

LAW no. 303/2004

On the Statute of Judges and Prosecutors

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TITLE I General provisions

CHAPTER I Notions and principles

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

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

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

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

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

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

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

Art. 4 - (1) Through all their activity, judges and prosecutors are obliged to safeguard the rule

of the Law, to respect the rights and freedoms of persons, as well as their equality before the law and to provide non-discriminating legal treatment to all the participants in judiciary proceedings, regardless of their capacity, to respect the Deontological Code for Judges and Prosecutors and to partake to continuous professional training.

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

CHAPTER II

Incompatibilities and interdictions

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

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

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

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

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

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

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

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

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

statements in paragraph (2).

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

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

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

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

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

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

Art. 10 - (1) Judges and prosecutors may not express publicly their opinion regarding pending trials or regarding cases on which the prosecutor's office has been notified.

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

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

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

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

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

TITLE II

The career of judges and prosecutors

CHAPTER I

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

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

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

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

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

a) they are Romanian citizens, with permanent residence in Romania and have full legal capacity;

b) they are bachelors of law;

c) they have no criminal and fiscal record;

d) they can speak Romanian;

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

Art. 15 - (1) The admission exam shall be held annually at the date and location established by the National Institute of Magistracy, with the approval of the Superior Council of Magistracy. The date, location and manner of holding the admission exam, as well as the number of available positions shall be published in the Official Journal of Romania, Part III, on the web page of the Superior Council of Magistracy and on that of the National Institute of Magistracy, at least with 60 days before the date established for the exam.

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

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

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

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

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

of the National Institute of Magistracy.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The followings shall be disciplinary offenses:

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

exercise of duties;

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

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

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

a) warning;

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

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

d) expelling from the Institute.

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

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

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

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

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

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

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

(3) The auditors of justice who do not succeed at the graduation exam may sit for it once more, in the next session held by the National Institute of Magistracy. Should an auditor of justice unjustifiably fail to appear for the exam or in case that he does not graduate the examination in the second session, he may not be appointed as judge or prosecutor and shall be obliged to reimburse the scholarship and the education fees.

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

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

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

CHAPTER II

Debutant judges and debutant prosecutors

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

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

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

(3) Debutant judges shall enjoy stability.

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

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

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

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

a) applications regarding alimonies, registrations and corrections in the civil status registers, garnishments, approval of enforcements, vesting the writs of execution and adopting *assurance* measures;

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

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

d) summons of payment;

e) judicial amnesty;

f) ascertaining the amnesty or pardon;

g) offences provided in Article 279 paragraph 2 a) of the Criminal Procedural Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 27.

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

(4) Repealed by Law no.97/2008

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

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

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

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

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

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

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

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

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

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

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

CHAPTER III

Appointment of judges and prosecutors

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

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

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

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

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

Art. 32 - (1) A person who meets the legal requirements for admission into magistracy may be appointed as military judge or prosecutor after having acquired the capacity of active officer in the Ministry of National Defence.

(2) The verification for becoming active military personnel, for the person who fulfils the conditions provided by law in order to be appointed as a military judge or prosecutor, shall be carried out by the specialised structure of the Defence Ministry, which assures the management of the military positions at the level of the military courts and prosecutors offices.

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

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

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

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

(5) - (10⁷) Repealed by Government Emergency Ordinance no.46/2008.

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

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

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

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

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

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

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

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

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

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

CHAPTER IV

Continuous training and periodical evaluation of judges and prosecutors

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

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

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

Art. 37 - (1) Judges and prosecutors shall participate, at least once every 3 years, to the continuous training programmes organised by the National Institute of Magistracy, by universities in our country or abroad or to other forms of professional training.

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

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

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

Art. 37¹ (1) The board and lodging expenses for the judges, prosecutors, judicial specialised personnel assimilated to them, auditors of justice and the training personnel provided by art.108 of Law no.304/2004 on the judicial organisation, republished, as subsequently amended, who participate at the continuous professional training activities organised by the National Institute of Magistracy, shall be covered from the budget of this institution.

