Strasbourg, 10 September 2018 **CDL-REF(2017)045**

Opinion No. 930 / 2018 Engl.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

ROMANIA

DRAFT LAW (*)

AMENDING AND SUPPLEMENTING THE LAW ON THE CRIMINAL CODE AND THE LAW ON PREVENTING, DISCOVERING AND SANCTIONING CORRUPTION OFFENCES

and

DRAFT LAW (*)

AMENDING AND SUPPLEMENTING THE LAW ON THE CRIMINAL PROCEDURE CODE AND SUPPLEMENTING THE LAW ON THE ORGANISATION OF THE JUDICIARY

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(*) Unofficial translation

DRAFT

LAW
AMENDING AND SUPPLEMENTING

THE LAW no. 286/2009
ON THE CRIMINAL CODE
and
THE LAW NO. 78/2000
ON PREVENTING, DISCROVERING AND SANCTIONNING
CORRUPTION OFFENCES

The **Romanian Parliament** adopts this bill.

Art. I - Law no. 286/2009 on the Criminal Code, published in the Official Journal of Romania, Part I, no. 510 of 24 July 2009, subsequently amended and supplemented, is hereby amended and supplemented as follows:

1. **Under article 5, paragraph (1) is hereby amended as follows:**
"Art. 5 - (1) In case one or several criminal codes have been enacted between the time the violation was committed and the final judgment in a case, the more favourable stipulation shall apply in its entirety, as the provisions derived from successive laws cannot be applied**."**

2. **Under article 5, following paragraph (1), four new paragraphs are hereby inserted, paragraphs (1^1) - (1^4), as follows:**

"(1^1) The more favourable criminal law is used by taking into consideration the following criteria:
a) the scope of the offence and the thresholds for penalties are verified. Should this verification lead to the conclusion that the thresholds for a penalty applicable to the offence determined as such are more favourable in one specific law, which shall be deemed the more favourable criminal law.
b) the mitigating or aggravating circumstances for criminal liability are verified, as well as how the penalties might merge in case of multiple offences or re-offending. Should this verification lead to a more lenient resulting penalty, according to one of the laws compared, that shall be deemed the more favourable criminal law.
c) the statute of limitations terms shall be verified. Should the statute of limitations for criminal liability be reached according to one of these laws, this one shall be deemed the more favourable criminal law.
(1^2) The legal order of precedence mentioned for the verification performed under para. (1^1) is mandatory.
(1^3) The stipulations repealing some the more favourable criminalisation rules are subjected to constitutionality review and, should partial constitutionality be identified or should the repealing stipulation be deemed as unconstitutional, the stipulations that were repealed or amended in an unconstitutional manner may become more favourable criminal law.
(1^4) In case one or several criminal acts have been enacted between the time the violation was committed and the final judgment in a case, the applicable thresholds for imposing a penalty are those included in the more favourable law, alongside the terms and conditions for the statute of limitations from the more favourable criminal law.**"**

3. **Under article 16 paragraph (3), letter a) is hereby amended as follows:**
"a) can foresee the outcome of their actions, in the expectation of causing such outcome by perpetrating the act. Whenever the criminal law stipulates that, in order to be criminalized, an action must be committed for a certain purpose, that offence should

have been committed with direct intent, and this should result without any doubt from the specific circumstances of the case;"

4. Article 17 is hereby amended as follows:

"Violation committed by omission"
Art. 17. – A committed offence that involves causing an outcome is also deemed as having been committed by omission, when:
a) there is a specific obligation to take action stipulated by law;
b) the author of the omission, through previous action or inaction, created a state of threat for the protected social value, which facilitated the occurrence of the outcome."

5. Under article 35, paragraph (1) is hereby amended as follows:
"Art. 35 - (1) An offence is deemed to be continuing when a person commits, at various time intervals but for the realization of the same criminal intent, actions or inactions each having the content of the same offence. In case of offences directed against a person, the continuing form of the offence shall be taken into consideration by the court only when the actions were directed against the same passive subject."

6. Under article 39, paragraph (1) letters b), c) and e) are hereby amended as follows:
"b) when only penalties by imprisonment have been established, the harshest penalty shall be applied, which can be increased by up to 3 years;
c) when only fines have been established, the harshest penalty shall be applied, which can be increased by one-third of that maximum threshold;
……
e) when several penalties by imprisonment and several penalties by fine have been established, the penalty by imprisonment shall be applied, according to the provisions under letter b), to which the penalty by fine is added, according to the provisions under letter c)."

7. Under article 39, paragraph (2) is hereby amended as follows:
"(2) When applying the provisions of the above paragraph, the total of all penalties handed down by the court for the multiple offences cannot be exceeded."

8. Under article 61, paragraph (5) is repealed.
9. Article 62 is repealed.
10. Under article 64, paragraph (1) is hereby amended as follows:
"Art. 64 - (1) In case the whole or part of the penalty by fine cannot be served for reasons not attributable to the convicted defendant, the Court shall replace the obligation to pay a fine that has not been fulfilled by the obligation to perform community service, except for the case where the person's health as determined by the forensic medical report precludes them from performing such service. One fine-day is equal to one day of community service."
11. Under article 64 paragraphs (2) and (6) are repealed.
12. Under article 65, following paragraph (3), a new paragraph, paragraph (3^1) is hereby inserted, as follows:
"(3^1) While the service of penalty by imprisonment is suspended under supervision, the enforcement of additional penalties shall also be suspended."

13. Under article 75, paragraph (1) letter d) is hereby amended as follows:
"d) covering in full the financial damages caused by an offence, during criminal investigation or trial, prior to the moment when the court decision is rendered final, unless the offender had benefited from the same mitigating circumstances during the past 5 years prior to having committed this offence. The mitigating circumstance is not applicable in the case of the following offences, should financial damages have resulted

from their committal: robbery, piracy, aggravated theft, fraud committed through computer systems and electronic means of payment."

14. Under article 75 para. (2), following letter (b), two new letters are hereby inserted, letters (c) and d), as follows:
"c) proper behaviour of the offender prior to the offence;
d) the behaviour after the offence had been committed, without holding this circumstance against the defendant, should the latter adopt denial of having committed the offence as his/her position, as a not guilty plea."

15. Under article 75, following paragraph (2), a new paragraph is hereby inserted, paragraph (3), as follows:
"(3) The circumstances mentioned under para. (2) are indicative."

16. Under article 83, paragraph (3) is repealed.
17. Under article 91 paragraph (1) letter c) is repealed.
18. Under article 91, paragraph (2) is repealed.
19. Under article 93, the introductory part of paragraph (2) is hereby amended as follows:
(2) The Court may order a convict to comply with one or several of the following obligations:"

20. Under article 96, paragraph (4) is hereby amended as follows:
"(4) If during the supervision term a convict commits a new intentional offence, which is discovered before the expiry of the term and for which a sentence by imprisonment for more than a year was returned, even after the expiry of this term, the court shall revoke suspension and shall enforce the sentence."

21. Article 100 is hereby amended as follows:
"Art.100 - (1) Conditional release may be ordered if:
a) a convict has served at least half of the penalty, in case of a term of imprisonment no longer 10 years, or at least two-thirds of the penalty, but no more than 15 years in prison, in case of a term of imprisonment exceeding 10 years;
b) a convict is serving their sentence in an open or semi-open prison treatment;
c) a convict fulfilled completely all civil-law based obligations determined by the conviction order, unless they prove to have been unable to do so;
d) there are no proofs based on which the court might assess that the convicted person had not been reformed and that they are not able to reintegrate themselves into society.
(2) If a convicted person turned 60 years old, conditional release may be ordered after the effective serving of at least one third of the penalty, in case of a term of imprisonment not exceeding 10 years, or at least half of the penalty, in case a term of imprisonment exceeding 10 years, provided that the conditions set forth in para. (1) letters b) - d) above are fulfilled.
(3) In calculating increments of penalty provided in par. (1), the part of the sentence term that may be deemed, according to law, as served due to the work performed is to be considered. In this case, conditional release may be ordered only after the effective service of at least one third of the prison sentence, when it does not exceed 10 years, and at least half of the penalty, when the penalty is more than 10 years.
(4) In calculating increments of penalty provided in para. (2), consideration shall be given to the part of the sentence term that may be regarded as served, according to law, due to the work performed. In this case, conditional release may be ordered only after the effective service of at least one quarter of the imprisonment sentence, when it does not exceed 10 years, and at least one third of it, when the sentence is more than 10 years.
(5) It is mandatory to submit the *de facto* reasons having led to the granting of conditional release or the rejection of such conditional release and, should the release be granted, to warn the convict about their future conduct and about the consequences they are exposed to if they

continue to commit offenses or fail to comply with the supervision measures or to fulfil their obligations during the term of supervision.
(6) The period between the conditional release date and the date of the sentence expiry is the probation term throughout which the convict is supervised."

22. Under art. 112[1] para. (1) and (2) are hereby amended as follows:
"Art.112[1].- (1) Assets other than those referred to in Art. 112 are also subject to confiscation, in case a person is convicted for an offence that is likely to procure a material benefit and in relation to which the penalty provided by law is a term of imprisonment of 4 years or more, **and** the court has reached the conclusion, based on the circumstances of the case including the factual elements and the evidence taken in court, that those assets represent proceeds of crime. The court's conclusion may rely also on the disproportionate ratio between the lawfully obtained revenues and the actual wealth of the person.
(2) Extended confiscation is ordered if the following conditions are cumulatively met:
a) the value of assets acquired by a convicted person within a time period of five years before and, if necessary, after the time of perpetrating the offense, until the issuance of the indictment, clearly exceeds the revenues obtained lawfully by the convict;
b) based on the evidence taken in court, the conclusion reached is that the assets originate from criminal activities such as those provided in para. (1)."

23. Following paragraph (2) of article 112[1], a new paragraph is hereby inserted, para. (2[1]), as follows:
"(2[1]) The decision of the court must be substantiated by verified evidence beyond any doubt, which should result in the involvement of the convicted person in criminal activities generating proceeds."

24. Paragraph (3) of article 112[1] is hereby amended as follows:
(3) When enforcing the provisions of para. (2), the value of the assets transferred by a convicted person or by a third party to a family member, as long as the respective family member was aware of the fact that the purpose of such a transfer was to avoid confiscation or to a legal entity over which that convicted person has control shall also be considered. Confiscation shall be ordered within the limit of the transferred assets, at the moment when such an illegal transfer may be substantiated through verified evidence beyond any doubt."

25. Under article 112[1], following paragraph (8), two new paragraphs are inserted, para. (9) and (10), as follows:
"(9) The following assets are also subject to confiscation, pursuant to the terms of this article,:

a) assets transferred by the convicted person to a family member, as long as the respective family member was aware or should have been aware of the fact that the purpose of such a transfer was to avoid confiscation or if such a transfer was made free of charge;

b) assets transferred by the convicted person to a legal entity over which that convicted person has control;
c) assets transferred by the convicted person to a third party, as long as specific circumstances lead to the conclusion that the respective third party was aware or should have been aware of the fact that the purpose of such a transfer was to avoid confiscation
(10) Confiscation ordered pursuant to the terms of this article may not damage the rights of *bona fide* third-parties who acquire assets for a consideration."

26. Under art. 154, paragraph (1), letters b) and c) shall be amended as follows:
b) 8 years, when the penalty provided by the law for the offense committed is a term of imprisonment exceeding 10 years, but no more than 20 years;
c) 6 years, when the penalty provided by the law for the offense committed is a term of imprisonment exceeding 5 years, but no more than 10 years;"

27. Art. 155 is hereby amended as follows:

"Art. 155: Interruption of the statute of limitations

Art. 155 - (1) The statute of limitations for criminal liability is interrupted for each criminal count and subject as a result of taking any procedural action in the case, which must be served according to the law to the suspect or to the defendant during the criminal trial.

(2) A new statute of limitations term shall run after each interruption in relation to the person in favour to whom the statute of limitations operates starting from the moment when the procedural action was served.

(3) The statute of limitations removes criminal liability no matter how many interruptions may operate, as long as the term stipulated under art. 154 has been exceeded by another half;

(4) The admission in principle of the request to reopen a criminal case causes a new statute of limitations term for the criminal liability to run again, in compliance with the provisions stipulated by para. (3).

28. Following article 159, a new article, art. 159^1 is hereby inserted, as follows:

Article 159^1: Mediation agreement

Art. 159 – The mediation agreement is effective only with respect to the persons among whom it was made and only as long as such agreement is reached before a final decision is rendered by the court."

29. Under art. 173 four new paragraphs are hereby inserted, para. (2)-(5), as follows:

"(2) The Constitutional Court decisions of a general mandatory nature as also deemed as law, according to the meaning provided by para. (1).

(3) The mandatory nature of applying the decisions of the Constitutional Court as a more favourable provision of the criminal law, stipulated by para. (2), refers to the operative part, as well as to the recitals of such decisions.

(4) The execution of penalties, educational and safety measures, issued based on a law subjected to constitutional review stipulated under para. (2), as well as all the penal consequences of the court decisions related to such facts must be analysed on the court's own motion, within an expedited procedure, within a maximum of 15 days since these are published in the Official Journal of Romania, Part I.

(5) The analysis stipulated under para. (4) shall be performed also based on the request submitted by the convicted person, who has the right to claim such an action to be undertaken at any given moment.

30. **Under art 175, paragraph (2) is repealed.**

31. Under article 177, paragraph (1) letters b) and c) are hereby amended as follows:

"b) the spouse or former spouse;

c) persons establishing relations similar to those existing between spouses or between parents and children, if they are cohabiting or have cohabited."

32. Following art. 187, a new article is hereby inserted, art. 187^1, as follows:

Information not to be disclosed to the public

Art. 187^1 – Information not to be disclosed to the public is that category of information classified, according to the law, as state secret or confidential information which is included in an accordingly marked document, unless such information has been legally declassified."

33. Under article 189 paragraph (1), following letter h), a new letter i) is hereby inserted, as follows:

"i) against a judge, a prosecutor, a member of police, armed police or army forces, who are exercising their duties or in relation to the exercise of such duties."

34. Under article 214, paragraph (1) is hereby amended as follows:

„Art. 214 – (1) An action of an individual who causes a juvenile or a physically or psychologically disabled person to resort repeatedly to the pity of the general public in order to ask for material support or who benefits from proceeds from such activity shall be punishable by no less than 6 months and no more than 3 years of imprisonment."

35. Article 215 is hereby amended, as follows:

"Use of underage persons for mendicancy

The action of a person who is of age and has the capacity to work, who resorts repeatedly to the pity of the general public in order to ask for material support, by using the presence of a juvenile for this purpose, shall be punishable by no less than 3 months and no more than 2 years of imprisonment."

36. Article 216 is hereby amended, as follows:

"Use of an exploited person's services

Art. 216 – The action of using the services listed under Art. 182, provided by a person about whom the beneficiary is aware that they are a victim of human trafficking or of trafficking of underage persons, shall be punishable by no less than 6 months and no more than 3 years of imprisonment".

37. Article 216[1] is hereby amended as follows:

"Art. 216[1] – Entertaining any type of sexual relations with an underage person who practices prostitution shall be punishable by no less than three months and no more than 2 years, unless such action represents a more serious offence."

38. Under article 257 paragraphs (1), (2) and (4) are hereby amended as follows:

Art. 257 - (1) A threat committed either directly or by any means of direct communication, blows or any other acts of violence, bodily harm, blows or bodily harm which result in death, or murder, committed against a public servant holding an office that involves the exercise of state authority, who is exercising their duties or in relation to the exercise of such duties shall be punished as provided by the law for those offenses, and the special limits of the penalty shall be increased by half.

(2) The commission of an offence against a public servant holding an office that involves the exercise of state authority or against their property, for the purpose of intimidation or revenge, in relation to the exercise of their duties, shall be punished as provided by the law for those offenses, and the special limits of the penalty shall be increased by half.

[…]

(4) The acts set out in para. (1)-(3), committed against a member of the police, armed police or army forces, who are exercising their duties or in relation to the exercise of such duties, shall be punished as provided by the law for those offenses, and the special limits of the penalty shall be increased by half."

39. Under article 269, paragraph (3) is hereby amended as follows:

"(3) Aiding and abetting committed by a family member or a relative up to the second degree of kinship shall not be punishable."

40. Under art. 269, following paragraph (3), three new paragraphs, para. (4)-(6), are hereby inserted as follows:

"(4) The following shall not be included in the scope of the offence stipulated under para. (1):

a) issuance, approval or endorsement of regulatory legislation;

b) handing out decisions or taking measures by the judicial bodies in those cases they have been entrusted with,

c) the testimony given during judicial proceedings or the method in which expert reports are implemented in judicial cases.

(5) Should the same *actus reus* and the same circumstances represent aid and abetting for more than one offender, for the purposes stipulated under para. (1), this shall be deemed as one single offence of aiding and abetting.
(6) An offence of aiding and abetting has a subsidiary nature in relation to other offences and shall be taken into consideration as such whenever its *actus reus* does not represent another offence stipulated by the Criminal Code or by special criminal laws."

41. Under article 273, following paragraph (3), a new paragraph, para. (4) is hereby inserted, as follows:
(4) The following actions shall not be deemed an offence as stipulated by para. (1):
a) The refusal to give statements that self-incriminate the person in question;
b) refusal to testify in the sense requested by judicial investigation bodies;
c) changing and recanting a statement that had been given as a result of any type of pressures being exercised against the witness;
d) a mere divergence of testimonies given during the trial, unless direct evidence exists that should prove their deceitful nature and ill faith."

42. Under article 277, paragraphs (1)-(3) are hereby amended as follows:
"Art. 277 – (1) Unlawful revealing of confidential information regarding the date, time, place, manner or means by which evidence is to be administered, by a magistrate or by another public servant who has become aware thereof by virtue of their office, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine..
(2) Unlawful disclosure of evidence or official documents in a criminal case, before taking a decision not to prosecute or before the settlement of the case in the court of first instance, by a public servant who has become aware thereof by virtue of their office, shall be punishable by no less than 1 month and no more than 1 year of imprisonment or by a fine.
(3) Unlawful disclosure of confidential information in a criminal case when a prohibition to do so is set out in the criminal procedural law, shall be punishable by no less than 1 month and no more than 1 year of imprisonment or by a fine. If the offence is committed by a magistrate or by a representative of the criminal investigation body, the penalty shall be increased by half.

43. **Under article 277, following paragraph (3), two new paragraphs, para. (3^1) and (3^2), are hereby inserted, as follows:**
"(3^1) The action taken by the public servant who, before a final conviction decision is rendered by a court, makes a reference to a suspect or to a defendant as if the person had already been convicted shall be punishable by no less than 6 months and no more than 3 years of imprisonment. Should such a statement be made on behalf of a public authority, the penalty shall be increased by one third."
(3^2) Violation of the right to a fair trial, to have one's case tried by an impartial and independent judge through any intervention which affects the process of random distribution of cases shall be punishable by no less than 6 months and no more than 3 years of imprisonment."

44. Under article 279, paragraph (2) is hereby amended as follows:
„(2) The commission of an offence against a judge or prosecutor or against their property, for intimidation or revenge in relation to the exercise of their office, shall be punished by the penalty of imprisonment as provided by the law for that offence, and the special limits of the penalty shall be increased by half."

45. Under article 287, following paragraph (1), a new paragraph is hereby inserted, paragraph (1^1), as follows:
(1^1) Failure to enforce a court order which applied a sanction to perform community service committed by failure to report to the mayor's office in order to be included on the list and serve the sanction, absconding from the execution of the sanction following the initiation of activities or failure to perform the duties on the job shall be punishable by no less than 3 months and no more than 2 years of imprisonment."

