

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

The Senate adopts this draft law

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

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

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

2. Article 2 shall be amended and shall read as follows:

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

(2) Justice shall be made equally for all, without difference based on race, nationality, ethnic origins, language, religion, sex, sexual orientation, opinions, political beliefs, wealth, social origins or status or any other discriminatory criteria, in compliance with the equality of arms principle, court and judge independence, the principle of separation of powers and the mandatory enforcement of final decisions reached by courts of law, as well as reasonable duration of proceedings and respect for the rights of defence.”

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

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

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

“Art. 9.- The decisions of the sections may be appealed against with the administrative section of the court of appeal, according to ordinary law.”

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

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

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

“(2) The 3-judge dispute resolution panel shall be created by including in the panel the judge provided by the standby plan.”

7. Article 19 (2¹) shall be amended and shall read as follows:

“(2¹) The Panel for solving the appeal in the interest of the law, the Panel for solving matters of law and panels of 5 judges operate within the High Court of Cassation and Justice.”

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

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

(3) Section I Civil cases, Section II Civil cases and the Administrative and Fiscal Section of the High Court of Cassation and Justice shall judge by a different panel the second appeal lodged against decisions ruled by these sections, rejecting the request to seize the Constitutional Court.”

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

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

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

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

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

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

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

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

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

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

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

13. Article 30¹ (2) shall be amended and shall read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. Article 49 (2¹) shall be amended and shall read as follows:

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

23. A new paragraph, paragraph (2²) shall be introduced under Article 49, after paragraph (2¹), and shall read as follows:

“(2²) The provisions of paragraph (2¹) shall apply accordingly in those cases where, due to objective reasons, the Management Board cannot be formed.”

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

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

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

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

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

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

27. Article 54 (1) shall be amended and shall read as follows:

“Art.54.- (1) The cases falling according to law, under the jurisdiction of the courts of first instance, be they courts, tribunals or courts of appeal, shall be judged by 1-judge panels, except for labour disputes and social insurance cases. Pursuant to the provisions of Art.23 (1¹) of Law no. 303/2004 on the statute of judges and prosecutors, as republished and further amended and supplemented, intern judges may participate, pursuant to law, in the hearings of panels consisting of tenured judges.”

28. Paragraph (1¹) of Article 54 shall be repealed.

29. A new paragraph, paragraph (1³) shall be introduced under Article 54, after paragraph (1²), and shall read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36. A new paragraph, paragraph 3¹) shall be introduced under Article 66¹, after paragraph (3), and shall read as follows:

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

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

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

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

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

.....

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

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

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

40. Article 79¹ (2), (3), (9)-(11) shall be amended and shall read as follows:

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

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

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

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

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

41. A new article, article art.79⁴, shall be introduced after Article 79³, and shall read as follows:

"Art.79⁴.- The Directorate for Investigating Organised Crime and Terrorism shall develop annually an activity report, and shall present it to the section for prosecutors of the Superior Council of Magistracy and to the Minister of Justice, no later than the month of February of the following year. The Minister of Justice shall present the Parliament the conclusions on the activity report of the Directorate for Investigating Organised Crime and Terrorism."

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

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

43. Article 87 (1)-(3), (6), (8), (9) and (9¹) shall be amended and shall read as follows:

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

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

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

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

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

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

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

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

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

44. Article 88 shall read as follows:

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

45. A new section, Section 2¹ – Investigation of Offences in the judiciary, including articles 88¹-88⁹, shall be introduced after Article 88, and shall read as follows:

„Section 2¹

Section for the Investigation of Offences in the Judiciary

Art.88¹.- Setting up of the Section for the Investigation of Offences in the Judiciary

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

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

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

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

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

Art.88².- The activity of the Section for the Investigation of Offences in the Judiciary

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

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

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

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

Art.88³.- The appointment and dismissal of the Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary

(1) The Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary shall be appointed by the Plenum of the Superior Council of Magistracy, following a competition which consists in the presentation of a project on the exercise of the specific duties of that management position, with a focus on management skills, efficient resource management, capacity to assume decisions and responsibilities, communication skills and resistance to stress, as well candidate integrity, the evaluation of his/her activity as a prosecutor and how they relate to the specific values of the profession, such as the independence of the judiciary or respect for fundamental rights and freedoms.

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

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

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

(3) The requirements a prosecutor should fulfil to hold the position of Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary are provided by Art.88⁵ (3).

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

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

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

(7) The Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary shall be dismissed by the Plenum of the Superior Council of Magistracy, in case of failure to fulfil the specific duties of his/her position or in case he/she has been applied a disciplinary sanction in the past 3 years, upon proposal of the committee provided by paragraph (2).

