

LAW OF THE REPUBLIC OF MOLDOVA ON THE SUPERIOR COUNCIL OF MAGISTRACY

No. 947-XIII from 07.19.1996

“Official Gazette of the Republic of Moldova”, 10.03.1996, No. 64/641

(Amended by Law no. 1414-XIII from 12.17.1997 “Official Gazette, 19 of March 1998, No. 24-25, art.152)

Parliament adopts this law.

Chapter I

GENERAL PROVISIONS

Article 1. Superior Council of Magistracy - Judicial Self-Administration Body

(1) Superior Council of Magistracy is an independent body, created in view of organization and functioning of the judicial system, and is the guarantee of the judicial authority's independence.

(2) Superior Council of Magistracy shall exercise the judicial self-administration.

Article 2. Legal Framework

Manner in which the Superior Council of Magistracy is organized and functions shall be regulated by the Constitution, by laws on the organization of the judiciary, on the status of judge, by this law and other normative acts.

Article 3. Composition

(1) The Superior Council of Magistracy shall be made up of 11 magistrates.

(2) The following shall be *ex officio* members of the Superior Council of Magistracy: Minister of Justice, President of the Supreme Court of Justice, President of the Appellate Court, President of the Economic Court, General Prosecutor.

(3) Three magistrates shall be elected by secret vote by the joint chambers of the Supreme Court of Justice, three magistrates by Parliament and three magistrates from among titular professors in law.

Article 4. Competence

The Superior Council of Magistracy shall:

- a) Submit proposals of appointment, promotion, transfer or removal from position of judges, presidents and deputy presidents of courts, to the President of the Republic of Moldova or to Parliament, take the oath of judges;
- b) Decide on the limited period of time promotion and limited period of time transfer of judges to another court of the same level, as well as on the suspension from position in cases provided for by law;
- c) Resolve the issue of judge's resignation, including the one of its cessation, under law;
- d) Select candidates for the position of judge;
- e) Approve the vocational training program for judicial candidates, appoint the judge who will supervise the judicial candidate' internship;
- f) Examine citizens' petitions on the issues related to judicial ethics;
- g) Validate the decisions (opinions) by the Qualification Board and Disciplinary Board;
- h) Apply incentive-related measures as well as disciplinary sanctions to judges;
- i) Ensure judge's inviolability, under law;
- j) Examine the appeals filed against the decisions (opinions) by the Disciplinary Board and Qualification Board;
- k) Ensure providing of vocational training for active judges and courts' personnel collaborators;
- l) Ask fiscal bodies to check the veracity of judges' s family revenue declarations;
- m) Examine the information provided by the Ministry of Justice and the Economic Court of the Republic of Moldova on the manner in which organizational, material and financial needs of the courts were met, as well as the information provided by the Supreme Court of Justice on the administration of justice all over the country;
- n) Examine, confirm and propose the draft budget, which is necessary for a proper functioning of courts, to Parliament for approval, submit the draft budget to the Government to make the Government cognizant of it;
- o) Present to Parliament for approval proposals on the headquarters, district of courts and their number, as well as the number of judges from courts,

including from specialized courts, tribunals, the Appellate Court and the Supreme Court of Justice;

p) Approve and amend the Regulation on the structure and functioning of the Superior Council of Magistracy's personnel, the Regulation on the internship of judge, as well as other regulations related to the judicial system's activity;

r) Approve the forms and directions of the methodic assistance provided by judges from the Supreme Court of Justice;

s) Convene conferences and sessions of judges on the issues related to judicial activity;

t) Submit annually, no later than April 1st, to Parliament and the President of the Republic of Moldova, a report on the manner in which the courts were organized and functioned during the previous year.

u) Appoint, promote, transfer and remove from position collaborators of the Superior Council of Magistracy's personnel, and apply incentive-related measures and disciplinary sanctions to them;

v) Exercise other responsibilities under law.

(Art. 4 was amended by Law no. 373-XV from 07.19.2001)

(Art. 4 was completed by Law no. 772-XIV from 02.02.2000)

(Art. 4 was amended by Law no. 1414-XIII from 12.17.97)

Article 5. The President

(1) The President of the Superior Council of Magistracy shall be elected by secret vote for a 2-year and 6 month term, by majority vote of members of the Council.