46. **Under article 290, paragraph (3) is hereby amended, as follows**:
"(3) The bribe giver shall not be punishable if they report the action prior to the criminal investigation bodies be notified thereupon, no later than 1 year since the action was committed."

47. Under article 291, paragraph (1) is hereby amended as follows:
"Art. 291 – (1) Soliciting, receiving or accepting the promise of money or other benefits, directly or indirectly, for oneself or for another, committed by a person who has influence or who alleges that they have influence over a public servant and who promises they will persuade the latter, a promise followed by an intervention to the respective public servant in order to determine him/her to perform, fail to perform, speed up or delay the performance of an act that falls under the latter's professional duties or to perform an act contrary to such duties, shall be punishable by no less than 2 and no more than 7 years of imprisonment."

48. Under article 292, paragraph (2) is hereby amended, as follows:
"(2) The perpetrator shall not be punishable if they report the action prior to the criminal investigation bodies be notified thereupon, however no later than one year since the action was committed."

49. Under article 295, following paragraph (2), a new paragraph, para. (3) is hereby inserted, as follows:
(3) Criminal proceedings are initiated based on a criminal complaint. Reconciliation shall remove criminal liability."

50. Under article 297, paragraph (1) is hereby amended as follows:
„Art.297. – (1) The action of the public servant who, while exercising their professional duties specifically regulated though laws, Government ordinances or emergency ordinances, refuses to undertake an action or undertakes such action by violating specific provisions included in a law, emergency ordinance or Government ordinance in order to obtain undue proceeds for himself/herself or his/her spouse or relative up to the second degree of kinship inclusively and who thus causes an effective and ascertainable material damage higher than the equivalent of the national minimum gross wage or a damage to the rights and interests of a natural person or of a legal entity, shall be punishable by no less than 2 and no more than 5 years of imprisonment or by fine."

51. Under article 297, following para. (2), a new paragraph is hereby inserted, para. (3), as follows:
"(3) The provisions of paragraphs (1) and (2) are not applicable to the process of drafting, issuance and endorsement of documents adopted by the Parliament or by the Government."

52. Article 298 is hereby repealed.

53. Under article 308, following paragraph (2), two new paragraphs are hereby inserted, para. (3) and (4), as follows:
(3) If the offences incriminated under art. 295 and 297-300 have resulted in material damages, and the offender covers in full the damage thus incurred, during the criminal investigation phase or during the trial, until the court decision is rendered final, the limits stipulated under para. (2) shall be halved.
(4) The provisions of para. (3) are applicable to all persons who have acted together by committing one of the actions stipulated under para. (1), no matter if the damage was covered by only one or some of these offenders.

54. Art. 309 is hereby amended as follows:
"Art. 309 – If the actions provided under Article 295, Article 300, Article 303, Article 304, Article 306 or Article 307 caused extremely severe consequences, the special limits of the punishment stipulated in the law shall increase by one third".
55. Under article 334, paragraphs (1), (2) and (4) are hereby amended as follows:
"Art. 334 – (1) The act of registering a vehicle as fit for traffic or driving an unregistered vehicle, tramway, agricultural or forestry tractor on public roads, under the law shall be punishable by no less than 1 and no more than 3 years of imprisonment or by a fine.
(2) The act of registering a vehicle as fit for traffic or driving an unregistered vehicle or tramway, agricultural or forestry tractor using a false registration number of forged plates shall be punishable by no less than 1 and no more than 5 years of imprisonment or by a fine.
[…]
(4) Driving, on public roads, a vehicle, an agricultural or forestry tractor or towing a trailer the number plates or registration numbers of which have been withdrawn or a vehicle registered in another state, which is not authorized for driving in Romania, shall be punishable by no less than 6 months and no more than 2 years of imprisonment or by a fine."

56. Under article 335, paragraphs (1) and (2) are hereby amended as follows:
"Art. 335 – (1) Driving a vehicle, an agricultural or forestry tractor or a tramway, train as well as any other vehicle equipped with and engine on public roads, without having the appropriate driving license shall be punishable by no less than 1 and no more than 5 years of imprisonment.
(2) Driving, on public roads, a vehicle for which a driving license is required by law, by an individual who owns a driving license which was issued for a different category or subcategory than the one in which the vehicle is included, or whose license has been withdrawn or rescinded or who is not entitled to drive vehicles, tramways, agricultural or forestry tractors in Romania shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine.

57. Under article 336, paragraphs (1) and (2) are hereby amended as follows:
"Art. 336 – (1) Driving, on public roads, a vehicle propelled by an engine or by animal traction, by an individual who has a blood alcohol concentration exceeding 0.80 g/l shall be punishable by no less than 1 and no more than 5 years of imprisonment or by a fine.
(2) The same penalty shall be applied to an individual who, while under the influence of psychoactive substances, drives a vehicle propelled by an engine or by animal traction."

58. Following article 336, a new article is hereby inserted, art. 336[1], as follows:
"The use of alcohol or other substances after a traffic accident had occurred"
Art. 336[1] – (1) The act committed by the driver of a vehicle to use alcohol or other psycho-active substances, after a traffic accident had occurred, which resulted in the death or bodily harm of one or more persons, until the moment when biological samples are taken, shall be punishable by no less than 1 and no more than 5 years of imprisonment or by fine.
(2) Should the person in one of the situations stipulated under para. (1) be a provider a public transport services for passengers, transport services of hazardous substances or products or be a participant to the practical training delivered for trainees or to the practical tests taken in order to award the driving license, the acts shall be punishable by no less than 2 and no more than 7 years of imprisonment.
(3) The use of psycho-active substances, after a traffic accident had occurred, which resulted in the death or bodily harm of one or more persons, until the moment when biological samples are taken, shall not be deemed an offence, in case when such substances are administered by the authorised medical personnel, should this measure be necessary due to the health condition or a bodily injury of the driver."

59. Article 337 is hereby amended as follows:
"Refusing or avoiding to provide biological samples
Art. 337 – (1) The act of refusing or avoiding, by the driver of a vehicle, including an agricultural or forestry tractor or a tramway, for which a driving license is required by law, or by the driving instructor, during training, or by the examiner of the competent authority, during the practical tests taken in order to award the driving license, to provide the biological samples required to determine the presence of alcohol or of psychoactive substances in the blood stream shall be punishable by no less than 1 and no more than 5 years of imprisonment.
(2) The same punishment is applicable to the person driving a vehicle according to the terms provided by para. (1), who uses alcohol or psychoactive substances or ingests psychoactive substances after the traffic event took place and until the moment when the biological samples are taken."

60. Following article 338, a new article is hereby inserted, art. 338[1], as follows:
"The use of alcohol or other substances by persons undertaking their practical training after a traffic accident had occurred"
Art. 336[1] – (1) The act committed by the driver of a vehicle or by the driving instructor, during the training process, or of the examiner of the competent authority, during the practical tests taken in order to award the driving license, to use alcohol, drug-related products or substances or pharmaceutical drugs with similar effects, after a traffic accident had occurred, which resulted in the death or bodily harm of one or more persons, until the moment when biological samples are taken, shall be punishable by no less than 1 and no more than 5 years of imprisonment.
(2) The use of pharmaceutical drugs with similar effects to the drug-related products or substances, after a traffic accident had occurred and prior to the arrival of the police on the scene, shall not be deemed an offence, when such substances are administered by the authorised medical personnel, should this measure be necessary due to the health condition or a bodily injury of the driver."

61. Under article 342, paragraph (6) is hereby repealed.

62. Under article 367, paragraph (6) is hereby amended, as follows:
"(6) An *organized crime group* means a structured group, made up of three or more persons, which exists for a certain period of time and acts in a coordinated manner for the purpose of perpetrating one or more serious offences, in order to obtain directly or indirectly a financial benefit or other material benefits. The group set up occasionally for the immediate purpose of committing one or more offences which has no continuity or a determined structure or pre-established roles reserved for its members within the group shall not be deemed as an organized crime group. Any of the offences stipulated under art. 223 para. (2) of the Criminal Proceedings Code, including those offences which are punishable by imprisonment for at least 5 years according to the law, shall be deemed a serious offence."

63. Article 384 is hereby amended as follows:
"Illegal harvesting of tissues or organs
Art. 384 – (1) Unlawful harvesting of tissues or organs from a corpse shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine.
(2) In case the act stipulated under para. (1) compromises a forensic autopsy, required by law, the punishment shall be imprisonment for no less than 2 and no more than 5 years."

Art. II – Extended confiscation may be applied to assets acquired after the entry into force of Law 63/2012 amending and supplementing the Romanian Criminal Code and of Law 286/2009 on the Criminal Code, provided that enough clear evidence exist that the respective assets originate from criminal activities similar in nature with those stipulated under para. (1) of art. 112[1] from Law no. Law 286/2009 on the Criminal Code, subsequently amended and supplemented, including also the amendments hereby introduced.

Art. III – Article 13^2 of Law no. 78/2000 on preventing, discovering and sanctioning corruption offences, published in the Official Journal of Romania, Part I, no. 219 of 18 May 2000, subsequently amended and supplemented, is hereby repealed.

Art. IV – Law no. 286/2009 on the Criminal Code, published in the Official Journal of Romania, Part I, no. 510 of 24 July 2009, subsequently amended and supplemented including also the amendments hereby introduced, shall be republished in the Official Journal of Romania, Part I.

This law represents the transposition of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, published in the Official Journal of the European Union, L series no. 127 of 29 April 2014, as well as of Directive 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, published in the Official Journal of the European Union, L series no. 65 of 11 March 2016.

This law was adopted by the Romanian Parliament, in compliance with the stipulations of art. 75 and art. 76 para. (1) of the Romanian Constitution, as republished.

ON BEHALF OF THE PRESIDENT
OF THE CHAMBER OF DEPUTIES

FLORIN IORDACHE

PRESIDENT OF THE SENATE

CĂLIN POPESCU-TĂRICEANU

Bucharest
No.

DRAFT

LAW AMENDING AND SUPPLEMENTING
LAW no. 135/2010
ON THE CRIMINAL PROCEEDING CODE
AND ALSO
SUPPLEMENTING LAW no. 304/2004
ON THE ORGANISATION OF THE JUDICIARY

The **Romanian Parliament** adopts this bill.

Art. I - Law no. 135/2010 on the Criminal Proceedings Code, published in the Official Journal of Romania, Part I, no. 486 of 15 July 2010, subsequently amended and supplemented, is hereby amended and supplemented as follows:

24. Under article 3 paragraph (1), letter c) is hereby repealed.

25. Under article 3 paragraph (3) is hereby amended as follows:
"(3) The exercise of one judicial function is incompatible with the exercise of any other judicial function as part of the same criminal proceedings.

26. Under article 3 paragraph (6) is hereby repealed.

27. Under article 4, following paragraph (2) six new paragraphs are hereby inserted, para. (3) - (8), as follows:
"(3) During prosecution and trial, public communication, public statements, as well as provision of other information, directly or indirectly, from public authorities on the facts and the persons who are subject to such proceedings shall be banned. Persons within public authorities may not refer to the suspects or the accused persons as being guilty unless a final decision ordering conviction was passed in relation to those deeds.
(4) As an exception, during prosecution or trial, the prosecution bodies or the court may communicate publicly data on the ongoing criminal proceedings only when the data provided justify a public interest provided by law or when this is necessary and in the interest of uncovering and investigating the truth in the case.
(5) Public communication stipulated under para. (4) may not refer to the suspects or the accused persons as being guilty of having committed an offence,
(6) During the criminal trial, persons suspected of having committed an offence shall not be presented publicly wearing handcuffs or any other means of physical restraint and shall not be affected by any other means which might induce the public perception that they are guilty of having committed some offences.
(7) Should the judicial bodies communicate publicly data and information on the initiation of criminal investigation, pre-trial measures or indictment of a person, the same bodies must also publish the decisions to close the case, drop criminal charges or terminate criminal proceedings, or the acquittal, the termination of the criminal trial or the order to return the case to the prosecutor's office, as determined in court, in the same conditions**.**"
(8) Compliance with the obligations stipulated under para. (7) may be demanded by any interested party."

28. Under art. 8, a new paragraph is hereby inserted, para. (2), as follows:

" (2) Any person has the right to a fair trial, for his/her case to be heard by an impartial and independent judge. The assignment of all cases to judges and prosecutors is made on a random basis."

29. Under article 10, paragraph (2) is hereby amended, as follows:

"(2) Prosecution bodies and courts of law must ensure that the main subjects of the criminal proceedings and the lawyer have the necessary time to prepare the defence, which cannot be shorter than 3 days, except in the case of taking or ruling on preliminary measures, when the deadline cannot be shorter than 6 hours, as well as the means required in order to prepare the defence, by making available and communicating all prosecution documents in an electronic format."

30. Under article 10, following paragraph (4), a new paragraph is hereby inserted, para. (4^1), as follows:

"(4^1) The exercise of the right not to make any statement cannot be used against the suspect or the accused person in any stage of the criminal proceedings and shall not be construed as personal circumstances justifying the conviction of the judicial bodies that the person is guilty for having committed the offence he/she is being investigated for and may not be used for corroborating the facts."

31. Under article 10, paragraph (5) is hereby amended, as follows:

"(5) Judicial bodies shall ensure full and effective exercise of the right to defence by the main subjects of the criminal proceedings throughout the duration of the criminal proceedings and compliance with the principle of equality of arms."

32. Under article 10, following paragraph (5), a new paragraph, paragraph (5^1), is hereby inserted as follows:

"(5^1) Failure to comply of the obligations provided by this article shall lead to the absolute nullity of the non-compliant procedural acts performed."

33. Under article 10, following paragraph (6), two new paragraphs, para. (7) and (8), are hereby inserted as follows:

"(7) The suspect and the accused have the right to communicate freely and confidentially with their lawyer in order to prepare the defence.

(8) The suspect, the accused and the witness have the right to the free of charge assistance of an interpreter."

34. Article 15 is hereby amended as follows:

"Requirements for initiating or exercising criminal proceedings

Art. 15. – Criminal proceedings are initiated and exercised when there is evidence leading to clear and convincing indications that a person committed an offence, and when there are no circumstances preventing the initiation or exercise of such action."

35. Under article 17, paragraph (2) is hereby amended, as follows:

(2) During the trial, criminal proceedings are extinguished when the court sentence ordering a conviction or an educational measure, a waiver of penalty, a delay of penalty, an acquittal or termination of criminal proceedings is rendered final.

36. Article 18 is hereby amended, as follows:

"Continuation of criminal proceedings upon request by the suspect or defendant

Art. 18 – In case of amnesty, statute of limitations, prior complaint withdrawal, existence of a non-penalty cause, a suspect or defendant may request continuation of criminal proceedings.

37. Under article 21, paragraph (1) is hereby amended as follows:

Art. 21. – (1) Civil action may be brought in the criminal trial against the party accountable for tort liability, upon request of the party entitled, according to civil law, until the initiation of the judicial investigation."

38. Under article 22, following paragraph (3) a new paragraph, para. (4) is hereby inserted as follows:

"(4) In case the victim is a legally incompetent person or a person with limited legal competence, and his/her legal representatives waives the civil claims as submitted or, as applicable, endorses the waiver expressed by the victim, the prosecutor may continue civil actions."

39. Under article 25, paragraph (4) is hereby amended as follows:

"(4) The criminal court's decisions related to the civil action may be opposed only to the parties of the criminal trial in which the decision was taken".

40. Under article 30, letter d) is hereby repealed.

41. Article 31 is hereby amended, as follows:

"The Lawyer

Art. 31. – The lawyer shall assist or represent the parties or the subjects of the proceedings throughout the entire trial, according to the law."

42. Under article 36, paragraph (1), letter c^1) is amended as follows:

"c^1) money laundering offences and the offences listed under Law no. 241/2005 on preventing and fighting tax evasion, as subsequently amended".

43. Under article 36, following paragraph (1), a new paragraph, para. (1^1) is hereby inserted, as follows:

"(1^1) The Tribunals rule on appeals filed against criminal sentences returned in the District Courts on the merits of the case for the offences where the initiation of criminal proceedings may take place following the prior complaint of the victim or in relation to which reconciliation may come into effect."

44. Under article 38, letter g) of paragraph (1) and paragraph (2) is hereby amended as follows:

"g) offences committed by members of the Court of Auditors, the President of the Legislative Council, the Ombudsman and by deputies of the Ombudsman;

[…]

(2) Courts of Appeal rule on appeals filed against criminal sentences returned by Tribunals on the merits of the case, as well as on appeals files against the decisions returned by District Courts on the merits of the case, except for those cases under the specific jurisdiction of Tribunals."

45. Under article 39 paragraph (1), letter d) is hereby repealed.

46. Under article 40, paragraph (1) is hereby amended as follows:

"Art. 40 – (1) The High Court of Justice examines the merits of the case for high treason offences, offences committed by senators, deputies and Romanian members of the European Parliament, Government members, judges of the Constitutional Court, members of the Superior Council of Magistracy, judges of the High Court of Justice, prosecutors of the Prosecutor's Office attached to the High Court of Justice, commissioners, generals, marshals and admirals."

47. Under article 40, following paragraph (4), a new paragraph is hereby inserted, para. (4^1), as follows:

"(4^1) The High Court of Justice rules the application for review lodged against the judgment passed by the highest court in criminal matters by the 5-judge panel, rejecting the request to

seize the Constitutional Court. The ruling on the application for review is issued according to the provisions of art. 425^1, which apply accordingly."

48. Article 47 is hereby amended as follows:
"Pleas for lack of jurisdiction

Art. 47 – (1) Lack of subject-matter jurisdiction and lack of personal jurisdiction may be invoked throughout the criminal proceedings, until a final judgment is ruled.
(2) Lack of territorial jurisdiction may be invoked until the beginning of the judicial investigation.
(3) Lack of jurisdiction may be invoked ex officio, by the prosecutor, by the victim or by the parties."

49. Under article 48, paragraph (1), letter b) is hereby amended as follows:
"b) the court session report stipulated under art. 370^2 was issued."

50. Under the general section Title III, Chapter II, the title of section 4 is hereby amended as follows:
"SECTION 4
Jurisdiction of the judge for human rights and liberties"

51. Article 54 is hereby repealed

52. Under article 61, paragraph () is hereby amended as follows:

"Art. 61 – (1) Whenever there are clear and convincing evidence or indications related to the commission of an offence, the following institutions must prepare reports on the identified circumstances:"

53. Under article 64, paragraphs (4) and (5) are hereby amended as follows:

(4) A Judge for human rights and liberties may not participate, in the same case, in the examination of the case on its merits or in the appeal proceedings.
(5) Judges who participated in the settlement of challenges to decisions not to initiate a criminal investigation or to drop charges, or who settled the request to confirm the termination of criminal investigation or the claim to confiscate or disregard a piece of evidence may not participate, in the same case, in the examination of the case on the merits or in the appeal proceedings.

54. Under article 65, paragraph (3) is hereby amended as follows:
"(3) The stipulations of Art. 64 para. (2) shall apply to prosecutors and assistant magistrates or, as applicable, to court clerks, when a reason for incompatibility exists between them or between them and the Judge for human rights and liberties or one of the members of the judicial panel."

55. Under article 67, paragraphs (5) and (6) are hereby amended as follows:
"(5) The submission of an application to disqualify the same person, for the same reasons of incompatibility, on the same factual and legal grounds as those invoked in a previous application that was rejected renders the new application inadmissible. The inadmissibility is ascertained by the judicial panel to which the challenge to disqualify is submitted."
(6) The Judge for human rights and liberties or the judicial panel to which the challenge to disqualify was submitted, with the participation of the judge whose disqualification was demanded, shall rule on preventive measures to be taken in the case."