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

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

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

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

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

Art.37¹ was introduced by the Government Emergency Ordinance no.195/2008, published in the Official Journal no. 825 from 8th of December 2008

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

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

(1²) The maximum limit for the expenses provided in paragraph (1²) shall be established by an order of the Minister of justice and civic freedoms or of the General Prosecutor of the Prosecutor Office attached to the High Court of Cassation and Justice

(1³) The expenses for the remuneration of the training personnel for the activities provided in paragraph (1) shall be sustained from the budget of the court of appeal or of the prosecutor office attached to it. The provisions of art.108 paragraph (3) of Law no. 303/2004, republished, as subsequently amended, shall apply accordingly.

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

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

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

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

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

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

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

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

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

Art. 40 - (1) The evaluation reports on the professional activity of judges or prosecutors drawn

up by the boards in Article 39 paragraph (3) or (4), may grant one of the following results: “very good”, “good”, “satisfactory” or “unsatisfactory”.

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

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

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

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

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

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

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

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

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

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

CHAPTER V

Promotion of judges and prosecutors and their appointment to leading position

Section 1

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

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

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

(3) The board for the promotion of judges shall be composed of judges from the High

Court of Cassation and Justice, judges from courts of appeal and trainers from the National Institute of Magistracy, all appointed by decision of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

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

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

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

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

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

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

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

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

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

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

(2) The tests consist of:

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

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

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

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

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

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

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

2nd Section

Appointment into leading position at the first instance courts, tribunals, courts of appeal and at the corresponding prosecutor's offices

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The appointment of into the other leading position in prosecutor's offices shall be

made for a 3 years term of office, which is renewable only once, by the Superior Council of Magistracy, at the proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

management skills;

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

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

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

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

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

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

3rd Section

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

Art. 52 - (1)*) The promotion into the office of judge within the High Court of Cassation and Justice is decided by the Superior Council of Magistracy, from among the judges who held the office of judge during the previous 2 years in tribunals or courts of appeal, received the reading "very well" in their last evaluation, were not disciplinarily sanctioned, had outstanding professional activity and have at least 12 years' length of service as judge or prosecutor.

*) The provisions of Art.52, paragraph (1) have been invalidated as unconstitutional by the Decision no. 866/2006 of the Constitutional Court, as concerns the provision conditioning the promotion into the office of judge at the High Court of Cassation and Justice by holding the office of judge during the previous 2 years.

(2) Article 48 paragraphs (10) - (12) shall apply accordingly.

(3) The vacant positions of judge within the High Court of Cassation and Justice shall be public and available permanently on the web pages of the Superior Council of Magistracy and on that of the High Court of Cassation and Justice.

(4) The judges who meet the requirements in paragraph (1) may submit their

candidacies for the office of judge within the High Court of Cassation and Justice, accompanied by any documents considered relevant, within 30 days from the moment when the vacancy was made public, to the board of direction of the High Court of Cassation and Justice, which shall analyse them and forward them to the Superior Council of Magistracy, together with a consultative report on promotion, within 10 days from receipt.

Art. 53 - (1) The president, the vice-president and the section presidents of the High Court of Cassation and Justice shall be appointed by the President of Romania, at the proposal of the Superior Council of Magistracy, from among the judges of the High Court of Cassation and Justice who have worked at this court for at least 2 years.

(2) The President of Romania may refuse only in a reasoned form the appointment into the leading position in paragraph (1), notifying the reasons for his refusal to the Superior Council of Magistracy.

(3) The appointment into the offices in paragraph (1) is made for a 3 years term of office, which is renewable only once.

(4) Article 48 paragraphs (10) - (12) shall apply accordingly.

(5) The judges of the High Court of Cassation and Justice who meet the requirements in paragraph (1) may apply to the Superior Council of Magistracy for the office of president, vice-president or section president of the High Court of Cassation and Justice, within 30 days from the date when the office of president, vice-president or section president became vacant.

