, have actually been for at least 3 years at the hierarchically inferior court or prosecutor's office to the one they wish to promote and meet the following minimum conditions of seniority:

a) 7 years seniority as a judge or prosecutor for promotion to the office of a judge of a court or specialized court and a prosecutor at the prosecutor's office attached to the tribunal or the prosecutor's office attached to the specialized court;

b) 10 years seniority as a judge or prosecutor, for promotion to the office of a court of appeal and prosecutor at the prosecutor's office next to it;

c) 18 years seniority as a judge or prosecutor, for promotion to the position of prosecutor at the Prosecutor's Office attached to the High Court of Cassation and Justice.

(2) When calculating the minimum seniority for participation in the promotion contest, no account shall be taken of the period during which the judge or prosecutor was a justice auditor.

(3) The Superior Council of Magistracy, through its sections, shall verify fulfilment of the conditions set out in paragraph (1).

(4) The seniority referred to in paragraphs (1) and (2) must be fulfilled by the date of enrolment in the promotion contest.

(5) The Superior Council of Magistracy shall verify through the relevant sections the fulfilment of the conditions provided for in paragraphs (1) to (4). "

**60.Article 45 shall be amended and shall have the following content:**

"Art. 45. - Judges and prosecutors who meet the conditions stipulated in Art. 44 may take part in the contest in order to promote on the spot, within the limits of the number of seats approved annually by the corresponding sections of the Superior Council of Magistracy.

**61. In Article 46, paragraphs (3) and (4) shall be amended and shall have the following content:** "(3) The procedure for conducting the contest, including the way of challenging the results, is stipulated in the Regulation on the organization and running of the contest for the promotion of judges and prosecutors. Cancelling or modifying in any way the response scale set for any of the competition topics, once this scale has been brought to the attention of the candidates, causes the contest to be invalidated and resumed.

(4) The provisions of Article 21 paragraph (3) shall apply accordingly. "

**62. After Article 46, three new articles are inserted, Art. 46/1 to 46/3, with the following content:**

"Art.46/1.- (1) Effective promotion of judges and prosecutors shall be carried out only through a competition organized at national level, within the limits of the vacant places in the courts and courts of appeal or, as the case may be, at the prosecutor's offices.

(2) The contest for effective promotion of judges and prosecutors shall be organized annually or whenever necessary by the Superior Council of Magistracy, through the National Institute of Magistracy.

(3) The date, the place, the manner of conducting the competition and the vacancies for which a competition is organized shall be communicated to all judges and prosecutors through the courts of appeal and prosecutors' offices, and shall be published on the website of the Superior Council of Magistracy, the National Institute the Magistrates' Office and the Prosecutor's Office attached to the High Court of Cassation and Justice, at least 30 days before the date of submission of the applications for participation in the competition.

Art. 46<sup>2</sup>. - (1) There can participate in the actual promotion contest at the immediately higher courts and prosecutor's offices the judges and prosecutors who have had the "very good" rating at the last evaluation, have not had any disciplinary sanction in the last 3 years, have obtained the professional grade corresponding to the court or prosecutor's office at which they request the promotion and have actually worked for at least 2 years at the lower court or prosecutor's office, in the case of promotion to the office of a court of appeal, prosecutor at the prosecutor's office attached to it or prosecutor at the Prosecutor's Office attached to the High Court of Cassation and Justice.

(2) The provisions of Article 44, paragraphs (3) and (4) shall apply accordingly.

Art.46<sup>3</sup>.- (1) The effective promotion contest shall consist in supporting a test having as object the evaluation of the activity and conduct of the candidates in the last 3 years.

(2) The procedure for organizing and conducting the contest, including the competition commissions and their constitution, the matters subject to verification as part of the proof provided in paragraph (1) and the way of establishing and challenging the results, shall be established by the Regulation provided by Art. 46 para. (4).

(3) The provisions of Article 21, paragraph (3) shall apply accordingly. "

**63. Article 47 shall be amended and shall have the following content:**

"Art.47.- Within 30 days from the communication of the results, the Section for Judges or, as the case may be, the Prosecutor's Section of the Superior Council of Magistracy rules, by decision, the promotion of the judges and prosecutors declared admitted."

**64. After Article 47, two new articles are inserted, Art. 47<sup>1</sup> and 47<sup>2</sup>, with the following content:**

"Art. 47<sup>1</sup>. - (1) Judges and prosecutors who have effectively promoted execution positions in higher courts or prosecutor's offices may not be delegated, detached or transferred for at least 2 years from the date of promotion.

(2) Judges who have actually promoted to execution positions in higher courts may not be appointed as prosecutors, and prosecutors who have actually promoted executive positions at higher prosecutor's offices may not be appointed as judges for at least two years from the date of promotion.

Art.47<sup>2</sup>.- Promotion of legal specialists assimilated to judges and prosecutors within the Superior Council of



Magistracy, the Public Ministry, the Ministry of Justice, as well as their coordinated or subordinated institutions is done through the organized promotion examination for judges and prosecutors, under the law. "

**65. In Article 48, paragraphs (1), (4) - (6) shall be amended and shall have the following content:**

"Art. 48. - (1) The appointment to the positions of president and vice-president in the courts, tribunals, specialized courts and courts of appeal shall be made only by competition or examination, whenever necessary, by the Judges Section of the Superior Council of the Magistracy, through the National Institute of Magistracy.

(4) The contest or exam consists in the presentation of a project regarding the exercise of the specific tasks of the management function and in written tests on management, communication, human resources, the candidate's ability to make decisions and to assume responsibility, the resistance to stress and a psychological test. The contestations regarding each of the competition subjects are sent to the National Institute of Magistracy within 3 days of publication of the results for each subject. Cancelling or modifying in any way the response scale set for any of the competition topics, once this scale has been brought to the attention of the candidates, causes the contest to be invalidated and resumed.

(5) The Examination Board is appointed by the Judges Section of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy, and consists of 2 judges from the High Court of Cassation and Justice, 2 judges from the Courts of Appeal and 3 specialists in institutional management and organization. The commissions will take into consideration the judges who have attended management courses.

(6) The date, the place, as well as the Regulations for organizing the competition or the exam elaborated by the National Institute of Magistracy shall be approved by the Judges Section within the Superior Council of Magistracy and shall be displayed on the website of the National Institute of Magistracy, Ministry of Justice, the Superior Council of Magistracy and at the courts, at least 30 days before the date of its execution. "

**66. In Article 48, after paragraph (6) a new paragraph, paragraph (6<sup>1</sup>) shall be inserted, with the following content:**

"(6<sup>1</sup>) The appeal of evaluation shall be settled by the Appeals Board by analysing the audio-video recording of the Candidate's subject."

**67. In Article 48, paragraphs (7) and (9) shall be amended and shall have the following content:**

"(7) The Judges Section of the Superior Council of Magistracy shall validate the result of the contest or the examination and appoint the judges to the managerial positions provided in paragraph (1) within 15 days from the date of the final results. The provisions of Article 21 paragraph (3) shall apply accordingly.

(9) The appointment of the judges in the other senior positions shall be for a period of three years, with the possibility of re-investing only once, by the Judges Section within the Superior Council of Magistracy, at the proposal of the President of the Court. "

**68. In Article 48, after paragraph (9), a new paragraph (9<sup>1</sup>) shall be inserted, with the following content:**

"(9<sup>1</sup>) Judges who have the grade "very good" at the last assessment, have not had any disciplinary sanction in the last 3 years and meet the seniority conditions stipulated by law may be appointed to the positions of management referred to in paragraph (9).

**69. In Article 48, paragraph 10 shall be amended and shall have the following content:**

"(10) Judges who have been part of the intelligence services or collaborated with them or the judges who have personal interest who influence or could influence the objective and impartial performance of the duties provided by law may not be appointed in management positions."

**70. In Article 49, paragraphs 1 and 5 shall be amended and shall have the following content:**

"Art. 49. - (1) The appointment in the positions of general prosecutor of the prosecutor's office attached to the

court of appeal, first prosecutor of the prosecutor's office attached to the tribunal, first prosecutor of the prosecutor's office attached to the juvenile and family tribunal, or first prosecutor of the prosecutor's office attached to the court and their deputies shall be held only through organized competition or examination, whenever necessary, by the Prosecutor's Section of the Superior Council of Magistracy, through the National Institute of Magistracy.

(5) The Examination Board is appointed by the Prosecutor's Section of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy, and consists of 2 prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, 2 prosecutors from the prosecutor's offices attached to courts of appeal and 3 specialists in institutional management and organization. When boards are set up, prosecutors who have attended management courses will be mainly taken into consideration."

**71. In Article 49, after paragraph (5), a new paragraph (5<sup>1</sup>) is inserted, with the following content:**

"(5<sup>1</sup>) The provisions of Article 48 paragraph (61) shall apply accordingly."

**72. In Article 49, paragraphs 6, 7 and 9 shall be amended and shall have the following content:**

"(6) The date, place, as well as the Regulations for organizing the competition or the exam elaborated by the National Institute of Magistracy are approved by the Section for Prosecutors of the Superior Council of Magistracy and are displayed on the website of the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Institute of Magistracy, the Superior Council of Magistracy, the Ministry of Justice and at the offices of the prosecutor's offices, at least 30 days before the date of its performance.

(7) The Prosecutor's Section of the Superior Council of Magistracy shall validate the result of the contest or the examination and appoint the prosecutors in the management positions provided in paragraph (1) within 15 days from the date of the final results. The provisions of Article 21 paragraph (3) shall apply accordingly.

(9) The appointment in the other positions of management at the Prosecutor's Office is made for a period of 3 years, with the possibility of re-investing only one time, by the Prosecutor's Section of the Superior Council of Magistracy, at the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice. "

**73. In Article 49, after paragraph (9), a new paragraph (9<sup>1</sup>) shall be inserted, with the following content:**

"(9<sup>1</sup>) Prosecutors who have the "very good" rating at the last assessment have not had any disciplinary sanction in the last 3 years and meet the seniority conditions prescribed by law may be appointed to the management positions provided in paragraph (9)."

**74. Article 50 shall be amended and shall have the following content:**

"Art.50.- (1) For the appointment to management positions, the following minimum conditions of seniority are required:

- a) for the position of president and vice-president of the court, first prosecutor of the prosecutor's office attached to the court and his deputy, 6 years seniority in the position of judge or prosecutor;
- b) for the position of president and vice-president of a specialized court or tribunal, as well as president of the section of the tribunal, first prosecutor of the prosecutor's office attached to the tribunal or the prosecutor's office attached to the juvenile and family tribunal, his deputy and chief prosecutor of the department the Prosecutor's Office attached to the tribunal or the Prosecutor's Office attached to the Tribunal for Minors and Family, 8 years of service as Judge or Prosecutor;
- c) for the position of president, vice-president, president of the section of the court of appeal, general prosecutor of the prosecutor's office attached to the court of appeal and his deputy, chief prosecutor of the prosecutor's office attached to the court of appeal, 12 years seniority in the position of judge or prosecutor.

(2) The provisions of Article 44 paragraph (2) shall apply accordingly.

(3) In order to participate in the competition or examination for appointment to management positions, the judge or prosecutor must work for at least 2 years at the court or, where appropriate, the prosecutor's office where the management position for which he is applying is vacant. The provisions of this paragraph shall also apply accordingly for the appointment to the management positions provided by Art. 48 para. (9) and Art. 49 paragraph (9).

(4) By way of derogation from the provisions of paragraph (3), where no candidate is present at two consecutive competitions for appointment to a management position, the next competition or examination organized for appointment to the same seniority position may have judges or, as the case may be, prosecutors from another court or prosecutor's office of the same court of appeal or prosecutor's office attached to the court of appeals district, who have the right to work at the court or prosecutor's office for which they apply.

(5) If, at a court or a prosecutor's office attached to the district where the president, vice-president or president of the section, respectively the first prosecutor or his deputy positions are vacant, no judge or prosecutor fulfils the conditions of seniority provided for by the law for the performance of these functions, does not consent to the delegation or, for objective reasons, no judge or prosecutor from the same court or prosecutor may be delegated, any of the judges or prosecutors serving in another court or prosecutor's office in the same court of appeals may be delegated to that management position.

**75. In Article 51, paragraphs 1, 2 and 7 shall be amended and shall have the following content:**

"Art.51.- (1) Upon the expiration of the term of office of a managerial position, the judges or the prosecutors may have, under the conditions stipulated in Art. 48-50, another position of management at the same court or prosecutor's office, according to the law, either return to execution positions at the courts or prosecutor's offices which they have managed or where they come from.

(2) The dismissal from the management position of the judges is ordered by the Superior Council of Magistracy - the Section for Judges, ex officio or, at the proposal of the general assembly or of the president of the court for the following reasons:

- a) if they no longer fulfil one of the conditions required for appointment to the management position;
- b) in the event of misconduct of managerial duties regarding efficient organization, behaviour and communication, assuming responsibilities and managerial skills;
- c) if one of the disciplinary sanctions is applied.

(7) The dismissal from the management positions of the prosecutors is ordered by the Superior Council of Magistracy - the Prosecutor's Section, ex officio or, at the proposal of the general assembly or the head of the prosecutor's office for the reasons set out in paragraph (2), which shall apply accordingly. "

**76. In Article 51, after paragraph (7), three new paragraphs, paragraphs (8) - (10), shall be inserted, with the following content:**

"(8) Until the completion of the dismissal procedure provided for in paragraphs (2) and (7), the Section for Judges, respectively the Prosecutor's Section of the Superior Council of Magistracy, as the case may be, may order the suspension of the judge or prosecutor from the management position.

(9) The decision shall be motivated within 5 days from the pronouncement and may be challenged with appeal to the High Court of Cassation and Justice - the Administrative and Fiscal Complaints Section, within 5 days from the communication, without carrying out the prior procedure.

(10) Until the appeal has been resolved, the court may order, upon request, to suspend the execution of the suspension decision."

**77. After article 51 a new article, article 51<sup>1</sup>, shall be inserted, with the following content:**

"Art.51<sup>1</sup>.- (1) Suspension in any way of the employment relationship does not suspend the duration of the mandates of the management positions provided in Art. 48 and 49.

(2) The impossibility of exercising attributions for more than one year shall result in the termination of the mandates of the management positions provided for in Articles 48 and 49. "

**78.In Article 52, the paragraph (1) and (3) shall be amended and shall have the following content:**

"(1) Promotion to a position of Justice with the High Court of Justice takes place only based on a competitive examination organized whenever this is necessary, within the limit of vacancies, by the Section for Judges of the Superior Council of Magistracy, through the National Institute of Magistracy.

"(3) The judges who have actually completed at least 3 years of office as judge at the Court of Appeal have obtained the "very good" rating in the last 3 evaluations, have not had any disciplinary sanction in for the past 3 years have an effective seniority of at least 18 years in the office of judge may participate in the promotion contest for the judge at the High Court of Cassation and Justice. The provisions of Article 44 paragraph (2) shall apply accordingly. "

**79.In Article 52<sup>1</sup> paragraph (2), point (b) shall be amended and shall have the following content:**

"b) an interview held before the Judges Section of the Superior Council of Magistracy."

**80.In Article 52<sup>1</sup>, paragraph (2), point (c) is abolished.**

**81.In Article 52<sup>1</sup>, paragraphs 3 to 5 shall be amended and shall have the following content:**

"(3) The competition commissions are appointed by decision of the Section for Judges of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

(4) The competition commissions are made up of judges from the High Court of Cassation and Justice, university professors having a lecturer degree or university professor from law faculties from advanced research universities and education as they are classified according to Art. 193 para. (4) point c) of the National Education Law no. 1/2011, as amended and supplemented.

(5) The members of the commissions referred to in paragraph (3) may not have political affiliation at the time the commissions are formed and throughout the duration of the contest."

**82.In Article 52<sup>2</sup>, paragraph 1 shall be amended and shall have the following content:** "Art.52<sup>2</sup>.- (1) Within the examination provided by Art.521 paragraph (2) point a), at the request of the competition commissions, the Section for Judges of the Superior Council of Magistracy shall request, through the courts of appeal, court judgments of the last 5 years of activity, as well as the other data necessary for the assessment under this law. "

**83.In Article 52<sup>3</sup>, paragraph 1 shall be amended and shall have the following content:**

"Art.52<sup>3</sup>.- (1) The assessment provided for in Article 522 shall have as its object:

- a) verification of analysis and synthesis capacity;
- b) verification of consistency in expression;
- c) verifying the argument in terms of clarity and logic;
- d) verifying compliance with the reasonable time limits for solving cases and drafting judgments ". "

**84. In Article 52<sup>3</sup>, paragraph 2 shall be abolished.**

**85. Article 52<sup>4</sup> shall be amended and shall have the following content:**

"Art.52<sup>4</sup>.- (1) Within the interview examination, the Section for judges of the Superior Council of Magistracy assesses issues related to the integrity of the candidates and how the candidates relate to values such as the independence of the judiciary and the impartiality of the judges, the motivation of the candidates and their human and social competences.

(2) At the session of the Judges Section of the Superior Council of Magistracy in which the interview is held, a psychologist appointed by the Section for Judges will also take part in the interview, who will be able to ask questions to the candidates for the purpose of assessing the motivation and the human and social competences of them. "

**86. Article 52<sup>6</sup> is abolished.**

**87. In Article 52<sup>7</sup>, paragraph 1 shall be amended and shall have the following content:**

"Art.52<sup>7</sup>.- (1) Within 15 days from the communication of the results of the promotion contest to the position of judge at the High Court of Cassation and Justice, the Section for Judges has, by decision, the promotion of the candidates declared admitted."

**88. Article 53 shall be amended and shall have the following content:**

"Art. 53. - (1) The president, vice-president and section presidents of the High Court of Justice are appointed by the Section for Judges of the Superior Council of Magistracy from among justices of the High Court of Justice who have worked with said court for at least 2 years and who have not been subject to any disciplinary action in the past 3 years.

(2) Appointment to the positions specified at para. (1) shall be valid for a time interval of 3 years, with a possibility for one single renewal.

(3) The provisions of Art.48 para.(10) - (12) shall apply accordingly.

(4) Justices of the High Court of Justice who meet the requirements provided for under para. (1) may apply for the position of Chief Justice of Deputy Chief Justice of the High Court of Justice or of Chamber President of the Section for Judges of the Superior Council of Magistracy within 30 days of the date when the position of president, vice-president or section president becomes vacant.

(5) The Chief Justice, Deputy Chief Justice and Chamber President at the High Court of Justice shall be revoked by the Section for Judges of the Superior Council of Magistracy, which may act *sua sponte*, upon request by one third of the number of members or by the general meeting of the court, for reasons listed under Article 51 para. (2), which shall apply accordingly."

**89. In Article 54, paragraphs (1), (3) and (4) shall be amended and shall have the following content:**

"Art. 54. - (1) The Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, the first deputy and his deputy, the chief prosecutor of the National Anticorruption Directorate, his deputies, the chief prosecutors of these prosecutor's offices, the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism and his deputies are appointed by the President of Romania, at the proposal of the Minister of Justice, with the opinion of the Prosecutors Section of the Superior Council of Magistracy, between the prosecutors who have a minimum of 10 years of service as judge or prosecutor, for a period of three years, with the possibility of re-investing only once.

(3) The President of Romania may, in justified cases, refuse once the appointment to the management positions provided for in paragraph (1), making the reasons for the refusal known to the public.

(4) The dismissal of the prosecutors from the management positions provided for in paragraph (1) shall be made by the President of Romania, at the proposal of the Minister of Justice, which may be heard *ex officio* at the request of the general meeting or, as the case may be, of the Prosecutor General of the Prosecutor's Office

attached to the High Court of Cassation and Justice or the General Prosecutor of the National Anticorruption Directorate or the Directorate for the Investigation of Organized Crime and Terrorism, with the opinion of the Section for Prosecutors of the Superior Council of Magistracy, for the reasons set out in Article 51 paragraph (2) which shall apply accordingly. "

**90.In Article 54, after paragraph (4), a new paragraph (5) shall be inserted, with the following content:**

"(5) From the date of termination of the mandate of the management function, the prosecutors referred to in paragraph (1) shall regain the professional grade and the corresponding salary to it previously had or the ones obtained as a result of the promotion, under the law, during the activity within the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Directorate or the Directorate for the Investigation of Organized Crime and Terrorism."