56. Under article 68, paragraphs (1) and (2) are hereby amended as follows:
Art. 68 – (1) The abstention or challenge to disqualify a Judge for human rights and liberties shall be ruled on by a judge from the same court assigned on a random basis.

(2) The abstention or challenge to disqualify of judges who are part of a judicial panel shall be ruled on by another judicial panel assigned on a random basis."

57. Under article 68, following paragraph (2), a new paragraph is hereby inserted, para. (2^1), as follows:

(2^1) In case the abstention or challenge to disqualify the judge is admitted, the person replacing the judge who abstained himself/herself or who was disqualified must be assigned on a random basis."

58. Under article 68, paragraph (4) are hereby amended as follows:

(4) The abstention or challenge to disqualify for court clerks shall be ruled on by a Judge for human rights and liberties, or, as applicable, by a judicial panel."

59. Article 70 is hereby amended as follows:

"Art. 70: Prosecutor abstention or disqualification procedure

(1) Throughout the criminal proceedings, the hierarchically superior prosecutor shall rule on the abstention or disqualification of a prosecutor.

(2) The hierarchically superior prosecutor shall rule such a request within 48 hours, and the resulting prosecutor's order is subject to remedies within 48 hours since it was served.

(3) The complaint shall be ruled by the judge for human rights and liberties from the court which would normally have jurisdiction to determine the case on its merits, as the provisions of para. (6) – (9) become applicable.

(4) During the criminal investigation, a disqualified prosecutor may participate in the settlement of the application referring to preventive measures and may perform acts or order any steps that justify the emergency.

(5) In case an abstention or challenge to disqualify is sustained, the hierarchically superior prosecutor or the court, in the case stipulated under para. (3), must decide the extent to which the acts performed or the measures ordered are maintained.

(6) Throughout the criminal investigation, when the proceedings are presented to he judge for human rights and liberties, or during the trial, the statement of abstention or the challenge to disqualify a prosecutor participating to the court session must be submitted to the judge for human rights and liberties or to the judicial panel, otherwise the request shall be deemed inadmissible. The inadmissibility of the statement of abstention or the challenge to disqualify a prosecutor must be ruled by the judge or by the judicial panel to whom the request was submitted to.

(7) The abstention or the challenge to disqualify the prosecutor participating to the court session shall be ruled by the judge for human rights and liberties or by the judicial panel invested with the request, in chambers, within a maximum of 24 hours. In case they assess this to be needed, any verifications may be undertaken and the main subjects of the criminal proceedings, the parties and the prosecutor who abstained himself/herself or whose disqualification is requested may all be heard in court.

(8) In case an abstention or challenge to disqualify the prosecutor participating to the court session is sustained, the judge, or, as applicable, the judicial panel shall decide the extent to which the acts performed or the measures ordered by that prosecutor in front of the judge for human rights and liberties or, as applicable, during the trial, are maintained.

the judge for human rights and freedoms from the court which would have jurisdiction to adjudicate on the matters of the case or from the court the abstaining or disqualified prosecutor's office is attached to shall rule on the abstention or disqualification of the prosecutor investigating the criminal case through an order of his/her superior

(9) The court session report which settles the abstention or the challenge to disqualify is not subject to any remedies."

60. Under Art. 74, paragraph (2) is hereby amended as follows

"(2) When it finds that the application is substantiated, the High Court of Justice orders the transfer of proceedings to another court of appeal, and then court of appeal orders the transfer of proceedings to one of the courts of the same level as that from which the transfer is sought, from any area of jurisdiction."

61. Under article 75, paragraphs (2) and (3) are repealed.

62. Article 77 is hereby amended as follows:

"**Suspect** Art. 77. – A person in respect of whom, from the clear and convincing evidence or indications existing in a case, an inference is drawn that he/she committed an act stipulated by the criminal law, is a suspect."

63. Under article 81, paragraph (1), letters d) and g^2) are amended as follows:

d) to be informed, within a deadline of up to 1/2 of the minimum custodial sentence stipulated by law for the offence under investigation, on the current status of the criminal investigation, at an address on the territory of Romania, an electronic mail address or an electronic messaging address, communicated by the victim through the notice submitted to the criminal investigation body;

.....

g^2) to have the translation of any resolution not to indict into a language that he/she understands, when they do not understand Romania, while in the case of persons belonging to a minority group, the communication is delivered in the mother tongue."

64. Under article 83, following letter b), a new letter, letter b^1) is hereby be inserted, as follows:

"b^1) the right to be notified on the date and hour of the prosecution act by the prosecution body or on the hearing held by the judge of human rights and liberties. The notification shall be made by phone, fax, e-mail or by other such means, and a report shall be concluded to this end. Its absence shall not prevent the completion of the act."

65. Under article 83, following paragraph (1), a new paragraph, para. (2) is hereby be inserted, as follows:

(2) The provision of art. 10 para. (4^1) apply accordingly."

66. Under article 89, paragraph (1) is hereby amended, as follows:

"Art. 89. – (1) A suspect or a defendant has the right to be assisted by one or more counsels all along the criminal investigation and the trial, and judicial bodies are under an obligation to inform them on such right. Legal assistance is ensured when at least one of the counsels is present."

67. Under article 90, letter c) is hereby amended as follows:

"c) during the course of trial, in cases where the law establishes life detention or an imprisonment penalty exceeding 5 years for the committed offence."

68. Under article 91, paragraph (2) is hereby amended as follows:

"(2) During the entire course of criminal proceedings, when legal assistance is mandatory, if a retained counsel is unjustifiably absent, unjustifiably fails to ensure a replacement or refuses unjustifiably to ensure the defence, even though the use of all procedure rights was ensured, the judicial body shall take steps to obtain appointment by the court of a counsel to replace them, by providing such replacement with a reasonable term and with facilities required for the preparation of an effective defence. This aspect shall be mentioned in a report or, as applicable, in the hearing report. During the course of the trial, when legal assistance is

mandatory, if a retained counsel is unjustifiably absent from the hearing term, fails unjustifiably to ensure a replacement or unjustifiably refuses to ensure defence, even though the use of all procedure rights was ensured, the court shall take steps to appoint an ex officio counsel to replace them, by providing such replacement with a minimum term of 3 days to prepare the defence".

69. Under Art. 91, following Paragraph (2), a new paragraph is hereby inserted, paragraph (2^1), as follows:

"(2^1) The unjustified absence of the counsel cannot result in legal consequences on the defendant. The provisions of paragraph (5) apply accordingly."

70. Under article 92, paragraphs (2) and (7) are hereby amended, as follows:

(2) The counsel for the suspect or the defendant may ask to be notified on the date and hour of the prosecution act by the prosecution body or on the hearing held by the judge of rights and freedoms. The notification shall be made by phone, fax, e-mail or by other such means. The suspect or the defendant may participate to any criminal prosecution act or to any hearing, based on his/her request. In case the witnesses or trial subjects considers that they have reasons to fear in connection with these circumstances, they may require, according to the law, the prosecutor or the judge to be awarded with the status of the threatened or protected person, as the case may be, both during the criminal prosecution phase as well as during the trial phase.

[…]

(7) During trial, the counsel has the right to consult the case files, to assist the defendant, to exercise the defendant's trial-based rights, to submit complaint, claims, memos, pleas and raise objections."

71. Under article 94, para. (1), (4) and (7) are hereby amended, as follows:

"(1) Counsels of parties and of main subjects to the trial have the right to request consultation of the case file throughout the criminal proceedings. Such right may not be restricted."

[…]

(4) During the course of the criminal investigation, the prosecutor may restrict, on a reasoned basis, the case file consultation, if this could harm the proper conducting of the criminal investigation, for a maximum of 20 days, since the day of the request.

[…]

(7) For the preparation of defence, a defendant's counsel has the right to learn of the entire material in the criminal investigation case file in the proceedings conducted before the Judge for human rights and liberties regarding deprivation of freedom or restrictive measures in which the counsel participates. The ruling on the applications for preventive measures may not start unless the counsel has been given the time to prepare the defence, and not before the judge has made sure that the counsel had enough time to read the entire criminal investigation file, but not less than 4 hours. The violation of this right results in the absolute nullity of the resolution ordering pre-trial measures."

72. Under article 97, following paragraph (3), a new paragraph is hereby inserted, para. (4) as follows:

"(4) In order to qualify for supporting a decision to prosecute, waive a punishment or postpone the enforcement of a sentence, it must be possible to verify if the methods of proof mentioned under paragraph (2) letter f) were obtained lawfully and it must be possible to be examined by experts to ascertain their reality or veracity."

73. Under article 99, paragraph (2) is hereby amended, as follows:

"(2) A suspect or defendant shall benefit from the presumption of innocence, and shall have no obligation to prove their innocence, and shall have the right not to contribute to their own incrimination and the right not to cooperate under any criminal proceedings. Any doubt

regarding the guilt of the suspect or of the defendant shall exclusively be interpreted in favour of the former."

74. Under article 102, paragraphs (2), (3) and (5) are hereby amended as follows:

(2) Evidence obtained unlawfully may not be used in criminal proceedings, as they are voided by absolute nullity.

(3) The nullity of a document ordering or authorizing the production of evidence or based on which such evidence was produced triggers exclusion of that piece of evidence and the means of evidence.

[…]

(5) The evidence and the means of evidence excluded shall be kept sealed at the headquarters of the prosecutor's office, as regards the causes in the criminal prosecution phase, respectively, to the court, as regards the causes which were pending trial."

75. Under article 103, paragraphs (2) and (3) are hereby amended as follows:

(2) In making a decision the existence of an offence and on a defendant's guilt, the court decides, on a justified basis, on the basis of all the assessed pieces of evidence. Conviction is ordered only when the court is convinced that the charge was proven beyond any reasonable doubt.

(3) A court sentence ordering a conviction, the implementation of an educational measure to waive of penalty, or delay of enforcement may not be based decisively on statements of the investigator, of informants or of protected witnesses. Also, it may not be based solely on the statements of the other defendants in the case, on the statements of witnesses who benefit of exemption for the deeds they report or on the statements of those benefiting from favourable legal provisions for statements made in front of judicial bodies, unless such evidence is corroborated with other evidence, legally produced in the case. A court sentence ordering a conviction, the implementation of an educational measure, a waiver of penalty, or a postponement of enforcement may not be based altogether on the defendant's refusal to make statements."

76. Under article 103, following paragraph (3), two new paragraphs are hereby inserted, para. (4) and (5), as follows:

(4) A conviction, waiver of penalty, or postponement of enforcement may not be ordered for other offences than those on trial. It is not possible to extend the scope of the prosecution during the criminal trial for other deeds or circumstances than those for which the case was put on trial. Changing the charges may only be ordered in case the facts indicate another offence than that charged in the indictment.

(5) A court sentence ordering a conviction, waiver of penalty, or delay of enforcement must describe the required elements that define the offence for which the sentence was passed, the evidence substantiating each element, including the *mens rea* element, as well as the reasons for which the defence's evidence and arguments were dismissed."

77. Under art. 106, after para. (1) a new paragraph is hereby inserted, para. (1^1), as follows:

"(1^1) The hearing of a person may not last for more than 6 hours in every 24 hours. The six hour periods may not be consecutive ones, as a 12 hour interval must come in-between these".

78. Under art. 110, para. (1) is hereby amended, as follows:

"(1) Statements by a suspect or defendant shall be recorded in writing, as such and word by word. In the written statement, the questions asked during the hearing shall be recorded together with the answers to such questions, by mentioning the person asking them, and the time when the hearing started and when the hearing ended shall be mentioned every time. The rejected questions shall be recorded, as applicable, in the minutes or in the court session report, by mentioning the person asking these rejected questions and the grounds for such rejection."

79. Under article 110, following paragraph (1), a new paragraph is hereby inserted, para. (1^1), as follows:

"(1^1) Statements by a suspect or defendant shall be recorded with audio technical means, based on the request of the person involved and they will be made available in full to the defence."

80. Under art. 110, para. (5) is hereby amended, as follows:

(5) During the criminal investigation, the hearing of a suspect or defendant by the prosecutor shall be recorded with audio or audio-video devices."

81. Under article 110, following paragraph (5), a new paragraph is hereby inserted, para. (6), as follows:

(6) When such recording is not possible, this fact shall be mentioned in the statement of the suspect or defendant, indicating the specific reason why such recording was not possible."

82. Under article 113, paragraphs (1) and (3) are amended as follows:

"Art. 113. - (1) When the requirements established by law in respect of the status of threatened or vulnerable witnesses or for the protection of private life or dignity are met, criminal investigation bodies may order protection measures specified under Art. 124 – 130 in respect of a victim or a civil subject of the criminal trial. Such provisions shall apply accordingly.

[…]

(3) If the victim or the civil subject of the criminal trial is in one of the situations referred to in paragraph (2), the judicial body brings to the attention of the protective measures which may be taken, their content and the possibility to waive them. The waiver of a victim or of a civil subject of the criminal trial to take protective measures shall be recorded in writing and signed by the respective person, in the presence of the defence counsel, if necessary."

83. Under art. 115, para. (2) is hereby amended, as follows:

"(2) Persons who are in a situation that questions their capacity to testify may be heard only when judicial bodies establish that the person is able to consciously present facts and factual circumstances that reflect reality."

84. Under article 116, following paragraph (2), four new paragraphs are hereby inserted, para. (2^1) - (2^4), as follows:

"(2^1) Witnesses may refuse to testify on those facts or circumstances which might entail their criminal liability for having committed an offence.

(2^2) A person heard as protected witness or as threatened witness may not be heard further in the same case, as a witness with his/her real identity unless the reasons which led to him/her being provided a different standing in the trial are not valid anymore.

(2^3) A person cannot acquire simultaneously multiple standings in the trial as witness without a real identity and cannot act simultaneously as a threatened witness and as a protected witness for the same case

(2^4) The witness may be accompanied by a counsel in front of judicial bodies and may consult with his/her counsel, in confidential terms, throughout the entire hearing."

62. Under article 117, paragraph (1), following letter b), a new letter is hereby inserted, letter c), as follows:

"c) persons who, having lived with the suspect or the defendant, established with them similar relationships as between spouses or parents and children, as well as persons who were in this situation in the past."

63. Under article 124, paragraph (2) is hereby amended as follows:

"(2) If the persons mentioned under para. (1) cannot be present or have the capacity of suspect, defendant, victim, civil subject of the criminal trial, party with tort liability or witness in the case, or if there are clear and convincing evidence or indications that these can influence

the minor's statement, their hearing shall take place in the presence of a representative of the guardianship authority or of a relative having full legal capacity, as determined by the judicial bodies."

64. Article 125 is hereby amended as follows:

Threatened witness

Art. 125. – In case there are clear and convincing evidence or indications that the life, physical integrity, freedom, assets or professional activity of a witness or of a member of their family could be jeopardized as a result of the data provided by them to judicial bodies or of their statements, the judicial bodies of competent jurisdiction shall grant them the status of threatened witness and shall order one or more of the protection measures set by art. 126 or art. 127, as applicable."

65. Under art. 126, para. (3) is hereby amended, as follows:

"(3) In case of application of the protection measures listed under para. (1) letters c) and d), witness statements shall not include their real address or their identity data, these being recorded in a special register to which only criminal investigation bodies, the judge for human rights and liberties, or the court have access, under confidentiality terms."

66. Under article 126, paragraph (7) is hereby repealed.

67. Under article 128, following paragraph (8), a new paragraph is hereby inserted, para. (9), as follows:

"(9) The court may order the removal of protection measures, based on a request or on its own motion, if the terms which determined the prosecutor or the court to take such measures are no longer valid. The provisions of para. (4) – (6) shall apply accordingly."

68. **Under art. 138, para. (12) is hereby amended, as follows:**

"(12) *Controlled delivery* designates a surveillance and investigation technique allowing for the entry, transit or exit from the territory of the country of goods in respect of which there are clear and convincing indications related to the illicit nature of their possession or obtaining, under the surveillance of or based on an authorization from the competent authorities, for the purpose of investigating an offence or of identifying the persons involved in its commission."

69. Under article 139, paragraph (1), letter a) is hereby amended as follows:

"a) there is a clear and convincing indication in relation to the preparation or commission of one of the offences listed under para. (2);"

70. Under art. 139, para. (3) is hereby amended, as follows:

"(3) The recordings set forth by this chapter, performed by the parties or by the main subjects of the criminal trial, represent evidence when they concern their own conversations or communications with third parties."

71. Under article 139, following paragraph (3), a new paragraph is hereby inserted, para. (3^1), as follows

"(3^1) Records made by surveillance cameras as well as those carried out in public places may constitute means of evidence."

72. Under art. 140, para. (2) is hereby amended, as follows:

"(2) Such application filed by the prosecutor must include: the electronic surveillance measures that are requested for authorization, the name or the identification data of the person against whom such measure is to be ordered, if known, the evidence or data related to the commission of an offence in respect of which such measure may be ordered, the facts and the charges, and, in case of a video, audio or photo surveillance measure, whether an approval for criminal investigation bodies to enter specified private areas in order to activate and deactivate the technical devices to be used for the implementation of the electronic surveillance measure is

also requested, and a justification of the proportional and subsidiary nature of the measure. The prosecutor has to submit the case file to the judge for human rights and liberties."

73. **Under article 143, following paragraph (4), a new paragraph is hereby inserted, para. (4^1), as follows**

"(4^1) Wiretapped and recorded phone conversations, communications or discussions that are unrelated to the offence or persons under investigation or do not contribute to the identification or localisation of the persons may not be used or attached to the criminal investigation file They are to be archived at the Prosecutor's Office, in designated places, ensuring confidentiality, and may be provided to the person in question, based on their request. When a final decision is reached in the case, they are to be deleted or, as applicable, destroyed by the prosecutor, based on a report to such effect, if a wiretapping warrant has not been obtained for the rest of the conversations. If during the wiretapping or recording of conversations, communications or discussions indications of other offences are identified, it is possible to supplement the warrant for such other offences. Wiretapped and recorded conversations, communications or discussions may only be used as evidence for the offence that is subject to investigation or if they contribute to the identification or localisation of the persons in relationship to whom authorization was sought from the judge for human rights and liberties."

74. **Under article 145, paragraphs (1), (2) and (5) are hereby amended as follows**

"Art. 145 – (1) Following completion of a technical surveillance measure, the prosecutor shall inform each subject of the warrant and each person placed under technical surveillance in relation to the warrant and who had not standing as regards the criminal investigation, and any other person regardless their standing under the criminal investigation, on the technical surveillance measure enforced against them, in writing, within maximum 10 days.
(2) Following such information, a person subject to surveillance has the right to learn, upon request, of the content of the minutes recording the electronic surveillance activities performed. Also, the prosecutor has to ensure, upon request, the listening in full of discussions, communications or conversations, or the watching of images resulted from each electronic surveillance activity;

(5) The postponement may not exceed 1 year after the date when one of the situations provided by para. (4) letters a)-c) occurred."