(6) The revocation from office of the president, the vice-president or of the section presidents of the High Court of Cassation and Justice shall be made by the President of Romania at the proposal of the Superior Council of Magistracy, which may act *ex officio*, at the request of one third of the number of its members or at the request of the general assembly of the court, for the reasons provided by Article 51 paragraph (2) which shall apply accordingly.

Art. 54 - (1) The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, his prime-deputy and deputy, the general prosecutor of the National Anti-Corruption Department, his deputies, the chiefs prosecutors of the section within these prosecutor's offices, as well as the chief prosecutor of the Directorate for Investigation the Offences of Organised Crime and Terrorism and his deputies, shall be appointed by the President of Romania, at the proposal of the Minister of Justice, with the endorsement of the Superior Council of Magistracy, from among the prosecutors having at least 10 years' length of service as judges or prosecutors, for a 3 years term of office which is renewable only once.

(2) Article 48 paragraphs (10)-(12) shall apply accordingly.

(3) The President of Romania may refuse only in a reasoned form the appointment into the leading position in paragraph (1), while notifying the public the reasons for his refusal.

(4) The revocation of the prosecutors from the leading position in paragraph (1) shall be made by the President of Romania at the proposal of the Minister of Justice, who may act *ex officio*, at the request of the general assembly, or, the case being, at the request of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or of the General Prosecutor of the National Anti-corruption Department, with the endorsement of the Superior Council of Magistracy, for the reasons provided by Article 51 paragraph (2) which shall apply accordingly.

Art. 55 - (1) The appointment into other leading position within the Prosecutor's Office attached to the High Court of Cassation and Justice and within the National Anti-corruption

Department shall be made, for a 3 years term of office, which is renewable only once, by the Superior Council of Magistracy, at the proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or of the General Prosecutor of the National Anti-Corruption Department, as the case may be.

(2) For the appointment into the leading position as provided for in paragraph (1), a recommendation from the person in charge of the section or, the case being, the directorate within the Prosecutor's Office attached to the High Court of Cassation and Justice or the National Anti-corruption Department, where the prosecutor is to be appointed, shall be required.

(3) Article 48 paragraphs (10) - (12) shall apply accordingly.

(4) The revocation from the leading position of the prosecutor appointed according to paragraph (1) shall be decided by the Superior Council of Magistracy, either *ex officio* or at the proposal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or of the General Prosecutor of the National Anti-Corruption Department, for the reasons provided by Article 51 paragraph (2) which shall apply accordingly.

(5) The proposal in paragraph (4) may be made *ex officio* or at the request of the general assemblies or of the heads of the sections or, the case being, of the directorate within the Prosecutor's Office attached to the High Court of Cassation and Justice or within the National Anti-corruption Department.

Art. 56 - Upon completion of the term of office of the leading position provided in Articles 53, 54 and 55, a judge or prosecutor shall return to the court or prosecutor's office where they came from or to a court or prosecutor's office where they are entitled to work according to the law.

CHAPTER VI

Delegation, secondment and transfer

Art. 57 - (1) If a first instance court, a tribunal or a specialised tribunal cannot operate normally because of the temporary absence of certain judges, the existence of vacancies or other such causes, the president of the court of appeal that has jurisdiction may, at the proposal of that court's president, delegate judges from other courts within the aforementioned jurisdiction, with their written consent.

(2) The delegation of judges from first instance courts, tribunals and specialised tribunals to the jurisdiction of another court of appeal shall be decided, with their written consent, by the Superior Council of Magistracy at the request of the president of the court of appeal in whose jurisdiction the delegation is requested and with the endorsement of the president of the court of appeal where they work.

(3) The delegation of judges within the courts of appeal shall be decided, with their written consent, by the Superior Council of Magistracy, at the request of the president of the court of appeal.

(4) The delegation into a leading position of judges within the courts of appeal, tribunals, specialised tribunals and first instance courts shall be decided by the Superior Council of Magistracy, with the written consent of the judges, until the office is filled through appointment according to this law.