**91.In Article 55, paragraph 1 shall be amended and shall have the following content:**

"Art. 55. - (1) Appointment in other positions of management than those provided by Art. 54 within the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Directorate and the Directorate for the Investigation of Organized Crime and Terrorism is done for a period of three years, with the possibility of reinvestment once by the Prosecutors Section of the Superior Council of Magistracy, at the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, the Chief Prosecutor of the National Anticorruption Directorate or the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism, as the case may be. "

**92.In Article 55, a new paragraph (1<sup>1</sup>) shall be inserted after paragraph (1), with the following content:**

"(1<sup>1</sup>) Prosecutors who have not had any disciplinary sanction for the past 3 years and have an effective seniority of at least 10 years may be appointed to the management functions provided for in paragraph (1)."

**93.In Article 55, paragraphs 2, 4 and 5 shall be amended and shall have the following content:**

"(2) For appointment to the management positions provided in paragraph (1), it is necessary the recommendation of the head of the section or, as the case may be, the head of the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Directorate or the Directorate for the Investigation of Organized Crime and Terrorism, where the prosecutor is to be appointed.

(4) The dismissal from the management positions of the prosecutors appointed according paragraph (1) is ruled by the Section of Prosecutors of the Superior Council of Magistracy, ex officio or at the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, of the Prosecutor Head of the National Anticorruption Directorate, the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism, or, as the case may be, for the reasons provided for in Article 51 paragraph (2), which shall apply accordingly.

(5) The proposal referred to in paragraph (4) may be made ex officio or at the notice of general meetings or of the heads of sections or, as the case may be, of the Directorate of the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Directorate or the Directorate Investigation of Organized Crime and Terrorism. "

**94. Article 56 shall be amended and shall have the following content:**

(1) Upon expiry of the term of office for managerial positions listed under Article 53, judges shall return to the positions held previously with the High Court of Justice.

(2) Upon expiry of the term of office for managerial positions listed under Article 54 and 55, prosecutors may fill another management position with the same Prosecutors' Office, under the law, or may return to execution positions with the Prosecutors' Offices headed by them or from which they come.

**95. In Article 57, paragraph 2 shall be amended and shall have the following content:**

"(2) The delegation of judges from courts, tribunals, specialized courts and courts of appeal to the courts of another court of appeal district shall be ordered, with their written consent, by the Superior Council of Magistracy - Judges Section upon the request of the President the court of appeal in the district of which the delegation is requested and with the opinion of the President of the Court of Appeal where they are acting."

**96. In Article 57, paragraph 3 is abolished.**

**97. In Article 57, paragraphs 4 to 8<sup>1</sup> are amended and shall have the following content:**

"(4) The delegation to the leading positions of the judges from the courts of appeal, tribunals, specialized courts and courts shall be ordered, with their written consent, by the Superior Council of Magistracy - Judges Section, until the position occupation by appointment under the law.

(5) The delegation in the management positions from the High Court of Cassation and Justice of the judges from this court is ordered by the Superior Council of Magistracy - Judges Section, with their written consent, at the proposal of the President of the High Court of Cassation and Justice.

(6) The delegation of judges may be made for a period not exceeding six months and may be extended, with their written consent, under the same conditions.

(7) In the interests of the service, prosecutors may be delegated, with their written consent, including in management positions, the provisions of paragraphs (1) - (6) being applicable accordingly.

(8) Judges and prosecutors may be delegated only to the courts or prosecutor's offices to which they have the right to operate according to the acquired professional status.

(8<sup>1</sup>) In the interest of the service, the magistrate-assistants may be delegated, with their written consent, to the positions of first magistrate-assistant or chief assistant magistrate by the president of the High Court of Cassation and Justice or the president of the Constitutional Court, after case, for a maximum of 6 months. The delegation of magistrate-assistants may be extended, with their written consent, under the same conditions. During the delegation, magistrate-assistants shall enjoy all the rights provided for by the law for the position in which they are delegated. "

**98. In Article 58, paragraph 1 shall be amended and shall have the following content:**

"Art.58.- (1) The appropriate section of the Superior Council of Magistracy may order the detachment of judges and prosecutors, with their written consent, to other courts or prosecutors' offices, the Superior Council of Magistracy, the National Institute of Magistracy, the National School of Clerks, The Ministry of Justice or its subordinate units or other public authorities in any office, including those of public dignity appointed at the request of such institutions, as well as in the institutions of the European Union or international organizations at the request of the Ministry of Justice. "

**99. At Article 58, after paragraph (1) three new paragraphs shall be inserted, paras. (1<sup>1</sup>), (1<sup>2</sup>) and (1<sup>3</sup>), which shall read as follows:**

“(1<sup>1</sup>) Judges and prosecutors may fill positions with European Union institutions or international organizations if the international document regulating the requirements for filling such positions specifically conditions access to the relevant position on the capacity as judge or prosecutor.

(1<sup>2</sup>) If a judge or prosecutor chooses to take a position with a European Union institution or international organization, he/she shall be released from the position of judge or prosecutor, and such position shall be reserved.”

(1<sup>3</sup>) For the National Institute of Magistracy, the National School for Court Clerks, and the training activities performed by judges, prosecutors, assistant magistrates and legal specialty personnel assimilated to magistrates, such secondment is ordered only in situations where they perform such activities on a full-time basis.

**100. In Article 58, paragraph 5 shall be amended and shall have the following content:**

"(5) Upon termination of the detachment, the judge or prosecutor shall return to his / her former position. If the detached judge or prosecutor is in the situation referred to in paragraph (6) and has not opted for the position of management or has not expressed any option, the provisions of Article 51 paragraph (1) shall apply accordingly upon termination of the detachment. "

**101. In Article 58, after paragraph (5), three new paragraphs (6) - (8) shall be inserted, with the following wording:**

"(6) If the detached judge or prosecutor occupies a leading position in the courts or prosecutor's offices, within 6 months of the decision of the corresponding section of the Superior Council of Magistracy by which the detachment has been disposed makes an option for the managerial position or for the position occupied by detachment.

(7) If the detached judge or prosecutor has not opted for the managerial position or has expressed no option, the respective managerial position shall become vacant upon expiry of the term stipulated in paragraph (6). If the judge or prosecutor opts for the previously held position, the detachment shall cease upon the expiry of the period provided for in paragraph (6).

(8) The provisions of paragraphs (6) and (7) shall also apply accordingly if the judge or prosecutor was detached before taking up the management position."

**102. Article 59 shall be amended and shall have the following content:**

"Art.59.- Detachment and delegation cannot be made to higher courts or prosecutors' offices higher than those to which the judge or prosecutor is entitled to function according to the law."

**103. Article 60 shall be amended and shall have the following content:**

"Art. 60. - (1) The transfer of judges and prosecutors from one court to another court or from a prosecutor's office to another prosecutor's office or to a public institution shall be approved at the request of the respective section of the Superior Council of Magistracy, with the advisory opinion of the president of the court or of the chief prosecutor of the appropriate prosecutor's office.

(2) The transfer cannot be made to higher courts or prosecutors' offices higher than those to which the judge or prosecutor has the right to function, according to the law.

(3) The rules governing the transfer procedure shall be established by regulations elaborated by the respective sections of the Superior Council of Magistracy. "

**104. In Article 61, paragraphs (1) and (3) shall be amended and shall have the following content:**

"Art.61.- (1) At the reasoned request, the judges may be appointed as prosecutors to the prosecutor's offices



attached to the judges, and the prosecutors in the position of judge at the courts, by a decree of the President of Romania, at the proposal of the Superior Council of Magistracy, subject to the conditions laid down in this law. The proposal for appointment to the position of judge is formulated by the Judges Section of the Superior Council of Magistracy, with the advisory opinion of the prosecutor's office from which it comes, as well as of the court in which he is about to act, and the nomination proposal of the judges in the position of prosecutor is formulated by the Prosecutor's Section of the Superior Council of Magistracy, with the advisory opinion of the court in which he operates and of the prosecutor's office where he is about to activate.

(3) The President of Romania may not refuse the appointment to the positions provided in paragraph (1)."

**105. In Article 62 paragraph (1), point a) shall be amended and shall have the following content:**

"a) when he was sued for committing an offense after the confirmation of the preliminary chamber judge;"

**106. In Article 62 paragraph (1), a new point, point a<sup>2</sup>) shall be inserted after point ai), with the following wording:**

"a<sup>2</sup>) when the preventive measure of judicial control or judicial control on bail has been taken against him and the judicial body has determined in his duty not to practice the profession in which he has committed the offense;"

**107. In Article 62 paragraph (1), after the point c), two new points d) and e) are inserted, with the following wording:**

d) in the case provided by Art.52 paragraph (1) of the Law no.317 / 2004 on the Superior Council of Magistracy, republished;

e) between the date of the decision of the appropriate Section for the application of the disciplinary sanction stipulated in Art. 100 point e) and date of dismissal from the function."

**108. In Article 62, paragraph (1<sup>1</sup>) shall be amended and shall have the following content:**

"(1<sup>1</sup>) The judge or prosecutor may be suspended from office if he has been sued for an offense, if it is judged, in the circumstances of the case, to prejudice the prestige of the profession. If the Judge or Prosecutor is deemed to be in office, he may be provisionally forbidden to perform certain duties until the case has been finally settled."

**109. In Article 62, after paragraph (1) a new paragraph shall be inserted, para. (1<sup>2</sup>), which shall read as follows:**

"(1<sup>2</sup>) A judge or prosecutor suffering from a medical condition other than that specified at para.(1) item b), which makes him/her unable to perform his/her duties and prerogatives, can be suspended from his/her position, upon request by him/her or by the management board of the court or prosecutors' office. Such measure may be ordered only following expiry of the duration while sick leave certificates may be issued for and allowances for temporary work incapacity may be granted in the social health insurance system. Such medical condition is established based on an expert report which is conducted by a specialist medical commission appointed by joint order of the Minister of Justice and the Minister of Health. Such suspension from the position shall last until the person's recovery. Based on the expert report the commission sets the term within which the magistrate must come back for a re-examination."

**110. In Article 62, paragraphs 2 to 4 are amended and shall have the following content:**

"(2) Suspension from office of judges and prosecutors shall be ordered by the Judges Section or, as the case may be, by the Prosecutor's Section of the Superior Council of Magistracy.

(3) During the suspension period from the office, ordered under the paragraph (1), point a)- a2) and point c)- e), paragraph (P) and paragraph (1<sup>3</sup>), the judge and the prosecutor shall not be subject to the provisions

concerning the prohibitions and incompatibilities provided for in Articles 5 and 8 and is not paid wage entitlements. During this period, the judge or the prosecutor is paid the social health insurance rights, according to the law. This period is not seniority in work and magistracy.

(4) During the period of suspension ordered under paragraphs (1) point (b) and paragraph (12), an allowance equal to 80% of the net monthly indemnity in the last month of activity before the date the suspension of office is paid and the provisions on the prohibitions and incompatibilities referred to in Articles 5 and 8 are applicable."

**111. In Article 62, after paragraph (4), five new paragraphs, paragraphs (5) - (9), shall be inserted, with the following content:**

"(5) After the expiry of the term referred to in paragraph (12) and the performance of a new expertise by the specialized medical commission appointed by joint order of the Minister of Justice and the Minister of

Health, the appropriate section of the Superior Council of Magistracy may decide to terminate the suspension and reinstatement in the capacity of the judge or prosecutor, the extension or, if the illness is irreversible, proposes dismissal by retirement.

(6) Auditors of justice shall be suspended from the capacity of auditor in the cases provided for in paragraphs (1) point a) and b), paragraphs (1<sup>1</sup>) and (1<sup>2</sup>), which shall apply accordingly. In the case provided for in paragraph (P), the Scientific Council of the Institute may order the suspension of the justice auditor if it considers that the offense undermines the dignity of the auditor's quality or the image of the Institute.

(7) The suspension from the position of auditor of justice shall be ordered by the Scientific Council of the Institute. The decision ordering the suspension, as well as the decision on the termination of the suspension, shall be immediately communicated to the justice auditor; the decision taken is also brought into knowledge of the Superior Council of Magistracy. Upon termination of the suspension, the justice auditor will resume the courses at the Institute at the same stage as they were interrupted.

(8) During the period of suspension ordered for the reasons set out in paragraph (1) point a) and paragraph (11), the auditor of justice shall not benefit from scholarship or other rights of auditors, and this period shall not constitute seniority in magistracy. During the period of suspension ordered pursuant to paragraph (P) and for the reason set out in paragraph (1) point b), the justice auditor shall be paid an indemnity equal to 80% of the scholarship.

(9) In the hypothesis provided for in paragraph (5), if the illness of the auditor is irreversible, the Scientific Council of the Institute shall order his expulsion."

**112. Article 62<sup>1</sup> shall be amended and shall have the following content:**

"Art.62/1.- (1) The resolution by which the preventive arrest or home arrest was ordered, the resolution or the order by which it was established the obligation not to exercise the profession in which exercise the offense was committed during the judicial control or the judicial control on bail, the indictment ordering the suing, or the ordinance ordering the waiver of criminal prosecution of a judge or prosecutor shall be communicated within 24 hours to the Section for Judges or to the Prosecutor's Section, as the case may be, of the Council Superior Council of Magistracy.

(1) Within three days from the final ruling of a judgment given in a criminal case against a magistrate, the executing court shall communicate to the appropriate section of the Superior Council of Magistracy a copy of the decision."

**113. After Article 62<sup>1</sup> a new article shall be inserted, Art.62<sup>2</sup>, which shall read as follows:**

“Art.62<sup>2</sup> .- In case of judges and prosecutors holding managerial positions, the term of office for such managerial positions shall be terminated if the suspension from their position ordered under the terms of Art.62 para. (11) lasts longer than one year.”

**114. In Article 63, paragraphs 1 and 2 shall be amended and shall have the following content:**

"Art.63.- (1) The Section for Judges or, as the case may be, the Prosecutor's Section shall immediately notify the Judge or Prosecutor and the management of the court or Prosecutor's Office where the decision to suspend the office is in operation.

(2) If closure, discharge or termination of the criminal proceedings against the judge or prosecutor is ordered or the restitution of the case to the Prosecutor's Office is ordered, the suspension of office shall cease and the suspended judge or prosecutor shall be reinstated in the previous situation, the money entitlements during the period of suspension from the execution position shall be paid or, as the case may be, during the entire mandate of the managerial position which he could not exercise due to suspension or termination of the mandate under the conditions of Art. 622. The money to be paid will be increased, indexed and updated, including the legal penalty interest - payment obligations established by order of the Minister of Justice. The judge or prosecutor is recognized the seniority in magistracy and the effective seniority in the position of judge or prosecutor during that period. "

**115. In Article 63, after paragraph (2), a new paragraph (2<sup>1</sup>) shall be inserted, with the following content:**

"(2<sup>1</sup>) Suspension from office shall also cease when the discharge or termination of the criminal proceedings is pronounced in the first instance. In this case, the rights provided for in paragraph (2) shall be granted after the final judgment has been passed on the discharge or termination of the criminal proceedings. "

**116. In Article 63, paragraph (3) shall be abolished.**

**117. Article 64 shall be amended and shall have the following content:**

"Art.64.- (1) In the case referred to in Article 62 paragraph (1) point (b), psychological illness shall be determined by a specialized expertise carried out by a specialized medical commission appointed by joint order of the Minister of Justice and the Minister of Health. At the request of the president of the court or of the head of the prosecutor's office or of the management colleges, the corresponding section of the Superior Council of Magistracy shall order the magistrate's presentation to the specialized expertise.

(2) The suspension from office shall be ordered until recovery, ascertained by specialized medical examination carried out by the medical commission. Through the expertise report, the commission sets the deadline for the magistrate to return to the review.

(3) The provisions of Article 62 paragraph (5) shall apply accordingly.

(4) If the magistrate unjustifiably refuses to submit within the specified time limit to the specialized expertise, the corresponding section of the Superior Council of Magistracy shall order the suspension of his / her office for a period of one year. During the suspension of office for this reason, the judge and the prosecutor are not paid the salary rights and the provisions regarding the prohibitions and incompatibilities stipulated by the law are not applicable. This period does not constitute seniority in office and in the magistracy. Suspension from office shall be terminated by decision of the corresponding section of the Superior Council of Magistracy, following the presentation of the magistrate to the specialized expertise.

(5) The provisions of paragraphs (1) - (4) shall apply accordingly to the auditors of justice, and the suspension of the auditor quality may be ordered by the Scientific Council of the National Institute of Magistracy. In this case, the suspension shall be ordered until recovery, ascertained by specialized medical examination carried out by the commission stipulated in para. (2), but not more than 2 years from the date of finding the disease by expertise, in which case he shall cease to be an auditor. "

**118. After article 64 a new article, article 64<sup>1</sup> shall be inserted, with the following content:**

"Art.64/1i.- If the judge or prosecutor is appointed to the office of magistrate or other judicial functions in European or international arbitration courts or instances, his employment relationship may be suspended upon request during the respective appointment by decision of the corresponding section of the Superior Council of Magistracy. During this period, the judge or the prosecutor is not paid the salary rights. That period constitutes seniority in position and seniority in magistracy. "

**119. In Article 65 paragraph (1), point (f) shall be amended and shall have the following content:**

"f) conviction, postponement of applying the punishment and waiving of applying the punishment, ordered by a final decision, as well as the waiver of the criminal prosecution confirmed by the preliminary chamber judge for an offense detrimental to profession's prestige;"

**120. In Article 65 paragraph (1), point (f<sup>1</sup>) is abolished.**

**121. In Article 65 paragraph (1), points h) and i) shall be amended and shall have the following content:**

"h) failure to present, unjustifiably to the specialized expertise, until the time of suspension from office, ordered according to Art.64 paragraph (4);

i) failure to fulfil the conditions provided for in Article 14 paragraph (2) points a) and e) or of the condition regarding the lack of the criminal record, if in the latter case it is considered that it is not necessary to remain in office;

**122. In Article 65 paragraph (1), a new point (j) is inserted after point (i), with the following wording:**

"j) failure to pass the examination referred to in Article 26."

**123. Article 65 paragraph (1<sup>1</sup>) is abolished.**

**124. In Article 65, paragraphs 2, 4 and 5 shall be amended and shall have the following content:**

"(2) The dismissal from office of judges and prosecutors shall be ordered by a decree of the President of Romania, at the proposal of the Section for Judges or, as the case may be, of the Section for Prosecutors.

(4) The dismissal from office of the trainee judges and of the trainee prosecutors shall be made by the Judges Section or, as the case may be, by the Prosecutor's Office Section.

(5) If the judge or prosecutor requests the dismissal from office by resignation, the Section for Judges or, as the case may be, the Prosecutor's Section may set a maximum of 30 days from which the resignation becomes effective, if the presence of the judge or the prosecutor is necessary."

**125. In Article 65<sup>1</sup> paragraphs 2 and 3 shall be amended and shall have the following content:**

"(2) If the judge or prosecutor exercises the remedy provided by law against the decision to dismiss from office or to the decision proposing dismissal, he shall be suspended from office until the final settlement of the case by the competent court.

(3) During the period of suspension, the judge or prosecutor shall not be subject to the provisions concerning the prohibitions and incompatibilities provided for in Articles 5 and 8 and shall not be paid his salary rights. During the same period, the judge or the prosecutor is paid the social health insurance contributions, as the case may be, according to the law. The provisions of Article 63 paragraph (1) shall apply accordingly. "

**126. The title of Chapter VIII is amended and shall have the following content:**

**"CHAPTER VIII**

**Magistrate-assistants of the High Court of Cassation and Justice and of the Constitutional Court"**

**127. In Article 66, paragraphs (1) and (2) shall be amended and shall have the following content:**

"Art. 66. - (1) The first magistrate-assistant, the magistrates-assistant chiefs and the magistrate-assistants shall enjoy stability.

(2) Magistrate-assistants are appointed and promoted on the basis of the Judges Section on a contest basis."

**128. In Article 66, after paragraph (2), a new paragraph (2<sup>1</sup>) shall be inserted with the following content:**

"(2<sup>1</sup>) The magistrate-assistants of the Constitutional Court are appointed and promoted by the Plenum of the Constitutional Court on the basis of a contest. The Examination Board is appointed by the President of the Constitutional Court and consists of 5 Judges of the Court, in the case of the First Magistrate-assistant and the Chief Magistrate-assistants and 3 Judges of the Court in the case of Magistrate-assistants. "

**129. In Article 67, paragraphs (3) and (4) shall be amended and shall have the following content:**

"(3) The III degree magistrate-assistants are appointed, without contest, among judges or prosecutors with seniority in these positions for at least 5 years by supporting an interview with the Judges Section of the Council or the Plenum of the Constitutional Court, as the case may be. After a period of 3 years in this position, the magistrate-assistants can be transferred to the second degree and after another 3 years in the first degree.