75. Under article 145, following paragraph (5), nine new paragraphs are hereby inserted, para. (6) - (14), as follows

"(6) The person informed according to paragraph (1) may challenge both the legality, the merits and the proportionality of the technical surveillance measure he/she was subject to and the translation of transcripts drafted based on discussions carried out in a different language than Romanian, as well as the legality of the enforcement of the technical surveillance warrant.
(7) The challenge provided by paragraph (6) shall be filed with the court of law of the judge of rights and freedoms who ordered or confirmed the technical surveillance measure and shall be adjudicated by the judge of rights and freedoms from the higher court, or by the competent panel of judges of the High Court of Review and Justice, when the measure was ordered or confirmed by the High Court of Review and Justice in Chambers, with the participation of the prosecutor and by summoning the person who filed the challenge.
(8) The deadline for filing the challenge is 10 days and shall run:
a) from the date when the prosecutor informed, according to para. (1), the person who was subject to a technical surveillance measure, when the legality, the merits and the proportionality of that technical surveillance measure are challenged;
b) from the date when the person who was subject to a technical surveillance measure, other than the defendant, was informed, on request, on the contents of the reports recording the technical surveillance activities carried out or from the date when he/she was allowed, on request, to listen to the discussions, communications or conversations or to watch the images

resulted from the technical surveillance activity, when the enforcement of the technical surveillance warrant is challenged.
(9) When the challenge provided by para. (6) is related to a technical surveillance warrant or to the enforcement of a technical surveillance warrant ordered or approved by the judge of rights and freedoms from the High Court of Review and Justice, it shall be adjudicated by the competent panel of judges from the High Court of Review and Justice, as set forth by law.
(10) The challenge provided by paragraph (6) shall be adjudicated by court decision, which is not subject to any remedies, and shall include one of the following solutions:
1. Rejection of the challenge:
When the challenge was filed too late;
When the court appreciates that the technical surveillance measure was ordered or confirmed as set forth by law or was grounded and proportionate;
When the court appreciates that the warrant was enforced as set forth by law;
2. Acceptance of the challenge:
When the court appreciates that the technical surveillance measure was not ordered or confirmed as set forth by law or was not grounded and proportionate;
When the court appreciates that the enforcement of the technical surveillance measure was not as set forth by law.
(11) If in the case where the technical surveillance measure was ordered the court was seized by indictment, the challenge provided by para. (6) shall be filed with the court and shall be adjudicated by the judge in preliminary chambers as set forth by the procedure provided by Art. 345 (1). The provisions of paragraphs (8) and (10) shall apply accordingly."
(12) In case the challenge is admitted, the evidence obtained shall be completely destroyed and may not be used in any criminal proceedings to prove any offence.
(13) The prosecutor shall destroy the unlawfully obtained records and shall draft a report on this, which shall be attached to the case file.
(14) In case the challenge is admitted, as provided by paragraph (10) section 2, the court may order, based on the claim filed by the person stipulated under art. 6, the state, through the Ministry of Public Finance, to pay damages.

76. Following art. 145, a new article is hereby inserted, art. 145[1], as follows:

"**Art. 145[1] –** (1) Data, information and outcomes of electronic surveillance warrants obtained on the rounds of Law no. 51/1991 may not be used in other cases and for investigating other offences than those that impact on national security, according to this law, and for which the suspicions existed that grounded the application for surveillance, under pain of absolute nullity.
(2) Actions covered by Law no. 51/1991 that impact on national safety include the criminal offences covered by Titles X - XII of the Criminal Code, those listed by Law no.535/2004 on preventing and fighting terrorism, as subsequently amended and supplemented, as well as those covered by the Expeditious Ordinance of the Government no. 159/2001 on preventing and fighting the use of the financial-banking system for financing acts of terrorism. Extending the situations for which national safety warrants may be obtained, by any legislative or administrative regulations, is prohibited and punishable according to the law.
(3) Data, information and outcomes of electronic surveillance warrants obtained in violation of Paragraphs (1) and (2) may not be used in any criminal proceedings, irrespective of the stage of the case."
(4) If data and information collected through technical surveillance warrants result into clear and convincing evidence or indications of another offence than those referred to in para. (2), such data and information shall be submitted to the prosecutor, which may proceed in compliance with articles 140 and 141, which apply accordingly."

77. **Under art. 146, para. (3) is hereby amended, as follows:**
"(3) If in a case the court returned a conviction sentence, applied an educational measure, a waiver of penalty or penalty reprieve, an acquittal or a termination of criminal proceedings, which is rendered final, the physical item or its copy shall be preserved by being archived together with the case file at the premises of the court, in special places, by ensuring confidentiality."

78. **Under article 146[1], paragraph (1), letter a) is hereby amended as follows:**
a) there are clear and convincing evidence or indications related to the preparation or commission of an offence;"

79. **Under article 146[1], paragraph (5) is hereby repealed.**
80. **Under article 147, paragraph (1), letter a) is hereby amended as follows**
a) there are clear and convincing evidence or indications related to the preparation or commission of an offence;"

81. **Under article 148, paragraph (1), letter a) is hereby amended as follows:**
"a) there are clear and convincing evidence or indications related to the preparation or commission of an offence against national security set forth by the Criminal Code and by other special laws, as well as in case of offences of drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism or acts assimilated to those, terrorism financing, money laundering, counterfeiting of currency or other securities, counterfeiting of electronic payment instruments, blackmail, deprivation of freedom, tax evasion, corruption offences, offences assimilated to corruption offences, offences against the European Union's financial interests, of offences committed by means of a computer systems or electronic communication devices, or in case of other offences in respect of which the law requires a penalty of no less than 7 years of imprisonment, or when there are clear and convincing evidence or indications that a person is involved in criminal activities that are related to the above-mentioned offences;"

82. Under art. 149, para. (2) is hereby amended, as follows:
"(2) The prosecutor, the judge for human rights and liberties, or the court has the right to know the real identity of undercover investigators and informants, subject to the observance of professional secrecy."

83. Under article 150, paragraph (1), letter a) is hereby amended as follows:
"a) there are clear and convincing evidence or indications related to the preparation or commission of drug trafficking, weapons trafficking, trafficking in human beings, terrorism, money laundering, counterfeiting of currency or other securities, blackmail, deprivation of freedom, tax evasion, corruption offences, of offences assimilated to corruption and offences against the European Union's financial interests, or in case of other offences in respect of which the law establishes a penalty of no less than 7 years of imprisonment, or when there are clear and convincing evidence or indications that a person is involved in criminal activities that are related to the above-mentioned offences, as per Art. 43.

84. Under article 152, paragraph (1), letter a) is hereby amended as follows:
"a) there are clear and convincing evidence or indications related to the commission of an offence among those stipulated under art. 139 para. (2) or of an offence of disloyal competition, escape, forged documents, offences on the use of weapons, ammunition, nuclear materials and explosive materials and precursors to restricted explosive substances, an offence of unlawful import of waste and residues, an offence related to gambling or an offence related to the use of drug precursors, as well as offences regarding operations with products that may have psycho-active effects similar to drugs and narcotics;"

85. Under article 153, paragraph (1) is hereby amended, as follows:
"Art. 153. – (1) The prosecutor, based on a prior approval from the judge for human rights and liberties, may request a credit institution, or any other institution holding data regarding the financial status of a person, to communicate data referring to the existence and content of accounts and of other financial statements of a person if there are clear and convincing indications in respect of the commission of an offence, and there are grounds to believe that the requested data represent evidence."

86. Under Art. 153, following paragraph (1), a new paragraph is hereby inserted, paragraph (1^1), as follows:
"(1^1) The request of the prosecutor must include the identification data of then persons whose financial data are required and must indicate the offences that have been allegedly committed by each individual person for which clear and convincing indications exist. Data on other persons than those for which the request was made are confidential and cannot be used as means of proof against the persons not included in the scope of the request."

87. Under article 153, paragraph (2) is hereby amended, as follows:
"(2) The measure set under para. (1) is ordered ex officio or upon request by criminal investigation bodies, through an order that has to include, in addition to the entries set by art. 286 para. (2), the following: the institution holding or having data under control, the name of the suspect or defendant, or, as applicable, of the person in relation to whom data are requested, a specification that the requirements set by para. (1) are met, and the obligation of the institution to communicate the requested data forthwith, under confidentiality terms."

88. Under article 154, paragraph (1) is hereby amended, as follows:
"Art. 154. – (1) If there are clear and convincing indications in relation to the preparation or commission of an offence, for the purpose of collecting evidence or of identifying a perpetrator, suspect or defendant, the prosecutor supervising or conducting the criminal investigation may order immediate preservation of computer data, including of data referring to information traffic, that were stored by means of a computer system and that is in the possession or under the control of a provider of public electronic communication networks or of a provider of electronic communication services intended for the public, in the event that there is a danger that such data may be lost or altered."

89. **Under article 158, paragraph (2), letters a) and b) are hereby amended as follows:**
a) a description of the location where search is to be conducted, and if there are clear and convincing evidence or indications regarding the existence or a possibility of transferring searched evidence, data or persons to neighbouring places, a description of such places;
b) indication of factual elements or data which lead to clear and convincing evidence or indications;

90. Under article 158, paragraph (11) is hereby amended as follows:
"(11) During the trial, on its own motion or upon request by the prosecutor, the court may order the conducting of a search for the purpose of enforcing a warrant for the pre-trial arrest of a defendant, as well as in situations where there are clear and convincing evidence or indications that material evidence that is connected with the offence that is the subject matter of the case exists at the location where the search is requested. The stipulations of para. (2) - (8) and of art. 157 shall apply accordingly."

91. Under Art. 159, following paragraph (8), a new paragraph is hereby inserted, paragraph (8^1), as follows:
"(8^1) Failure to indicate the items or persons searched prevents the search from being performed by the investigators. The refusal of the searched person to hand over the

accurately identified persons or items which represent the subject of the search, is to be entered into the search report. The lack of this indication in the search report and the continuation of the search without asking for them specifically or if they have already been handed over is sanctioned by absolute nullity. The evidence obtained based on a search report that was voided for such reasons may not be used during the criminal trial."

92. Under article 159, paragraph (13) is hereby amended as follows:

"(13) Judicial bodies are under an obligation to limit themselves only to the seizure of items and documents that are related to the act in relation to which the criminal investigation is conducted. Items or documents the circulation or holding of which is prohibited or in relation to which there are clear and convincing indications that they may have connection with the commission of an offence in respect of which a criminal action is initiated *ex officio* must always be seized."

93. Under article 158, paragraph (14), letters b) and c) are hereby amended as follows

"b) if there are clear and convincing indications that in the space where search is to be conducted, there is a person whose life or bodily integrity is threatened;
c) if there are clear and convincing indications that the wanted person may avoid the procedure."

94. Under para. (2) of art. 161, following letter i), a new letter is hereby inserted, letter i[1]), as follows:

"i[1]) entries on persons or items searched and denied for surrender, pursuant to art. 159 para. (8);"

95. Under article 162, paragraph (4) is hereby amended, as follows:

„(4) Items that have no connection with the case shall be returned to the person to whom they belong, within 30 days since the date they were seized, except for those subject to forfeiture, under the law or for those in relation to which the search warrant was issued later on."

96. Under article 162, following paragraph (5), a new paragraph is hereby inserted, paragraph (6), as follows:

"(6) *Items that have no connection with the case*, according to paragraph (4), mean any item, electronic media or document that does not serve as evidence for proving the offence for which the search was authorised or for which a search warrant was subsequently obtained from the judge of jurisdiction, in compliance with the law."

97. Under article 164, a new paragraph is hereby inserted, para. (2), as follows:

"(2) The stipulations of art. 157-163 shall apply accordingly."

98. **Under article 165, paragraph (2) is hereby amended, as follows:**

(2) If there are clear and convincing indications that, by conducting a bodily search, traces of an offence, physical evidence or other items having importance for finding the truth in the case can be discovered, judicial bodies or any other authority having responsibilities in ensuring public order and safety shall proceed to conducting it."

99. Under Art. 168, following paragraph (15), a new paragraph is hereby inserted, paragraph (15[1]), as follows:

"(15[1]) The data obtained from a computer system or electronic data storage system that are not related to the offence under criminal investigation and for which the search was authorised are to be permanently deleted from the copies made on the grounds of paragraph (9), and may not be used in other criminal cases and in evidence of other acts for which no search warrant exists. If, during the search of a computer system, indications are discovered

that raise suspicions of other criminal activities, it is possible to apply for a computer search warrant for such other activities or persons."

100. Under article 170, paragraph (1) is hereby amended, as follows:

(1) In case that there are clear and convincing indications in relation to the preparation or commission of an offence and there are reasons to believe that an item or document can serve as evidence in a case, the criminal investigation bodies or the court may order the natural person or legal entity holding them to provide and surrender them, subject to receiving proof of surrender."

101. Under article 171, paragraph (4) is hereby amended, as follows

"(4) If the criminal investigation body or the court assess that a copy of a document may serve as evidence, they shall retain only the copy thereof."

102. Under article 171, following paragraph (4), a new paragraph is hereby inserted, para. (4^1), as follows:

"(4^1) In case of computer data, the judicial bodies and the institutions assigned by such bodies shall retain the original medium containing computer data or the digital copy thereof."

103. Following art. 171, a new article is hereby inserted, Art. 171^1, as follows:

"Art. 171^1 – (1) Items, documents or electronic data handed over or seized, according to articles 170 and 171, may be used as evidence only for demonstrating the offences subject to the case in which they were requested. If, during the search of a computer system, indications are identified which raise suspicions of other criminal activities, it is possible to apply for a computer search warrant for such other activities or persons.

(2) Items, documents or electronic data that were not used for the purpose stated in paragraph (1) are to be returned to their owner or destroyed, as the case may be, within 30 days from the time when it was found that they are not useful for proving the prosecuted offence and in relationship to which they were handed over or seized or for which a search warrant was obtained subsequently or they were lawfully seized."

104. Under article 172, paragraphs (4) and (7) are hereby amended, as follows:

(4) An expert report can be conducted by licensed or recognized experts from the country or from abroad.

[…]

(7) In strictly specialized areas, if certain specific knowledge or other such knowledge is necessary for the understanding of evidence and there are no licensed experts, the court or criminal investigation bodies may request the opinion of specialists working within judicial bodies or of external ones. The provisions referring to the hearing of witnesses shall apply accordingly."

105. **Under article 172, following paragraph (8), a new paragraph is hereby inserted, para. (8^1), as follows:**

"(8^1) Direct participation of licensed independent experts, their observations in relation to the expert report aims, the materials to be analyzed, the methods used, the analyses performed and the conclusions must be included in the expert report drafted by the assigned experts, in the dissenting opinions or in an independent expert report."

106. Under article 172, following paragraph (10), a new paragraph is hereby inserted, para. (10^1), as follows:

(10^1) When drafting the fact-finding report, the specialist has the obligation to comply with the standards and regulations of the profession specific to the field of the fact-finding report, and failure to comply shall trigger his/her civil, disciplinary, professional or criminal liability, as appropriate. Professional liability may also be invoked before the disciplinary bodies of the

professional association which granted the professional accreditation in the field of the specialist."

107. Under article 172, para. (12) is hereby amended, as follows:
"(12) Following completion of a fact finding report, when judicial bodies believe that an expert opinion is necessary or when the conclusions of the fact finding report are challenged, an expert report must be ordered. Failure to draft a failure report, should the fact finding report be challenged, shall result in the removal of the latter from the case file."

108. Under article 173, para. (2), (5) and (6) are hereby amended, as follows:
"(2) During the criminal investigation and in court, judicial experts are assigned on a random basis, from the list of licensed experts for that specific matter, by drawing the names from the list, in the presence of all parties or their legal counsels, legally summoned for this purpose. Failure from the parties or their counsels to appear during this session shall not prevent the expert from being designated.

[…]

(5) The experts, the forensic medicine institution, the specialist institute or laboratory shall communicate to the judicial bodies the fact that the expert report ordered cannot be performed, stating the reasons in writing.

(6) A forensic medicine institution, specialist institute or laboratory shall communicate the names of the appointed experts and the fields or areas of specialization in which they are licensed to the judicial bodies having ordered such expert examination, within the shortest time possible after the expert examination was ordered and prior to the delivery of the expert report.".

109. Under article 175, paragraphs (1) and (2) are hereby amended, as follows:
„Art. 175. – (1) An expert has the right to refuse the delivery of the expert report as long as they do not possess the required scientific know-how and facilities or for the same reasons for which witnesses may refuse to testify.

(2) An expert has the right to learn of materials in the case file necessary for conducting an expert examination. The expert will consider all the documents submitted to the case file as evidence and will not limit his/her considerations to the findings of the technical and scientific examinations carried out in the case by the prosecution experts. The expert will have access to all the data and information to which such other experts had access. Independent, licensed experts appointed according to art. 172 para. (8) shall have the same rights."

110. Under article 177, paragraph (6) is hereby repealed.

111. Under article 178, following paragraph (2), a new paragraph is hereby inserted, para. (2^1), as follows:
"(2^1) The independent experts appointed according to art. 172 para. (8) participate in the expert examination together with the experts designated by the judiciary bodies. Their separate opinions are to be recorded in the expert report prepared by experts appointed by the judicial bodies."

112. Under article 178, paragraph (5) is hereby amended, as follows:
"(5) If an expert report was performed in the absence of the parties or main subjects of the criminal trial, these or their counsels shall be informed of the preparation of the expert report and of their right to consult and challenge such report, as well as to choose their own expert who can add dissenting opinions to the report submitted by the judicial bodies."

113. Under article 181^1, following paragraph (2), a new paragraph is hereby inserted, para. (3), as follows:
"(3) The provisions of art. 173 para. (4), art. 177 and art. 178 para. (2) shall apply accordingly."

114. Under article 202, paragraph (1) is hereby amended, as follows:
"Art. 202. – Preventive measures may be ordered if there are clear and convincing evidence leading to a conclusion that a person committed an offence and if such measures are necessary in order to ensure a proper conduct of criminal proceedings, to prevent the suspect or defendant from avoiding the criminal investigation or trial or to prevent the commission of another offence."

115. Under article 203, paragraphs (2), (3), (5) and (7) are hereby amended, as follows:

"(2) The preventive measures listed under art. 202 para. (4) letters b) and c) can be taken against a defendant by the prosecutor and the judge for human rights and liberties, during the criminal investigation and by the court during the trial.
(3) The preventive measures listed under art. 202 para. (4) letters d) and e) can be taken against a defendant by the judge for human rights and liberties, during the criminal investigation and by the court during the trial.
[…]
(5) During the criminal investigation, applications, proposals, complaints and challenges regarding preventive measures are ruled on in chambers, by a reasoned court session report, which is returned in chambers**.**
[…]
(7) Court session reports returned by the judge for human rights and liberties or the court shall be communicated to the defendant and the prosecutor who were absent upon their reading."

116. Article 205 is hereby repealed.

117. Article 207 is hereby repealed.

118. Article 208 is hereby amended as follows:

" Art. 208. – (1) When a prosecutor decides to prosecute a defendant against whom a preventive measure was ordered, the indictment, together with the case file, shall be forwarded to the court of competent jurisdiction, at least 5 days prior to the expiry of its term.

(2) Within 3 days of the case file registration, the court shall establish *ex officio* the lawfulness and validity of such preventive measure, prior to the expiry of its term, and summon the defendant.
(3) The provisions of art. 235 para. (4) - (6) shall apply accordingly.

(4) When they find that the grounds having determined the taking of a preventive measure are still in place or that new grounds exist that justify a preventive measure, the court shall order, through a court session report, the maintaining of such preventive measure against the defendant.

(5) When they find that the grounds having determined the taking or extension of a pre-trial arrest measure have ceased and there are no new grounds justifying it, or in the event of occurrence of new circumstances, which confirm the unlawfulness of such preventive measure, the court shall order, through a court session report, its revocation and the release of the defendant, unless they are arrested in another case.

(6) Throughout the trial, the court, *ex officio*, shall check regularly, but no later than 60 days, whether the grounds which resulted in maintaining the preventive measures against the defendant still subsist or whether there are new grounds justifying the continuation of

such measures. The stipulations of para. (3) - (5) shall apply accordingly.
(7) During the verification performed for the preventive measures, the court may also order for the obligations included therein to be amended.