(5) The delegation into the leading position within the High Court of Cassation and Justice of the judges of this court shall be decided by the Superior Council of Magistracy, with their written consent, at the proposal of the president of the High Court of Cassation and Justice.

(6) Judges may be delegated for a period not exceeding 90 days in one year and the delegation may be extended, with their written consent, by no more than 90 days.

(7) For office purposes, prosecutors may be delegated, with their written consent, including into leading position, by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice to the prosecutor's offices within the Public Ministry for no more than 90 days in one year.

(8) The delegation of prosecutors may be extended, with their written consent, by another 90 days.

(9) During delegation, the judges and prosecutors shall enjoy all the rights provided in the law for the office to which they are delegated. If the salary and other pecuniary rights provided for the office to which a judge or prosecutor is delegated are lower, he shall keep his initial monthly indemnity and the other pecuniary rights.

Art. 58 - (1) The Superior Council of Magistracy shall decide on the judges secondment, with their written consent, to other courts or prosecutor's offices, to the Superior Council of Magistracy, to the National Institute of Magistracy, to the Ministry of Justice and Civic Freedoms, to subordinated units or to other public authorities, to any office, including into the offices of appointed public dignity, at the request of these institutions, as well to other institutions of the UE or international organisations.

(2) The length of secondment is 6 months to 3 years. The secondment may be prolonged by up to 3 years, only once, as provided in paragraph (1).

(3) During secondment, the judges and prosecutors shall keep their capacity of judges and prosecutors and shall enjoy the rights provided by law for the seconded personnel. When the salary and the other pecuniary rights provided for the office to which a judge or prosecutor has been seconded are lower, he shall keep his initial monthly indemnity and the other pecuniary rights.

(3¹) The judges, prosecutors and the personnel assimilated to them, seconded abroad for office purposes, shall enjoy the rights and obligations established by the special provisions of the institution where they are seconded.

(3²) In the cases where the special provisions provided for in paragraph (3¹) do not exist, the personnel seconded abroad shall enjoy the following rights:

a) the basic monthly indemnity, supplemented by permanent benefits provided by law for the position held previously to the secondment;

b) the reimbursement of travel expenses between the place of residence and the place of secondment, at the beginning and at the end of the secondment period, as well as for his/her leave of absence in the country;

c) the reimbursement of rent, within the limits established annually, within the budget allocated to this end by the state budget law, through a common order of the Minister of Justice, President of the Superior Council of Magistracy, President of the High Court of Cassation and Justice, General Prosecutor of the prosecutor office attached to the High Court of Cassation and Justice and of the Chief Prosecutor of the National Anticorruption Directorate;

d) per diem, in the amount provided by law for State secretary when they travel abroad.

(3³) The personnel seconded abroad shall not enjoy in the country the same rights as at the institution where he/she is seconded.

(4) The secondment period shall be considered as length of service as judge or prosecutor.

(5) Upon cessation of the secondment, the judge or prosecutor shall return to the office that he held previously.

Art. 59 - A judge or prosecutor may not be seconded to a court or prosecutor's office that is higher than the ones in which he is entitled to work, according to the law.

Art. 60 - The transfer of the judges or prosecutors from one court to another or from a prosecutor's office to another or to a public institution shall be approved, at the request of those in question, by the Superior Council of Magistracy.

Art. 61 - (1) At their reasoned request, the judges may be appointed as prosecutors, and prosecutors as judges, by decree of the President of Romania, at the proposal of the Superior Council of Magistracy, while observing the requirements provided in this Law.

(2) For appointment to the offices in paragraph (1), the candidates shall give an interview before the section for judges within the Superior Council of Magistracy, in case of prosecutors requesting appointment as judges, and, respectively, before the section for prosecutors within the Superior Council of Magistracy, for judges requesting appointment as prosecutors.

(3) The President of Romania may refuse only in a reasoned manner the appointment into the offices in paragraph (1), while making the reasons of his refusal known to the Superior Council of Magistracy.