(4) The third degree magistrate-assistants may also be appointed by contest between lawyers, notaries, legal specialists referred to in Art. 87, paragraph (1), academic specialists with legal specialization, as well as among higher education clerks of the courts of appeal, the Constitutional Court and the High Court of Cassation and Justice, with at least 5 years of service in these positions. "

**130. In Article 67, after paragraph (4), two new paragraphs, paragraphs (5) and (6) are inserted, with the following content:**

"(5) The persons who have been at least 10 years as magistrate-assistant, who have not had any disciplinary sanction in the last 3 years, had only the "very good" rating at all evaluations and have ceased their activity for non-imputable reasons, can be appointed without a contest or examination, in the vacant position of magistrate-assistant, with the same degree at the date of dismissal. People who have been part of, or collaborated with, intelligence services cannot be appointed to this function. The provisions of Article 33 paragraphs (2) to (4) shall apply accordingly.

(6) The appointment in the positions of first-magistrate-assistant and chief-magistrate-assistant shall be done for a period of 3 years, with the possibility of reinvestment under the terms of this article. "

**131. In Article 68 paragraph (1), point (b) shall be amended and shall have the following content:**

"b) participates in the meetings of the United Sections of the High Court of Cassation and Justice and of the Chamber of 5 Judges as a disciplinary body."

**132. In Article 69, point a) shall be amended and shall have the following content:**

"a) attends the hearings of the sections and the Chamber of 5 Judges;"

**133. In Article 70, after paragraph (1), a new paragraph (2) shall be inserted, with the following content:**

"(2) The chief magistrate-assistants and magistrate-assistants who attend the meetings of the United Sections

of the High Court of Cassation and Justice shall be appointed by the president of the court."

**134. After Article 72, a new article, article 72<sup>1</sup>, shall be inserted, with the following content:**

"Art.72<sup>1</sup> - The first magistrate-assistant, the chief magistrate-assistants, one of whom is the director of the cabinet of the president of the Constitutional Court, and the magistrate-assistants of the Constitutional Court, operate under the leadership of the President of the Constitutional Court and fulfil, as the case may be, the attributions stipulated by Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished, and by the Regulation on the organization and functioning of the Constitutional Court. "

**135. Article 75 shall be amended and shall have the following content:**

"Art.75.- (1) The Section for Judges of the Superior Council of Magistracy has a right and an obligation, either upon request or *sua sponte*:

a) to defend judges against any interference with their professional activity or in relation to it that could affect their independence or impartiality, as well as against any act that could create suspicions about their independence or impartiality;

b) to defend the professional reputation of judges;

c) to defend the independence of the judiciary.

(2) The Section for Prosecutors of the Superior Council of Magistracy has a right and an obligation, either upon request or *sua sponte*:

a) to defend prosecutors against any interference with their professional activity or in relation to it that could affect their impartiality or independence in deciding on cases, in compliance with Law no. 304/2004 on Judicial Organization, as republished and subsequently amended, as well as against any act that could create suspicions on their independence or impartiality;

b) to defend the professional reputation of prosecutors;

(3) Complaints referring to the defence of the independence of the judiciary as a whole are examined, upon request or *ex officio*, by the Plenum of the Superior Council of Magistracy, based on assent from each Section.

(4) Judges or prosecutors who are in one of the situations referred to in paragraph (1) may address the appropriate sections of the Superior Council of Magistracy in order to order the necessary measures, according to the law. "

**136. Article 76 shall be amended and shall have the following content:**

"Art. 76. - Judges and prosecutors are free to organize or join local, national or international professional organizations in order to protect their professional rights and interests, as well as those provided in Art. 11 paragraph (3), being members of their governing bodies. "

**137. In Article 77, paragraph (2) shall be amended and shall have the following content:**

"(2) The special protection measures, the conditions and the manner of their realization shall be established by a decision of the Government, at the proposal of the Ministry of Justice, the Superior Council of Magistracy and the Ministry of Internal Affairs."

**138. In Article 77, after paragraph (2) a new paragraph (3) shall be inserted, with the following content:**

"(3) The concrete measures of protection ordered by the competent bodies on a case-by-case basis shall be communicated to the Superior Council of Magistracy immediately, but not later than 48 hours."

**139. In Article 78, paragraph 1 shall be amended and shall have the following content:**

"Art. 78. - (1) The judges and prosecutors, including the retired, shall receive compensation from the budgetary funds of the High Court of Cassation and Justice, of the Ministry of Justice, of the Public Ministry or, in case of military prosecutors, of the Ministry of National Defence, if their life, health or property is

affected in the performance of their duties or in connection with them."

**140. In Article 78, after paragraph (2) a new paragraph (3) shall be inserted, with the following content:**

"(3) In the case of the refusal to grant the indemnities stipulated in paragraph (1), their beneficiary may address to the administrative legal department of the court. The action is exempt from the stamp duty."

**141. In Article 79, after paragraph (7), two new paragraphs (8) and (9) are inserted, with the following content:**

"(8) Judges, prosecutors in activity and retired, as well as their spouse and dependent children shall receive free of charge medical care, medicines and prostheses, subject to the legal provisions regarding the payment of the social security contribution.

(9) The conditions for free provision of medical care, medicines and prostheses are established by Government Decision. These rights are not salaried and are not taxed."

**142. In Article 81, paragraph 3 is repealed.**

**143. At Article 82, paragraphs (1)-(3), (5) and (6) shall be amended to read as follows:**

"Art.82.- (1) When they reach the age of 60, judges, prosecutors, assistant magistrates of the High Court of Justice, assistant magistrates of the Constitutional Court and legal specialty personnel assimilated to judges or prosecutors, as well as former financial judges and prosecutors and account counsellors of the jurisdictional division who held positions with the Court of Audits, and who have a seniority of at least 25 years in a position of judge or prosecutor, assistant magistrate or legal specialty personnel assimilated to judges and prosecutors, as well as in a position of financial judge or prosecutor or account counsellor with the jurisdictional division of the Court of Audits may retire upon request and may receive a public service pension in a percentage of 80% of the calculation basis consisting of the monthly gross employment remuneration or the monthly gross salary, as applicable, and the increments received in the last month prior to their retirement date.

(2) Upon reaching the age of 60, judges, prosecutors, assistant magistrates of the High Court of Justice and of the Constitutional Court, legal specialty personnel assimilated to judges or prosecutors, as well as former financial judges and prosecutors and account counsellors of the jurisdictional division who held such positions with the Court of Audits may retire upon request and may benefit from the pension specified at para.(1) if they have a seniority of at least 25 years only in a position of judge, prosecutor, assistant magistrate with the High Court of Justice and of the Constitutional Court or of legal specialty personnel assimilated to judges, as well as in a position of judge with the Constitutional Court, financial judge or prosecutor or account counsellor with the jurisdictional division of the Court of Audits. In calculating this seniority, the periods while judges, prosecutors, assistant magistrates or legal specialty personnel assimilated to judges or prosecutors, as well as judges of the Constitutional Court, financial judges, prosecutors and account counsellors of the jurisdictional division of the Court of Audits practiced as lawyers, legal specialty personnel in former state arbitrations, legal advisors or legal counsel on staff, shall be also considered.

(3) Judges, prosecutors and assistant magistrates of the High Court of Justice and judges and assistant magistrates of the Constitutional Court having a seniority between 20 and 25 years only in such positions shall also benefit from the public service pension specified at para. (1) upon request, prior to reaching the age of 60, and, in such case, the pension amount shall be diminished by 1% of the calculation basis specified at para. (1), for each year missing out of the total seniority in such positions.

(5) Upon reaching the age of 60, persons who meet the seniority requirements specified by paras. (1) and (3) in a position of judge, prosecutor, magistrate assistant or legal specialty personnel assimilated to judges, as well as in a position of financial judge or prosecutor, state notary or account counsellor of the jurisdictional division of the Court of Audits may retire and benefit from a public service pension even if they have a different occupation as of their retirement date. In such case, the pension is established based on a calculation basis equal to the monthly gross employment remuneration applicable to a judge or prosecutor in office under identical conditions relating to the position, seniority and rank of the court or of the prosecutors' office, and to the increments, calculated on a percentage basis, received as of the date when they were released from their positions or, as applicable, to the monthly gross base salary and the increments received in the last month prior to their retirement date. Only persons who were released from their positions for reasons non-imputable to them may benefit from such public service pension.

(6) Judges, prosecutors and assistant magistrates of the High Court of Justice and of the Constitutional Court are entitled to pension for occupational disease and invalidity in a percentage of 80% of the public service pension."

**144. In Article 83, paragraphs (1) and (3) shall be amended and shall have the following content:**

"Art. 83. - (1) The judges, prosecutors, assistant magistrates from the High Court of Cassation and Justice, as well as the legal specialists referred to in Article 87 paragraph(1) may be kept in office after the age of retirement age under the law, up to the age of 70. Until the age of 65, the magistrate may choose to remain in office, but after this age, the annual opinion of the Section for Judges or, where applicable, the Prosecutor's Section is required to be maintained in activity.

(3) The re-appointment as a judge, prosecutor or assistant magistrate shall be made without contest by the appropriate section of the Superior Council of Magistracy, to the courts or, where appropriate, to the prosecutor's offices attached to them, within which they were entitled to work until at the date of retirement and which cannot function normally due to lack of personnel. In this case the appointment to the position of assistant magistrate is made by the Superior Council of Magistracy, and the appointment to the position of judge or prosecutor is made by the President of Romania, at the proposal of the Superior Council of Magistracy. The former judges, prosecutors or assistant magistrates who have been dismissed by retirement according to the present law and for whom the disciplinary sanction of the exclusion from the magistracy has not been established under Law no. 317 / 2004, republished, as subsequently amended may be re-appointed in the function. During re-appointment, the amount of the pension is reduced by 85%. "

**145. In Article 83<sup>2</sup>, paragraphs 1 and 4 shall be amended and shall have the following content:**

"Art. 83<sup>2</sup>. - (1) It does not benefit from the service pension provided in Art. 82 and 831 and the indemnity provided for in Article 81, the judges, prosecutors, assistant magistrates and legal specialists assimilated to judges and prosecutors who, even after their dismissal, were finally convicted or ordered to postpone the punishment for a corruption offense , an offense assimilated to corruption offenses or offense related to it, as well as one of the offenses covered by Title IV of Law no.286 / 2009, as subsequently amended and supplemented, "Offenses against the Execution of Justice" committed prior to dismissal. These persons receive pension in the public system, according to the law.

(4) The conviction decision or the order for the postponement of the punishment, which is final, shall be communicated by the executing court of the Superior Council of Magistracy. The Section for Judges or, as the case may be, the Prosecutor's Section will inform the National Pensions House about the occurrence of one of the situations provided for in this Article which has the effect of granting, suspending, terminating or resuming the payment of the service pension or, as the case may be, or the resumption of the procedure for the



settlement of the application for the granting of the service pension. Information to the Section for Judges or, where applicable, the Prosecutor's Section includes the elements necessary for the application of the measure by the territorial pension houses, including the identification data of the person, the legal basis of the measure and the date from which it applies."

**146. After article 83<sup>2</sup> a new article, article 83<sup>3</sup>, shall be inserted, with the following content:**

"Art.83<sup>3</sup>.- It does not benefit from the service pension provided in Art. 82 and 83<sup>1</sup> and the indemnity provided in Art. 81, judges, prosecutors, assistant magistrates and legal specialists assimilated to judges and prosecutors in respect of which the disciplinary sanction of the exclusion from the magistracy has been established, in accordance with Law no.317 / 2004, republished, with subsequent amendments. These people benefit from a pension in the public system, under the law. "

**147. Article 84 shall be amended and shall have the following content:**

"Art. 84. - (1) The surviving spouse of the judge or prosecutor is entitled, at the age of 60 years, to the survivor's pension under the conditions stipulated by the Law no. 263/2010 on the unitary pension system, with subsequent amendments and completions, calculated from the paid service pension or at which the supporter would have been entitled to the date of death, updated as appropriate.

(2) The minor children of the deceased judge or prosecutor, as well as the older children up to the end of the studies, but not more than 26 years old, shall be entitled to the survivor's pension, calculated from the paid pension or to which the deceased supporter would have had the right to the death date, updated, as the case may be, under the conditions of the Law no. 263/2010, with the subsequent amendments and completions, and the percentages stipulated by this law, depending on the number of descendants.

(3) If, at the time of death, the prosecutor or the judge does not fulfil the conditions for granting the service allowance, minors and children up to the end of their studies but not more than 26 years, they shall be entitled to a survivor pension in the amount of 75% of the monthly gross indemnity paid by the deceased supporter in the last month of activity, under the conditions stipulated by Law no. 263/2010, as subsequently amended and supplemented.

**148. In Article 85, paragraph 1 shall be amended and shall have the following content:**

"Art.85.- (1) The part of the service pension which exceeds the level of the pension in the public system, the pension stipulated in Art. 82 paragraph (2), Art. 831 and Art.84 paragraph (3), as well as the service pension granted to those who do not meet the age limit provided by the Law no. 263/2010, with the subsequent amendments and completions, shall be borne by the state budget. "

**149. After Article 85, a new article shall be inserted, Art.85<sup>1</sup>, which shall read as follows:**

"Art.85<sup>1</sup>.- The provisions of Art.82-85 shall apply accordingly also to judges of the Constitutional Court. A period for the duration of which a person held a position of judge with the Constitutional Court represents seniority in a judge position."

**150. Article 86 shall be amended and shall have the following content:**

"Art. 86. - (1) It constitutes seniority in the magistracy, also applicable to the persons referred to in Art. 82 para. (1) and (2), the period during which the judge, the prosecutor, the legal professional staff provided under Art. 87 para. (1) or the magistrate-assistant has performed the functions of judge, prosecutor, judge at the Constitutional Court, financial judge, financial prosecutor, accountant counsellor in the legal section of the Court of Accounts, auditor of justice, legal specialists provided by Art. 87 paragraph (1), assistant magistrate, court clerk with law higher education, lawyer, notary, legal assistant, legal adviser, legal specialists in the apparatus of the Parliament, the Presidential Administration, the Government, the Constitutional Court, the People's Advocate, the Court of Accounts or the Legislative Council, accredited higher education legal professor.

(2) It constitutes seniority within the meaning of the present law, the period during which a person has

exercised the function of state notary, this seniority being applied to the persons mentioned in Art. 82, paragraphs (1) - (5), as well as the former state notaries, even if they have another occupation at the time of retirement. "

**151. Article 95 shall be amended and shall have the following content:**

"Art. 95. - (1) Judges and prosecutors may be searched, detained or arrested only with the approval of the Section for Judges or, as the case may be, of the Prosecutor's Section of the Superior Council of Magistracy.

(2) In the case of a flagrant offense, judges and prosecutors may be detained and subject to search by law, the Section for Judges or, where appropriate, the Prosecutor's Section being immediately informed by the body which ordered the detention or search.

**152. Article 96 shall be amended and shall have the following content:**

"Art. 96. (1) The state is financially liable for harm caused by judicial errors.

(2) The state's liability is established under the law and does not eliminate the liability of judges and prosecutors who, even if no longer in office, practiced their profession in bad faith or gross negligence, as such terms are defined under Article 99<sup>1</sup>.

(3) A judicial error exists when, in judicial proceedings:

- a) One ordered the performance of procedure acts in blatant breach of substantive or procedural law, whereby a person's rights, freedoms and legitimate interests were seriously violated, thus causing damage that could not be remedied by an ordinary or extraordinary avenue of appeal;
- b) One returned a final court decision that is blatantly and unquestionably contrary to the law or the factual situation resulted from the evidence produced in the case, as well as when, by a clear and unquestionable violation of the factual situation or of the applicable law, a person's rights, freedoms and legitimate interests were affected, and such damage could not be remedied by an ordinary or extraordinary avenue of appeal.

(4) The Civil Procedure Code and the Criminal Procedure Code, as well as other special laws may regulate specific scenarios in which judicial errors may exist.

(5) To get remedy for a harm caused, the harmed party may file legal action against the state, represented by the Ministry of Public Finance. The jurisdiction to adjudicate such civil action rests upon the Tribunal under whose territorial jurisdiction the plaintiff has his/her/its domicile.

(6) Payments of amounts owed as compensation shall be made within a maximum of one year as of the date when the final court decision was returned.

(7) Within 2 months of the final court decision returned in relation to the action specified under para. (6), the Ministry of Public Finance shall notify the Judicial Inspection, in order for it to verify whether the judicial error was caused by the judge or prosecutor as a result of performing his/her duties and prerogatives in bad faith or in gross negligence, according to the procedure provided for by Art.741 of Law no.317/2004, as republished and subsequently amended.

(8) The state, through the Ministry of Public Finance, shall file reverse action against the judge or prosecutor if, following the consultative report of the Judicial Inspection stipulated at para. (7) and its own evaluation, it believes that the judicial error was caused as a result of performance of duties and prerogatives by judges or prosecutors in bad faith or gross negligence. The term for filing a reverse action is 6 months after the date of communication of the Judicial Inspection's report.

(9) The jurisdiction to rule in such reverse action shall rest with the civil division of the court of appeals having jurisdiction over the respondent's domicile as a court of first instance. In cases where the judge or prosecutor against whom such reverse action is filed works in such court or in the prosecutors' office attached to it, the reverse action shall be adjudicated by a neighbouring Court of Appeals of the plaintiff's choice.

(10) A second appeal can be filed with the corresponding Chamber of the High Court of Justice against a decision returned pursuant to para.(9).

(11) Within 6 months after this law comes into force, the Superior Council of Magistracy shall establish conditions, terms and procedures for the mandatory professional insurance of judges and prosecutors. Such insurance shall be fully covered by judges or prosecutors, and its absence may not delay, diminish or eliminate the civil liability of judges or prosecutors for judicial errors caused by the performance of their duties and prerogatives in bad faith or gross negligence.

**153.**In Article 99, points j), n), o), r) and t) shall be amended and shall have the following content:

j) non-observance of the secrecy of the deliberations or the confidentiality of the works having this character, as well as of other information of the same nature which he / she became aware in the exercise of his / her office, except for those of public interest, under the law, if the act does not constitute an offense;

n) use of the function held to obtain favourable treatment by the authorities or interventions for the settlement of claims, claiming or accepting the resolution of the personal interests or of the family members or of other persons, other than within the legal framework regulated for all citizens, if the offense meets the constitutive elements of a crime;

o) non-compliance with the provisions on random distribution of cases;

r) lack to motivate the prosecutor's court decisions or judicial acts within the time limits provided by the law;

t) the exercise of the position in bad faith or serious negligence, if the act fails to meet the constitutive elements of a crime. Disciplinary sanctions do not remove criminal liability. "

**154.**In Article 100 paragraph (1), points (b) and (c) shall be amended and shall have the following content:

b) the reduction of the gross monthly indemnity by up to 25% for a period of up to one year;

c) the disciplinary transfer for an effective period of one year to three years at another court or at another prosecutor's office, even of an immediately inferior degree; "

**155.**In Article 100 paragraph (1), a new point, point d<sup>1</sup>) is inserted after point (d), with the following wording:

"d<sup>1</sup>) Professional downgrading;"

**156.**In Article 100, after paragraph (1) a new paragraph (2) shall be inserted, with the following content:

"(2) By way of derogation from the provisions of special laws governing disciplinary liability, the disciplinary sanctions that may be applied for the disciplinary deviations provided for in Article 99 points (b), (d) and (t) of the first sentence may not consist of those provided for in Article 100 points (a) - (d). "

**157.**After Article 107 a new article is inserted, Art. 105<sup>1</sup> with the following content:

"Art.105/1.- For the purposes of this law, judges, prosecutors, assistant magistrates and legal specialists assimilated to judges and prosecutors who have been dismissed for one of the reasons set out in Art. 65 paragraph (1) points a) - c) and in respect of which the disciplinary sanction of the exclusion from the magistracy has not been established under the conditions of Law no.317 / 2004, republished, with the subsequent amendments are considered dismissed from their offices for non-imputable reasons."

**158. After Article 107**, six new articles shall be inserted, Art. 108 - 113, which shall read as follows:

“Art.108.- The provisions of this law are of immediate application. The option terms set forth by this law shall start running as from its coming into force.

Art. 109.- (1) The provisions of this law shall not apply to procedures for filling management or executive positions, including by promotion, or to professional appraisal procedures that are in progress at the date of its coming into force.

(2) Judges and prosecutors holding managerial positions under a second term of office or who have held a managerial position for two mandates by the date when this law comes into force may not, according to this law, apply for a new term of office for the same management position,.

Art. 110.- Judges and prosecutors who obtained a higher professional rank as a result of succeeding in a competitive examination by the date when this law comes into force may be transferred to higher level courts and prosecutors' offices.