119. Article 208[1] is hereby repealed.

120. Under article 120, paragraph (11) is hereby amended, as follows:
"(11) A suspect or defendant taken into custody, based on his/her request, shall be handed a copy of the prosecutorial order stipulated under para. (10) together with all evidence adduced."

121. Article 211 is hereby amended as follows:
"Art. 211. – (1) During the criminal investigation, a prosecutor may order the taking of a judicial control measure against a defendant, for a period of maximum 30 days that can be extended with a maximum of 150 days, if such preventive measure is necessary for the attainment of the purpose set by art. 202 para. (1).
(2) The court, during the trial, may order a judicial control measure against a defendant, for a period of maximum 30 days that can be extended with a maximum of 150 days if the requirements under para. (1) are met."

122. Article 213 paragraph (2) is hereby amended, as follows:
"(2) The Judge for human rights and liberties notified as per para. (1) shall set a term for its resolution in chambers and shall order summoning of the defendant. The challenge lodged by the defendant must be ruled upon within 5 days since it had been registered."

123. **Article 214 is hereby amended, as follows:**
"Judicial control measure ordered by the court
Art. 214. – (1) The court with which the case is pending may order, through a court session report, the implementation of a judicial control measure against a defendant, based on a reasoned application from the prosecutor or *ex officio* for a period of maximum 30 days that can be extended with a maximum of 150 days.
(2) The court notified as per para. (1) shall order summoning of the defendant. Hearing of the defendant is mandatory if they attend in court on the set term.
(3) Presence of the defendant's counsel and participation of the prosecutor are mandatory."

124. **Under article 215, paragraph (1) letter a) is hereby amended, as follows:**
"a) to appear before the criminal investigation body or the court whenever they are summoned."

125. Under article 215, paragraphs (6), (7) and (9) are hereby amended, as follows:

(6) The institution, body or authority set under para. (4) periodically checks the observance of obligations by the defendant, and if it finds violations shall immediately notify the prosecutor, during the criminal investigation, or the court, during the trial.
(7) If, during the term of a judicial control measure, a defendant breaches in ill-faith their obligations or there are clear and convincing evidence or indications that they intentionally committed a new offence in respect of which initiation of a criminal action against them was ordered, the judge for human rights and liberties, or the court, upon request by the prosecutor or *ex officio*, may order the replacement of this measure by a house arrest measure or a pre-trial arrest measure, under the terms set by the law.
[…]
(9) The stipulations of para. (8) first recital shall apply accordingly during the trial, when the court decides, through a court session report, upon justified request by the prosecutor or the defendant or *ex officio*, after hearing the defendant. The court session report may be challenged according to the terms of art. 206, which apply accordingly."

126. **Under article 215[1], paragraphs (7) and (8) are hereby amended, as follows:**
(7) The court, during trial, may order the judicial control measure against the defendants for a period of maximum 60 days.
(8) During trial, the total maximum duration of judicial control may not exceed a reasonable term and, in all cases, may not exceed 5 years since indictment."

127. **Under article 216, paragraph (2) is hereby amended, as follows:**
"(2) The court, during the trial, may order judicial control on bail against a defendant if the requirements under para. (1) are met."

128. **Under article 217, paragraph (9) is hereby amended, as follows**:
"(9) In the event that, during a measure of judicial control on bail, a defendant violates in ill-faith the obligations resting upon them, or there are clear and convincing evidence or indications that they committed a new offence with direct intent in respect of which initiation of a criminal action against them was ordered, the judge for human rights and liberties or the court, upon justified application by the prosecutor or ex officio, may order replacement of this measure by a house arrest or a pre-trial arrest measure, under the law."

129. **Under article 218, paragraph (1) is hereby amended, as follows**:
"Art. 218. – (1) House arrest is ordered by the Judge for human rights and liberties or by the court, if the requirements set by Art. 223 para. (1) are met and if such measure is necessary and sufficient for the attainment of one of the purposes set by Art. 202 para. (1)."

130. Under Art. 218, following paragraph (1), a new paragraph is hereby inserted, paragraph (1[1]), as follows:

"(1[1]) The defendant may be put under house arrest also if the reasonable suspicion results from the evidence that he/she has committed an offence punishable with a term of imprisonment of 5 years or more and, cumulatively, if based on assessing the serious nature of the act, the manner and circumstances of committing that act, the group and background, criminal record and other personal circumstances of the defendant, it is found that it is absolutely necessary to deprive him/her of liberty, in order to remove a specific threat for public order."

131. Under article 218, paragraph (3) is hereby amended, as follows:
"(3) Such measure may not be ordered against a defendant in whose respect there are clear and convincing evidence that he committed an offence against a family member and in relation to which the defendant previously received a final conviction for an escape offence."

132. The title of article 220 is hereby amended as follows:
"Order for house arrest by the court"

133. Under article 220, paragraphs (1)-(3) are hereby amended, as follows:
"Art. 220. – 1) The court with which the case is pending may order, through a court session report, a defendant put under house arrest, upon justified application by the prosecutor or *ex officio*, if there are new reasons which require deprivation of freedom.
(2) The court, notified as per para. (1), shall order summoning of the defendant. Hearing of the defendant is mandatory if they appear on the set hearing term.
(3) Provision of legal assistance to the defendant and the prosecutor's attendance are mandatory."

134. Under Art. 218, following paragraph (4), a new paragraph is hereby inserted, paragraph (5), as follows:

"(5) House arrest against the person who had been the subject of another custodial measure, except for remand, may not be ordered on the same grounds which substantiated the order of the first custodial measure, in the absence of new grounds which require his/her deprivation of freedom."

135. Under article 221, paragraph (2) letter a) is hereby amended, as follows:
a) to appear before the criminal investigation body, the judge for human rights and liberties or the court whenever they are summoned."

136. Under article 221, paragraphs (3), (6)-(9) and (11) are hereby amended, as follows:
(3) The judge for human rights and liberties or the court may order that, during house arrest, a defendant permanently wear an electronic surveillance system**.**

[…]

(6) Based on a written and justified request from the defendant, the Judge for human rights and liberties or the court, through a court session report, may allow them to leave the building in order for them to go to their working place, to education or professional training courses or to other similar activities or for the purpose of procuring their essential living means, as well as in other well-grounded situations, for a limited time period, if this is necessary for the exercise of certain legitimate rights or interests of the defendant.
(7) In emergency cases, for well-grounded reasons, a defendant may leave the building without the permission of the judge for human rights and liberties or of the court, during a strictly necessary time period, by informing immediately on this the institution, body or authority appointed in charge of their supervision and the judicial bodies having taken the house arrest measure or with which the case is pending.
(8) A copy of the court resolution by the Judge for human rights and liberties or of the Court ordering a house arrest measure shall be communicated forthwith to the defendant and to the institution, body or authority appointed in charge of their supervision, to the law enforcement body within the territorial jurisdiction of which they lives, to the public community statistics service, and to border authorities.
(9) The institution, body or authority appointed in charge of a defendant supervision by the judicial bodies having ordered house arrest regularly checks observance of the measure and of their obligations by the defendant, and if it finds breaches of these, shall immediately notify the prosecutor, during the criminal investigation, or the court, during the trial.

[…]

(11) In the event that a defendant breaches in ill-faith a house arrest measure or the obligations resting upon them, or there are clear and convincing evidence or indications that they committed a new offence with direct intent in respect of which a criminal action was initiated against them, the Judge for human rights and liberties or the court, upon justified request by the prosecutor or *ex officio*, may order the replacement of house arrest by pre-trial arrest, under the terms set by the law.

137. **Under article 222, paragraph (12) is hereby amended, as follows:**
"(12) During trial, the house arrest measure may be ordered over a maximum period of 30 days. The stipulations of art. 239 shall apply accordingly."

138. Under article 223, the introductory paragraph and letter d) of paragraph (1) shall be amended as follows:
"Art. 223. – (1) Pre-trial arrest may be ordered by the Judge for human rights and liberties, during the criminal investigation, or by the Court with which the case is pending, during the trial, only if evidence generate clear and convincing evidence that the defendant committed an offence and if one of the following situations exists:

[…]

d) that, after the initiation of the criminal action against them, the defendant committed a new offence with intent or is preparing to commit new offence."

139. Under article 223, paragraph (2) is hereby amended, as follows:
"(2) Pre-trial arrest of the defendant can also be ordered if the evidence lead to the conclusion that they committed a offence with direct intent against life, an offence having caused bodily harm or death of a person, an offence against national security as under the Criminal Code and other special laws, an offence of corruption, drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism or aiming at terrorism, counterfeiting of currency or other securities, blackmail, rape, deprivation of freedom, assault of an official, judicial assault, robbery, piracy through threat, offences against the fighting capacity of armed forces, genocide, offences against humanity or war crimes, establishment of an organized crime group, theft, aggravated destruction of property, embezzlement, electoral offences, offences against safety and traffic on public roads, against justice, pimping, sexual intercourse with a minor, sexual aggression by threat, failure to comply with the rules for using weapons and ammunition, failure to comply with the rules for using nuclear materials, failure to comply with the rules for using explosive substances, trafficking and exploitation of vulnerable persons, performing illegal activities involving drug precursors or with other products able to produce psycho-active effects or another violent crime and, cumulatively, based on an assessment of the seriousness of facts, of the manner and circumstances under which it was committed, or the entourage and the environment from where the defendant comes, of their criminal history and other circumstances regarding their person, it is found that their deprivation of freedom is necessary in order to eliminate a specific threat to public order".

140. **Under Art. 223, following paragraph (2), a new paragraph is hereby inserted, paragraph (3), as follows:**
"(3) To assess the specific threat to public order, the pre-trial arrest proposal and the court decision ordering such a preventive measure issued by the judge must indicate the factual and personal circumstances indicating that an effective, real and imminent threat to public order exists. Generic and abstract arguments may not be called upon and acknowledged in substantiating such a measure."

141. **Under Art. 226, following paragraph (1), a new paragraph is hereby inserted, paragraph (1^1), as follows:**
"(1^1) The judge who ordered the pre-trial arrest must provide a rationale for the measure, justifying specifically the manner in which the specific threat to public order is removed."

142. **Under article 228, paragraph (1) is hereby amended, as follows:**
"Art. 228. – After such measure is ordered, the defendant shall be informed forthwith, in a language they understand, of the reasons why pre-trial arrest was ordered."

143. Under article 231, paragraphs (4)-(6) are hereby amended, as follows:
(4) Law enforcement bodies shall proceed to the arrest of the person indicated in the warrant, to whom a copy of the warrant shall be handed, in one of the ways established under para. (1) or (2), after which they shall take the person, within maximum 24 hours, before the Judge for human rights and liberties having ordered the pre-trial arrest or to the judicial panel with which the case is pending settlement.
(5) For the enforcement of a pre-trial arrest warrant, law enforcement bodies may enter the domicile or residence of any natural person, without their permission, as well as the premises of any legal entity, without permission from its legal representative, if there are clear and convincing indications generating the conclusion that the person indicated in the warrant is at that domicile or residence.
(6) In the event that the pre-trial arrest of a defendant was ordered in absentia due to health condition, to a force majeure event or a state of necessity, the defendant shall be brought, upon cessation of such reasons, before the Judge for human rights and liberties having ordered the measure or, as applicable, the judicial panel with which the case is pending disposition."

144. Under art. 235, paragraph (1) is hereby amended, as follows:
„(1) A proposal to extend pre-trial arrest shall be submitted along with the case file with the Judge for human rights and liberties, at least 5 days before the pre-trial arrest term expires; failure to do so shall be sanctioned as set forth in art.268 para.(1)."

145. Article 238 is hereby amended to read as follows:

"**Pre-trial detention of the defendant during trial"**

Art. 238. – (1) Pre-trial detention of the defendant can be ordered during the trail by the court the case is brought to, ex officio, or upon the justified proposal of the prosecutor, for a period of 30 days at most, based on the same grounds and in the same conditions as the pre-trial detention ordered by the judge for rights and liberties during the criminal pursuit. The provisions of art. 225 – 232 are adequately applied.

(2) The measure provided by para. (1) can be ordered by the court within the composition provided by the law. In this case, the pre-trial detention mandate is issued by the chairman of the panel of judges.

(3) As regards the defendant previously pre-trial detained in the same case during the criminal pursuit or the trial, this measure can be ordered again only if new grounds occurred imposing his/her detention."

146. Under article 239, paragraph (2) is hereby amended to read as follows:

"(2) The terms set out in para. (1) start running as of the date when the court was seized, in case the defendant is in custody awaiting trial, or as of the date when such measure is enforced, when pre-trial arrest during preliminary chamber procedure or during trial or in absentia was ordered against them."

147. Under article 240, paragraph (1) is hereby amended to read as follows:

"Art. 240. – (1) If, based on medical documents, it is ascertained that a defendant placed in pre-trial arrest suffers from a disease that cannot be treated in the medical network of the National Administration of Penitentiaries, the management of the detention facility orders that such defendant be treated in the medical network of the Ministry of Health under constant guard. The reasons that led to this measure shall be communicated immediately to the prosecutor, during the criminal investigation, or to the Court, during the trial."

148. Under article 241, paragraphs (2) and (3) are hereby amended to read as follows:

"(2) The judicial body ordering such measure or, as appropriate, the prosecutor, the Judge for Rights and Liberties, or the court with which the case is pending, ascertains, by prosecutorial order or court resolution, *ex officio,* upon request or notification by the detention facility's management, the lawful cessation of preventive measures, and order the immediate release of the person held in custody or pre-trial arrest, unless they are held in custody or arrested in another case.

(3) The Judge for Rights and Liberties, or the court shall determine, by a reasoned court resolution, the lawful cessation of the measure even in the absence of the defendant. Providing legal assistance to the defendant and the prosecutor's attendance are mandatory."

149. Under article 242, paragraphs (3), (4^1), (5), (7) and (10) – (12) are hereby amended to read as follows:

"(3) A preventive measure is to be replaced, *ex officio* or upon request, by a harsher preventive measure, if the requirements provided by law for its ordering are met, if the grounds based on which the measure had been taken changed and, after an assessment of the case's specific circumstances and the defendant's procedural conduct, it is deemed that the harsher preventive measure is necessary for the purpose set by Art. 202 para. (1).

[…]

(4^1) During the criminal investigation, the revocation of preventive measures of judicial supervision and of conditional bail, as well as the replacement of such measures with one another are ordered by the prosecutor, if the measure was not taken by the Judge of Rights and Liberties.

When replacing the preventive measures of judicial supervision by the conditional bail, the provisions of Art. 216 para. (1) and (3) and of Art. 217 shall be applied as appropriate.

[…]

(5) An application for revocation or replacement of a preventive measure filed by the defendant shall be submitted, in writing, to the Judge for Rights and Liberties, or to the court, as appropriate.

[…]

(7) In order to rule on such application, the Judge for Rights and Liberties, or the court shall set a date for the disposition hearing and shall order summoning of the defendant.

[…]

(10) If an application concerns the replacement of a pre-trial arrest or house arrest measure with a judicial measure of control on bail, if such request is justified, the Judge for Rights and Liberties, or the court, by a reasoned court resolution, rendered in chambers, sustains in principle the request and establishes the amount of bail, by granting to the defendant a term to post such bail.

(11) If the bail is posted within the set term, the Judge for Rights and Liberties, or the Court shall sustain by court resolution returned in chambers the replacement of such preventive measure by judicial control on bail, establish the obligations incumbent on the defendant during such measure and order the immediate release of the defendant, unless arrested in another case.

(12) If the bail is not posted within the set term, the Judge of Rights and Freedoms, or the court, by a court resolution returned in chambers, in the defendant's absence shall deny the defendant's application as unfounded".

150. Under article 245, paragraphs (1) and (3) are hereby amended to read as follows:

"Art. 245. – (1) The Judge for Rights and Liberties, during the criminal investigation, or the Court, during the trial, may order temporary compelling of a suspect or defendant to undergo medical treatment, if they are in the situation provided by art. 109 para. (1) of the Criminal Code.

[…]

(3) The Judge for Rights and Liberties shall rule on the measure referred to in para. (1) in chambers, by a reasoned court resolution. The court shall decide upon the measure by a reasoned court resolution."

151. Under article 246, paragraphs (1), (9), (10), (12) and (13) are hereby amended to read as follows:

"Art. 246. – (1) During the criminal investigation, if the prosecutor deems that the requirements provided by law are met, he submits to the Judge for Rights and Liberties of the court on which would rest the competence of jurisdiction to settle the case in first instance a reasoned application to temporarily compel a defendant to undergo medical treatment.

[…]

(9) If after enforcement of such measure, the suspect or defendant recovers or their health condition improves, thus eliminating any threat for public safety, the Judge for Rights and Liberties who has enforced such measure, upon notification by the prosecutor or a specialist physician or upon request by the suspect or defendant or by a member of their family, may order cancellation of such measure. The stipulations of para. (2) - (7) shall apply accordingly.

(10) If, after enforcing such measure, the court is notified by indictment, cancellation of such measure may be ordered, according to para. (9), by the Court before which the case is pending.

[…]

(12) If a suspect or defendant violates in ill-faith a temporary compelling to undergo medical treatment, the Judge for Rights and Liberties, or the court ordering such measure or before which the case is pending shall order, upon notification by prosecutor or by specialty physician or *ex officio*, the suspect's or defendant's temporary hospital admission, as provided by Art. 247.

(13) In case a non-indictment is decided, the prosecutor notifies the court to take, confirm or, by the case replace or cease the measure. The court, in chambers and with the prosecutor's participation hears, if possible, the person subject to the temporary measure, in the presence of his/her attorney and after a medical-legal examination, pronounces by a reasoned decision.

. The session report can be challenged within 3 days since its pronouncing, challenge solved by the hierarchically superior court to the notified one, or, by the case, by the competent panel of judges of the High Court of Justice, in the Cambers."

152. Under article 247, paragraph (1) is hereby amended to read as follows:

"Art. 247. – (1) The Judge for Rights and Liberties, during the criminal investigation, or the Court, during the trial, may order temporary hospital admission of a suspect or defendant who is mentally ill or a chronic user of psychoactive substances, if such measure is needed to eliminate a concrete and present threat to public safety."

153. Under article 248, paragraphs (1), (11) and (12) are hereby amended to read as follows:

"Art. 248. – (1) During the criminal investigation if the prosecutor deems that the requirements provided by law are met, he submits a reasoned application to the Judge for Rights and Liberties of the court on which would rest the competence of jurisdiction to settle the case in first instance to temporarily admit a suspect or defendant to a hospital.

[…]

(11) If after enforcement of such measure, the suspect or defendant recovers or their health condition improves, thus eliminating any threat for public safety, the Judge for Rights and Liberties who enforced such measure, by a court resolution, upon notification by the prosecutor or the attending physician or upon request by the suspect or defendant or by

a member of their family, may order the conducting of a psychiatric forensic medical examination so as to cancel the enforced measure.

(12) If, after ordering such measure, the court was notified by indictment, cancellation of such measure may be ordered, according to para. (11), by the Court before which the case is pending."

154. Under article 249, paragraph (4) is hereby amended to read as follows:

"(4) The asset freezing measures for the special confiscation or the extended confiscation can be taken over the goods of the suspect or defendant or of other persons in whose property or possession toe goods to be confiscated are, if there are well grounded evidence or indications that the respective goods were obtained from criminal activities. The asset freezing measures cannot exceed a reasonable period and will be revoked if such period is exceeded or if the ground considered when taking the asset freezing measures no longer apply."