CHAPTER VII

Suspension from and cessation of the office of judge and prosecutor

Art. 62 - (1) A judge or prosecutor may be suspended from office in the following cases:

a) when criminal action has been initiated against him through ordinance or indictment;
b) when he suffers from a mental illness that prevents him from properly exercising his office.

(2) The suspension of judges and prosecutors from office shall be decided by the Superior Council of Magistracy.

(3) During their suspension from office, the judges and prosecutors shall not receive their salary rights. This period shall not be considered as length of service in the magistracy.

(4) The provisions on interdictions and incompatibilities as specified in Articles 5 and 8 shall not apply to judges or prosecutors during their suspension from office.

Art. 63 - (1) In the case provided for by Article 62 paragraph (1) letter a), the Superior Council of Magistracy shall notify at once the decision of suspension from office to the judge or the prosecutor and to the leadership of the court or prosecutor's office where he works.

(2) In case of removal, cessation of the criminal prosecution, acquittal or cessation of criminal trial with regard to the judge or prosecutor, the suspension from office shall cease and the magistrate shall be restored to the previous situation, paid the pecuniary rights of which he was deprived during the suspension and shall be recognised the length of service in the

magistracy for the period in question.

Art. 64 - (1) In the case in Article 62 paragraph (1) letter b), the mental illness shall be found by specialised expertise, at the notification of the court president or of the person in charge of the prosecutor's office or of the boards of direction, and the suspension from office shall be decided for the period recommended by the specialised medical board appointed according to Article 14 paragraph (2) e).

(2) After expiry of the period provided for by paragraph (1), the Superior Council of Magistracy or, the case being, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or the general prosecutor of the National Anti-corruption Department, based on a new expertise, may decide to cease the suspension and reinstate the judge or prosecutor into office, to extend the suspension period or, if the illness is irreversible, to propose the removal from office according to the law.

(3) During the suspension period, the judges or the prosecutors shall receive their social health insurance rights, according to the law.

Art. 65 - (1) The judges and prosecutors shall be removed from office in the following cases:

- a) resignation;
- b) retirement, according to the law;
- c) transfer to another office, according to the law;
- d) professional incapacity;
- e) as a disciplinary sanction;
- f) final conviction of the judge or prosecutor for an offence;
- g) violation of Article 7;
- h) failure to succeed in the examination in Article 33 paragraph (14);
- i) failure to meet the requirements provided by Article 14 paragraph (2) a), c) and e).

(2) The removal from office of the judges and prosecutors shall be decided by decree of the President of Romania, at the proposal of the Superior Council of Magistracy.

(3) The placement in reserve or the withdrawal of the military judges and prosecutors shall take place according to the law, after they are removed from office by the President of Romania. In case of retirement or transfer, the removal from office shall be performed after placement in reserve or, the case being, after withdrawal.

(4) The removal from office of the debutant judges and debutant prosecutors shall be done by the Superior Council of Magistracy.

(5) Should a judge or prosecutor request his removal from office through resignation, the Superior Council of Magistracy may establish a period not exceeding 30 days from which the resignation will take effect, if the presence of the judge or prosecutor is necessary.

(6) A judge or prosecutor who was removed from office for reasons not imputable to him shall keep his professional rank acquired in the hierarchy of courts or of prosecutor's offices

Art. 65^{1*} (1)** Repealed by Law no.77/2009

(2) In case of the appeal against the decision of removal from office, the judge or the prosecutor shall be suspended from office until a competent court shall give an irrevocable decision.

(3) The provisions of Art.63 paragraph (2) and of the Art.64 paragraph (3) shall apply accordingly.

CHAPTER VIII

Assistant-magistrates of the High Court of Cassation and Justice

Art. 66 - (1) The prime-assistant-magistrate, the chief assistant-magistrates and the assistant-magistrates of the High Court of Cassation and Justice shall enjoy stability.

(2) The assistant-magistrates shall be appointed and promoted by the Superior Council of Magistracy, based on a competitive examination.

(3) The general requirements for the appointment of assistant-magistrates shall be those provided for the offices of judge and prosecutor.