Art. 111.- The Government Decision specified at Article 78 para.(2) shall be adopted within 90 days of the date when this law comes into force. In case of failure to comply with this term the stipulations of Art.78 para. (3) of this law are applicable accordingly.

Art.112.- The stipulations listed under Article16 para.(3), Art. 19, Art. 26 and Art. 28 of this law shall come into force starting with the 2019-2020 academic year.

Art. 113.- On the date when this law comes into force, the stipulations of Art. 2 of Law no. 124/2000 on the Constitutional Court's Structure and Staff, published in Part I of Official Journal of Romania #331 of 17 July 2000, as subsequently amended, are hereby repealed.

**Art.II** - Law no.303 / 2004 on the status of judges and prosecutors, republished in the Official Gazette of Romania, Part I, no.826 of September 13, 2005, as subsequently amended and supplemented, as well as those brought by this law will republish in the Official Gazette of Romania, Part I, giving the texts a new numbering.

**This law was adopted by the Romanian Parliament, in compliance with the provisions of articles 75 and 76 paragraph (1) of the Romanian Constitution, republished.**

**For President of Chamber of Deputies**

**Petru Gabriel Vlase**

**Bucharest**

**No.**

**President of the Senate**

**Calin Popescu- Tariceanu**

## LAW no. 303/2004

### On the Statute of Judges and Prosecutors

- the Law no. 303/2004 was published in the Official Journal of Romania, Part I, no. 576/29.06.2004 and was amended by the Emergency Government Ordinance no. 124/2004, published in the Official Journal of Romania, Part I, no. 1.168/9.12.2004, amended and completed by the Law of approval no. 71/2005, published in the Official Journal of Romania, Part I, no. 300/11.04.2005.

- was republished on the grounds of art. XII, title XVII of the Law no. 247/2005 on the reform in the fields of property and justice, as well as other adjacent measures, published in the Official Journal of Romania, Part I, no. 653/22.07.2005, re-numbering the legal provisions.

-this version includes all the amendments of the official act, inclusively the ones provided by Law no.118/24.04.2009, published in the Official Journal of Romania no.285/30.04.2009

#### TITLE I

##### General provisions

##### CHAPTER I Notions and principles

Art. 1 - The magistracy is the judicial activity performed by judges in view of accomplishing justice and by prosecutors in view of protecting the general interests of society, the rule of the law and the rights and freedoms of citizens.

Art. 2 - (1) The judges appointed by the President of Romania are irremovable according to the present law.

(2) The irremovable judges may not be transferred, delegated, or promoted without their consent, and they may be suspended or removed from office only according to the conditions provided by the present law.

(3) Judges are independent; they are subject only to the law and must be impartial.

(4) Any person, organisation, authority or institution has the duty of respecting the independence of judges.

Art. 3 - (1) Prosecutors appointed by the President of Romania enjoy stability and are independent, according to the law.

(2) The prosecutors who are granted stability may not be transferred, seconded or promoted without their consent. They may be delegated, suspended and removed from office only according to the provisions of the present law.

Art. 4 - (1) Through all their activity, judges and prosecutors are obliged to safeguard the rule of the Law, to respect the rights and freedoms of persons, as well as their equality before the law and to provide non-discriminating legal treatment to all the participants in judiciary proceedings, regardless of their capacity, to respect the Deontological Code for Judges and Prosecutors and to partake to continuous professional training.

(2) Judges may not refuse to try on account of the absence of regulation in the tried matter or motivating that the law is unclear or incomplete.

#### CHAPTER II

##### Incompatibilities and interdictions

Art. 5 - (1) The offices of judge, prosecutor, assistant magistrate and judiciary assistant shall be incompatible with any other public or private office, except for didactical offices in the higher education, as well as for training offices in the National Institute of Magistracy and in the National School for Court Clerks, according to the law.

(2) Judges and prosecutors are obliged to refrain from any activity related to the act of justice if they suppose the existence of a conflict between their interests and the public interest of accomplishing justice or of protecting the general interests of society, unless the conflict of interests has been brought in writing to the cognisance of the leading board of the court or prosecutor's office and it was deemed that the existence of the conflict of interests does not affect the unbiased fulfilment of working duties.

(3) Judges, prosecutors, assistant-magistrates and the specialised auxiliary personnel are obliged to make annual statements on their own responsibility mentioning whether their spouse, relatives or relations by marriage up to the fourth degree inclusively, exercise a legal office or perform a legal activity or activities of criminal investigation or research, as well as their workplace. The statements shall be registered and filed in the professional record.

Art.6 - (1) Judges, prosecutors, assistant-magistrates, and the judicial specialised personnel assimilated with magistrates and the specialised auxiliary personnel are obliged to make an authenticated statement on their own responsibility according to criminal law, regarding their membership or non-membership as agents or collaborators of the intelligence services, as political police.

(2) The National Council for Research on the Communist Secret Service Archive shall verify the statements in paragraph (1). The results of such verifications shall be attached to the personal records.

(3) The provisions of the Law no.187/1999 on access to one's own record and to the disclosure of the intelligence service as a political police shall apply accordingly.

Art.7 - (1) Judges, prosecutors, assistant-magistrates, judicial specialised personnel assimilated with magistrates and the specialised auxiliary personnel in courts and prosecutor's offices may not be operative employees, including undercover, informers or collaborators of the intelligence services.

(2) The persons in paragraph (1) shall make annual authenticated statements on their own responsibility according to criminal law, showing that they are not operative employees, including undercover, informers or collaborators of the intelligence services.

(3) The Supreme Council for National Defence shall verify, *ex officio* or upon notification from the Superior Council of Magistracy or from the Minister of Justice, the reality of the statements in paragraph (2).

(4) Violation of paragraph (1) shall lead to removal from the office, including those of judge or prosecutor.

Art. 8 - (1) Judges and prosecutors are forbidden to:

- a) perform commercial activities, either directly or through intermediaries;
- b) perform arbitration activities in civil, commercial or other litigations;
- c) be associates in a trade company or to be members in management, administration or control bodies of civil companies, trade companies, including banks or other credit institutions, insurance or financial companies, national companies or autonomous administrations;
- d) be members of an economic interest group.

(2) By derogation from the provisions of paragraph (1) c), judges and prosecutors may be shareholders or associates, according to the Law on mass privatisation.

Art. 9 - (1) Judges and prosecutors may not be part of political parties or political groups, nor to perform or participate in activities of political nature.

(2) When exercising their attributions, the judges and prosecutors are obliged to refrain from expressing or showing their political opinions in any manner whatsoever.

Art. 10 - (1) Judges and prosecutors may not express publicly their opinion regarding pending trials or

regarding cases on which the prosecutor's office has been notified.

(2) Judges and prosecutors may not give written or verbal counselling in litigations, even if those trials are pending before courts or prosecutor's offices other than those where they work, and they may not perform any other activity that is performed by lawyers according to the law.

(3) Judges and prosecutors are allowed to plead, according to the conditions provided in the law, only in their personal cases, in those of their ascendants and descendants, spouses, as well as in those of persons placed under their trust or guardianship. Even in such situations nevertheless, judges and prosecutors are not allowed to use their capacity, in order to influence the solution given by the court or by the prosecutor's office and they must avoid creating the appearance that they could influence the solution in any way.

Art. 11 - (1) Judges and prosecutors may participate in the elaboration of publications, may elaborate articles, specialised studies, literary or scientific works and may participate in audiovisual broadcasts, except for those having a political nature.

(2) Judges and prosecutors may be members of examination commissions or of the ones for drafting laws, internal or international documents.

(3) Judges and prosecutors may be members of scientific or academic societies, as well as of any legal entities of private law that do not have a pecuniary-related purpose.

## TITLE II

### The career of judges and prosecutors

#### CHAPTER I

##### Admission into magistracy and the initial professional training of judges and prosecutors

Art. 12 - Admission of judges and prosecutors into magistracy shall take place through competitive examination, based on professional competence, aptitudes and good reputation.

Art. 13 - Admission into magistracy and the initial professional training for the office of judge and prosecutor shall be performed through the National Institute of Magistracy.

Art. 14 - (1) The admission to the National Institute of Magistracy is made by observing the principles of transparency and equality, exclusively on the basis of a competitive examination.

(2) The persons who applies for the National Institute of Magistracy has to meet cumulatively the following requirements:

- a) they are Romanian citizens, with permanent residence in Romania and have full legal capacity;
- b) they are bachelors of law;
- c) they have no criminal and fiscal record and enjoys a good reputation;
- d) they can speak Romanian;

e) they are able, medically and psychologically, to exercise this office. The Medical commission shall be appointed by a joint order of the Minister of Justice and the Minister of Health. The taxes for the medical examination of the candidates who were admitted are provided by the budget of the National Institute of Magistracy.

Art. 15 - (1) The admission exam shall be held annually at the date and location established by the National Institute of Magistracy, with the approval of the Superior Council of Magistracy. The date, location and manner of holding the admission exam, as well as the number of available positions shall be published in the Official Journal of Romania, Part III, on the web page of the Superior Council of Magistracy and on that of

the National Institute of Magistracy, at least with 60 days before the date established for the exam.

(2) The data in paragraph (1) shall be brought to knowledge also through a press release to be published in three central daily newspapers.

(3) For applying to the exam in paragraph (1), the candidate shall pay a fee the amount of which is to be established by decision of the Superior Council of Magistracy, according to the expenses required for organising the exam.

(4) The Superior Council of Magistracy shall establish annually the number of attendees/trainees of the National Institute of Magistracy, taking into account the number of current vacancies for judge and prosecutor positions as well as of the eventual positions to be set up.

(5) The admission board, the board that elaborates the subjects and the board that solves objections shall be appointed by decision of the Superior Council of Magistracy, upon the proposal made by the National Institute of Magistracy. The board of admission shall verify the files of candidates and the fulfilment of the requirements in Article 14 paragraph (2).

(6) The results of the exam shall be posted at the premises of the National Institute of Magistracy and published on the web page of the Superior Council of Magistracy and on that of the National Institute of Magistracy.

(7) The applicants who disagree with the examination results may lodge appeals at the relevant commission within 3 days as of the public announcement. The commission shall solve the appeals within a period of 3 days. The commission's decision shall be irrevocable, and the provisions of paragraph (6) shall apply accordingly.

(8) A verification will be made of compliance with the requirement of having a good reputation and the requirement of being medically able and psychologically competent to exercise this position, after the final results of the competitive examination are released.

Art. 16 - (1) The persons who attend the courses of the National Institute of Magistracy have the quality of auditors of justice.

(2) The initial professional training performed by the National Institute of Magistracy consists of academic education and practical training of the auditors of justice in order to become judges or prosecutors.

(3) The duration of the training courses for the auditors of justice is of 2 years. After the first year within the National Institute of Magistracy, the auditors of justice may choose, according to their marks/credits and to the number of vacancies, either the position of judge or prosecutor.

(4) During the courses, auditors of justice shall undergo practical training in courts and in prosecutor's offices, attend court sessions and the activity of criminal prosecution, in order to become directly acquainted with the activities performed by the judges, the prosecutors and by the specialised auxiliary personnel.

(5) The Superior Council of Magistracy approves the professional training program for auditors, upon proposal of the National Institute of Magistracy.

Art. 17 - (1) Auditors of justice shall receive a scholarship in the form of a monthly indemnity according to the office of debutant judge and debutant prosecutor, in relation to their length of service as auditors.

(2) The scholarship of auditors of justice in paragraph (1) shall have the nature and the legal treatment of a salary right and shall be established based on the gross indemnity provided in the law for debutant judges and prosecutors, out of which deductions shall be calculated in view of obtaining the net indemnity, the employer's and the employees' obligations towards the State social insurance system, as well as the contribution to the social health insurance following to be paid. Auditors of justice shall receive their



indemnity also during holidays.

(3) The remuneration of the auditors of justice is paid out of the fund included in the annual approved budget of the Superior Council of Magistracy.

(4) The auditors of justice shall enjoy the rights provided in Article 79 paragraphs (4) and (5), which shall apply accordingly.

(5) The period during which a person has held the capacity of auditor of justice, if he has succeeded in graduating the National Institute of Magistracy, shall constitute length of service as judge or prosecutor.

(6) The provisions of paragraphs (1) - (3) and (5) shall also apply to the auditors of justice coming from other countries, on the basis of agreements concluded with the Ministries of Justice of those countries.

Art. 18 - (1) Non-observance by the auditors of justice of the obligations provided by law or by the Regulation of the National Institute of Magistracy shall be disciplinary sanctioned.

(2) The followings shall be disciplinary offenses:

a) performing public activities of political nature or showing political beliefs in the exercise of duties;

b) irreverent attitudes towards colleagues, the training and leadership personnel of the National Institute of Magistracy, as well as towards the persons that they contact during their probation period;

c) non-justifiable absence from courses, if this exceeds 8 classes in one month.

(3) The disciplinary sanctions applicable to the auditors are:

a) warning;

b) reduction of scholarship by up to 15% for a period from one to 3 months;

c) reduction of scholarship in proportion with the number of non-justifiable absences, if they exceed 8 classes in one month;

d) expelling from the Institute.

(4) The warning shall be applied, in written, by the director of the National Institute of Magistracy and may be appealed at the Scientific Council of the Institute.

(5) The sanctions in paragraph (3) b), c) and d) shall be applied by the Scientific Council of the National Institute of Magistracy.

(6) The decisions of the Scientific Council that are provided in paragraph (5) may be appealed before the competent contentious administrative and fiscal court.

(7) If the auditor of justice is expelled from the Institute, he/she is obliged to return the amounts received as scholarship, as well as the education fees.

(8) The procedure of finding the violation and applying the disciplinary sanctions shall be established by the Regulation of the National Institute of Magistracy.

Art. 19 - (1) After completing the training courses of the National Institute of Magistracy, the auditors of justice shall pass a graduation theoretical and practical exam, by which it is verified whether the knowledge necessary for exercising the office of judge or prosecutor was acquired.

(2) The auditors who pass the exam provided by paragraph (1) shall be appointed, according to the law, as a rule, in the positions they chose after the first year of study within the National Institute of Magistracy.

(3) The auditors of justice who do not succeed at the graduation exam may sit for it once more, in

the next session held by the National Institute of Magistracy. Should an auditor of justice unjustifiably fail to appear for the exam or in case that he does not graduate the examination in the second session, he may not be appointed as judge or prosecutor and shall be obliged to reimburse the scholarship and the education fees.

Art. 20 - (1) The graduates from the National Institute of Magistracy are obliged to function as judges or prosecutors for a period of 6 years.

(2) If a graduate of the National Institute of Magistracy is released from office before the expiry of the 6 years period, either at his own initiative or for reasons imputable to him/her, he/she shall be obliged to reimburse the scholarship for auditors of justice and the education fees made for his/her training, according to the time left until expiry of the time limit provided in paragraph (1).

(3) During the period between graduation and the appointment as probationer judges or prosecutors, the graduates of the National Institute of Magistracy shall receive the monthly indemnity of auditors of justice. The amounts for this are included in the budget of the National Institute of Magistracy.

## CHAPTER II

### Debutant judges and debutant prosecutors

Art. 21 - (1) Debutant judges and prosecutors shall be appointed by the Superior Council of Magistracy, based on their general average marks, obtained by summing up the three average marks from the end of each year of study and from the National Institute of Magistracy graduation exam.

(1<sup>1</sup>)The period between the graduation and the appointment by the Superior Council of Magistracy as a debutant judge or prosecutor, as well as the period during which a person has held the office of debutant judge or prosecutor, if he/she succeeds at the capacity exam provided by art.25, shall be considered as length of service as judge or prosecutor.

(2) Debutant judges and prosecutors may be appointed only at the first instance courts or, the case being, at the prosecutor's offices attached to these.

(3) Debutant judges shall enjoy stability.

Art. 22 - (1) The length of probation is of 1 year.

(2) During the probation period, judges and prosecutors have to continue their professional training, under the coordination of a judge or prosecutor especially appointed by the president of the first instance court or, as the case may be, by the prime-prosecutor of the prosecutor's office attached to this court.

(3) The court presidents and the heads of prosecutor's offices must ensure all the necessary conditions for the good progress of the probation period.

Art. 23 - (1) Debutant judges shall render decision on:

a) Legal action for trespassing, legal action for alimony, applications for entries to be made or amended in the marital status records, requests for attachment of assets, requests to warrant foreclosure and to order certain types of asset seizure;

b) pecuniary-related disputes regarding the payment of an amount of money or the handing over of an asset, if the value of the object of the dispute does not exceed 10.000 lei;

c) complaints against official records of contraventions and on the application of contravention sanctions;

d) summons of payment;

e) judicial amnesty;

f) ascertaining the amnesty or pardon;

g) violations included in the Criminal Code and for which a criminal case shall be started only based on preliminary complaint by the victim, except for those stipulated at Art. 218 par. (1) and (2), Art. 219 par. (1), Art. 223, 226, 227, and Art. 239-241.

(2) The debutant prosecutors have the right to participate in trials, carry out and sign procedural acts, under the coordination of a prosecutor enjoying stability.

(3) Solutions of the debutant prosecutors shall be countersigned by the prosecutor who coordinates them.

Art. 24 - (1) The judge or the prosecutor who are in charge of co-ordinating debutant judges or, the case being, debutant prosecutors shall draw up, quarterly, individual evaluation reports on the assimilation of the specific practical knowledge for the activity of judge or prosecutor.

(2) In view of participation to the capacity exam, the last individual evaluation report shall contain the consultative endorsement of the president of the court of appeal or of the general prosecutor of the prosecutor's office attached to it.

Art. 25 - (1) After completing the probation period, the debutant judges and prosecutors shall be obliged to sit for the capacity exam. If a debutant judge or debutant prosecutor shall fail to pass the capacity exam, he/she shall be obliged to sit for the next session.

(2) Unjustifiable absence from or failing twice the capacity exam shall lead to the loss of the capacity of debutant judge or debutant prosecutor. In this event, the judge or prosecutor shall be obliged to reimburse the auditor's scholarship and the education fees spent for his professional training.

(3) The person who, for justified reasons, did not attend the capacity exam, may sit for this exam only if no more than 2 years pass from the end of the probation period until the date established for the exam. The provisions of paragraph (2) shall apply accordingly.

(4) After a 2 year period, the persons provided in paragraph (3) are obliged to follow a new probation period according to the law.

Art. 26 - (1) The capacity exam for debutant judges and debutant prosecutors shall be organised annually by the Superior Council of Magistracy, through the National Institute of Magistracy.

(1<sup>1</sup>) At the capacity exam provided for in paragraph (1) shall attend the debutant judges and the debutant prosecutors, as well as the judicial specialised personnel assimilated with judges and prosecutors within the Superior Council of Magistracy, the National Institute of Magistracy, the Public Ministry and the Ministry of Justice.

(2) The date, location and the manner of holding the capacity exam shall be published in the Official Journal of Romania, Part III, as well as on the web page of the Superior Council of Magistracy and on that of the National Institute of Magistracy and shall be notified to the courts and to the prosecutor's offices attached to them, at least 90 days before the date appointed for the capacity exam.

(3) Applications for the capacity exam, accompanied by the evaluation reports and the other necessary documents, according to the Regulation on the capacity exam for debutant judges and debutant prosecutors, shall be submitted to the Superior Council of Magistracy within 60 days from publication of the exam's date.

Art. 27 - (1) The board for the judges capacity exam and the board for solving appeals shall be composed from judges within the High Court of Cassation and Justice, judges within the courts of appeal and trainers from the National Institute of Magistracy, all appointed by decision of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

(2) The board for the prosecutors capacity exam and the board for solving appeals shall be composed from prosecutors within the Prosecutor's Office attached to the High Court of Cassation and Justice, prosecutors within the prosecutor's offices attached to the courts of appeal and trainers from the National Institute of Magistracy, appointed by decision of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

Art. 28 - (1) The capacity exam shall consist of verification of the theoretical and practical knowledge, by way of written and oral examinations.

(2) Theoretical tests shall concern the constitutional foundations of the rule of law, the basic legal institutions, judicial organisation and the Deontological Code for judges and prosecutors. The oral tests shall be attended by at least 3 members of the boards provided in

Article 27.

(3) The practical tests shall consist in solving moot cases and drafting judicial acts, separately for judges and prosecutors, according to the specific nature of their activity.

(4) *Repealed by Law no.97/2008*

Art. 29 - (1) The results of the capacity exam shall be recorded in the candidates classification table, which shall be posted at the premises of the National Institute of Magistracy and shall be published on the web page of the Superior Council of Magistracy and on that of the National Institute of Magistracy.