155. Under article 249, following paragraph (4) a new paragraph is inserted, para. (4^1), reading as follows:

"(4^1) In case of goods making the object of special confiscation or of extended confiscation, the prosecutor is obliged to take the asset freezing measures to avoid hiding, destruction, alienation or avoidance of such goods from pursuit."

156. Under article 249, paragraph (5) is hereby amended to read as follows:

"(5) The asset freezing measures taken to repair the damage produced by infraction and to secure the execution of judicial expenses can be taken over the goods of the suspect or the defendant and of the civil liable person up to the meeting of their probable value. In view of setting up the value of goods over which security measures are instated, the judicial bodies instating the measure are bound to order a valuation examination or the determination of goods value based on the grids used by the Chamber of Notaries Public."

157. Under article 250, paragraphs (5^1) and (6) are hereby amended and will read as follows:

"(5^1) If until the challenge settlement according to para. (1), the court was notified by indictment, the challenge is forwarded to it for a competent settlement. The court settles the challenge by a final decision.

(6) Against the manner in which such asset freezing order is enforced by the Court, the prosecutor, the suspect or the defendant or any other interested person may file a challenge with that judge or court, within 3 days since the enforcement of such measure."

158. Under article 250^1, paragraphs (1) and (2) are hereby amended and will read as follows:

"Art. 250^1. – (1) Against the decision or the sentence through which the court of law of the court of appeal imposed an asset freezing measure, the defendant, the prosecutor or any other interested person may file a challenge within 48 hours since the decision was issued, or by the case communicated. The challenge is filed, by the case with the court of law or the court of appeal which pronounced the attached decision and is forwarded, together with the case file to the higher-level court within 48 hours since its registration.

(2) The challenge against the decision or the sentence through which the Criminal Section of the High Court of Justice, took an asset freezing measure in the first instance or at the appeal and settled by the Panel of 5 Judges."

159. Under article 250[1], following paragraph (3) a new paragraph is inserted, para. (4), reading as follows:

"(4) If the assets freezing measure is ordered directly by the decision of the court of appeal, the provisions of para. (1) – (3) are applied accordingly."

160. Following Article 250[1] a new Article is inserted, Art. 250[2], reading as follows:

"**Removal, upon request, the asset freezing measures**

Art. 250[2]. – (1) During the whole criminal trial, asset freezing measures can be removed, totally or partially, by the judicial body before which the case is pending, *ex officio*, or upon the request of the interested person, if it no longer applies or the circumstances imposing such measures were changed. During the trial, the application to remove the asset freezing measures can also be made by the prosecutor.

(2) Removal of the asset freezing measure is ordered by the prosecutor through order and by the court session report of the court of law or of the court of appeal.

(3) Against the order or the court session report deciding the removal of asset freezing measure or the asset freezing measure rejection, the interested person, or, by the case, the prosecutor can file a challenge, the provisions of Art. 250 and 250[1] being applied appropriately. The challenge against the order or the session report deciding the removal of asset freezing measure shall suspend enforcement."

161. Article 251 is hereby amended and will read as follows: "Bodies enforcing asset freezing

Art. 251. – The order or session report to take asset freezing measure is enforced by the criminal investigation bodies, as well as by the competent bodies according to the law, by the decision of criminal investigation body or of the court of law, by the case."

162. Under article 252, paragraph (6) is hereby amended and will read as follows:

"(6) The objects referred to under para. (4) and (5) shall be delivered within 48 hours of their collection. If such items are strictly necessary to the criminal investigation, or to the trial, their delivery shall be made subsequently, but no later than 48 hours of the return of a final court decision in the case in question."

163. Under article 252[3], paragraph (3) is hereby amended and will read as follows:

"(3) As regards the sale of the seized movable assets, and the applications referred to in para. (2), the court shall rule by reasoned court resolution."

164. Under article 252[3], following (3) a new paragraph is inserted, para. (4), reading as follows:

"(4) The decision provided by para. (3) can be challenged with higher level court, respectively the competent panel of judges of the High Court of Justice by the

parties, custodian, prosecutor, as well as by any other interested person, the provisions of Art. 252^2 para. (4) – (7) being appropriately applied."

165. Under article 252^4, paragraph (1) is hereby amended and will read as follows:

"Art. 252^4. – (1) Against the enforcement of the decision provided by Art. 252^2 para. (3) or of the court decision to sell the seized movable goods, provided by Art. 252^2 para. (7), by Art. 252^3 para. (3) or Art. 252^3 para. (4), the suspect or defendant, the civil liable party, the custodian or any other interested party, as well as the prosecutor can make a challenge during the criminal trial with the competent court to settle the case in the first instance."

166. Under article 253, paragraph (4) is hereby amended and will read as follows:

"(4) In case of seized real estate, the prosecutor, or the Court having ordered the measure shall demand the relevant body to make a mortgage registration of the property seized and enclose a copy of the order or court resolution whereby the seizure was ordered and a copy of the seizure minutes."

167. Under article 254, paragraph (2) is hereby amended and will read as follows:

"(2) The money amounts referred to in para. (1) shall be deposited by debtors, as applicable, at the disposal of the judicial body having ordered the garnishment or of the enforcement body, within 5 days of their due date, the receipts to be surrendered to the prosecutor, or to the court within 24 hours of their depositing."

168. Under article 255, paragraph (1) is hereby amended and will read as follows:

"Art. 255. – (1) If the prosecutor or the Judge for Rights and Liberties, during the criminal investigation, or the Court, ascertain, upon request or *ex officio*, that the assets seized from a suspect or defendant or from any other person who received such assets for safekeeping are owned by the victim or by any other person or have been abusively taken from their holders or owners, they shall order the return of such assets. The provisions of Art. 250 shall apply accordingly."

169. Under article 260, paragraph (3) is hereby amended and will read as follows:

"(3) In case the registered letter with a summons to a suspect or defendant living abroad cannot be handed to them, and also in case the law of the state of the recipient does not allow summons send by mail, the summons shall be posted at the head office of the prosecutor's office or court, as the case may be, including the entries stipulated in para. (2)."

170. Under article 261, paragraphs (3) and (5) are hereby amended and will read as follows:

"(3) The receiver of the summons shall sign a proof of reception, and the procedural agent, attesting their identity and signature, shall write a Minute. If proof of reception is denied or cannot be provided, the agent shall post the summons on that dwelling's door and writes a notification including the entries stipulated in para. (4) in conclusion of the Minutes.

[…]

(5) If the summoned person lives in a building of several apartments or in a hotel, if the summons does not mention the number of the apartment or room the person lives in, the agent shall investigate in order to find it out. If the investigations are fruitless, the agent shall post the summons on the main door to the building, writes a report about it including the entries stipulated in para. (4) and in concluding the Minutes, describes the circumstances that made it impossible to hand over the summons."

171. Under article 265, paragraph (2) is hereby amended and will read as follows:

"(2) A suspect or a defendant can be brought in by bench warrant even before having been summoned, only in exceptional circumstances and if such step is required in the interest of settling the case."

172. Under article 265, following paragraph (12) two new paragraphs are inserted, para. (13) and (14), reading as follows:

"(13) Before the enforcement of a bench warrant against a suspect or defendant, he is informed about the accusation by being handed over a continuation order of criminal investigation, respectively the order of criminal investigation initiation and he is made aware of his right to give no statement and to hire an attorney.

(14) The enforcement body of a bench warrant will confirm the meeting of obligations provided in pa. (13) in a Minutes to be signed by the suspect or the defendant and by the enforcement body. In case the suspect or the defendant refuses to sign, the enforcement body will specify and reason of that refusal."

173. Article 267 is hereby amended and will read as follows:

"**Access to electronic data bases**

Art. 267. – (1) In order to complete the summons procedure, communicating the procedural acts or bringing in under warrant before the jurisdictional body, the prosecutor or the court of law have a right of direct access to electronic databases held by the divisions of person's registration and to the databases management.

(2) The bodies of the state administration that hold electronic databases are under an obligation to cooperate with the prosecutor or the court of law so as to provide them with direct access to the information in the electronic databases of the divisions of person's registration and to the databases management."

174. Under article 274, the side name and paragraph (1) are hereby amended to read as follows: "**Reimbursing expenses covered by the State in advance in case of dropping charges, conviction, postponement of penalty enforcement or waiving penalty enforcement**

Art. 274. – (1) In case of dropping charges, conviction, postponement of penalty enforcement, or waiving penalty enforcement, the defendant shall be compelled to cover the judicial expenses paid by the State, except for public defender fees and the fees for interpreters appointed by the judicial bodies, which will remain the charge of the State. The expenses amount will be justified by expense notes submission spreading down all the expenses borne by the State by type of activities and institutions

175. Under article 275 paragraph (1), introductive part of section 3 and letter b) are hereby amended to read as follows:

"3. in case the defendant requests that the criminal trial continues by:

[…]

b) the suspect or the defendant, when the case is dismissed for reasons other than those in Art. 16 para. (1) letters a) - c) or the criminal trial is discontinued;"

176. Under article 275 paragraph (1), point 4 is repealed.

177. Under article 275 paragraph (5) is hereby amended and will read as follows:

"(5) The stipulations of para. (1) pct. 1 and 2 and para. (2) - (4) shall apply accordingly, also as regards the suspect, in the situation where a case is dismissed during the criminal investigation and in the situation where a challenge against acts and steps taken by the criminal investigation bodies is denied."

178. Under article 276, paragraph (1) is hereby amended and will read as follows:

"Art. 276. – (1) In case of a conviction or enforcement of an educational measure, dropping the criminal investigation, postponement of penalty enforcement or waiving penalty enforcement, the defendant shall be compelled to cover the judicial expenses for the victim and for the civil party whose civil action was sustained."

179. Under article 276, following paragraph (5) a new paragraph is inserted, para. (5^1), reading as follows:

"(5^1) In case of acquittal, the state will be compelled to pay the defendant his judicial expenses." Under article 278, paragraph (1) is hereby amended and will read as follows:

"Art. 278. – (1) Obvious material errors in the text of a procedural act shall be corrected by the criminal investigation body itself, by the Judge for Rights and Liberties or by the Court that wrote the act, on request by the interested party or ex officio."

180. Under article 281 paragraph (1), letter b) is hereby amended and will read as follows:

A.

" b) the substantive jurisdiction and by quality of the person, of the criminal investigation body, the substantive jurisdiction and personal jurisdiction of courts of law, when the criminal investigation, respectively the trial took place in a court/by a criminal investigation body that is lower by substance of the person's quality;"

Under article 281 paragraph (4), letters a) and b) are hereby amended and will read as follows:

[…]

a) until the final judgement of the session report stipulated by art. 370^2, if the violation occurred during the criminal investigation or during the procedure stipulated by art. 370^1 –370^4;

b) at any stage of the procedure, if the violation occurred during the trial, after the session report remained final as stipulated by art. 370^2;"

181. Under article 282, paragraph (2) and letter a) of paragraph (4) are hereby amended and will read as follows:

"(2) Relative nullity can be raised by the prosecutor, suspect, defendant, the other parties or the victim, when they have their own procedural interest in having compliance with the legal rule that was violated, as well as ex officio, by the Judge of Right and Liberties and by the court of law.

[…]

a) during the whole criminal investigation and the latest until trial term stipulated by 370^2 para. (1), if the violation occurred during the criminal investigation;"

182. Under article 282 paragraph (4), following letter a) a new letter in inserted, lit. a^1), reading as follows:

„a^1) until the final judgement of the session report stipulated by art. 370^2, if the violation occurred within the procedure stipulated by art. 370^1– 370^4;"

183. Under article 282 paragraph (4), letter c) is hereby amended and will read as follows:

„c) until the next trial term with full procedure, if the violation occurred during the judgement, after the final judgement of the session report stipulated by art. 370^2."

184. Under article 284, paragraphs (1), (3) and (5) are hereby amended and will read as follows:

"Art. 284. – (1) The fine shall be ordered by the criminal investigation body by an order, and by the Judge for Rights and Liberties, and by the Court, by adjudication.

[…]

(2) If the person who was fined can provide justification for why they failed to comply with their obligation, the Judge for Rights and Liberties, or the Court can rule to nullify or reduce the fine.

[…]

(5) The motion for nullification or reduction of the fine resulting from an adjudication shall be settled by another Judge for Rights and Liberties, or another judicial panel, by adjudication."

185. Under article 287, paragraph (2) is hereby amended and will read as follows:

"(2) In the situations where the prosecutor refers a matter to the Judge for Rights and Liberties, or other authorities stipulated by law, with a request to rule on proposals or motions formulated during the criminal investigation, the prosecutor shall submit numbered copies that are certified by the prosecutor's office Registrar from the documents in the case, from the documents that are linked to the formulated motion or proposal. The criminal investigation body shall keep the original of the documents so as to continue their criminal investigation."

186. Following article 287 a new article is inserted, art. 287^1, reading as follows:

"**Sending in electronic format some intimation documents**

Art. 287^1. – The indictment as well as any other intimation documents of the court or of the Judge of Rights and Liberties are sent to them by the prosecutor also in electronic format."

187. Under article 290, following paragraph (1) two new paragraphs are inserted, para. (1^1) and (1^2), reading as follows:

"(1^1) For a person to benefit from the provisions on reducing the penalty limits, the denunciation should be submitted no later than 1 year after the date when the person acknowledged that the offence was committed.

(1^2) The conviction, waiver of penalty or delay of penalty may not be ordered exclusively based on the informant's testimony, unless this is accompanied by other evidence."

188. Article 292 is hereby amended and will read as follows:

"**Ex officio action**

Art. 292. – (1) The criminal investigation body shall take action ex officio on learning of a criminal offence from any other source than those stipulated in art. 289 – 291 and concludes a Minutes in this sense. The criminal investigation body will concretely show in the Minutes the circumstances in which he found out about the offence.

(2) After the ex officio action, the criminal investigation body registers the Minutes in his records and assigns at random the file to a prosecutor."

189. Under article 293, paragraph (2) is hereby amended and will read as follows:

"(2) Also considered "in the act" is an offence whose perpetrator, immediately after commission, is chased by the public order and national security bodies, by the victim, by eye-witnesses or public outcry, or displays signs that justify probable cause to suspect they have committed the offence or is caught close to the crime scene carrying weapons, instruments or any other objects of a nature to implicate them in the offence."

190. Under article 305, paragraph (1) is hereby amended and will read as follows:

"Art. 305. – (1) When the indictment meets the conditions required by law, it is found out that none of the cases preventing criminal action as under Art. 16 paragraph (1) apply and the names of the suspects are indicated, the criminal investigation body shall order the criminal investigation to start on the act and perpetrators. In case of hearings, the indicated or known author is appropriately applied the procedure stipulated in art. 107 – 110." Under article 305, following paragraph (1) a new paragraph is inserted, para. (1^1), reading as follows:

"(1^1) In all other situations than those listed under paragraph (1), the criminal investigation body shall order the start of the criminal investigation in rem. Within maximum 1 year from the beginning of the in rem criminal investigation, the criminal investigation body must either start the criminal investigation of the person, if the legal requirements are met, or close the case."

191. Under article 305, paragraph (3) is hereby amended and will read as follows:

"(3) When the existing data and evidence in the case constitute probable cause to believe that a certain individual has committed the offence that warranted the start of the criminal investigation and there is none of the cases stipulated in art. 16 para. (1), the criminal investigation body shall order that the criminal investigation continues in relation to

that individual, and the latter shall acquire the capacity of suspect. The measure ordered by criminal investigation body is submitted within 3 days to the confirmation of the prosecutor supervising the criminal pursuit, the criminal investigation body being compelled also to forward the case file. The order imposing the continuation of criminal investigation against the suspect, issued or, by the case confirmed by the prosecutor shall be notified to the suspect."

192. Article 307 is hereby amended and will read as follows:

"**Notification about the capacity of suspect**

Art. 307. – (1) The person who has acquired the standing of suspect shall be informed, before their first hearing, on that capacity, on the actions they are a suspect for, together with the description of all their constitutive elements and of the evidence indicating that the fact was committed, on the legal classification of the action, on their procedural rights under Art. 83, and a report shall be written to that effect. Lack of these elements shall trigger absolute nullity of further prosecution of the suspect.

(2) When the requirements provided by Art. 305 para. (1) are fulfilled and when the person against whom there are clear and convincing indications is known, the prosecution body shall inform without delay on the standing as suspect, under penalty of absolute nullity of all prosecution acts carried out in breach of this provision after the identification of the person.

(3) The criminal investigation body may continue prosecution without informing on the standing of the suspect, according to the terms of para. (1) and (2) only when the person against whom such clear and convincing indications exist is unjustifiably absent, is absconding or missing."

193. Under article 308, paragraph (4) is hereby amended and will read as follows:

"(4) The provisions of para. (1) – (3) are appropriately applied to the hearing of the underage or civil party witness, as well as to the hearing of the victim if, as regards their person or the case nature, the judge regards the avoidance of a repeated hearing during the trial to be in their interest."

194. Under article 309, paragraph (3) is hereby amended and will read as follows:

"(3) The defendant is conveyed a copy of the order through which the measure was decided."

195. Under article 311, paragraphs (2) and (3) are hereby amended and will read as follows:

"(2) When the criminal investigation is conducted against a person, the extension or change of legal classification ordered by the criminal investigation body is submitt3ed to the reasoned confirmation of the prosecutor supervising the criminal investigation, within 3 days at most since the date or order issuance, the criminal investigation body being compelled also to forward the case file.

(3) The judicial body that ordered the extension of the scope of prosecution or the change of legal classification is under an obligation to inform the suspect or the defendant about the new facts that warranted the extension of the scope or, by the case the change of legal classification."

196. Under article 312, after paragraph (1) two new paragraphs are inserted, para. (1^1) and (1^2), reading as follows:

„ (1^1) The prosecutor orders criminal investigation suspension only if, considering all the case circumstances, he appreciates that the suspect or the defendant could not be heard where he is or by a video conference, or that his hearing in such a way would impair his rights or the good performance of the criminal investigation.

(1^2) If the criminal investigation is not suspended, the hearing of the suspect or the defendant in the place where he is or by video conference can take place only in the presence of the attorney."

197. Under article 315 paragraph (2), letters c) – e) are hereby amended and will read as follows:

"c) initiation of court proceedings with the proposal to take the security measure of special confiscation;

d) initiation of court proceedings with the proposal to totally or partially repeal a document;

e) initiation of court proceedings with the proposal to take, or, by the case, to confirm, replace or cease the security measures provided by art. 109 or 110 of the Criminal Code, provisions of art. 246 para. (13) being applied appropriately;"

198. Under article 318, paragraphs (10) and (12) are hereby amended and will read as follows:

"(10) In the situation provided by para. (12^1), the order deciding the criminal investigation cease is verified for legality and solidity by the prime public prosecutor or, by the case, by the general prosecutor of the prosecutor's office by the Court of Appeal, and if issued by the latter, the verification is performed by the higher rank prosecutor. When the order was issued by a prosecutor of the Prosecutor's Office by the High Court of Justice, it is verified by the head section prosecutor, and when issued by the latter, the verification is performed by the general prosecutor of that prosecutor's office.

[…]

(12) The order deciding the criminal investigation cease, verified according to para. (10), is sent in copy, by the case to the person making the intimation, to the parties, the suspect, the victim or to other interested persons."

199. Under article 318, after paragraph (12) a new paragraph is inserted, para. (12^1), reading as follows:

"(12^1) If there is a suspect or defendant in the case, as well as if there is no victim, the order deciding the criminal investigation cease is forwarded for confirmation, within 10 days since the issuance date, to the judge of the court entitled, according to the law, to rule it in the first instance."