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

Art.88⁴.- The appointment and dismissal of the Deputy Chief Prosecutor of the Section for the Investigation of Offences in the Judiciary

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

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

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

Art.88⁵.- Appointment of prosecutors within the Section for the Investigation of Offences in the Judiciary

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

(2) The competition shall be before a competition committee organised according to Art.88³ (2), where the Chief Prosecutor of the Section is a member by right.

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

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

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

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

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

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

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

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

Management Boards, and of a trainer from the National Institute of Magistracy, proposed by its Scientific Board.

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

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

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

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

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

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

Art.88⁶.- Extended activity within the Section for the Investigation of Offences in the Judiciary

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

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

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

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

Art.88⁷.- Dismissal of prosecutors from the Section for the Investigation of Offences in the Judiciary

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

(2) In case of dismissal, the prosecutor shall return to the prosecutor's office he/she had worked for and shall return to their professional level and salary as held previously or

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

Art.88⁸.- The duties of the Section for the Investigation of Offences in the Judiciary

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

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

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

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

Art.88⁹.- The Section for the Investigation of Offences in the Judiciary shall develop annually an activity report, and shall present it to the Plenum of the Superior Council of Magistracy, no later than the month of February of the following year."

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

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

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

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

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

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

49. A new paragraph, paragraph (1¹) shall be introduced under Article 103, after paragraph (1), and shall read as follows:

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

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

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

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

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

- a) In case of course or conference teaching activities, the teaching hours shall be multiplied by a coefficient of 2.5;
- b) In case of seminar activities, as well as of other teaching activities or activities related to the initial and continuing training process, the working hours shall be multiplied by a coefficient of 1.5;
- c) The other activities specific to initial and continuing training shall be measured according to a methodology approved by decision of the Scientific Board of the Institute.”

52. Two new articles articles 113¹ and 113² shall be introduced after Article 113, and shall read as follows:

“Art.113¹.- (1) Judicial assistants are subject to assessments of the quality of their activities, every 2 years. The first assessment of the judicial assistants shall be performed one year after their appointment.

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

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

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

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

Art.113².- Sanctions applied to judicial assistants and their dismissal shall be communicated to the Economic and Social Council by the Minister of Justice.”

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

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

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

54. Three new articles, articles 120²-120⁴ shall be introduced after Article 120, and shall read as follows:

“Art.120².- (1) For the purposes of expeditious and thorough investigation of economic, financial, fiscal and customs offences, officers and agents of the Judicial Police shall be posted to prosecutor’s offices attached to courts, within the limits of the positions approved pursuant to law.

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

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

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

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

Art.120³.- (1) Officers and agents of the Judicial Police provided by Art.120² are posted with the prosecutor’s offices, upon nominal proposal of the General Prosecutor of the Prosecutor’s Office attached to the High Court of Cassation and Justice, by the Minister of internal Affairs, for a period of 6 years at the most, which may be extended every three years, with their consent.

(2) Officers and agents of the Judicial Police shall be appointed with prosecutor’s offices provided by Art.120² (1) by order of the General Prosecutor of the Prosecutor’s Office attached to the High Court of Cassation and Justice.

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

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

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

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

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

Art.120⁴.- (1) The duties provided by law for the Minister of internal Affairs regarding the rights and responsibilities of posted officers and agents of the Judicial Police shall be exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

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

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

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

(5) The position of officer and agent of the Judicial Police provided by Art.120² (1) is incompatible with any other public or private position, except for teaching positions in higher education.

(6) The number of officers and agents of the Judicial Police within the prosecutor's offices provided by Art.120² (1), as their repartition shall be established, according to needs, by order of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice."

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

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

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

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

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

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

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

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

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

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

60. Article 134¹ (2) shall be amended and shall read as follows:

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

61. A new article, article 134² shall be introduced after Article 134, and shall read as follows:

“Art.134².- (1) The President of the court of appeal may provide that the courts with high workload within the jurisdiction of the court of appeal may employ former judges who ceased their activity reasons not attributable to them, to develop draft judgments.

(2) The decision provided by paragraph (1) may be made using the procedure defined by the Superior Council of Magistracy, which shall include the criteria used to identify those situations where cooperation with former judges is necessary.”

62. Article 135 shall be amended and shall read as follows:

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

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

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

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

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

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

Art. II.- The Government Emergency Ordinance no. 78/2016 on the organisation and functioning of the Directorate for Investigating Organised Crime and Terrorism, and amending and supplementing certain laws shall be amended so as to be harmonised with the provisions of Section 2¹ - *Section for the Investigation of Offences in the Judiciary* – of this law.

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

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

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

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

This draft law was adopted by the Senate, in the meeting of 20 December 2017, in compliance to the provisions of Article 76 (1) of the Romanian Constitution, as republished.

PRESIDENT OF THE SENATE

Călin Popescu-Tăriceanu