(2) Any objections regarding the written tests of the capacity exam shall be sent to the National Institute of Magistracy within 72 hours from the posting of the results, by the candidates, by the courts of appeal or by the prosecutor's offices attached to them. The objections shall be solved within 3 days. The decision of the board for solving objections shall be irrevocable, paragraph (1) shall apply accordingly.

(3) The marks received in oral tests shall be final.

(4) After drawing up the classification table of the candidates, the Superior Council of Magistracy shall validate the exam, during its first session after the results were made public.

(5) The Superior Council of Magistracy may invalidate, totally or partially, the exam, if it finds that the conditions provided by law or regulation regarding the organisation of the exam were infringed or if there is a proof of fraud.

Art. 30 - (1) After the validation of the capacity examination, the Superior Council of Magistracy shall make sure that the lists of all vacant positions at the first instance courts and at the prosecutor's offices attached to them are published at once, separately for judges and for prosecutors, in the Official Journal of Romania, Part III and posted at the premises of the courts and prosecutor's offices.

(2) The candidates who succeeded at the capacity exam shall be entitled, according to the order of their average marks, to choose their positions, within 15 free days from the moment when the positions were made public in the Official Journal of Romania, Part III.

(3) The candidate who did not choose a position during the period provided in paragraph (2) shall be offered ex officio a position by the Superior Council of Magistracy. The refusal of accepting the proposal shall be considered resignation.

(4) In case of equal marks, the priority for choosing the position shall belong, in the following order, to the candidate who works in the court or prosecutor office for which he opted or to the candidate who has the greater length of service into magistracy.

(5) The appointments shall be made public at the Superior Council of Magistracy, at the courts and the prosecutor's offices and it shall be communicated to the interested persons and published on the web page of the Superior Council of Magistracy.

(6) In the jurisdictions of the courts and prosecutor's offices where a national minority has a percentage of at least 50% of the inhabitants, in case of equal marks, the priority shall belong to candidates who speak the language of that minority.

### CHAPTER III

#### Appointment of judges and prosecutors

Art. 31 - (1) The judges and prosecutors who succeed at the capacity exam shall be appointed by the President of Romania, at the proposal of the Superior Council of Magistracy.

(2) The appointment proposals shall be made within 30 days from the validation of the capacity exam.

(3) The President of Romania may refuse only once to appoint the judges and prosecutors provided in paragraph (1). His reasoned refusal shall be sent at once to the Superior Council of Magistracy.

(4) Should the Superior Council of Magistracy support its initial proposal, it shall reason its option and send it at once to the President of Romania.

(5) During the period between the validation date of the capacity exam and the date of entry into force of the decree of appointment by the President of Romania, the judges and prosecutors who succeeded in the capacity exam shall receive a salary correspondent to the immediately superior office to the one of debutant judge or prosecutor.

Art. 32 - (1) A person can be appointed as military judge or prosecutor who meets the requirements in the law on access to the magistrates' profession, as well as having an agreement from the Ministry of National Defense to the effect that they meet the legal requirements to be hired as an active officer with the armed forces.

(2) Appointment as military judge or prosecutor, transfer from civilian to military courts or prosecutor's offices, and awarding of military rank and promotion for military judges and prosecutors shall be performed according to the Uniform Rules of the Superior Council of Magistracy and the Ministry of National Defense.

Art. 33 - (1) Persons who were judges or prosecutors and ceased their activity for reasons not imputable to them, judicial specialised personnel provided by Article 87 paragraph (1), lawyers, notaries, judiciary assistants, legal advisers, the probation personnel with higher legal education, judiciary police officers with higher legal education, the court clerks with higher legal education, persons who have held judicial specialised offices within the apparatus of the Parliament, the Presidential Administration, the Government, the Constitutional Court, the Ombudsman, the Court of Accounts or the Legislative Council, the Juridical Research Institute within the Romanian Academy and the Romanian Institute for Human Rights, the professors at law within the accredited institutions, as well as the assistant-magistrate with the High Court of Cassation and Justice with at least 5 years length of service within the specific field, may be appointed into magistracy, based on a competitive exam, if they meet the requirements provided by Article 14 paragraph (2).

(2) The competitive exam in paragraph (1) shall be organised annually or any time it is required, by the Superior Council of Magistracy, through the National Institute of Magistracy, in view of filling in the vacancies in the first instance courts and the prosecutor's offices attached to them.

(2<sup>1</sup>) Dispozițiile art. 15 par. (8) se aplică în mod corespunzător.

(3) Within 30 days from the validation of the competitive exam in paragraph (1), the Superior Council of Magistracy shall send to the President of Romania the proposals for appointment as judges or prosecutors, for the candidates who succeeded at the above mentioned exam.

(4) Article 30 paragraph (6) shall apply accordingly.

(5) - (10<sup>7</sup>) Repealed by Government Emergency Ordinance no.46/2008.

(11) The President of Romania may refuse only once to appoint the judges or the prosecutors mentioned in paragraph (1). His reasoned refusal shall be sent at once to the Superior Council of Magistracy.

(12) If the Superior Council of Magistracy supports its initial proposal, it is obliged to send its reasoned option to the President of Romania at once.

(13) After appointment to the office of judge or prosecutor, the persons in paragraph (1) shall be obliged to undergo, for 6 months, a course of professional training with the National Institute of Magistracy, which must include elements of community law.

(14) The persons appointed according to the present Article shall be delegated, seconded, transferred or promoted to other courts or prosecutor offices only after a period of at least three years from the appointment into office.

(15) The judges of the Constitutional Court who, at the date of their appointment, held the office of judge or prosecutor shall be entitled, when their term of office expires, to return to the office they had held previously.

Art. 34 - (1) Before starting to exercise their office, the judges and prosecutors shall take the following oath: "I swear to abide by the Constitution and by the laws of this country, to defend the persons' rights and fundamental freedoms, to fulfil my duties with honour, conscience and without prejudice. So help me God!" The reference to Divinity within the oath shall be changed according to the religious beliefs of the judges and prosecutors and is optional.

(2) The refusal of taking the oath shall automatically determine the nullity of the magistrate's appointment.

(3) The oath shall be taken in a solemn session before the judges of the court, or, as the case requires, before the prosecutors of the prosecutor's office where the judge or prosecutor has been appointed, after reading the act of appointment.

(4) Taking of the oath shall be put down in an official record signed by the person in charge of the court or, the case being, of the prosecutor's office and by 2 of the judges or prosecutors present, as well as by the person who has taken the oath.

(5) Taking the oath shall be unnecessary in case of transfer or promotion of a judge or prosecutor to another office.

#### CHAPTER IV

##### Continuous training and periodical evaluation of judges and prosecutors

Art. 35 - (1) The continuous training of judges and prosecutors shall be the guarantee of their independence and fairness when exercising the office.

(2) The continuous training must take into account the dynamics of the legislative process and consists, mainly, in acquiring knowledge of and studying the internal legislation, the European and international documents to which Romania is a part of, the case law of courts and that of the Constitutional Court, the case law of the European Court of Human Rights and of the European Court of Justice, the comparative law, the deontological provisions, the multidisciplinary approach of new institutions of law, as well as of the knowledge and study of foreign languages and of PC literacy.

Art. 36 - The continuous training of judges and prosecutors shall be the duty of the National Institute of Magistracy, of the persons in charge of the courts or prosecutor's offices where they work, as well as of each judge and prosecutor, through individual training.

Art. 37 - (1) Judges and prosecutors shall participate, at least once every 3 years, to the continuous training

programmes organised by the National Institute of Magistracy, by universities in our country or abroad or to other forms of professional training.

(2) The judges and prosecutors are obliged to take intensive courses for learning or deepening their knowledge of a foreign language and of PC literacy, within the continuous training programmes organised by the National Institute of Magistracy or by the courts or prosecutor's offices, by universities in our country or abroad, as well as by other specialised institutions.

(3) The Superior Council of Magistracy shall approve, annually, on the National Institute of Magistracy proposal, the curriculum for the continuous training of judges and prosecutors.

(4) The continuous training of judges and prosecutors shall take into account the need for their specialisation.

Art. 37<sup>1</sup> (1) The board and lodging expenses for the judges, prosecutors, judicial specialised personnel assimilated to them, auditors of justice and the training personnel provided by art.108 of Law no.304/2004 on the judicial organisation, republished, as subsequently amended, who participate at the continuous professional training activities organised by the National Institute of Magistracy, shall be covered from the budget of this institution.

(2) The maximum limit of the expenses provided in paragraph (1) shall be established by decision of the President of the Superior Council of Magistracy, at the National Institute of Magistracy proposal.

(3) The travel expenses for the judges, prosecutors and judicial specialised personnel assimilated to them, who participate at the continuous professional training activities organised by the National Institute of Magistracy, shall be covered from the budgets of the institutions where they carry out their work.

(4) The travel expenses for the auditors of justice and the training personnel of the National Institute of Magistracy, who participate at the continuous professional training activities organised by the National Institute of Magistracy, shall be covered from the budget of this institution.

(5) The judges, prosecutors, judicial specialised personnel assimilated to them, auditors of justice and the training personnel who participate at the continuous professional training activities organised by the National Institute of Magistracy shall not be entitled to delegation daily allowance from the institution where they carry out their activity.

(6) The travel expenses for the members of the Scientific Council of the National Institute of Magistracy, who do not have the residence in Bucharest, shall be covered from the budget of the National Institute of Magistracy.

*Art.37<sup>1</sup> was introduced by the Government Emergency Ordinance no.195/2008, published in the Official Journal no. 825 from 8<sup>th</sup> of December 2008*

Art. 38 - (1) In every court of appeal and in every prosecutor's office attached to a court of appeal, continuous training activities shall be organised periodically, which shall consist of consultations, debates, seminars, sessions or round tables, with the participation of the National Institute of Magistracy. The topic for these shall be approved by the Superior Council of Magistracy.

(1<sup>1</sup>) The expenses for the organisation of the activities provided in paragraph (1), including the ones for the board and lodging and the travel of the participants and the training personnel shall be sustained from the budget of the court of appeal or, the case being, of the prosecutor office attached to the court of appeal.

(1<sup>2</sup>) The maximum limit for the expenses provided in paragraph (1<sup>2</sup>) shall be established by an order of the Minister of justice and civic freedoms or of the General Prosecutor of the Prosecutor Office attached to the High Court of Cassation and Justice

(1<sup>3</sup>) The expenses for the remuneration of the training personnel for the activities provided in paragraph (1) shall be sustained from the budget of the court of appeal or of the prosecutor office attached to

it. The provisions of art.108 paragraph (3) of Law no. 303/2004, republished, as subsequently amended, shall apply accordingly.

(1<sup>4</sup>) The judges, prosecutors and the training personnel participating at the activities provided in paragraph (1) shall not be entitled to receive the daily allowance of delegation from the institutions where they are carrying out their work.

(2) The president of the court of appeal or, the case being, the general prosecutor of the prosecutor's office attached to the court of appeal shall designate the judges and respectively the prosecutors who shall be in charge of organising the activity of continuous training for judges and prosecutors within the court of appeal and the courts within its jurisdiction, and respectively within the prosecutor's office attached to the court of appeal and within the subordinated prosecutor's offices.

Art. 39 - (1) In view of verifying whether the requirements of professional competence and performance are met, once every three years, the judges and prosecutors shall be subject to an evaluation on their effectiveness, on the quality of their activity and on their integrity, on their obligation to undergo continuous training and to graduate specialisation courses. The judges and prosecutors in leading position shall be evaluated also with regard to how they fulfil their management duties.

(2) The first evaluation of judges and prosecutors shall be performed after 2 years from their appointment.

(3) The evaluation in paragraph (1) shall be the task of boards set up by decision of the Superior Council of Magistracy, separately for judges and prosecutors, which shall be composed of the president of the court or, the case being, of the head of the prosecutor's office, section or directorate within the Prosecutor's Office attached to the High Court of Cassation and Justice or within the National Anti-corruption Prosecutor's Department, as well as of 2 judges or prosecutors designated by the Board of Direction.

(4) The boards for the evaluation of prosecutors within the Directorate for Investigation the Offences of Organised Crime and Terrorism and within the National Anti-Corruption Directorate shall include also the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice and, respectively, the General Prosecutor of the National Anti-corruption Directorate, which shall answer directly for the performances of these structures.

(5) The criteria for evaluating the professional activity of judges and prosecutors are provided in the annex 1) which will become an integrant part of this law.

(6) The Regulation on the procedure for evaluating the professional activity of judges and prosecutors shall be approved by decision of the Superior Council of Magistracy.

Art. 40 - (1) The evaluation reports on the professional activity of judges or prosecutors drawn up by the boards in Article 39 paragraph (3) or (4), may grant one of the following results: "very good", "good", "satisfactory" or "unsatisfactory".

(2) The judges or prosecutors who do not agree with the results granted may lodge a complaint to the relevant section of the Superior Council of Magistracy within 30 days since the result is communicated.

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<sup>1</sup> According to Art.3, title XVII of the Law no. 247/2005, when the deadline provided for by Art. II, paragraph (2) will be met, the annex to the Law no. 303/2004, with the subsequent amendments, will be repealed.



(3) When solving a complaint, the sections of the Superior Council of Magistracy may request from the person in charge of the court or prosecutor's office or from the boards or from the persons in Article 39 paragraph (3) or (4) any information that they see as necessary, and it shall be obligatory to summon the judge or prosecutor for being heard.

(4) The decisions rendered by the sections may be appealed before the Plenum of the Superior Council of Magistracy. The decisions rendered by the Plenum of the Superior Council of Magistracy, sitting as a court, are final and irrevocable.

Art. 41 - (1) Judges and prosecutors who receive the reading "unsatisfactory" shall be obliged to undergo 3 to 6 months of special courses held at the National Institute of Magistracy.

(2) Judges and prosecutors who receive the reading "satisfactory" following two consecutive evaluations shall be obliged to undergo 3 to 6 months of special courses held at the National Institute of Magistracy.

(3) The courses provided under paragraphs (1) and (2) shall be finalized by an exam, under the present law.

(4) Judges or prosecutors who receive the reading "unsatisfactory" following two consecutive evaluations or who have not succeeded in the examination in paragraph (3) shall be released from office for professional incapacity, by the President of Romania, on proposal of the Superior Council of Magistracy.

Art. 42 - (1) The evolution of the career of a judge or prosecutor shall be recorded in a sheet in the professional file, which shall be set up and kept by the Superior Council of Magistracy.

(2) The information of the magistrates' professional files is confidential, according to the provisions of the law.

(3) Judges and prosecutors shall have access to their own professional file and may obtain copies of the file existing documents.

## CHAPTER V

### Promotion of judges and prosecutors and their appointment to leading position

#### *Section 1*

##### Promotion to tribunals, courts of appeal and prosecutor's offices

Art. 43 - (1) Judges and prosecutors shall be promoted only by means of a competitive exam held at a national level, within the limits of vacancies existing at tribunals and courts of appeal or, the case being, at the prosecutor's offices.

(2) The competitive exam for the promotion of judges shall be held annually or any time considered necessary, by the Superior Council of Magistracy, through the National Institute of Magistracy.

(3) The board for the promotion of judges shall be composed of judges from the High Court of Cassation and Justice, judges from courts of appeal and trainers from the National Institute of Magistracy, all appointed by decision of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

(4) The board for the promotion of prosecutors shall be composed of prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, prosecutors from prosecutor's offices attached to courts of appeal and trainers from the National Institute of Magistracy, all appointed by decision of the Superior Council of Magistracy, at the proposal of the National Institute of

Magistracy.

(5) The date, the location and manner of holding the exam, as well as the number of vacancies shall be notified to all judges and prosecutors, through the courts and prosecutor offices and shall be published on the web pages of the Superior Council of Magistracy, of the National Institute of Magistracy, the Prosecutor Offices attached to the High Court of Cassation and Justice and on three central daily newspapers, at least 60 days before the date established for the exam.

Art. 44 - (1) The judges and prosecutors who have received the reading "very good" in the last evaluation, who were not sanctioned disciplinarily within the last 3 years and who meet the following minimum requirements of length of service may sit for the promotion exam to the immediately superior courts or prosecutor's offices:

a) 5 years' length of service in the office of judge or prosecutor, for promotion as judge in a tribunal or specialised tribunal and prosecutor in a prosecutor's office attached to a tribunal or in a prosecutor's office attached to a specialised tribunal;

b) 6 years' length of service in the office of judge or prosecutor, for promotion as judge in a court of appeal and as prosecutor in a prosecutor's office attached to it;

c) 8 years' length of service in the office of judge or prosecutor, for promotion as prosecutor in the Prosecutor's Office attached to the High Court of Cassation and Justice

(2) *When calculating the length of service in paragraph (1), the period when a judge or prosecutor was a lawyer shall be taken into consideration as well.*

(3) The Superior Council of Magistracy verifies the fulfilment of the conditions provided under paragraph (1).

Art. 45 - The judges and prosecutors who meet the requirements in Article 44 may sit for the examination, in view of promotion on the spot, within the limits of the number of positions approved annually by the Superior Council of Magistracy.

Art. 46 - (1) The promotion exam consists of written tests, of theoretical and practical nature.

(2) The tests consist of:

a) depending on specialisation, one of the following matters: civil, criminal, commercial, administrative, financial and fiscal, labour, family, and private international law;

b) the jurisprudence of the High Court of Cassation and Justice and of the Constitutional Court;

c) the case law of the European Court of Human Rights and of the European Court of Justice;

d) depending on the specialisation of the judge or prosecutor, either civil or criminal procedure.

(3) The procedure of holding the exam, including the means of objecting to the results shall be provided in the Regulation on the organisation and holding of the promotion exam for judges and prosecutors.

(4) Article 30 paragraph (6) shall apply accordingly.

Art. 47 - Within 30 days from notification of the results, the Superior Council of Magistracy shall order, by decision, the promotion of the judges and prosecutors who were declared admitted.

## ***2<sup>nd</sup> Section***

Appointment into leading position at the first instance courts, tribunals, courts of appeal

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<sup>2</sup> Declared unconstitutional through the Decision of Constitutional Court no. 785 din 12 mai 2009

and at the corresponding prosecutor's offices

Art. 48 - (1) Appointment into the offices of president and vice-president in first instance courts, tribunals, specialised tribunals and courts of appeal is possible only through an exam organised by the Superior Council of Magistracy, through the National Institute of Magistracy, any time considered necessary.

(2) Judges who have received the reading "very good" in the last evaluation, who were not sanctioned disciplinarily within the last 3 years and who meet the legal requirements of length of service may sit for the competitive examination.

(3) Judges shall submit their applications together with any other documents regarded as relevant, to the National Institute of Magistracy, within 20 days from moment when the exam' date was made public.

(4) The exam consists in presenting a project on the exercise of duties that are specific of the leading position and of written tests on management, communication, human resources, and the candidate's ability to take decisions and to assume responsibility, his resistance to stress and of a psychological test.

(5) The examination board shall be appointed by decision of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy and shall be composed of 2 judges from the High Court of Cassation and Justice, 2 judges from the courts of appeal and 3 specialists in management and institutional organisation. When setting up the boards, mainly the judges who have attended management courses shall be taken into account.

(6) The date, the location, as well as the Regulation on the holding the exam, elaborated by the National Institute of Magistracy, shall be approved by the Superior Council of Magistracy and posted on the web pages of the National Institute of Magistracy, the Ministry of Justice, the Superior Council of Magistracy and at the premises of the courts, at least 30 days before the examination date.

(7) The Superior Council of Magistracy shall validate the result of the exam and shall appoint the judges into leading position within 15 days from the date when the final results were posted. Article 30 paragraph (6) shall apply accordingly.

(8) The appointment of judges who obtained the best result in the competitive exam or, the case being, who succeeded in the exam, into the offices for which they applied, shall be made for a 3 years term of office, which is renewable only once according to paragraph (1).

(9) The appointment of judges into other leading position shall be made for a 3 years term of office, which is renewable only once, by the Superior Council of Magistracy, at the proposal of the court president.

(10) The judges who were part of the intelligence services before 1990 or who collaborated with them or the judges who have a personal interest that is influencing or could influence the objective and unbiased fulfilment of their duties provided in the law may not be appointed into leading position.

(11) Judges who sit for the competitive exam, as well as those who are proposed for a leading position shall be obliged to make a statement on their own responsibility showing that they were not part of the intelligence services before 1990 and that they did not collaborate with them either, as well as a statement of interests to be updated annually or within 15 days from the occurrence of a change or from the date when the judge became aware of the change.

(12) Before appointment into leading positions, the National Council for Research on the Communist Secret Service Archive shall verify and inform, within 15 days from the request by the Superior Council of Magistracy, whether the judge was a part of the intelligence services before 1990 or collaborated with these.