200. Under article 318, paragraphs (13) – (15) are hereby amended and will read as follows:

"(13) In the situation stipulated in para. (12^1), the court sets up the settlement term and orders the summoning of interested persons. If criminal action has been instated in the case, the plaintiff and the defendants can make requests and raise exceptions also regarding the legality of evidences management or of the criminal investigation performance.

(14) The court decides in the chambers, with the prosecutor's attendance, by

reasoned session report pronounced in the chambers, on the legality and solidity of the solution to give up the criminal investigation. The failure to attend of the legally summoned persons does not prevent the settlement of confirmation request.

(15) The court verifies the legality and solidity of the solution to give up the criminal investigation based on the papers and documents in the criminal investigation file and of the admitted new documents and, by session report, admits or rejects the confirmation request made by the prosecutor. In case the confirmation request is rejected, the court:

a) annuls the criminal investigation giving up solution and submits the case to the prosecutor to start or to complete the criminal investigation or, by the case, to initiate the criminal action and complete the criminal investigation;

b) annuls the criminal investigation giving up solution and orders its closing;"

201. Under article 318, after paragraph (15) a new paragraph is inserted, para. (15^1), reading as follows:

"(15^1) In cases where the criminal action initiation is ordered, the court verifies the legality of evidences management and of criminal investigation performance, excludes the illegally managed evidences or, by the case, sanctions according to art. 280 – 282 the criminal investigation acts conducted in law violation. In that case, the court can order one of the solutions stipulated in para. (15) or can order the solution stipulated by art. 341 para. (7) pct. 2 letter c)."

202. Under article 318, paragraph (16) is hereby amended and will read as follows:

"(16) The court session report pronouncing one of the solutions stipulated by para. (15) if final. The court session report pronouncing the annulment of criminal investigation giving up and of trial start stipulated by para. (15^1) can be attacked in the conditions of art. 341 para. (9) and (10)."

203. Under article 318, after paragraph (16) two new paragraphs are inserted, para. (17) and (18), reading as follows:

"(17) IF the court rejected the confirmation request of criminal investigation giving up, a new giving up solution can be ordered for other reasons than those initially considered.

(18) If the order is confirmed to give up criminal investigation, the court notified in this sense by the prosecutor can also order, through the same session report the security measure of special confiscation or the annulment of a document, the provisions of art. 549^1 being applied appropriately."

204. Article 326 is hereby amended and will read as follows:

"Referring the case to another prosecutor's office

Art. 326. – When there are solid evidence or grounds that the criminal investigation work is affected by circumstances of a case or the capacity of the main procedural parties or subjects or there is a threat of public disorder, the Prosecutor General of the Prosecutor's Office by the High Court of Justice, on request from the parties, a procedural subject or ex officio, can transfer the case to a different prosecutor's office of equal rank, the provisions of Art. 73 and 74 shall apply accordingly."

205. Under article 328, after paragraph (1) a new paragraph is inserted, para. (1^1), reading as follows:

"(1^1) To establish the object or limits of the trial, the indictment should mention all the constitutive elements of the action the defendant is charged for, including the subjective aspect and all the evidences supporting each of such elements."

206. Under article 329, paragraphs (2) and (3) are hereby amended and will read as follows:

"(2) After its verification according to art. 328 para. (1), a certified copy of the indictment shall be forwarded to the defendant. The copy can also be sent in electronic format.

(3) In the situation where the defendant does not speak the Romanian language, steps shall be taken to provide a certified translation of the indictment that shall be attached to it. When no certified translators are available, the translation of the indictment shall be performed by a person who can communicate with the defendant."

207. Under article 329, after paragraph (4) a new paragraph is inserted, para. (5), reading as follows:

"(5) The indictment, accompanied by the case file is forwarded to the competent court to judge the case in the first instance after verifying if the procedure stipulated by para. (2) was met. The notification proofs are forwarded together with the case file."

208. Under article 332 paragraph (1), letter b) is hereby amended and will read as follows:

"b) case return to the court;"

209. Under article 334, paragraphs (1) and (2) are hereby amended and will read as follows:

"Art. 334. – (1) The criminal investigation shall resume when the case is sent back to the prosecutor's office as under Art. 370^2 para. (7) let. b).

(2) When the decision relies on the stipulations of 370^2 para. (7) let. a), resumption shall be ordered by the chief prosecutor of that prosecutor's office or by the hierarchically superior prosecutor stipulated by law, only when they find that in order to address the irregularity it is necessary to perform criminal investigation steps. The order to resume the criminal investigation shall also mention the criminal investigation steps to be performed."

210. Under article 335, paragraph (1) is hereby amended and will read as follows:

"Art. 335. – (1) If the prosecutor who is hierarchically superior to the one having closed a case finds afterwards that new facts or circumstances emerged which lead to the conclusion that the circumstance based on which the case was closed is no longer valid, but not later than 6 months since the date he acknowledged the occurrence of the new fact or circumstance, he shall nullify the order to close the case and has the criminal investigation resumed. The provisions of art. 317 are appropriately applied. The reopening is submitted to confirmation, according to para. (4)."

211. Under article 335, paragraphs (2) is repealed.

212. Under article 335, paragraphs (3), (4), (4^1), (5) and (6) are hereby amended and will read as follows:

"(3) When the prosecutor finds that the suspect or defendant has failed, in ill-faith, to comply with their obligations as established under Art. 318 para. (6), the prosecutor shall rescind their order and issue a new order to resume the criminal. The provisions of para. (1) and (2) are also applicable if the prosecutor ordered to give up the criminal investigation and there is no suspect or defendant in the case.

(4) Resumption of the criminal investigation shall be subject to confirmation by the court of law, within no more than 3 days, under penalty of nullification. The court shall rule in a reasoned judgment, in chambers, by summoning the suspect or, by the case the defendant and with the participation by the prosecutor, by reasoned session report pronounced in the chambers, on the lawfulness and solidity of the order to resume the

criminal investigation. The fact that the legally summoned persons do not attend the court session does not prevent the settlement of confirmation request.

(4^1) In settling the confirmation request, the court verifies the lawfulness and solidity of the order resuming the criminal investigation, based on the papers and materials in the criminal investigation file and of any new documents admitted. The court session report is final.

(5) When a case has been closed or charges have been dropped, resumption of the criminal investigation can also take place when the court sustains the challenge against the prosecutor's order or rejected the confirmation request of the order to drop the charges.

(6) If the hierarchically superior prosecutor to the one ordering the solution denies the case closing of the drop of charges before the order including this solution is communicated, the resumption of criminal investigation is not submitted to the confirmation of the court."

213. Under article 339, paragraph (4) is hereby amended and will read as follows:

"(4) Complaints against resolutions to close a case or drop charges, other than those submitted to confirmation according to art. 318 para. (12^1) shall be filed within 20 days of receiving communication of the copy of the act that contains the resolution."

214. Under article 340, the side name and paragraph (1) are hereby amended and will read as follows:

"**Complaints against prosecutor's actions**

Art. 340. – (1) The person whose complaint against an order to close a case or to waive criminal investigation, in other cases than those stipulated by art. 318 para. (12^1), decided by order or indictment was denied as under Art. 339 can, within 20 days of receiving communication about it, file complaint at the court that would have legal jurisdiction to judge the case."

215. Under article 341 the side name and paragraphs (1) – (5^1) are hereby amended and will read as follows:

"**Solving the complaint by the court**

Art. 341. – (1) After the complaint is registered with the jurisdictional court of law, it shall be sent on the same day to the legally vested panel of judges. A complaint filed with the wrong body shall be forwarded via administrative channels to the appropriate judicial body.

(2) The court shall set a time frame for a resolution and orders the summoning of the plaintiff and the defendants and the notification of prosecutor, specifying that written notes can be filed concerning the admissibility or solidity of the complaint. If the criminal action has been initiated in the case, the plaintiff and the defendants can also formulate motions and challenges against the lawfulness of evidence gathering or of the performance of the criminal investigation.

(3) Within no longer than 3 days of receiving the communication stipulated at para. (2) the prosecutor shall send the case file to the court.

(4) When the complaint has been filed with the prosecutor, the latter shall refer it, together with the case file, to the appropriate court of law.

(5) The complaint is settled in the chambers, with the participation of the prosecutor, by a reasoned judgment pronounced in chambers. The fact that the legally summoned persons do not attend the court session does not prevent the settlement of the complaint.

(5^1) When settling the complaint, the court verifies the attacked resolution based on the

works and materials in the criminal investigation file and any newly admitted documents."

216. Under article 341 paragraph (6), the introductive part and letter c) are hereby amended and will read as follows:

" (6) In the cases where the decision was to not start the criminal investigation the court can rule one of the following ways:

[…]

c) sustain the complaint against the decision to discontinue prosecution by the person who had the capacity of suspect, in the assumption that the evidence is complete and the case does not have to be returned to the prosecutor to recommence prosecution and in the assumption that prosecution is complete, but the solution is ungrounded, substantiated by wrongful assessment of evidence, unless by doing so a more difficult situation is created for the person filing the complaint;"

217. Under article 341 paragraph (6), after letter c) a new letter is inserted, letter d), reading as follows:

„d) admits the complaint and orders the case closing if they consider illegal the resolution to discontinue the criminal investigation."

218. Under article 341 paragraph (7), the introductive part and letters b) and d) of point 2 the introductive part and letter:

"(7) In the cases where the decision was to start the criminal investigation the court can rule to:

[…]

c) sustain the complaint, annul the challenged resolution and send the case back to the prosecutor, with explanations, for them to supplement the criminal investigation or annuls the illegal document issued by the prosecutor, or compels him to remake it, if still the case;

[…]

d) sustain the complaint and change the legal grounds of the challenged resolution to close a case or to drop the charge, if this does not create a situation that is more difficult for the individual who filed the complaint."

219. Under article 341 paragraph (7) point 2, after letter d) a new letter is inserted, letter e), reading as follows:

"e) sustain the complaint and orders closing if he regards the resolution to drop the charges as not legal."

220. Under article 341, paragraphs (7^1), (8) – (11) are hereby amended and will read as follows:

"(7^1) If after the court notification, the hierarchically superior prosecutor admits the complaint and orders the annulment of the attacked resolution, the complaint will be rejected as being without object. The judicial expenses paid in advance by the State shall remain in its charge.

(8) The session report ruling one of the ways stipulated at para. (6) and para. (7) item 1, item 2 let. a), b), d) and e) is final.

(9) In the situation stipulated at para. (7) item 2 let. c), within 3 days of communication of the judgment, the prosecutor, the plaintiff and the defendants can file a reasoned challenge of the manner of addressing the exceptions concerning lawfulness of evidence-gathering and of performing the criminal investigation. A challenge unaccompanied

by legal reasoning shall be inadmissible.

(10) The challenge shall be filed with the court which settled the complaint and shall be forwarded for a resolution to the hierarchically superior court or, when the court notified by the complaint is the High Court of Justice, by summoning the plaintiff and the defendants and with the participation of the prosecutor, pronounced in the chambers by reasoned judgment, can order one of the following resolutions:

a) denies the challenge as tardy, inadmissible or, as the case may be, unfounded and sustain the order to begin trial;

b) sustains the challenge, annuls the session report and retries the complaint as under para. (7) item 2, if the exceptions concerning lawfulness of evidence-gathering or performance of the criminal investigation received the wrong resolution.

(11) The evidence that was excluded from the case cannot be considered during the trial of the case on the merits."

221. Title II –Preliminary Chambers of Special Part, including art. 342 – 348, is repealed.

222. Under article 352, paragraphs (11) and (12) are hereby amended and will read as follows:

"(11) If the classified information is essential to settle the case, the court shall request, as applicable, the total declassification, the partial declassification or the change of the classified level. The judge can also allow the access to classified information to the defendant's attorney. On condition he holds a security certificate or an access authorization corresponding to their level of confidentiality.

(12) The judge can deny the defendant's attorney, even if meeting the conditions stipulated in para. (11) final thesis, the access to classified information only if such access could seriously endanger the life or fundamental rights of another person, or if the denial is strictly required to defend an important public interest. If the judge does not allow the defendant's attorney to have access to classified information, such information cannot form the basis for a ruling to convict, to waive penalty enforcement or postponed enforcement of the respective penalty."

223. Under article 364, after paragraph (6) a new paragraph is inserted, para. (6^1) reading as follows:

"(6^1) The person can be convicted in absence only if he/she was legally summoned for each stage of the trial or entered by other official means in the possession of some information regarding the trial venue and date, was informed about the possibility of a resolution being pronounced in absence, or if he/she was represented by an attorney chosen or appointed ex officio and benefited of an adequate defence during the trial."

224. After Chapter I of Title III – "The Trial" of the Special Part a new chapter is inserted, Chap. I^1 – *Preliminary verifications at first instance trial*, including art. 370^1 – 370^5, reading as follows:

"**Preliminary measures**

Art. 370^1. – (1) After the court notification by conviction, the file is assigned at random to a panel of judges.

(2) The defendant, the other parties and the victim are informed about their right to hire a defender and the term within which, since the communication date, can raise written request and exceptions regarding the lawfulness of court notification, the lawfulness of evidences bringing in and of documents drafting by the criminal investigation bodies. The term is

established by the chairman of the panel of judges between 20 and 30 days, depending on the case complexity and particularities.

(3) In the situations stipulated by art. 90, the chairman of the panel of judges takes measures to appoint a defender ex officio and establishes, depending on the case complexity and particularities, the term within which written request and exceptions can be raised regarding the lawfulness of court notification, the lawfulness of evidences bringing in and of documents drafting by the criminal investigation bodies ranging between 20 and 30 days.

(4) At the expiry of the terms stipulated by para. (2) and (3), the chairman of the panel of judges establishes the trial term and summons the parties.

Verification procedure and the decisions that can be issued

Art. 370[2]. – (1) At the established trial term, the court verifies the notification competence and lawfulness, as well as the lawfulness of evidence bringing in and of documents drafting by criminal investigation bodies**.**

(2) If it appreciates it is not competent, the court proceeds according to art. 50 and 51.

(3) The court settles the request and exceptions expressed or the exceptions raised ex officio, by a session report, based on the works and materials in the criminal investigation file and of any other admitted proofs, listening the conclusions of the parties and of the victim, if present, as well as of the prosecutor.

(4) If no requests and exceptions were made and no exceptions were raised ex officio, the court retains the lawfulness of evidence bringing in and of documents drafting by criminal investigation bodies.

(5) If it rejects the requests and exceptions invoked or raised ex officio, the court retains the lawfulness of evidence bringing in and of documents drafting by criminal investigation bodies.

(6) In case the court finds out irregularities in the notification document or if it sanctions according to art. 280 – 282 the criminal investigation documents conducted in violation of the law, or if it excludes one or several evidences brought in, within 10 days since the session report communication, the prosecutor shall remedy the irregularities of the notification document and notifies the court if he preserves the indictment order or asks for the case return.

(7) The court returns the case to the prosecutor's office if:

a) the indictment is incompliant with the provisions of art. 328, and the irregularity was not remedied by the prosecutor within the term stipulated by para. (6), if the irregularity brings about the impossibility to determine the trial subject or limits;

b) it excluded all evidences brought in during the criminal investigation;

c) the prosecutor requests the case return, according to para. (6), or does not answer within the term stipulated by the same provisions.

(8) The excluded evidence cannot be considered in the case trial.

(9) The session report pronounced according to para. (3) – (7) is immediately notified to the prosecutor, the parties and the victim.

Challenge

Art. 370[3]. – (1) Within 3 days since the notification of the session report stipulated by art. 370[2] para. (3) – (5) and (7), the prosecutor, the parties and the victim can make a challenge. The challenge can also be related to the settlement of requests and exceptions.

(2) The challenge is judged by the competent court to settle the respective appeal.

(3) The challenge is settled according to the procedure provided by art. 4251. The

provisions of art. 3701 and art. 3702 are appropriately applied.

(4) When settling the challenge, no other requests or exceptions can be invoked or raised ex officio, others than those invoked or raised ex officio in front of the first instance, except for the cases of absolute nullity.

B. Setting up the term for trial continuation

Art. 370^4. – (1) After the session report provided by art. 370^2 remained final, the chairman of the panel of judges sets up, if the case, the term to continue the trial.

(2) In the situation provided by art. 370^2 para. (4), if the prosecutor, the parties or the victim are present and state they do not understand to make a challenge against the session report through which the court finds out the notification lawfulness, of evidences bringing in and of criminal investigation documents drafting, the session report remains final and the court can proceed to the further trial of the case.

Verification of documents and evidences during the trial Art. 370^5. – If during the case trial it is found out that the documents or evidences made or brought in during the criminal investigation are null and void, they are removed from the case, irrespective of the resolution pronounced during the previous verification."

225. Under article 374, paragraph (1) is hereby amended and will read as follows:

„Art. 374. – (1) After the session report stipulated in art. 370^2 remains final, during the first court hearing when the summoning procedure shall be fulfilled according to the law and the case shall be on trial, the chairman shall order the Registrar to read the bill wherein the case was sent to trial, or, as the case may be, the bill wherein the court proceedings began or to make a brief presentation thereof."

226. Article 386 is hereby amended and will read as follows:

"**Changing the charges**

Art. 386. – (1) When during the court proceedings, including during the verifications stage as per art. 370^1 – art. 370^4, it deems that the legal charges for the crime in the bill of indictment are about to be changed, the court is under an obligation to discuss the new legal charges and to draw the defendant's attention that he has the right to ask for the case to be adjourned for later during the same court session or to be postponed, to prepare his defence.

(2) When the new legal charges are aimed at an offence for which it is necessary for the victim to file a prior complaint, the court shall call the victim to court and ask the latter if he is willing to file a prior complaint. When the victim files the prior complaint, the court shall continue its investigation, otherwise it shall order the end of the criminal proceedings in court.

(3) The change of charges cannot be discussed as regards another situation than that retained in the Indictment. If the actual situation is noticed to be different from that causing the prosecution, the resumption of criminal investigation can be ordered as regards those actions, if they can represent another offence."

227. Under article 392, paragraph (1) is hereby amended and will read as follows:

"Art. 392. – (1) Only the members of the panel of judges hearing the debate shall take part in the deliberation. In case one or more of the members of the panel is/are no longer a judge with that court, the case shall be re-docketed."

228. Under article 394, paragraph (5) is hereby amended and will read as follows:

"(5) When the panel of judges cannot reach either majority or unanimity, the court proceedings shall be resumed by the dispute-resolution panel, and the judge shall be randomly assigned."

229. Under article 396, paragraphs (1) – (4) are hereby amended and will read as follows:

"Art. 396. – (1) The court shall rule on the charges brought against the defendant, deciding, as the case may be, to convict, to waive enforcement of penalty, to postpone the service of sentence, to acquit or to end the criminal proceedings.

(2) The court shall rule to convict, or by the case, to apply an educative measure when it feels that the act exists, it is deemed an offence and was committed by the defendant.

(3) Waiving enforcement of the penalty shall be decided when the court finds that the act exists, it is deemed an offence and was committed by the defendant, according to the requirements under Article 80 - 82 of the Criminal Code.

(4) Postponing service of the penalty shall be decided when the court finds that the act exists, it is deemed an offence and was committed by the defendant, according to the requirements under Article 83 - 90 of the Criminal Code."

230. Under article 397, paragraph (6) is hereby amended and will read as follows:

"(6) When, during the criminal investigation, or the trial, the preventive measure of the judicial control on bail was taken against the defendant or the decision was taken to replace another preventive measure with the preventive measure of the judicial control on bail and the civil action is sustained, the court shall order such payment of damages to repair the consequences of the crime be taken from the bail, according to the provisions under Article 217."