(2) During the absence of the President, his functions shall be exercised by a member of the Council who shall be appointed by a decision by the Superior Council of Magistracy.

(Art. 5 was amended by Law no. 1414-XIII from 12.17.97)

(Art. 5 was found unconstitutional by the Constitutional Court's decision no. 10 from 03.04.97)

Article 6. President's Responsibilities

The President of the Superior Council of Magistracy shall:

a) Convene and chair the sessions of the Council;

b) Coordinate the activity of the Council and distribute materials to be examined;

c) Represent the Council before domestic and foreign public authorities;

d) Exercise other responsibilities under law.

Article 7. Qualification Board and Disciplinary Board

(1) Within the Superior Council of Magistracy there shall function the Qualification Board and the Disciplinary Board.

(2) Structure, competence and manner of functioning of the Qualification Board and Disciplinary Board shall be established by law.

Article 8. Relations with Other Authorities

(1) In relations with the Supreme Court of Justice, the Ministry of Justice and with other public authorities, the Superior Council of Magistracy shall be independent, and base its activity only upon the Constitution and other laws.

(2) The Superior Council of Magistracy may notify Parliament, the President of the Republic of Moldova and the Government in relation to any issues, which under law, are related to its competence.

(3) The Superior Council of Magistrates shall keep relations with similar bodies from other countries as for the issue of functioning and administration of justice.

Chapter II

THE STATUS OF MEMBER OF THE SUPERIOR COUNCIL OF MAGISTRACY

Article 9. Duration of Mandate

(1) The duration of mandate of member of the Superior Council of Magistracy shall be of 5 years.

(2) Members who were appointed *ex officio* to the Council shall not fall under the terms of paragraph (1).

Article 10. Rights

Member of the Superior Council of Magistracy shall be entitled to:

- a) Take knowledge of the materials presented to the Council for examination;
- b) Participate in examining them;
- c) File requests, express his/her arguments and present additional materials;
- d) Ask courts, Ministry of Justice, other institutions and organizations for information and documents that are necessary to exercise his/her responsibilities;
- e) Propose issues that are related to the competence of the Council to be discussed within Council's session;
- f) Participate by vote in passing decisions and express, as the case may be, a separate opinion;

g) Enjoy other rights under law.

Article 11. Obligations

Member of the Superior Council of Magistrates shall be obliged to:

- a) Exercise his/her responsibilities according to law;
- b) Enforce magistrates' rights and liberties, their honor and dignity, as specified by law;
- c) Contribute to the promotion of the principle of the judicial authority's independence;
- d) Keep the secret of deliberations and confidentiality of his/her work;
- e) Vote *pro* or against in the process of adopting decisions.

Article 12. Cessation of Mandate

(1) Mandate of member of the Superior Council of Magistracy shall cease in case of:

- a) Expiry;
- b) Resignation;
- c) Personal request;
- d) Withdrawal of mandate, transfer to another job, removal from position;
- e) Demise.

(Letter d) was amended by Law nr. 1414-XIII from 12.17.97)

(2) The withdrawal of mandate of member of the Superior Council of Magistracy shall be performed, at the proposal of the Council, in case of ill-founded non-fulfillment of the obligations of member as established by this law.

(3) The withdrawal of the mandate of member of the Superior Council of Magistracy shall be performed by the body that has elected the person to this position.

Article 13. Completion of Vacancy

In case the mandate of member of the Superior Council of Magistracy ceased, the election or appointment of a new member shall be performed within a 30-day term from the date of vacancy, under the procedure of election or appointment of the member.

Article 14. Identity Card

Member of the Superior Council of Magistracy shall receive an identity card of a model approved by Parliament.

Chapter III

ORGANIZATION OF THE ACTIVITY OF THE SUPERIOR COUNCIL OF MAGISTRATES

Article 15. Sessions

- (1) The Superior Council of Magistrates, as a corporative body, shall exercise its attributions in plenary sessions.
- (2) The sessions of the Superior Council of Magistracy shall be deliberative if at least two thirds of its members attend them.
- (3) The sessions of the Superior Council of Magistracy shall be public. Upon its decision, some issues may be examined in closed session.
- (4) The individuals whose problems are being examined shall be obligatorily summoned to the session of the Superior Council of Magistracy.
- (5) The Superior Council of Magistrates may allow certain persons whose presence is considered to be useful within session to attend it.