(13) The leading positions vacancies within the courts shall be public and available permanently on the web pages of the Superior Council of Magistracy, of the National Institute of Magistracy and of the Ministry of Justice, as well as by posting at the premises the courts.

(14) The appointments into leading positions according to this Article shall take place within 6 months from the date when the leading positions become vacant.

Art. 49 - (1) The appointments as general prosecutor of a prosecutor's office attached to a court of appeal, as prime-prosecutor of the prosecutor's office attached to a tribunal, as prime- prosecutor of the prosecutor's office attached to a tribunal for minors and family or as prime- prosecutor of the prosecutor's office attached to a first instance court and as deputy to the above offices, shall be made only through competitive exam held by the Superior Council of Magistracy, through the National Institute of Magistracy, any time considered necessary.

(2) The prosecutors who have received the reading "very good" in the last evaluation, who were not disciplinarily sanctioned within the last 3 years and who meet the legal requirements of length of service may sit for the competitive exam.

(3) The prosecutors shall submit their applications together with any other documents regarded as relevant, to the National Institute of Magistracy, within 20 days from the moment when the date of the exam was made public.

(4) Article 48 paragraph (4) shall apply accordingly.

(5) The examination board shall be appointed by the Superior Council of Magistracy at the proposal of the National Institute of Magistracy and shall be composed of 2 prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, 2 prosecutors from the prosecutor's offices attached to the courts of appeal and 3 specialists in management and institutional organisation. When setting up the boards, mainly the prosecutors who have attended management courses shall be taken into account.

(6) The date, the location, as well as the Regulation for the organisation and holding of the competitive exam as elaborated by the National Institute of Magistracy shall be approved by the Superior Council of Magistracy and posted on the web pages of the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Institute of Magistracy, the Superior Council of Magistracy, the Ministry of Justice and at the premises of the prosecutor's offices, at least 30 days before the date of the exam.

(7) The Superior Council of Magistracy shall validate the result of the exam and shall appoint the prosecutors into the leading position within 15 days from the date when the final results were posted. Article 30 paragraph (6) shall apply accordingly.

(8) The appointment of prosecutors who obtained the best result in the competitive exam or, the case being, who succeeded in the exam, into the offices for which they applied, shall be for a 3 years term of office, which is renewable only once according to paragraph (1).

(9) The appointment of into the other leading position in prosecutor's offices shall be made for a 3 years term of office, which is renewable only once, by the Superior Council of Magistracy, at the proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(10) For the appointment into the leading position in paragraph (9), the recommendation of the person in charge of the prosecutor's office where the prosecutor is to be appointed shall be required.

(11) Article 48 paragraphs (10)-(12) and (14) shall apply accordingly also for the appointment of prosecutors into leading position.

(12) The leading positions vacancies within the prosecutor's offices shall be public and available permanently on the web pages of the Prosecutor's Office attached to the High Court of Cassation and Justice, of the Superior Council of Magistracy, of the National Institute of Magistracy and of the Ministry of Justice, as well as by posting them at the premises of prosecutor's offices.

Art. 50 - (1) For appointment into a leading position, the following requirements of minimum length of service apply:

a) for the office of president and vice-president of a first instance court, prime- prosecutor with a prosecutor's office attached to a first instance court and his deputy, 5 years' length of service as judge or prosecutor;

b) for the office of president and vice-president of a tribunal or specialised tribunal, as well as of section president within a tribunal, of prime-prosecutor within a prosecutor's office attached to a tribunal or with a prosecutor's office attached to a tribunal for minors and family, of deputy to the above mentioned offices and of chief prosecutor of a section within the prosecutor's office attached to a tribunal or a tribunal for minors and family, 6 years' length of service as judge or prosecutor;

c) for the office of president and vice-president, section president within a court of appeal, of general prosecutor within the prosecutor's office attached to a court of appeal and of deputy to the latter, of chief prosecutor of section within a prosecutor's office attached to a court of appeal, 8 years' length of service as judge or prosecutor.

(2) *When calculating the length of service in paragraph (1), the period during which the judge or prosecutor was a lawyer shall be taken to account as well<sup>3</sup>.*

(3) For appointment into leading positions, the judges and prosecutors must be entitled to work within the court or, the case being, the prosecutor's office where they are to be appointed.

Art. 51 - (1) Upon cessation of their term of office in leading position, the judges or prosecutors may hold, according to Article 48, 49 and 50, a leading position in the same court or the same prosecutor's office or within another court or prosecutor's office or may return to the courts or prosecutor's offices where they come from or to a court or prosecutor's office where they are entitled to work, according to the law.

(2) The revocation of the judges from leading positions shall be decided by the Superior Council of Magistracy, either *ex officio* or at the proposal of the general assembly or of the court president, for the following reasons:

a) if they no longer fulfil one of the requirements for appointment into a leading position;

b) in case of inappropriate exercise of management duties relating to effective organisation, to behaviour and communication, to the assuming of responsibilities and to management skills;

c) in case of application of one of the disciplinary sanctions.

(3) When verifying the effective organisation, the following main criteria are to be taken into account: appropriate use of human and material resources, evaluation of needs, crisis management, relation between invested resources and obtained results, management of information, organisation of professional training and improvement and assignment of tasks within the courts or prosecutor's offices.

(4) When verifying the behaviour and communication skills, the following main aspects are to be taken into account: behaviour and communication with judges, prosecutors, auxiliary personnel, the users of justice, the persons involved in the act of justice, other institutions, the media, ensuring access to information of public interest in that court or prosecutor's office and transparency in leadership.

(5) When verifying the assuming of responsibility, the following main aspects are to be taken into account: the fulfilment of duties provided in laws and regulations, the implementation of national and sequential strategies in the field of the Judiciary and the observance of the principle of random case distribution or, the case being, of cases distribution based on objective criteria.

(6) When verifying the management skills, the following main aspects are to be taken into account: the capacity for organisation, the capacity for quick decision-making, resistance to stress, self-improvement, capacity for analysis, synthesis, foresight, strategy and planning in the short, medium and long term,

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<sup>3</sup> Declared unconstitutional by the Decision of the Constitutional Court no. 176/2014.

initiative and capacity to adapt quickly.

(7) The revocation of prosecutors from leading positions shall be decided by the Superior Council of Magistracy, either *ex officio* or at the proposal of the general assembly or of the head of the prosecutor's office, for the reasons in paragraph (2) which shall apply accordingly.

### **3<sup>rd</sup> Section**

Promotion into the office of judge within the High Court of Cassation and Justice and appointments into leading positions at the High Court of Cassation and Justice, the Prosecutor's Office attached to the High Court of Cassation and Justice and the National

#### **Anti-corruption Department**

Art. 52 - (1) Promotion to the position of Justice with the High Court of Cassation and Justice shall be the exclusive result of a competitive examination which shall be given whenever necessary, within the number of existing vacancies, by the Superior Council of Magistracy through the agency of the National Institute for Magistrates.

(2) The date, location, manner of operation of the competitive examination and number of vacancies for which the examination is given shall be communicated to all judges and prosecutors through the agency of the Courts of Appeals, Prosecutor's Offices attached to the Courts of Appeals, and that of the Prosecutor's Office attached to the High Court of Cassation and Justice and shall be posted on the websites of the Superior Council of Magistracy, the National Institute for Magistrates, the High Court of Cassation and Justice, Prosecutor's Office attached to the High Court of Cassation and Justice, as well as published in 3 national-circulation daily newspapers, at least 40 days before the date that was set for the competitive examination.

(3) Qualifying to take the competitive examination for promotion as justice at the High Court of Cassation and Justice are judges and prosecutors currently working no lower than a Court of Appeals or a Prosecutor's Office attached to a Court of Appeals, who have been a judge at a Court of Appeals or a prosecutor at a Prosecutor's Office attached to a Court of Appeals or a prosecutor with the Prosecutor's Office attached to the High Court of Cassation and Justice, have been given a "very good" evaluation in their latest 3 evaluation procedures, have never been subject to disciplinary action \*) and have a seniority as judge or prosecutor of no less than 15 years.

(4) The Stipulations of Art. 48 par. (10)-(12) shall apply accordingly.

(5) The Superior Council of Magistracy shall verify compliance with the requirements stipulated in this Article.

#### **Article 52<sup>1</sup>**

(1) Applications to take the competitive examination for promotion as a justice with the High Court of Cassation and Justice shall include mention of the Chamber they want to join.

(2) The competitive examination for promotion as a justice with the High Court of Cassation and Justice consists of:

a) one module where there is an assessment of the documents filed by the candidates or which regard their work;

b) one interview before the Plenum of the Superior Council of Magistracy;

c) one written module, with a focus on the practical.

(3) The Commissions for the competitive examination shall be appointed by decision of the Superior Council of Magistracy, on nomination from the National Institute for Magistrates.

(4) The Commissions for the competitive examination shall be made up of justices from the High Court of Cassation and Justice, Professor/level teaching staff from law schools in universities engaged in advanced research and education as defined in Art. 193 par. (4) lett. c) in the Law on National Education #1/2011, as subsequently amended and supplemented, and trainers from the National Institute for Magistrates.

(5) The members of the Commissions described at par. (3) cannot have any political affiliation at the time the Commissions are formed.

(6) *Repealed*, by item 3 or Art. I in EMERGENCY GOVERNMENT ORDER #81 of December 4<sup>th</sup>, 2012, published in the OFFICIAL JOURNAL issue #837 of December 12<sup>th</sup>, 2012.

(7) Excluded from membership on the Commissions described at par. (3) are individuals whose spouse, immediate relatives and relatives up to, and including, the fourth degree, are among the candidates in the examination.

#### Article 52<sup>2</sup>

(1) As regards the test stipulated at Art. 52<sup>1</sup> par. (2) lett. a), on request from the exam Commissions the Superior Council of Magistracy shall contact the Courts of Appeals or, as the case may be, prosecutor's offices attached to Courts of Appeals or the Prosecutor's Office attached to the High Court of Cassation and Justice, to ask for judgments or, as the case may be, documents developed by the candidates or regarding their work, for the previous 5 years of activity as well as other information required for the assessment, as under this Law.

(2) Any individual can submit documents to the exam Commissions of a nature relevant to par. (1) and developed by the candidates, which can be analyzed during the test stage where an assessment is made of the documents developed by the candidates or which regard their work.

(3) Applications to take the examination shall be posted on the websites of the Superior Council of Magistracy and the High Court of Cassation and Justice, accompanied by a note that announces to the public that any individual can submit documents to the exam Commissions of a nature relevant to par. (1) and developed by the candidates, as well as the deadline for submission of such documents.

(4) The documents stipulated in par. (1) shall be posted on the website of the Superior Council of Magistracy, in compliance with the legal rules on protection of personal information, and will be up for public debate for a duration of 7 days after posting. Reports or remarks from the public can be taken into consideration by the exam Commission during their assessment.

#### Article 52<sup>3</sup>

(1) For candidates who are judges the assessment described at Art. 52<sup>2</sup> shall include:

- a) an examination of their capacity for analysis and synthesis;
- b) an examination of their coherence in expressing themselves;
- c) an examination of their arguments in terms of clarity and logic;
- d) repealed;
- e) repealed;
- f) repealed;
- g) repealed;
- h) repealed;

- i) repealed;
  - j) an examination of compliance with reasonable durations for ruling in a case and writing the full text of their judgment.
- (2) The stipulations in par. (1) shall apply accordingly to assessments of candidates who are prosecutors, as under Art. 52<sup>2</sup>.
- (3) As part of the assessment procedure the exam Commissions can ask the candidates to clarify any one of the aspects under assessment.

#### Article 52<sup>4</sup>

- (1) During the interview stage the Plenum of the Superior Council of Magistracy assesses aspects regarding the candidates' integrity.
- (2) Attending the meeting of the Plenum of the Superior Council of Magistracy that hears the interview shall be a consultative psychologist appointed by the Plenum, who can ask questions of the candidates with a goal to assessing their motivation as well as human and social skills.
- (3) Assessing the candidates' integrity shall be performed on the basis of a Report on this matter from the Judicial Inspection, as well as of the candidate's responses to questions about the contents of the Report, of information in their personnel file, of the documents filed by the candidate, of the way the candidate relates to values such judicial independence, magistrates' impartiality, integrity and other aspects arising from the discussion.

#### Article 52<sup>5</sup>

- (1) The maximum score that can be obtained in the modules described at Art. 52<sup>1</sup> par. (2) is 100, distributed as follows:
- a) 40 points for the module under Art. 52<sup>1</sup> par. (2) lett. a);
  - b) 20 points for the module under Art. 52<sup>1</sup> par. (2) lett. b);
  - c) 40 points for the module under Art. 52<sup>1</sup> par. (2) lett. c).
- (2) The minimum passing score for the module under Art. 52<sup>1</sup> par. (2) is:
- a) 28 points for the module under Art. 52<sup>1</sup> par. (2) lett. a);
  - b) 14 points for the module under Art. 52<sup>1</sup> par. (2) lett. b);
  - c) 28 points for the module under Art. 52<sup>1</sup> par. (2) lett. c).
- (3) The minimum passing score for the competitive examination is 70.

#### Article 52<sup>6</sup>

- (1) The written test described at Art. 52<sup>1</sup> par. (2) lett. c) consists of:
- a) one of the following groups of subjects, depending on specialization:
    - (i) civil law, family law and private international law;
    - (ii) criminal law;
    - (iii) administrative law, financial and tax law, and labor law;
  - b) jurisprudence of the European Court of Human Rights and jurisprudence of the European Court of



Justice;

c) civil or criminal procedure, depending on the judge's or prosecutor's specialization.

(2) In developing the subjects for the test at par. (1) the jurisprudence of the High Court of Cassation and Justice and that of the Constitutional Court shall also be included.

#### Article 52<sup>7</sup>

(1) Within no more than 15 days since release of the results of the competitive examination for promotion to the position of Justice at the High Court of Cassation and Justice, the Superior Council of Magistracy shall issue a decision to promote the candidates who passed in the examination.

(2) The procedure used in the competitive examination for promotion to the position of Justice at the High Court of Cassation and Justice, including the avenues to challenge the results, shall be set by a Regulation to be issued by the Superior Council of Magistracy, in compliance with this Law, in a Decision that shall be published in the Official Journal of Romania Part I.

Art. 53 - (1) The president, the vice-president and the section presidents of the High Court of Cassation and Justice shall be appointed by the President of Romania, at the proposal of the Superior Council of Magistracy, from among the judges of the High Court of Cassation and Justice who have worked at this court for at least 2 years.

(2) The President of Romania may refuse only in a reasoned form the appointment into the leading position in paragraph (1), notifying the reasons for his refusal to the Superior Council of Magistracy.

(3) The appointment into the offices in paragraph (1) is made for a 3 years term of office, which is renewable only once.

(4) Article 48 paragraphs (10) - (12) shall apply accordingly.

(5) The judges of the High Court of Cassation and Justice who meet the requirements in paragraph (1) may apply to the Superior Council of Magistracy for the office of president, vicepresident or section president of the High Court of Cassation and Justice, within 30 days from the date when the office of president, vice-president or section president became vacant.

(5<sup>1</sup>) In case the positions of Chief Justice or Deputy Chief Justice of the High Court of Cassation and Justice become vacant following expiry of the term of office, candidacy shall be submitted no later than 30 days before said expiry, but no earlier than 60 before the position becomes vacant.

(6) The revocation from office of the president, the vice-president or of the section presidents of the High Court of Cassation and Justice shall be made by the President of Romania at the proposal of the Superior Council of Magistracy, which may act *ex officio*, at the request of one third of the number of its members or at the request of the general assembly of the court, for the reasons provided by Article 51 paragraph (2) which shall apply accordingly.

Art. 54 - (1) The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, his prime-deputy and deputy, the general prosecutor of the National Anti-Corruption Department, his deputies, the chiefs prosecutors of the section within these prosecutor's offices, as well as the chief prosecutor of the Directorate for Investigation the Offences of Organised Crime and Terrorism and his deputies, shall be appointed by the President of Romania, at the proposal of the Minister of Justice, with the endorsement of the Superior Council of Magistracy, from among the prosecutors having at least 10 years' length of service as judges or prosecutors, for a 3 years term of office which is renewable only once.

(2) Article 48 paragraphs (10)-(12) shall apply accordingly.

(3) The President of Romania may refuse only in a reasoned form the appointment into the leading

position in paragraph (1), while notifying the public the reasons for his refusal.

(4) The revocation of the prosecutors from the leading position in paragraph (1) shall be made by the President of Romania at the proposal of the Minister of Justice, who may act *ex officio*, at the request of the general assembly, or, the case being, at the request of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or of the General Prosecutor of the National Anti-corruption Department, with the endorsement of the Superior Council of Magistracy, for the reasons provided by Article 51 paragraph (2) which shall apply accordingly.

Art. 55 - (1) The appointment into other leading position within the Prosecutor's Office attached to the High Court of Cassation and Justice and within the National Anti-corruption

Department shall be made, for a 3 years term of office, which is renewable only once, by the Superior Council of Magistracy, at the proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or of the General Prosecutor of the National Anti-Corruption Department, as the case may be.

(2) For the appointment into the leading position as provided for in paragraph (1), a recommendation from the person in charge of the section or, the case being, the directorate within the Prosecutor's Office attached to the High Court of Cassation and Justice or the National Anti-corruption Department, where the prosecutor is to be appointed, shall be required.

(3) Article 48 paragraphs (10) - (12) shall apply accordingly.

(4) The revocation from the leading position of the prosecutor appointed according to paragraph (1) shall be decided by the Superior Council of Magistracy, either *ex officio* or at the proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or of the General Prosecutor of the National Anti-Corruption Department, for the reasons provided by Article 51 paragraph (2) which shall apply accordingly.

(5) The proposal in paragraph (4) may be made *ex officio* or at the request of the general assemblies or of the heads of the sections or, the case being, of the directorate within the Prosecutor's Office attached to the High Court of Cassation and Justice or within the National Anti-corruption Department.

Art. 56 - Upon completion of the term of office of the leading position provided in Articles 53, 54 and 55, a judge or prosecutor shall return to the court or prosecutor's office where they came from or to a court or prosecutor's office where they are entitled to work according to the law.

## CHAPTER VI

### Delegation, secondment and transfer

Art. 57 - (1) If a first instance court, a tribunal or a specialised tribunal cannot operate normally because of the temporary absence of certain judges, the existence of vacancies or other such causes, the president of the court of appeal that has jurisdiction may, at the proposal of that court's president, delegate judges from other courts within the aforementioned jurisdiction, with their written consent.

(2) The delegation of judges from first instance courts, tribunals and specialised tribunals to the jurisdiction of another court of appeal shall be decided, with their written consent, by the Superior Council of Magistracy at the request of the president of the court of appeal in whose jurisdiction the delegation is requested and with the endorsement of the president of the court of appeal where they work.

(3) The delegation of judges within the courts of appeal shall be decided, with their written consent, by the Superior Council of Magistracy, at the request of the president of the court of appeal.

(4) The delegation into a leading position of judges within the courts of appeal, tribunals, specialised tribunals and first instance courts shall be decided by the Superior Council of Magistracy, with the written consent of the judges, until the office is filled through appointment according to this law.

(5) The delegation into the leading position within the High Court of Cassation and Justice of the judges of this court shall be decided by the Superior Council of Magistracy, with their written consent, at the proposal of the president of the High Court of Cassation and Justice.

(6) Delegation of Justices can be issued for no longer than 6 months and can be extended, with the persons' agreement, for no more than another 6 months.

(7) For office purposes, prosecutors may be delegated, with their written consent, including into leading position, by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice to the prosecutor's offices within the Public Ministry for no more than 6 months.

(8) The delegation of prosecutors may be extended, with their written consent, by another 6 months.

(8<sup>1</sup>) Assistant-magistrates can be delegated in the interest of professional tasks, with their written agreement, to the positions of assistant-first-magistrate or chief-first-magistrate, by the Chief Justice of the High Court of Cassation and Justice, for no longer than 6 months. Based on their written agreement the assistant-magistrates their delegation can be extended for another maximum 6. During their delegation the assistant-magistrates shall receive all the legal rights pertaining to the position they are delegated to.

(9) During delegation, the judges and prosecutors shall enjoy all the rights provided in the law for the office to which they are delegated. If the salary and other pecuniary rights provided for the office to which a judge or prosecutor is delegated are lower, he shall keep his initial monthly indemnity and the other pecuniary rights.