(4) The provisions of the present Law concerning the incompatibilities and interdictions, the continuous training and periodical evaluation, the rights and duties, as well as the disciplinary liability of the judges and prosecutors shall apply accordingly to the assistant-magistrates.

Art. 67 - (1) The prime-assistant-magistrate shall be promoted amongst the chief-assistant-magistrates who have at least 4 years length of service.

(2) The chief-assistant-magistrates of third rank shall be promoted amongst the assistant-magistrates who have at least 3 years length of service. After serving 2 years as chief-assistant-magistrates, they may be promoted to the second class assistant-magistrates and, after another 5 years, to the first class assistant-magistrates.

(3) The assistant-magistrates of third class shall be appointed without a competitive examination, amongst the judges or prosecutors with at least 4 years length of service as magistrates. After a period of 3 years in this position, the assistant-magistrates may be promoted to the second class and, after another 3 years, to the first class.

(4) The assistant-magistrates of the third class may be appointed also, by means of competitive examination, from among lawyers, notaries, law-specialised personnel provided by Art.87 paragraph (1), as well as court clerks with higher legal education from courts of appeal and from the High Court of Cassation and Justice, who have at least 5 years' length of service.

Art. 68 - (1) The prime-assistant-magistrate shall have the following attributions:

a) coordinates the activity of the assistant-magistrates in the sections and of the civil servants from the Chancellor' Office of the High Court of Cassation and Justice;

b) participates in the sessions of the Joint Sections of the High Court of Cassation and Justice and of the Nine Judges-Panel, sitting as a disciplinary court.

(2) The prime-assistant-magistrate shall have other attributions in accordance with the Regulation on the administrative organisation and operation of the High Court of Cassation and Justice.

Art. 69 - The chief-assistant-magistrates shall have the following attributions:

a) participate in the sessions of the sections and of the Nine Judges-Panel;

b) designate the assistant-magistrates who participate in the court sessions;

c) ensure that the section records are kept in good conditions and all duties are fulfilled in

due time.

Art. 70 - The assistant-magistrates shall participate in the court sessions of the sections.

Art. 71 - The assistant-magistrates who participate in the sessions of the High Court of Cassation and Justice shall draw up the minutes, participate with a consultative vote in the deliberation and draw up the decisions, according to the allocation of cases made by the president for all members of the court panel.

Art. 72 - The assistant-magistrates fulfil any other tasks assigned by the president of the High Court of Cassation and Justice, the vice-president or by the president of the section.

TITLE III

The rights and duties of judges and prosecutors

Art. 73 - When establishing the rights of judges and prosecutors, one shall take into account the place and role of the Judiciary under the Rule of Law, of the responsibility and complexity of the offices of judge and prosecutor, of the interdictions and incompatibilities provided in the law for these offices and shall aim at safeguarding their independence and impartiality.

Art. 74 - (1) For the performed activity, the judges and prosecutors are entitled to a remuneration established in relation to the level of the court or of the prosecutor's office, to the office held, to the length of service in the magistracy and to other criteria provided by the law.

(2) The judges and prosecutors' salary rights may not be reduced or suspended outside the cases provided in this law. The indemnities of the judges and prosecutors shall be established by a special law.

(3) - repealed by Government Emergency Ordinance No. 50 published in the Official Journal of Romania No. 566/30.06.2006

(4) The military judges and prosecutors are active members of the military and shall have all the rights and duties that emerge from this capacity.

(5) The salaries and the other rights due to military judges and prosecutors shall be provided by the Ministry of National Defence, in accordance with the legislation on the salaries and other rights of the personnel within the bodies of the Judiciary and with the regulations on the material and pecuniary rights specific for the quality of active member of the armed forces and, respectively, of civil employee of the aforementioned ministry.

(6) The granting of military ranks and the promotion to higher ranks of military judges and prosecutors shall take place according to the norms applicable to the permanent personnel of the Ministry of National Defence.

Art. 75 - (1) The Superior Council of Magistracy is entitled and obliged to protect the judges and prosecutors against any act that is likely to affect their independence or impartiality or to give rise to suspicion with regard to these.