Article 16. Convocation

- (1) Convocation of session of the Superior Council of Magistracy shall be performed at the initiative of the President of the Superior Council of Magistracy.
- (2) The Superior Council of Magistracy may also be convened at the initiative of at least 3 of the Council's members.
- (3) The members of the Superior Council of Magistracy shall be informed about the date, hour, place and agenda of the session no later than 3 days before the session, except for extraordinary cases.

Article 17. Procedure to Examine Issues

The examination of the issues to be considered at the session shall start with the report by the President of the Superior Council of Magistracy or by one of the Council's members, who had beforehand studied the materials and documents submitted, and after this the individuals invited to the session shall be heard, and necessary documents and materials shall be examined.

Article 18. Recusation and Self-Recusation

- (1) The member of the Superior Council of Magistracy may not participate in the examination of the issue and shall be recused if there are circumstances, which exclude his/her participation in the examination, or circumstances, which would cast doubts on his/her objectivity. In case such circumstances exist, the Council's member shall be obliged to declare self-recusation.
- (2) Based on the same reasons, recusation may be made by the person whose issue is being examined, as well as by the person who submitted the materials to be examined.

- (3) The recusation should be reasoned by a written or verbal request.
- (4) The decision on the recusation or self-recusation of the member of the Superior Council of Magistracy shall be adopted by the majority vote of the members present at the session, in the absence of the member whose recusation or self-recusation is considered.

Article 19. Proposing Candidates for the Position of Judge, President and Deputy President of the Court

- (1) The Superior Council of Magistracy shall make proposals to the President of the Republic of Moldova or, as the case may be, to Parliament on the appointment of candidates to these positions, as well as on the appointment to the position of court president or court deputy president.
- (2) In order to make the respective proposal, the Superior Council of Magistracy shall examine the candidates and select candidates with the highest performance indicators provided for by law as to the appointment to this position.
- (3) The decision of the Superior Council of Magistracy along with the respective proposal on the appointment to the position of judge, court president or court deputy president, the personal file records of the candidate with the curriculum vitae on his/her activity and draft decree or draft decision on the appointment to the position, shall be submitted by the President of the Council.
- (4) If the President of the Republic of Moldova or, as the case may be, Parliament rejects the proposed candidate, the Superior Council of Magistracy may propose the same or another candidate for the existent vacancy under the terms of article 11 of the Law on the Status of Judge.

Article 20. Promotion, Transfer, Discharging from Official Responsibilities, Detachment, Suspension, Resignation and Removal from the Position of Judge

- (1) The issues related to promotion, transfer, discharging from official responsibilities, detachment, suspension, resignation and removal from the position of judge shall be examined by the Superior Council of Magistracy under the terms of law.
- (2) The transfer of judge for a limited period of time to another court shall be performed by the Superior Council of Magistracy upon judge's consent.
- (3) Judge may be detached from the position by the Superior Council of Magistracy under the terms of article 24/1 of Law on the Status of Judge.
- (4) The decisions on the transfer of judge to another court, promotion, resignation and his/her removal from position, along with a *curriculum vitae* with information his/her activity and a draft decree or draft decision shall be

submitted to the President of the Republic of Moldova or, as the case may be, to Parliament.

(5) The suspension from position of judge shall be performed by the Superior Council of Magistracy, under the conditions of article 24 from Law on the Status of Judge.

(6) In case the circumstances, which served as grounds for the suspension of judge from position, have disappeared, the Superior Council of Magistracy shall adopt a decision on the repeal of his suspension from position.

(7) The decision of the Superior Council of Magistracy on the suspension of judge from position or repeal of the suspension of judge from position shall be immediately submitted to the President of the Republic of Moldova or, as the case may be, to Parliament.

(8) The Superior Council of Magistracy shall cease the resignation of judge and order the cessation of the monthly life allowance payment under the conditions of article 26 from Law on the Status of Judge.