Art. 58 - (1) The Superior Council of Magistracy shall decide on the judges secondment, with their written consent, to other courts or prosecutor's offices, to the Superior Council of Magistracy, to the National Institute of Magistracy, to the Ministry of Justice and Civic Freedoms, to subordinated units or to other public authorities, to any office, including into the offices of appointed public dignity, at the request of these institutions, as well to other institutions of the UE or international organisations.

(2) The length of secondment is 6 months to 3 years. The secondment may be prolonged by up to 3 years, only once, as provided in paragraph (1).

(3) During secondment, the judges and prosecutors shall keep their capacity of judges and prosecutors and shall enjoy the rights provided by law for the seconded personnel. When the salary and the other pecuniary rights provided for the office to which a judge or prosecutor has been seconded are lower, he shall keep his initial monthly indemnity and the other pecuniary rights.

(3<sup>1</sup>) The judges, prosecutors and the personnel assimilated to them, seconded abroad for office purposes, shall enjoy the rights and obligations established by the special provisions of the institution where they are seconded.

(3<sup>2</sup>) In the cases where the special provisions provided for in paragraph (3<sup>1</sup>) do not exist, the personnel seconded abroad shall enjoy the following rights:

a) the basic monthly indemnity, supplemented by permanent benefits provided by law for the position held previously to the secondment;

b) the reimbursement of travel expenses between the place of residence and the place of secondment, at the beginning and at the end of the secondment period, as well as for his/her leave of absence in the country;

c) the reimbursement of rent, within the limits established annually, within the budget allocated to this end by the state budget law, through a common order of the Minister of Justice, President of the Superior Council of Magistracy, President of the High Court of Cassation and Justice, General Prosecutor of the prosecutor office attached to the High Court of Cassation and Justice and of the Chief Prosecutor of the National Anticorruption Directorate;

d) per diem, in the amount provided by law for State secretary when they travel abroad.

(3<sup>3</sup>) The personnel seconded abroad shall not enjoy in the country the same rights as at the institution where he/she is seconded.

(4) The secondment period shall be considered as length of service as judge or prosecutor.

(5) Upon cessation of the secondment, the judge or prosecutor shall return to the office that he held previously.

Art. 59 - A judge or prosecutor may not be seconded to a court or prosecutor's office that is higher than the ones in which he is entitled to work, according to the law.

Art. 60 - The transfer of the judges or prosecutors from one court to another or from a prosecutor's office to another or to a public institution shall be approved, at the request of those in question, by the Superior Council of Magistracy.

Art. 61 - (1) At their reasoned request, the judges may be appointed as prosecutors, and prosecutors as judges, by decree of the President of Romania, at the proposal of the Superior Council of Magistracy, while observing the requirements provided in this Law.

(2) For appointment to the offices in paragraph (1), the candidates shall give an interview before the section for judges within the Superior Council of Magistracy, in case of prosecutors requesting appointment as judges, and, respectively, before the section for prosecutors within the Superior Council of Magistracy, for judges requesting appointment as prosecutors.

(3) The President of Romania may refuse only in a reasoned manner the appointment into the offices in paragraph (1), while making the reasons of his refusal known to the Superior Council of Magistracy.

## CHAPTER VII

### Suspension from and cessation of the office of judge and prosecutor

Art. 62 - (1) A judge or prosecutor may be suspended from office in the following cases:

a) when they are being prosecuted for the commission of a crime;

a<sup>1</sup>) when they have been placed under pre-trial arrest or house arrest;

b) when he suffers from a mental illness that prevents him from properly exercising his office.

c) when they have been subject to a disciplinary penalty as under Art. 100 lett. d).

(1<sup>1</sup>) By exception from the stipulation of par. (1) lett. a), if the person is prosecuted for a criminal violation committed without intent and it is deemed that this does not impact the prestige of the legal profession, the judge or prosecutor will come under a temporary restriction from exercising certain responsibilities until a final judgment in their case.

(2) The suspension of judges and prosecutors from office and temporary restriction from exercising certain responsibilities shall be decided by the Superior Council of Magistracy.

(3) During their suspension from office, the judges and prosecutors shall not receive their salary rights. This period shall not be considered as length of service in the magistracy.

(4) The provisions on interdictions and incompatibilities as specified in Articles 5 and 8 shall not apply to judges or prosecutors during their suspension from office.

Art 62<sup>1</sup>

(1) The final judicial decision to place a judge or a prosecutor under pre-trial arrest or house arrest, the

indictment against a judge or prosecutor or the prosecutorial order to drop charges against a judge or prosecutor shall be communicated to the Superior Council of Magistracy within 24 hours.

(2) Within 3 days of the date a judgment in a criminal case brought against a magistrate becomes final, the enforcement court shall send the Superior Council of Magistracy a copy of the full text of the judgment.

Art. 63 - (1) The Superior Council of Magistracy shall immediately communicate the decision of suspension from office to the judge or prosecutor and the management of the court or prosecutor's office where they work.

(2) If a criminal case against a judge or prosecutor is dismissed, closed or the person is acquitted, suspension from office ceases and they are reinstated to their previous status, receive back pay for the period during which they were suspended and also receive seniority time for that same period.

(3) Judges and prosecutors can remain in office if charges against them were dropped or if there is a final judgment whereby their penalty will not be enforced. The judges' and prosecutors' remaining in office shall be ordered by the Superior Council of Magistracy, if it is deemed that their conduct does not impact the prestige of the legal profession.

Art. 64 - (1) In the case in Article 62 paragraph (1) letter b), the mental illness shall be found by specialised expertise, at the notification of the court president or of the person in charge of the prosecutor's office or of the boards of direction, and the suspension from office shall be decided for the period recommended by the specialised medical board appointed according to Article 14 paragraph (2) e).

(2) After expiry of the period provided for by paragraph (1), the Superior Council of Magistracy or, the case being, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or the general prosecutor of the National Anti-corruption Department, based on a new expertise, may decide to cease the suspension and reinstate the judge or prosecutor into office, to extend the suspension period or, if the illness is irreversible, to propose the removal from office according to the law.

(3) During the suspension period, the judges or the prosecutors shall receive their social health insurance rights, according to the law.

Art. 65 - (1) The judges and prosecutors shall be removed from office in the following cases:

- a) resignation;
- b) retirement, according to the law;
- c) transfer to another office, according to the law;
- d) professional incapacity;
- e) as a disciplinary sanction;
- f) conviction and postponement of penalty arising from a final judgment;
- f<sup>1</sup>) charges dropped and waiving enforcement of a penalty arising from a final judgment, if it is deemed that maintaining that person in office is not necessary;
- g) violation of Article 7;
- h) failure to succeed in the examination in Article 33 paragraph (14);
- i) failure to meet the requirements provided by Article 14 paragraph (2) a), c) and e).

(1<sup>1</sup>) By exception from par. (1) lett. f), judges and prosecutors can be maintained in office in case their conviction or postponement of service of their sentence was ruled for the violation stipulated at Art. 196 par. (2)-(4) in the Criminal Code. Maintaining them in office shall be the decision of the Superior

Council of Magistracy, if it is deemed that their conduct does not impact the prestige of the legal profession.

(2) The removal from office of the judges and prosecutors shall be decided by decree of the President of Romania, at the proposal of the Superior Council of Magistracy.

(3) The placement in reserve or the withdrawal of the military judges and prosecutors shall take place according to the law, after they are removed from office by the President of Romania. In case of retirement or transfer, the removal from office shall be performed after placement in reserve or, the case being, after withdrawal.

(4) The removal from office of the debutant judges and debutant prosecutors shall be done by the Superior Council of Magistracy.

(5) Should a judge or prosecutor request his removal from office through resignation, the Superior Council of Magistracy may establish a period not exceeding 30 days from which the resignation will take effect, if the presence of the judge or prosecutor is necessary.

(6) A judge or prosecutor who was removed from office for reasons not imputable to him shall keep his professional rank acquired in the hierarchy of courts or of prosecutor's offices

Art. 65<sup>1\*</sup> (1)\*\* Repealed by Law no.77/2009

(2) In case of the appeal against the decision of removal from office, the judge or the prosecutor shall be suspended from office until a competent court shall give an irrevocable decision.

(3) The provisions of Art.63 paragraph (2) and of the Art.64 paragraph (3) shall apply accordingly.

*Art.65<sup>1</sup> was introduced by Government Emergency Ordinance no.50/2006, published into the Official Journal of Romania, no.566/30.06.2006*

## CHAPTER VIII

### Assistant-magistrates of the High Court of Cassation and Justice

Art. 66 - (1) The prime-assistant-magistrate, the chief assistant-magistrates and the assistantmagistrates of the High Court of Cassation and Justice shall enjoy stability.

(2) The assistant-magistrates shall be appointed and promoted by the Superior Council of Magistracy, based on a competitive examination.

(3) The general requirements for the appointment of assistant-magistrates shall be those provided for the offices of judge and prosecutor.

(4) The provisions of the present Law concerning the incompatibilities and interdictions, the continuous training and periodical evaluation, the rights and duties, as well as the disciplinary liability of the judges and prosecutors shall apply accordingly to the assistantmagistrates.

Art. 67 - (1) The prime-assistant-magistrate shall be promoted amongst the chief-assistantmagistrates who have at least 2 years length of service.

(2) The chief-assistant-magistrates of third rank shall be promoted amongst the assistant-magistrates who have at least 3 years length of service. After serving 2 years as chiefassistant-magistrates, they may be promoted to the second class assistant-magistrates and, after another 5 years, to the first class assistant-magistrates.

(3) The assistant-magistrates of third class shall be appointed without a competitive examination, amongst the judges or prosecutors with at least 4 years length of service as magistrates. After a period of 3 years in this position, the assistant-magistrates may be promoted to the second class and, after another 3

years, to the first class.

(4) The assistant-magistrates of the third class may be appointed also, by means of competitive examination, from among lawyers, notaries, law-specialised personnel provided by Art.87 paragraph (1), as well as court clerks with higher legal education from courts of appeal and from the High Court of Cassation and Justice, who have at least 5 years' length of service.

Art. 68 - (1) The prime-assistent-magistrate shall have the following attributions:

a) coordinates the activity of the assistant-magistrates in the sections and of the civil servants from the Chancellor' Office of the High Court of Cassation and Justice;

b) participates in the sessions of the Joint Sections of the High Court of Cassation and Justice and of the Nine Judges-Panel, sitting as a disciplinary court.

(2) The prime-assistent-magistrate shall have other attributions in accordance with the Regulation on the administrative organisation and operation of the High Court of Cassation and Justice.

Art. 69 - The chief-assistent-magistrates shall have the following attributions:

a) participate in the sessions of the sections and of the Nine Judges-Panel;

b) designate the assistant-magistrates who participate in the court sessions;

c) ensure that the section records are kept in good conditions and all duties are fulfilled in due time.

Art. 70 - The assistant-magistrates shall participate in the court sessions of the sections.

Art. 71 - The assistant-magistrates who participate in the sessions of the High Court of Cassation and Justice shall draw up the minutes, participate with a consultative vote in the deliberation and draw up the decisions, according to the allocation of cases made by the president for all members of the court panel.

Art. 72 - The assistant-magistrates fulfil any other tasks assigned by the president of the High Court of Cassation and Justice, the vice-president or by the president of the section.

### TITLE III

#### The rights and duties of judges and prosecutors

Art. 73 - When establishing the rights of judges and prosecutors, one shall take into account the place and role of the Judiciary under the Rule of Law, of the responsibility and complexity of the offices of judge and prosecutor, of the interdictions and incompatibilities provided in the law for these offices and shall aim at safeguarding their independence and impartiality.

Art. 74 - (1) For the performed activity, the judges and prosecutors are entitled to a remuneration established in relation to the level of the court or of the prosecutor's office, to the office held, to the length of service in the magistracy and to other criteria provided by the law.

(2) The judges and prosecutors' salary rights may not be reduced or suspended outside the cases provided in this law. The indemnities of the judges and prosecutors shall be established by a special law.

(3) - repealed by Government Emergency Ordinance No. 50 published in the Official Journal of Romania No. 566/30.06.2006

(4) The military judges and prosecutors are active members of the military and shall have all the rights and duties that emerge from this capacity.

(5) The salaries and the other rights due to military judges and prosecutors shall be provided by the Ministry of National Defence, in accordance with the legislation on the salaries and other rights of the personnel within the bodies of the Judiciary and with the regulations on the material and pecuniary rights

specific for the quality of active member of the armed forces and, respectively, of civil employee of the aforementioned ministry.

(6) The granting of military ranks and the promotion to higher ranks of military judges and prosecutors shall take place according to the norms applicable to the permanent personnel of the Ministry of National Defence.

Art. 75 - (1) The Superior Council of Magistracy is entitled and obliged to protect the judges and prosecutors against any act that is likely to affect their independence or impartiality or to give rise to suspicion with regard to these.

(2) The judges or prosecutors who consider that their independence or impartiality is affected in any way by acts of interference with the professional activity may address to the Superior Council of Magistracy, in order to decide the necessary measures, according to the law.

Art. 76 - The judges and prosecutors are free to organise or accede to local, national or international professional organisations, for the protection of their professional interests, as well as to those provided by Article 11 paragraph (3).

Art. 77 - (1) The in office or retired judges and prosecutors are entitled to special measures of protection against threats, violence or any acts that jeopardise them, their families or their property.

(2) The special measures of protection, the conditions and the manner of putting them into practice shall be set forth by Government Decision, at the proposal of the Ministry of Justice and Civic Freedoms and of the Ministry of Interior and Administration.

Art. 78 - (1) The judges and prosecutors are entitled to compensation paid from the budgets of the High Court of Cassation and Justice, of the Ministry of Justice and Civic Freedoms or, the case being, of the Public Ministry, or, for military judges and prosecutors, with the funds of the Ministry of National Defence, if their life, health or property are affected while exercising their office duties.

(2) The compensation in paragraph (1) shall be subject to conditions established by Government decision, with the endorsement of the Superior Council of Magistracy.

Art. 79 - (1) The judges and prosecutors shall receive an annual paid leave of 35 working days.

(2) The judges and prosecutors shall be entitled to paid leaves for attending courses or other forms of specialisation organised within the country or abroad, for preparing and sitting for the capacity and the degree examination, as well as to leaves without payment, according to the Regulation on the leaves of absence of judges and prosecutors.

(3) Judges and prosecutors shall be entitled to medical leaves and to other types of leaves, according to the legislation in force.

(4) -repealed by Government Emergency Ordinance No.148/01.01.2006 published in the Official Journal of Romania No. 1008/14.11.2005.

(5) -repealed by Government Emergency Ordinance No. 50 published in the Official Journal of Romania No. 566/30.06.2006.

(6) The judges and prosecutors are entitled to rent office residences. The office residences that are administered by the Ministry of Justice and Civic Freedoms and by the subordinated units, as well as those that are in the property of or administered by the Public Ministry may not be purchased by judges, prosecutors or by any other employees of these institutions.

(7) In case of retirement for age-limit, the persons entitled to a rent contract, as provided for at paragraph (6) and the case being, his/hers husband or wife, keep the entitlement to the rent-contract for their life-time.



Art. 80 - Annually, the judges and prosecutors shall enjoy 6 free national return tickets, for first class railway transportation, vehicle, naval and aerial transportation or the reimbursement of 7, 5 litres of fuel/100km for 6 national return voyages, if they are travelling by car.

Art. 81 - (1) The judges and prosecutors having continuous length of service into magistracy for 20 years before the date of retirement or removal from office for other reasons not imputable to them, shall be entitled to receive an indemnity equalling 7 basic gross monthly salaries, which shall be taxed according to the law.

(2) The indemnity in paragraph (1) shall be granted only once during the career of a judge or prosecutor and shall be recorded according to the law.

(3) The manner for calculating continuous length of service into magistracy shall be established by decision of the Superior Council of Magistracy.

(4) Paragraph (1) shall apply also in case of death of an active judge or prosecutor. In this case, the indemnity shall go to the spouse and the children who were supported by the deceased at the date of death.

Art. 82 - (1) The judges, prosecutors, assistant-magistrates within the High Court of Cassation and Justice, judicial specialised personnel equated to judges and prosecutors, and also the former financial judges, prosecutors and account councillors from the jurisdictional section, who exercised their duties at the Accounts Court, having at least 25 years' length of service in the positions mentioned before, may retire at their request and shall enjoy, upon reaching the age of 60 years, a service pension, amounting up to 80% of the average of gross income with any other benefits for the last month of activity before the date of retirement.

(2) The judges, prosecutors, assistant-magistrates within the High Court of Cassation and Justice, judicial specialised personnel equated to judges and prosecutors, and also the former financial judges, prosecutors and account councillors from the jurisdictional section, who exercised their duties at the Accounts Court, shall be able to retire, at their request, before reaching the age of 60 years and shall enjoy the pension in paragraph (1), if they have at least 25 years' length of service only in these offices. The time while a judge, prosecutor, assistantmagistrate within the High Court of Cassation and Justice, judicial specialised personnel equated to judges and prosecutors, and the former financial judges, prosecutors and account councillors from the jurisdictional section, who exercised their duties at the Accounts Court practiced as lawyer, judicial specialised personnel within the former state arbitration committees or legal adviser shall be included into this period of 25 years.

(3) The service pension provided for in paragraph (1) shall benefit, at reaching the age of 60 years old, to judges and prosecutors with a length of service between 20 and 25 years, in this case the pension quantum stipulated in paragraph (1) being reduced by 1% for each year missing from the whole length of service.

(4) For each year that exceeds the length of service provided for in paragraphs (1) and (2), 1% shall be added to the pension, without being possible to exceed the base for calculation.

(5) The persons who meet the requirements of length of service as provided for by paragraphs (1) and (3) only as judges, prosecutors, assistant-magistrates within the High Court of Cassation and Justice, judicial specialised personnel equated to judges and prosecutors, and also the former financial judges, prosecutors and account councillors from the jurisdictional section, who exercised their duties at the Accounts Court shall enjoy, when reaching 60 years old, a service pension, even if at the retirement date they have a different occupation. In this case, the pension shall be established based on the salary rights of an active judge or prosecutor being in identical conditions of position, length of service and level of court or prosecutor's office, and benefits, in percentage, applicable at the date of retirement. The service pension applies only to persons who have been removed from the office of judge or prosecutor for reasons that are not imputable to them.

(6) Paragraphs (1), (3) and (4) shall apply to judges and prosecutors previously retired, who benefit from pension in the public system and who fulfil the conditions provided for in the present law for receiving a service pension. In this case, the pension shall be established based on the salary rights of a judge or prosecutor in office, being in identical conditions of position, length of service and level of court or prosecutor's office, and benefits, in percentage, applicable at the date of retirement.

(7) Judges and prosecutors may choose between service pension and the pension from the public system. Military judges and prosecutors may choose between the service pension and the military service pension.

(8) The pension provided for in this article has the juridical regime of a pension for age limit.

Art. 83 - (1) The judges, prosecutors, the assistant-magistrates of the High Court of Cassation and Justice and the judicial specialised personnel provided in Article 87 paragraph (1) may be maintained in office after they reach the retirement age provided by the law, until the age of 70 years. Until the age of 65, the magistrate has the option of keeping his position, but after this age, in order to be kept in office it is necessary the endorsement of the Superior Council of Magistracy.

(2) The judges and prosecutors who retired may cumulate their service pension with the revenues from a professional activity, regardless of the level of those revenues.

(3) The readmission in the position of judge, prosecutor or assistant-magistrate can be made without any exam and with the annual endorsement of the Superior Council of Magistracy, only to the court and prosecutors offices where the person practiced until retirement. In this case, the appointment as assistant-magistrate is made by the Superior Council of Magistracy, and the appointment as judge or prosecutor is made by the President of Romania, at the proposal of the Superior Council of Magistracy.

Art. 83<sup>1</sup> - (1) The judges and prosecutors may retire in advance, with the decrease of the retirement age provided for in the law with maximum 5 years, if they exceed the length of service in magistracy provided for in art.82 paragraphs (1) with at least 5 years. The ones that fulfil the conditions for receiving the pension as provided for in the present article, and provided in art.82 paragraph (2) may choose between the two pensions.

(2) The pension provided in paragraph (1) has the judicial nature of an anticipated service pension.

(3) The beneficiaries of the service pension provided for in paragraph (1) cannot cumulate their service pension with the revenues from a professional activity, until the age of 60 years old, regardless of the level of those revenues.

(4) The amount of the anticipated pension is established in accordance with the provisions of art. 82 paragraph (1) and (4).

