

To: Mr. Frans Timmermans

First Vice-President

Regarding the Government Emergency Ordinance (GEO) on modifying the conditions for organizing the admission contest at the National Institute of Magistracy, as well as some amendments to justice laws.

1. The establishment of some temporary provisions regarding the admission contest at the National Institute of Magistracy, the initial professional training for judges and prosecutors, the graduation exam of the National Institute of Magistracy, the probation period and the capacity exam of the junior judges and prosecutors.

By Law no. 242/2018 for amending and completing Law no. 303/2004 on the statute of judges and prosecutors, which entered into force on October 18, 2018, substantial amendments and completions were made to the admission contest at the National Institute of Magistracy (NIM), the initial professional training of judges and prosecutors, NIM graduation exam, the probation of judges and prosecutors, and their capacity exam.

Thus, the aforementioned law increased the duration of professional training courses at the National Institute of Magistracy from 2 to 4 years, and the length of the probation period of judges and prosecutors increased from 1 year to 2 years.

The amendment initiatives were formulated by the Superior Council of Magistracy, with the duration of the 4-year studies being applicable to the auditors of justice who will have the admission contest to the NIM starting with 2020. In its reasoning for the postponement, the Superior Council of Magistracy stated that it had identified difficulties in the application and even the impossibility of complying in the year 2019 with the procedures and deadlines established by the law.

For this purpose, the Government Emergency Ordinance:

- establishes temporary provisions regarding the admission contest to the NIM, the initial professional training of judges and prosecutors, the graduation exam of the National Institute of Magistracy, the probation and the capacity exam of the judges and prosecutors, by taking over some legislative solutions provided by Law no. 303/2004 in its form prior to Law no. 242/2018;
- establishes one year probation period for the judges and prosecutors admitted to the NIM in 2019;
- expressly states that, in order not to create a legal vacuum, the provisions of the Government Emergency Ordinance shall be supplemented by those of Law no. 303/2004 on the statute of judges and prosecutors, in so far as those do not state otherwise.

2. Another legislative change seeks to transpose those retained by Decision no. 45/2018 of the Constitutional Court, which noted that although "it is the exclusive right of the legislator to regulate service pensions, according to its policy, the former cannot achieve a parallel and a confusion between the function of state notary and that of judge or prosecutor".

To this end, the provisions of Art. 86 par. (2) of Law no. 303/2004 shall be repealed, for the purpose of eliminating the possibility for former state notaries retired from this capacity prior to 1995 to obtain a similar pension as to that of magistrates.

3. The normative act contains provisions regarding the appointment to the management positions within prosecutor's offices.

The President of Romania will continue to hold the prerogative to appoint, by decree, the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, his first deputy and deputy, the Chief Prosecutor of the National Anticorruption Department, his deputies, the Chief Prosecutor of the Department for the Investigation of Organized Crime and Terrorism, its deputies, as well as the chief prosecutors of sections of the aforementioned prosecutor's offices, at the proposal of the Minister of Justice.

The novelty of the regulation is that, in the future, the endorsement on the nominations proposed by the Minister of Justice will be issued by the Plenum of the Superior Council of Magistracy instead of the Council Prosecutor's Office, the change being justified by the fact that the adopted normative act also gives the possibility to the judges who have previously fulfilled the position of prosecutor to apply for one of these leadership positions in the prosecutor's office.

4. The regulation regarding the term of office of high-level prosecutors, appointed by the President of Romania, is maintained.

The novelty is that according to which the management positions within the prosecutor's offices for which the appointment is made by the President of Romania cannot be filled in by delegated prosecutors.

The legislative amendment was necessary in order to ensure the institutional consolidation of the aforementioned prosecution structures and to make the legal provisions governing the appointment mechanism in these management positions an efficient one, avoiding in-situ situations, considering that the lack of stable management of these judicial institutions generate difficulties in ensuring quality management.

5. In order to ensure institutional stability, a transitional rule is also provided in the GEO, in the sense that the current delegations in management positions are maintained for a period of 45 days, during which the vacancies must be occupied, under the terms of the law.

6. By GEO clarifications are brought on the calculation of the seniority necessary for the promotion to the position of judge at the High Court of Cassation and Justice. Thus, in the future, the seniority as a prosecutor shall be taken into consideration when calculating the overall seniority.

The legislative amendment was motivated by the fact that the previous legislation did not expressly provide that the length of service as prosecutor should be taken into account for the seniority required for High Court of Cassation and Justice.

7. The sole holder of the disciplinary action of the Judicial Inspection, by the judicial inspector, in matters of disciplinary liability of magistrates, shall be maintained.

The legislative amendments regard solely the correlation of the provisions in this matter, being removed provisions that referred to the holder of the disciplinary action by the president of the High Court of Cassation and Justice, the minister of justice and the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

8. The GEO stipulates explicitly that by decisions and Regulations adopted by the leading boards of the courts cannot be added to the law on the grounds that the aforementioned law incomplete or unclear.

This provision started from the finding that, sometimes, the leading boards had done so.

At the same time, each public authority must function within the limits of its own competence. Such authority cannot have any legislative powers.

Correlatively, the Ordinance regulates a new assignment for the section of judges, to pursue compliance with legal and regulatory provisions in the field of organisation and functioning of the courts and to take the necessary measures to immediately remove vulnerabilities that may affect the proper conduct of their activity.

9. In order to eliminate different interpretations regarding the functioning of the Section for investigating justice offences, certain rules of a general nature, provided by the Criminal Procedure Code, are transposed by the present GEO:

- The prerogative of the Section regarding the exercise and withdrawal of legal remedies in cases of its competence is provided;
- It is explicitly provided that also in matters of offences under the jurisdiction of the Section investigating justice offences, whenever the Criminal Procedure Code or other special laws refers to "higher-ranking prosecutor", this phrase shall mean the Chief Prosecutor of the Section.