(9) The decision on the cessation of the resignation, adopted by the Superior Council of Magistracy, may be appealed in the plenary session of the Supreme Court of Justice within a 10-day term from the date the copy of the decision has been received.

(Art. 20 was amended and completed by Law no. 373-XV from 07.19.2001)

(Art. 20 was amended by Law no. 1414-XIII from 12.17.97)

Article 21. Validation of the Decisions Issued by the Qualification Board and Disciplinary Board

(1) The decisions (opinions) of the Qualification Board and Disciplinary Board that have not been appealed shall be submitted in a 7-day term to the Superior Council of Magistracy to be validated.

(2) The decisions shall be validated within one-month term from the date the respective materials were received by the Superior Council of Magistracy.

(3) The Superior Council of Magistracy may invite, as the case may be, members of the Qualification Board or Disciplinary Board, as well as the persons whose problems are being examined, to attend the Council's sessions.

(4) After having examined the problem, the Superior Council of Magistracy shall decide to:

a) Validate the decisions (opinions) by the Qualification Board or Disciplinary Board;

b) Amend decisions by the Qualification Board or Disciplinary Board or reject them and adopt new decisions;

c) Reject the decisions by the Qualification Board or Disciplinary Board and cease the file examination-related procedure.

(5) In case the Superior Council of Magistracy amended the decisions by the Qualification Board and Disciplinary Board or rejected them and adopted new ones, it may grant another degree of qualification to judge or apply a disciplinary sanction under law.

(Paragraph 5 was introduced by Law nr. 1414-XIII from 12.17.97)

(6) In order to confer highest degree of qualification upon judge or remove him/her from position, the Superior Council of Magistracy shall submit the respective proposals to the President of the Republic of Moldova or, as the case may be, to Parliament.

(Paragraph 6, art. 21, was introduced by Law nr. 1414-XIII from 12.17.97)

(7) The provisions of paragraphs (5) and (6) shall be applied in the process of examining appeals against the decisions by the Qualification Board and Disciplinary Board under the terms of article 22 of this law.

(Paragraph 7, art. 21, was introduced by Law nr. 1414-XIII from 12.17.97)

Article 22. Examination of Appeals Filed against the Decisions by the Qualification Board and Disciplinary Board

(1) The appeals filed against the decisions by the Qualification Board and Disciplinary Board shall be examined within no later than one-month term from the date the Superior Council of Magistracy has received the respective materials.

(2) The interested persons shall be informed on time about the date of examining the appeals.

(3) After having examined the appeals, the Superior Council of Magistracy shall decide to:

a) Leave the decisions by the Qualification Board and Disciplinary Board as they are without amending them;

b) Amend the decisions by the Qualification Board and Disciplinary Board;

c) Reject the decisions by the Qualification Board and Disciplinary Board and cease the file examination-related procedure.

Article 23. Ensuring Judge's Inviolability

(1) In case of examination of the Prosecutor General's proposal to institute criminal proceedings against a judge, to hold him/her criminally liable, to detain, arrest or bring him by force, the Superior Council of Magistracy shall adopt, on the basis of the principle of the inviolability of judge, a decision, by which it shall:

a) Give its consent;

- b) Refuse acceptance;
- (2) The Prosecutor General may attend the deliberations related to the examination of the problems indicated in the paragraph (1).

Article 24. Adoption of Decisions

(1) The Superior Council of Magistracy shall adopt the decisions by the majority of votes of present members. In case of parity of votes, the decision, which is favorable to judge, shall be considered as adopted.

(2) The voting procedure shall be performed in the absence of person whose case is being examined and in the absence of other persons who were invited.

(3) The decision shall be developed in written form and signed by the chairman of the session.

(4) If a member of the Superior Council of Magistracy has a separate, it has to be motivated and attached to the decision, without reading it out.

(5) In case the Superior Council of Magistracy exercises its attributions provided for by articles 21 and 22, member at whose proposal or initiative the disciplinary proceedings were instituted shall not attend the deliberations.

(Paragraph 5, art. 24, was amended by Law no. 1414-XIII from 12.17.97)

Article 25. Appealing the Decisions

(1) The decisions by the Superior Council of Magistracy, except for those on the suspension of judge from position and on the cessation of judge's resignation, shall be final.