Art.83<sup>1</sup> was introduced by Government Emergency Ordinance no.100/2007, published in the Official Journal of Romania no.684/8.10.2007

#### Article 83<sup>2</sup>

(1) Judges, prosecutors, assistant-magistrates and legal personnel assimilated to judges and prosecutors shall not receive service pension as under Art. 82 and 83<sup>1</sup> and the indemnification under Art. 81 if, even after leaving office, they receive a final conviction or service of their sentence has been postponed, for a crime of corruption, a crime assimilated to corruption or a crime in relation to corruption committed before leaving their office. Such individuals shall receive pension in the public system, as under the law.

(2) The start of criminal action on one of the charges described at par. (1) shall lawfully cause suspension of

the application for service pension or, as the case may be, suspension of payment of the service pension if such has already been awarded before the final disposition of the case. In that period the person who is a defendant in the criminal action shall receive, as under the law, pension in the public system.

(3) If charges are dropped, the person is acquitted, the criminal trial is discontinued or enforcement of a penalty is waived in the case of a judge, prosecutor, assistant-magistrate or legal staff assimilated to judges, such person shall be reinstated and receive the service pension that was withheld from them during the criminal action or, as the case may be, the difference between that and the public-system pension they received after the start of the criminal action.

(4) A final conviction or judgment to postpone enforcement of the service of a sentence shall be communicated by the enforcement court to the Superior Council of Magistracy. The Superior Council of Magistracy shall inform the National Public Pensions Authority of the occurrence of one of the situations stipulated in this Article and whose effect is the granting, suspension, cessation or resumption of service pension or, as the case may be, suspension or resumption of the procedure to reach a decision on whether to grant service pension. The communication sent to the Superior Council of Magistracy shall include the elements needed by the territorial Pensions authorities to take the required steps, and the person's identification information, the legal grounds for the steps and the date as of which they are applicable.

Art.84 - (1) The surviving spouse of judges and prosecutors has the right, when reaching 60 years old, to an inheritor's pension according to Law no.19/2000 on the public pensions system and other social insurance rights, as subsequently amended, at a percentage calculated out of the paid service pension or out of the pension entitled to the holder at the date of the death, actualized if necessary.

(2) The minor children of the deceased judge or prosecutor, as well as children over 18, until the termination of their studies, but no more than 26 years old, are entitled to an inheritor's pension, at a percentage calculated out of the paid service pension or out of the pension entitled to the holder at the date of the death, actualized if necessary, according to Law no.19/2000 on the public pensions system and other social insurance rights, as subsequently amended, in the percentages provided by the law, according to the number of inheritors.

(3) If at the date of the death, the judge or prosecutor does not fulfil the conditions provided for receiving a service pension, the minor children, as well as children over 18, until the termination of their studies, but no more than 26 years old, are entitled to an inheritor's pension, at a percentage of 75% of the gross salaries of the deceased holder, in the previous month of activity, according to Law no.19/2000, as subsequently amended and supplemented.

Art.85 - (1) The amount of the service pension that exceeds the level of the pension in the public social insurance system, the one provided for in article 82 paragraph (2), article 83<sup>1</sup> and article 84 paragraph (3), as well as the service pension of those that do not fulfil the age limit condition provided by Law no.19/2000, as subsequently amended and supplemented, shall be covered by the State budget.

(2) The service pensions of judges and prosecutors, as well as the inheritor's pensions in article 84 shall be updated in relation to the increase of the gross monthly salary of a judge and prosecutor in service, in identical conditions of position, length of service and level of court or prosecutor's office, and benefits taken into consideration when calculating the service pension, and the benefit for length in service. If, after the actualization, the service pension is inferior to the present pension, then the judge or the prosecutor can choose to maintain that pension.

(3) The requests for retirement submitted by judges and prosecutors in service, in order to be granted the service pension provided by the present law shall be submitted to the competent territorial office for pensions. The payment of the pension shall be made starting with the date provided by the decree of the President of Romania as retirement date or, in lack of such a date, from the date when the President's decree of retirement is published in the Official Journal of Romania, Part I.

Art.86 - It is considered length of service into magistracy the period while judges, prosecutors, the judicial specialised personnel provided by art.87 paragraph (1) or assistant-magistrates held the offices of judge, prosecutor, law-specialised personnel in the former State arbitration, assistant-magistrate, auditor of justice, financial judge, financial judge-inspector, financial prosecutor, financial prosecutor-inspector, legal adviser within the jurisdictional section of the Court of Accounts, court clerk with higher education or judicial specialised personnel under art.87 paragraph (1), as well as the period during which they worked as lawyers, notaries, judicial assistants, professors at law in accredited institutions, judicial councillor, legal advisers, judiciary police officers with higher legal education, criminologist expert with higher judicial education, authorised according to law, probation personnel with higher legal education or who held legal offices in the Juridical Research Institute within the Romanian Academy, the Romanian Institute for Human Rights, the Parliament or its apparatus, or within the Presidential Administration, the Government, the Constitutional Court, of the Ombudsman, of the Court of Accounts or of the Legislative Council.

Art.87 - (1) For their term of office, the judicial specialised personnel within the Ministry of Justice and Civic Freedoms, the Public Ministry, the Superior Council of Magistracy, the National Institute of Magistracy, the National Institute of Criminology, National Institute for Criminologist Expertises shall be equated to judges and prosecutors as regards their rights and duties, including the exam of admission, the evaluation of professional activity, the capacity and promotion exams, the provisions of the present law shall apply accordingly.

(2) The establishment of the acts that are to be considered as disciplinary offences, the procedure for the inquiry and the application of the disciplinary sanctions shall be made by order of the persons in charge of the authorities in paragraph (1).

Art. 88 - (1) For outstanding merits in their activity, the judges and prosecutors may be granted the Diploma "Judicial Merit".

(2) The Diploma "Judicial Merit" shall be granted by the President of Romania, at the proposal of the Superior Council of Magistracy, for judges and at the proposal of the Minister of Justice and Civic Freedoms, for the prosecutors.

Art. 89 - The design of the diplomas and their manufacture shall be established, with endorsement from the Superior Council of Magistracy, by the Minister of Justice and Civic Freedoms.

Art. 90 - (1) The judges and prosecutors shall have the obligation to refrain from any act that is likely to compromise their dignity in their profession and in society.

(2) The relations between judges and prosecutors at the workplace and in society shall be based on respect and good faith.

Art. 91 - (1) The judges and prosecutors shall be obliged to solve their works within the appointed time limit, as well as to solve the cases in a reasonable time, according to their complexity, and to observe professional secrecy.

(2) The judges shall be obliged to keep the secrecy of deliberations and voting in which they partake, including after cessation of their office.

Art. 92 - (1) During the court sessions, the judges and prosecutors shall wear the outfits that are appropriate for the court in which they work.

(2) The outfits shall be established by decision of the Government, with the endorsement of the Superior Council of Magistracy, and provided free of charge.

Art. 93 - The judges and prosecutors shall be obliged to provide, in the conditions and at the terms provided by the law, their statements of wealth, as well as the ones of interests.

#### TITLE IV

## The liability of judges and prosecutors

### CHAPTER I General provisions

Art. 94 - The judges and prosecutors shall be civilly, disciplinarily and criminally liable according to the law.

Art.95 - (1) Judges, prosecutors and assistant-magistrates can be searched, detained, placed under house arrest or under pre-trial arrest only by agreement from the relevant Chambers of the Superior Council of Magistracy.

(2) In case of flagrant offences, the judges, prosecutors and the assistant-magistrates may be held in custody and searched according to the law. The body that decided the custody or the search shall be obliged to inform at once the Superior Council of Magistracy.

Art. 96 - (1) The State shall bear the patrimonial liability for any prejudice caused as a result of judicial errors.

(2) The State's liability shall be established according to the law and it shall not remove the liability of judges and prosecutors who exercised their office in bad faith or with serious negligence.

(3) The cases in which the damaged person is entitled to compensations for the prejudices caused through judicial errors committed in criminal trials are established by the Criminal Procedure Code.

(4) An injured person's right to compensation for the material damages caused through judicial errors committed in trials other than the criminal trials can be exercised only if a final decision has previously established the criminal or disciplinary liability, according to case, of the judge or prosecutor for an act committed during trial and if this act is likely to determine a judicial error.

(5) A person who has, during the trial, contributed in any manner in the commission of the judicial error by the judge or prosecutor shall not be entitled to compensation.

(6) In order to repair the prejudice, the damaged person may sue only the State, represented by the Ministry of Public Finances.

(7) After the damages have been covered by the State on grounds of an irrevocable decision handed down according to paragraph (6), the State may lodge an action for compensation against the judge or prosecutor who committed, either in bad faith or with serious negligence, the judicial error that caused the damages.

(8) The prescription term for suing in all cases provided by the present article is of one year.

Art. 97 - (1) Any person may notify the Superior Council of Magistracy, either directly or through the persons in charge of courts or prosecutor's offices, on the inappropriate activity or conduct of the judges or prosecutors, on the breach of professional duties with regard to the justice users or the commission of a disciplinary offence by a judge or prosecutor.

(2) Exercising the right provided by paragraph (1) may not concern the judgements which are subject only to appeal.

### CHAPTER II The disciplinary liability of judges and prosecutors

Art. 98 - (1) The judges and prosecutors shall be disciplinarily liable for the non-observance of their office duties, as well as for the actions that affect the prestige of justice.

(2) The disciplinary liability of military judges and prosecutors may be established only according to this Law.

Art. 99 - (1) The followings shall be disciplinary offences:

- a) manifestations that harm the profession's honor or probity or the judiciary's prestige, engaged in while in the exercise of service responsibilities or outside that exercise;
- b) violation of legal requirements concerning incompatibilities and bans for judges and prosecutors;
- c) undignified attitudes while in the exercise of service responsibilities and directed at colleagues, other court staff or prosecutor's office staff, judicial inspectors, legal counsels, experts, witnesses, parties in a trial or representatives of other entities;
- d) engaging on public activities with a political character or voicing their political choices while in the exercise of service responsibilities;
- e) denial without justification of motions, arguments, statements or documentary evidence filed by parties in a lawsuit;
- f) refusal without justification to carry out a service task;
- g) a prosecutor's failure to comply with orders from a hierarchically superior prosecutor issued in writing and in accordance with the law;
- h) failure, repeated and for reasons attributable to them, to comply with the legal requirements concerning speedy trial, or repeated delays in performing their tasks for reasons attributable to themselves;
- i) failure of a judge or prosecutor to comply with their obligation to abstain when they know that one of the legal reasons for abstention applies, as well as repeated and unjustified requests to abstain in one and the same case and whose effect is delaying the trial;
- j) failure to keep the secrecy of deliberation or confidentiality of such documents that have that character, as well as of other information of the same nature that comes to their knowledge in the exercise of their position, except for public-interest information, as under the law;
- k) unjustified failure to come to work, repeated or which directly impact the activity of the court or prosecutor's office;
- l) interference with the work of another judge or prosecutor;
- m) unjustified failure to comply with administrative orders or decisions lawfully issued by the chief judge of the court or the chief prosecutor of the prosecutor's office, or with other obligations of an administrative nature mandated by law or regulations;
- n) use of own position to obtain favorable treatment by authorities, or to intervene in the decision process for certain requests, to solicit or accept solutions to their personal or their family's interests or those of other individuals, otherwise than within the legal framework applicable to all citizens;
- o) serious or repeated non-compliance with or regulations concerning random distribution of cases;
- p) obstructing the work of judicial inspectors in any way;
- q) direct participation, or through proxy, to pyramid schemes, gambling or investment schemes where transparency of funds is not ensured;
- r) total absence of a rationale for their judgments in the case of judges or of their legal actions in the case of prosecutors, as mandated by law;
- s) use of improper expressions in the text of judgments in the case of judges or legal actions in the case of prosecutors, or rationales provided that run evidently counter to legal reasoning, of a nature that is likely to impact the prestige of the judiciary or the dignity of the magistrate's office;
- ş) failure to comply with judgments of the Constitutional Court or decisions handed down by the High Court of Cassation and Justice after ruling in appeals in the interest of the law;

t) exercise of office in ill faith in grave negligence.

#### Article 99<sup>1</sup>

(1) Ill faith exists when a judge or prosecutor knowingly violate the stipulations of substantive or procedural law, intending or accepting to harm a person.

(2) Grave negligence exists when the judge or prosecutor culpably, gravely, undoubtedly and inexcusably ignore the stipulations of substantive or procedural law.

Art. 100 - The disciplinary sanctions that may be applied to judges and prosecutors, according to the seriousness of their transgressions, are:

- a) warning;
- b) decreasing the initial gross monthly indemnity by up to 20% for a period of maximum 6 months;
- c) disciplinary transfer for a period of maximum one year to a court or prosecutor's office within the jurisdiction of another Court of Appeals or to a prosecutor's office attached to another Court of Appeals;
- d) suspension from office for up to 6 months;
- e) exclusion from the magistracy.

Art. 101 - (1) The disciplinary sanctions provided under article 100 shall be decided by the sections of the Superior Council of Magistracy, according to its organic law.

#### TITLE V

##### Transitory and final provisions

Art. 102 - (1) The judges in office of the High Court of Cassation and Justice shall continue their activity until the end of their term of office for which they have been appointed.

(2) The judges of the High Court of Cassation and Justice whose terms of office expired or, as the case may be, are dismissed for non-imputable reasons, preserve the rank acquired in the hierarchy and may hold the position of judge at the High Court of Cassation and Justice or may return to the previous position as magistrate, to a different position as judge or prosecutor or they may choose to become lawyers or public notaries, without being subject to passing a mandatory exam.

Art. 103 - The judges and prosecutors having, at the date when this law enters into force, their basic office norm in institutions of higher legal education, shall be obliged, beginning with the following academic year, either to transfer their basic office norm to the court or prosecutor's office where they work or to renounce to the quality of judge or prosecutor.

Art. 104 - (1) The judges and prosecutors in office, as well as the judicial specialised personnel in art.87 paragraph (1) who enjoyed length of service in the magistracy according to Law no.92/1992 on judicial organisation, as republished, as subsequently amended and supplemented, shall keep this length of service.

(2) The remuneration of the assistant-magistrates shall be made as provided in Annex 1 to the Government Emergency Ordinance no.27/20026 on the remuneration and other benefits of the magistrates.

Art. 105 - (1) The military judges and prosecutors who continue their activity in military courts and prosecutor's offices, while assigned to lower offices, shall keep their salary rights that were theirs at the date of re-assignment. The other provisions of this Law shall apply accordingly also to the military judges and prosecutors.

(2) The transfer of the military judges and prosecutors, either at their request or following the

reduction of positions, shall be made, according to their expressed choice, to civil courts and prosecutor's offices where the judge or prosecutor has a right to work, according to their professional rank.

Art. 106 - The Superior Council of Magistracy shall approve, by decision published in the Official Journal of Romania, Part I:

a) the Regulation on the competitive exam for admission and for graduating the National Institute of Magistracy, which provides the manner of organisation, the subject-matters, the bibliography, the exam tests, the procedure for holding the admission and the graduation exam, as well as the minimum average mark for admission to and for graduation of the National Institute of Magistracy;

b) the Regulation of the National Institute of Magistracy;

c) the Regulation on the capacity exam for the debutant judges and for debutant prosecutors, which provides the manner of organisation, the subject-matters, the bibliography, the exam tests, the procedure for holding the examination and the minimum average mark for succeeding in the capacity exam for the debutant judges and for debutant prosecutors;

d) the Regulation on the organisation and holding of the exam for admission into magistracy;

e) the Regulation on the holding of the courses of continuous training for judges and prosecutors and on the certification of the obtained results;

f) the Regulation on organising and holding of promotion exam for judges and prosecutors;

g) the Regulations on the appointment of judges and prosecutors into leading position;

h) the Regulations on the evaluation of the professional activity of judges and prosecutors;

i) the Regulation on the leave of absence of judges and prosecutors.

Art.107 - (1) The present Law shall come into force within 90 days from the moment when it's published in the Official Journal of Romania, Part. I.

(2) When the present law shall come into force, the following provisions shall be repealed:

a) the provisions of art.6, art.12, art. 14-16, art.36-43, art.55, art.58 and art.59-69 of the Law no.56/1993 on the Supreme Court of Justice, republished in the Official Journal of Romania, part I, no.56/08.02.1999, as subsequently amended;

b) the provisions of art.2 paragraph (2), art.3, art.42-69, art.91-120<sup>1</sup>, art.121-131<sup>1</sup> of Law no.92/1992 on the judicial organisation, republished in the Official Journal of Romania, part I, no.259/30.09.1997, as subsequently amended, except the provisions of art.66 on the length of service in magistracy required for promotion in the office of judge or prosecutor, which shall be repealed starting with 1<sup>st</sup> of January 2005.

(3) The provisions of art.13 of Law no.56/1993 on the Supreme Court of Justice, republished in the Official Journal of Romania, part I, no.56/08.02.1999, as subsequently amended, shall be repealed starting with 1<sup>st</sup> of January 2005.

The articles II-VIII from Title XVIII of Law no. 247/2005, which are not included in the supplemented body of Law 303/2004, are still applied as own provisions of Law no. 247/2005

Article II - (1) The Regulation on organising and holding of promotion exam for judges and prosecutors shall be approved by the Superior Council of Magistracy within 30 days from the entry into force of this Law and shall enter into force at the date when it is published in the Official Journal of Romania, Part I.

(2) The other Regulations in Article 106 shall be updated and approved within 30 days from the entry into force of this Law.



(3) Within 3 months from the entry into force of this Law, the Government Decision provided in Article 78 paragraph (3) of Law no.303/2004 shall be adopted.

Article III - Upon expiry of the time limit in Article II paragraph (2), the annex to Law no.303/2004 on the Statute of Magistrates, as subsequently amended, shall be repealed.

Article IV - (1) The boards for the first (competitive) exam regarding the leading position in courts and prosecutor's offices shall be appointed within 10 days from the entry into force of this Law, by the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

(2) The Regulations on the organisation of the competitive exam for appointment of judges and prosecutors to leading position shall be elaborated by the National Institute of Magistracy, approved by the Superior Council of Magistracy and posted on the web pages of the National Institute of Magistracy, of the Superior Council of Magistracy, of the Prosecutor's Office attached to the High Court of Cassation and Justice and of the Ministry of Justice, as well as at the premises of the courts and prosecutor's offices, within 10 days from the appointment of the boards.

(3) Within 30 days from publication of the Regulations in paragraph (2), a exam shall be held for appointment into leading position in courts of appeal, tribunals and in the prosecutor's offices attached to these, and within 60 days from the same date, an exam shall be held for the leading position in first instance courts and the prosecutor's offices attached to these. Article 48 paragraph (7) and art.49 paragraph (9) shall apply accordingly.

(4) The appointments into leading position in courts of appeal, tribunals, specialised tribunals and first instance courts, as well as to the prosecutor's offices attached to these, to which applies the procedure in Article 48 paragraph (9) and Article 49 paragraph (9) shall be performed within 30 days from appointment to leading position of judges and prosecutors who obtained the best result in the competitive exam in paragraph (3).

(5) The non-observance of the time limits and of the procedure for the organisation of the exam provided in this Article is a disciplinary offence.

Article V - (1) The judges and prosecutors who, at the date when this law enters into force, meet the requirements of retirement for having reached the age limit shall be removed from office after 3 months from the entry into force of this law.

(2) The Superior Council of Magistracy shall take the necessary measures for filling in within 4 months from the entry into force of this law, of the posts that are left vacant through the retirement of the persons in paragraph (1).

Article VI - The judges and prosecutors who have not renounced their basic office norm in institutions of higher legal education, according to Article 103 of Law no. 303/2004 republished, are obliged to transfer their basic office norm to the court or prosecutor's office where they work, within 30 days from the entry into force of this law.

Article VII - (1) The judges, prosecutors, assistant-magistrates, judicial specialised personnel assimilated to magistrates and specialised auxiliary personnel shall submit the statements in Article 5 paragraph (3) or, the case being, in Article 6 and Article 7 of Law no. 303/2004 republished, within 60 days from the entry into force of this Law.

(2) The National Council for the Study of Archives of the Intelligence shall verify the statements in Article 6 of Law no. 303/2004 re-published, and the Supreme Council of National Defence shall verify the statements in Article 7 of Law no. 303/2004 within 6 months from the entry into force of this law.

Article VIII - Article 83 of Law no.303/2004 re-published shall apply also to the assistantmagistrates of the Constitutional Court and to the judicial specialised personnel assimilated to judges and prosecutors in Article 73 of Law no.47/1992 on the organisation and operation of the Constitutional Court, as republished and

subsequently amended and supplemented.

The Parliament of Romania adopted the present law under the conditions of art. 77 paragraph (2), observing the provisions of art.75 and art.76 paragraph (1) from the Constitution of Romania, republished.