231. Under article 403, paragraphs (2) and (3) are hereby amended and will read as follows:

"(2) In the case of conviction, enforcement of an educative measure, waiving the service of the penalty or postponing the service of the penalty, the narrative description must comprise each act that the court retained as having been committed by the defendant, the form and the degree of guilt, the aggravating or mitigating circumstances, the reoffending level, the time that shall be deducted from the penalty ordered, respectively the time that shall be deducted from the penalty set when the waiving of service of the penalty or postponing of the service of the penalty are cancelled or revoked, as well as the documents attesting to the period about to be deducted.

(3) When the court considers that the defendant is guilty only for having committed part of the acts representing the subject of prosecution, the court ruling shall emphasize which acts resulted in a conviction or, as the case may be, in the waiving of the service of penalty or postponing of the service of penalty, as well as which acts resulted in the end of the criminal proceedings or the acquittal."

232. Under article 406, paragraphs (1) and (2) are hereby amended and will read as follows:

"Art. 406. – (1) The decision shall be drafted no later than 30 days since its ruling and, in properly grounded cases, this deadline shall be extended twice at the most, by 30 days each.

(2) The decision shall be drafted by one of the judges who participated in the adjudication of the case and shall be signed by all the members of the panel of judges who participated in the presentation of evidence and in the trial on the merits of the case and by the Registrar."

233. Under article 421 a new paragraph is inserted, para. (2), reading as follows:

"(2) The court of appeal may not reverse the acquittal ordered by the first court and cannot issue a conviction directly in appeal, unless evidence is resubmitted or new evidence is submitted that leads to the reversal of the acquittal, by infirming the grounds on which the acquittal was ordered."

234. Under article 425^1, paragraphs (3) and (5) are hereby amended and will read as follows:

"(3) The challenge is filed with the Judge of Rights and Liberties or, by the case, with the court which pronounced the challenged resolution and shall be reasoned until the settlement term, the provisions of art. 415 being applied appropriately.

[…]

(5) The challenge is settled by the Judge of Rights and Liberties or the panel of judges of the higher ranked court to the notified one, respectively by the jurisdiction panel of judges of the High Court of Justice, during public session, with the prosecutor's attendance."

235. After article 425^1 a new article is inserted, art. 425^2, reading as follows:

"**Challenge of security measure of special confiscation and extended confiscation**

Art. 425^2. – (1) Against the resolution by which the court of appeal orders the security measure of special confiscation of extended confiscation directly during the appeal, the defendant, the prosecutor or the persons whose rights or legitimate interests could be impaired can make a challenge but only as regards the security measure.

(2) The prosecutor can make a challenge within 48 hours since the sentencing, and the defendant within 48 hours since the notification.

(3) In case of persons whose rights or legitimate interests can be impaired, the 48 hours term is counting since the date they found out about the resolution stipulated in para. (1).

(4) The challenge suspends the enforcement. The challenge is settled within 5 days since its registration, in public session, with the prosecutor's attendance and with the summoning of the defendant and of the interested parties. The provisions of art. 425^1 shall apply appropriately.

(5) The challenge against the resolution stipulated in para. (1), pronounced by the Criminal Section of the High Court of Justice during the appeal is settled by the panel of 5 judges."

236. Under article 426 paragraph (1), letter i) is hereby amended and will read as follows:

"i) when two final rulings were issued against a person for the same crime, or when several final court resolutions were pronounced settling requests having the same subject-matter."

237. Under article 426, three new paragraphs are inserted, para. (2) – (4), reading as follows:

"(2) The cases stipulated in par (1) letter b), d) thesis II and i) can stand for grounds to cancel the resolution whose annulment is requested only if they were not invoked by appeal or during the appeal trial or if, although invoked, the court omitted to pronounced on them.

(3) By exception from para. (2), the case stipulated in para. (1) letter d) recital II that was not invoked by appeal or during the appeal trial can represent a reason for challenge for annulment only if the person invoking it was in impossibility to invoke it by appeal or during the appeal trial.

(4) The provisions of para. (1) letters a) and c) – g) are also applicable in case of resolutions settling the challenge stipulated by art. 425^2."

238. Under article 434, paragraph (1) is hereby amended and will read as follows:

"Art. 434. – (1) The decisions issued by the Courts of Appeals as appellate courts may be subject to appeal for review, except for the decisions wherein the court ordered cases to be retried."

239. Under article 434 paragraph (2), letters e) – g) are repealed.

240. Under article 438, after paragraph (1) four new paragraphs are inserted, para. (1^1) – (1^4), reading as follows:

"(1^1) The appeal for review can be declared only in favour of the convict in the following cases:

a. When the constitutive elements of an offence have not been fulfilled or when the court ruled a conviction for another deed than those for which the convict was prosecuted,
b. When the deed committed was given wrongful legal classification;
c. When the judgment is against the law or when the judgment wrongfully applied the law so as to influence the adjudication of the case;
d. When a serious factual error was committed;
e. When the judges who adjudicated on the merits of the case committed misuse of powers, namely they acted with the prerogatives of another power of the state.

(12) The appeal for review can also be filed against the final resolutions pronounced in cases where the European Court of Human Rights found out a violation of a right provided by the European Convention for the defence of human rights and fundamental freedoms in similar cases.

(13) When settling the appeal for review, the court verifies the attacked resolutions as regards all the review reasons provided by previous paragraphs, by previously discussing them with the parties.

(14) The appeal for review in favour of the convict can be declared any time."

244. Under article 453 paragraph (1), letter f) is hereby amended and will

read as follows:

"f) The conviction decision was grounded on a legal indictment provision which, after the decision became final, was declared unconstitutional, totally or partially or in a certain form of construing by the Constitutional Court;"

245. Under article 453 paragraph (1), after letter f) three new letters are inserted, letters g) – i), reading as follows:

"g) Failure to draft and/or sign the conviction decision by the judge who participated in the adjudication of the case;

h) The European Court of Human Rights found a violation of rights or fundamental freedoms caused by a judgment, and the severe consequences of such violation continue;

i) A judge or a prosecutor was definitively sanctioned disciplinary for the exertion in ill faith of his position or under gross negligence, if such circumstances influenced the resolution pronounced in the case."

246. Under article 453, paragraphs (3) and (4 are hereby amended and will read as follows:

"(3) The cases provided under para. (1) letters a), g) and h) may be invoked as grounds for review only for the benefit of the convicted person or the one against whom the court ordered waiving the service of the penalty or postponing the service of the penalty, as well as against the person whose acquittal was ruled. The case provided under para. (1) letter f) can be invoked as grounds for review in favour of the convicted person or the one against whom an educative measure was applied, of the one against whom the court ordered waiving the service of the penalty or postponing the service of the penalty.

(4) The case provided under para. (1) letter a) shall be grounds for review if, based on the new facts or circumstances the wrongfulness of the conviction, waiving the service of the penalty, postponing the service of the penalty or end the criminal court proceedings may be proven, whereas the cases provided under para. (1) letters b) - d) and f) shall be grounds for review if they resulted in the issuing of an unlawful or ungrounded decision;"

247. Under article 457, paragraphs (1) and (2) are hereby amended and will read as follows:

"Art. 457. – (1) The motion for review in favour of the convict may be filed anytime, even after the penalty was served or deemed to be served or after the death of the convict.

(2) The motion for review against the defendant, the acquitted person or the person with respect to whom the criminal proceedings ended may be filed within 3 months after:

a) In the cases provided under Article 453 para. (1) letters a)-d), when they are not found by final decision, since the date when the facts or circumstances were known by the person filing the motion or after the date when he/she became aware of the circumstances for which finding an offence may not be done in a criminal decision, but no later than 3 years after the date when they took place;

b) In the cases provided under Art. 453 para. (1) letters a)-d), if found in a final decision, after the date when the decision became known by the person filing the motion, but no later than one year after the date when the criminal decision remained final;

c) In the case provided under Art. 453 para. (1) letter e), after the date when the decisions impossible to reconcile became known to the person filing the motion."

248. Under article 466, paragraph (2) is hereby amended and will read as follows:

"(2) The convicted person who did not effectively receive, through any means, any official notification about the criminal proceedings in court, respectively, the person who even though aware of the criminal proceedings in court, was lawfully absent from the trial of the case and unable to inform the court thereupon shall be deemed as tried in absentia. The convicted person who had appointed a lawyer of choice or a representative shall not be deemed tried in absentia if the latter appeared at any time during the criminal proceedings in court, and neither shall the person who, following the notification of the conviction verdict, according to the law, while aware thereof, did not file an appeal, waived filing an appeal or withdrew their appeal."

249. Under article 469, paragraph (7) is hereby amended and will read as follows:

"(7) Sustaining of the motion to reopen the criminal proceedings may result in the rightful reversal of the ruling issued in the absence of the convicted person and of the session report pronounced in the procedure provided by art. 370^1 – 370^4."

250. Under article 474, paragraph (4) is hereby amended and will read as follows:

"(4) The settlement of the legal issues shall be binding for courts as of the date of the publication of the decision in the Romanian Official Journal, Part I."

251. Under article 477, paragraph (3) is hereby amended and will read as follows:

"(3) The settlement of the legal issues shall be binding for courts as of the date of the publication of the decision in the Romanian Official Journal, Part I."

252. Under article 485 paragraph (1), letter a) is hereby amended and will read as follows:

"a) to sustain the guilty plea and order one of the solutions under Art. 396 para. (2) - (4), which cannot create for the defendant a situation more difficult than the one that is subject to the agreement, if the conditions are met that are stipulated at Art. 480 - 482 concerning all the offences the defendant is charged with and that made the object of the agreement."

253. Under article 489, paragraph (2) is repealed.

254. Under article 491, paragraph (3) is hereby amended and will read as follows:

"(3) In the case stipulated at para. (2), if the legal entity has not appointed a proxy, such person shall be appointed, as the case may be, by the prosecutor who performs or supervises the criminal investigation, or by the court, selected from the ranks of insolvency practitioners who are certified under the law. Insolvency practitioners thus appointed shall operate, accordingly, under the stipulations of Art. 273 para. (1), (2), (4) and (5)."

255. Under article 493, paragraphs (1), (4), (7) and (8) are hereby amended and will read as follows:

"Art. 493. – (1) During the criminal investigation the Judge for Rights and Liberties, on proposal from the prosecutor or, as the case may be, the Preliminary Chamber Judge or the court, can order, if there are clear and convincing evidence or indications that the legal entity has committed a criminal offence and only in order to provide a smooth operation of the criminal trial, one of the following steps to be taken:

a) forbid the initiation or, as the case may be, suspension of the procedure to dissolve the legal entity or liquidate it;

b) forbid the initiation or, as the case may be, suspension of the legal entity's merger, division or reduction in nominal capital, that began prior to the criminal investigation or during it;

c) forbid asset disposal operations that are likely to diminish the legal entity's assets or cause its insolvency;

d) forbid the signing of certain legal acts, as established by the judicial body;

e) forbid activities of the same nature as those on the occasion of which the offence was committed;

[…]

(4) The preventive measures described at para. (1) can be ordered for a period of no more than 60 days, which can be extended during the criminal investigation and maintained during the preliminary chamber procedure and the trial, if the grounds still apply that caused those measures to be taken, and each extension can be awarded for no longer than 60 days.

[…]

(7) The judgment can be challenged before the Judge for Rights and Liberties or, as the case may be, or hierarchically superior court, by the legal entity and by the prosecutor, within 24 hours of its having been pronounced, for those who were present, and of its having been communicated, for the legal entity that was absent.

(8) Preventive measures can be rescinded by the Judge for Rights and Liberties on request from the prosecutor or the legal entity, and by the court and ex officio only when it is found that the reasons that caused the measures to be taken or maintained have ceased to apply. The stipulations of para. (5) - (7) shall apply accordingly.

256. Article 529 is hereby amended and will read as follows:

"**Rehabilitation by court**

Art. 529. – Jurisdiction to rule on judicial rehabilitation shall go to either the court that tried on the merits the case where the conviction was returned for which rehabilitation is now requested, or a similar court that has jurisdiction over the convicted individual's place of domicile, or last place of domicile in case the individual lives abroad at the date they file for rehabilitation."

257. Under article 538, after paragraph (2) a new paragraph is inserted, para. (2^1), reading as follows:

"(2^1) The effect of injunctive reliefs should place the suspect or accused person in the same position in which he/she were if his/her rights had not been violated."

258. Under article 539, paragraph (2) is hereby amended and will read as follows:

"(2) Unlawful deprivation of liberty shall mean any custodial measure ordered in a case in which the person was acquitted regardless the reason or if on the date when the custodial measure was ordered there was a reason to cease criminal proceedings."

259. Under article 539, after paragraph (2) a new paragraph is hereby inserted, para. (3), reading as follows:

"(3) Also entitled to the damage compensation is the person against whom a preventive measure or an asset freezing measure was taken during the criminal trial if the prosecutor's office ordered later the case closing or the court ordered acquittal."

260. Under article 545, paragraph (3) is repealed.

261. Article 549[1] is hereby amended and will read as follows:

"**Procedure for forfeiture or invalidation of a document when a case is closed**

Art. 549[1]. – (1) In the situation where the prosecutor has ordered the case closed or dropped charges and requested the court to order special forfeiture or a document to be invalidated, the prosecutorial order to close the case accompanied by the case file shall be sent to the court that would have legal jurisdiction to try the case on the merits, after expiry of the deadline stipulated at Art. 339 para. (4) or, as the case may be, at Art. 340 or after a ruling to deny the complaint, or confirming the order to drop the charges.

(2) If the charges are dropped, the file is submitted to the competent court if in the procedure of order confirmation, the court did not order on the measures provided by para. (1).

(3) The court sets up the settlement term depending on the case complexity and particularities, which cannot be shorter than 30 days.

(4) For the established term, the prosecutor's notification is ordered and the summon of the persons whose rights or legitimate interests could be impaired, to whom a copy of the order is sent and are informed that within 20 days since the notification receipt they can file written notes.

(5) The court if pronouncing by a session report, in public session, after hearing the prosecutor and the persons whose rights or legitimate interests could be impaired, if they are present. The provisions included in Title III of the Special Part regarding the trial which are not conflicting the provisions of the present article shall be appropriately applied. The provisions of art. 370[1] – 370[4] are not applicable.

(6) When solving the request, the court can order one of the following resolutions:

a) rejects the proposal and orders, by the case, the return of the asset or the removal of security measures in view of confiscation;

b) admits the proposal and orders goods confiscation, or by the case, the annulment of the document.

(7) Within 3 days of communication of the judgment, the prosecutor and the persons described at para. (2) can file a reasoned challenge. A challenge filed without a rationale shall be inadmissible.

(8) The challenge shall be ruled upon by the court that is hierarchically superior to that which first tried the matter or, when the court that first tried the matter is the High Court of Justice, by the panel that has legal jurisdiction which shall rule by reasoned judgment

without participation of the prosecutor or persons described at para. (2), in one of the following ways:

a) to deny the challenge as tardy, inadmissible or lacking grounds;

b) sustain the challenge, invalidate the original judgment and retry the matter as under para. (6)."

262. Under article 553, paragraph (4) is hereby amended and will read as follows:

"(4) The stipulations of para. (1) -(3) are applicable also in respect of sentences that are not final but are enforceable, except for those related to safety measures, asset freezing and preventive measures, which are enforced, as applicable, by the Judge for Rights and Liberties, or the court having ordered them."

263. Under article 557, after paragraph (1) a new paragraph is inserted, para. (1^1), reading as follows:

"(1^1) When handing over the enforcement warrant, the convicted person is informed in writing, acknowledging by signature, the right provided by art. 466 para. (1), and in case the person cannot or refuses to sign, a Minutes will be concluded."

264. Under Art. 587, paragraphs (2) and (3) are hereby amended, as follows

"(2) When the court finds that the requirements for granting conditional release are not met, through its dismissal decision, it shall set a term after the expiry of which such proposal or request may be renewed. Such term may not be longer than 6 months and starts running from the date when the court sentence is rendered final.

(3) A decision of the District court to reject the conditional release may be challenged only by the convict with the Tribunal under which territorial jurisdiction the detention facility is located within 3 days of serving that decision."

265. Under article 587, following paragraph (3), a new paragraph is hereby inserted, paragraph (3^1), as follows:

"(3^1) Prosecutors from the Offices attached to the district court or the tribunal that has jurisdiction to judge the application for release or the challenge shall participate in the sessions in which cases concerning conditional release are determined, irrespective of the Prosecutor's Office that prosecuted the case."

266. Under art. 598, para. (1), letter d) is hereby amended, as follows:

"d) when amnesty, statute of limitations, pardon or any other cause for extinguishing or reducing the penalty are raised, including a more favourable penal law or a decision of the Constitutional Court regarding the contents of the offence that the criminal court ruling was based."

Final and transitional provisions

Art. II – (1) The provisions of this Law applies to all the cases pending trial at the moment of its coming into force and to all judgments issued before this date.

(2) The judgements issued before the coming into force of this Law may be appealed using the avenues for appeal provided for by this Law and will be also reviewed from the perspective of the reasons regulated by this Law.

(3) The deadlines for appealing judgments issued before the coming into force of this Law and for the reasons provided by this Law start form the time of the Law's coming into force.

(4) The courts that have jurisdiction to judge the appeals filed under this Law and for the reasons regulated by this Law are those that have jurisdiction according to Law no. 135/2010, as subsequently amended and supplemented.

Art. III. – Law no. 304/2004 on the organization of the judiciary, republished, as subsequently amended and supplemented, is hereby amended and supplemented as follows:

1. **Under article 31 paragraph (1), letters b), d) and f) are hereby amended to read as follows:**

"b) For challenges against the decisions ruled by judges for human rights and freedoms from the courts of appeal and from the Military Court of Appeal, the judicial panel shall consist of 2 judges;

[…]

c) For challenges against the decisions ruled by judges for human rights and freedoms from the High Court of Justice, as well as against the court session reports issued in cases stipulated under art. 31^1, the judicial panel shall consist of 2 judges;

[…]

f) For challenges stipulated under art. 250^1 para. (1) and art. 250^2 para. (3) of the Criminal Proceedings Code against the court session reports issued during the appeal by the courts of appeal and by the Military Court of Appeal, the judicial panel shall consist of 3 judges."

2. **Article 31^1 is hereby amended, as follows:**

"Art. 31^1 – In cases on approval of closure of criminal investigation and reopening criminal investigation, the complaint against the decision to close the case or not to indict, against the confiscation procedure or against the procedure to dismiss a document, in case of termination or dropping criminal charges, the judicial panel shall consist of one judge."

3. **Under article 54 paragraph (1^1) is hereby amended to read as follows:**

"(1^1) The challenges lodged against judgments ruled in criminal matters by district courts and tribunals in the course of proceedings on the merits of the case, by judges for human rights and freedoms of these courts or in other cases stipulated by law, shall be ruled by judicial panel consisting of 2 judges."

Art. IV – Law no. 135/2010 on the Criminal Proceedings Code, published in the Official Journal of Romania, Part I, no. 486 of 15 July 2010, subsequently amended and supplemented including also the amendments hereby introduced, shall be republished in the Official Journal of Romania, Part I.

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This law represents the transposition of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, published in the Official Journal of the European Union, L series no. 127 of 29 April 2014, as well as of Directive 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, published in the Official Journal of the European Union, L series no. 65 of 11 March 2016.

This law was adopted by the Romanian Parliament, in compliance with the stipulations of art. 75 and art. 76 para. (1) of the Romanian Constitution, as republished.

ON BEHALF OF THE PRESIDENT
OF THE CHAMBER OF DEPUTIES — PRESIDENT OF THE SENATE

PETRU-GABRIEL VLASE — CĂLIN POPESCU-TĂRICEANU

Bucharest
No.