(2) The decision on the suspension of judge from position and on the cessation of judge's resignation may be appealed with the Supreme Court of Justice within a 10-day term from the date the copy of the decision was received.

(3) The Supreme Court of Justice shall examine, in a plenary session, the appeal filed against the decision by Superior Council of Magistracy within a 5-day term from the date the appeal was received.

Chapter IV

FINAL PROVISIONS

Article 26. Secretariate Work

(1) The secretariate work of the Superior Council of Magistracy shall be performed by members of the Council's personnel.

(Paragraph 1, art. 26, was amended by Law no. 1414-XIII from 12.17.97)
(Paragraph 1, art. 26, was found unconstitutional by the Constitutional Court's decision nr. 10 from 03.04.97)

(2) The work performed within the sessions of the Superior Council of Magistrates shall be recorded in the official minutes.

(3) The official minutes will include: the presence of the members of the Superior Council of Magistracy and other participants who attended the session, the contents of the debates and decision adopted, the issues subjected to vote and the results of the vote.

(4) The official minutes shall be developed within 3 days, signed by the chairperson of the session and countersigned by the secretary.

Article 27. Ensuring the Activity of the Superior Council of Magistracy

(1) In order to ensure its activity, the Superior Council of Magistracy shall have its own budget, which is part of the state budget.

(2) The Superior Council of Magistrates shall have support personnel.

(3) The personnel of the Superior Council of Magistracy shall be made up of 8 persons and ensure the activity of the Council, Qualification Board and Disciplinary Board.

(4) The Superior Council of Magistracy appoints by its decision the head of the Council's personnel, head of the justice and personnel department, as well as members of this department.

(5) The collaborators of the chancellery shall enjoy the status of civil servant and be appointed to position by the President of the Superior Council of Magistracy.

(6) The head of the personnel of the Superior Council of Magistracy shall organize the activity of the personnel, appoint, promote, transfer and remove from position the technical staff of the personnel, apply incentive-related measures and disciplinary sanctions under law.

(7) The structure and members of the personnel of the Superior Council of Magistracy shall be established by Parliament according to the appendix, which is part of this law.

(8) The personnel's regulation shall be approved by the Superior Council of Magistracy.

(9) Those collaborators of the personnel of the Superior Council of Magistracy who are licensed to practice the law, shall be granted the status of magistrate,

for the period of time in which they exercise their position, by a decision by the Superior Council of Magistracy.

(10) Members of the Superior Council of Magistracy who are part of corporative body of professors shall receive a monthly allowance that is equal to 10 minimal wages.

(Art. 27 was amended and completed by Law no. 373-XV from 07.19.2001)

(Art. 27 was amended by Law no. 1414-XIII from 12.17.97)

(Art. 27 was found unconstitutional by the Constitutional Court's decision no. 10 from 03.04.97)

Article 28. Seal and Headquarters

(1) The Superior Council of Magistracy shall enjoy the status of a legal entity and shall have its own seal representing the State Coat of Arms and its name.

(Paragraph 1, art. 28, was completed by Law no. 1414-XIII from 12.17.97)

(2) The Superior Council of Magistracy shall have its headquarters in Chisinau municipality.

Article 29. Information on the Superior Council of Magistracy

The Superior Council of Magistracy shall publish on annual basis information on judicial activity in the Newsletter of the Supreme Court of Justice.

Chapter V

TRANSITORY PROVISIONS

Article 30

This law shall go into effect from the date of its publication.

(Chapter V was amended by Law nr. 1414-XIII from 12.17.97)

(Art. II, chapter V, was found unconstitutional by the Constitutional Courts' decision no. 10 from 03.04.97)

(Art. III, chapter V, was found unconstitutional by the Constitutional Court's decision nr. 10 from 03.04.97)

Appendix to the Law on the Superior Council of Magistracy

Personnel of the Superior Council of Magistracy

1. Head of personnel	1
2. Justice and Personnel Section	
Chief of section	1
Senior specialists	2
Specialists-coordinators	2
3. Chancellery	
Senior specialist	1
Specialist-coordinator	1
Total:	8

(The Appendix was introduced by Law no. 1414-XIII from 12.17.97)

**PRESIDENT OF
PARLIAMENT**

Petru LUCINSCHI