(2) The judges or prosecutors who consider that their independence or impartiality is affected in any way by acts of interference with the professional activity may address to the Superior Council of Magistracy, in order to decide the necessary measures, according to the law.

Art. 76 - The judges and prosecutors are free to organise or accede to local, national or international professional organisations, for the protection of their professional interests, as well as to those provided by Article 11 paragraph (3).

Art. 77 - (1) The in office or retired judges and prosecutors are entitled to special measures of protection against threats, violence or any acts that jeopardise them, their families or their property.

(2) The special measures of protection, the conditions and the manner of putting them into practice shall be set forth by Government Decision, at the proposal of the Ministry of Justice and Civic Freedoms and of the Ministry of Interior and Administration.

Art. 78 - (1) The judges and prosecutors are entitled to compensation paid from the budgets of the High Court of Cassation and Justice, of the Ministry of Justice and Civic Freedoms or, the case being, of the Public Ministry, or, for military judges and prosecutors, with the funds of the Ministry of National Defence, if their life, health or property are affected while exercising their office duties.

(2) The compensation in paragraph (1) shall be subject to conditions established by Government decision, with the endorsement of the Superior Council of Magistracy.

Art. 79 - (1) The judges and prosecutors shall receive an annual paid leave of 35 working days.

(2) The judges and prosecutors shall be entitled to paid leaves for attending courses or other forms of specialisation organised within the country or abroad, for preparing and sitting for the capacity and the degree examination, as well as to leaves without payment, according to the Regulation on the leaves of absence of judges and prosecutors.

(3) Judges and prosecutors shall be entitled to medical leaves and to other types of leaves, according to the legislation in force.

(4) -repealed by Government Emergency Ordinance No.148/01.01.2006 published in the Official Journal of Romania No. 1008/14.11.2005.

(5) -repealed by Government Emergency Ordinance No. 50 published in the Official Journal of Romania No. 566/30.06.2006.

(6) The judges and prosecutors are entitled to rent office residences. The office residences that are administered by the Ministry of Justice and Civic Freedoms and by the subordinated units, as well as those that are in the property of or administered by the Public Ministry may not be purchased by judges, prosecutors or by any other employees of these institutions.

(7) In case of retirement for age-limit, the persons entitled to a rent contract, as provided for at paragraph (6) and the case being, his/hers husband or wife, keep the entitlement to the rent-contract for their life-time.

Art. 80 - Annually, the judges and prosecutors shall enjoy 6 free national return tickets, for first class railway transportation, vehicle, naval and aerial transportation or the reimbursement of 7, 5 litres of fuel/100km for 6 national return voyages, if they are travelling by car.

Art. 81 - (1) The judges and prosecutors having continuous length of service into magistracy for 20 years before the date of retirement or removal from office for other reasons not imputable to them, shall be entitled to receive an indemnity equalling 7 basic gross monthly salaries, which shall be taxed according to the law.

(2) The indemnity in paragraph (1) shall be granted only once during the career of a judge or prosecutor and shall be recorded according to the law.

(3) The manner for calculating continuous length of service into magistracy shall be established by decision of the Superior Council of Magistracy.

(4) Paragraph (1) shall apply also in case of death of an active judge or prosecutor. In this case, the indemnity shall go to the spouse and the children who were supported by the deceased at the date of death.

Art. 82 - (1) The judges, prosecutors, assistant-magistrates within the High Court of Cassation and Justice, judicial specialised personnel equated to judges and prosecutors, and also the former financial judges, prosecutors and account councillors from the jurisdictional section, who exercised their duties at the Accounts Court, having at least 25 years' length of service in the positions mentioned before, may retire at their request and shall enjoy, upon reaching the age of 60 years, a service pension, amounting up to 80% of the average of gross income with any other benefits for the last month of activity before the date of retirement.

(2) The judges, prosecutors, assistant-magistrates within the High Court of Cassation and Justice, judicial specialised personnel equated to judges and prosecutors, and also the former financial judges, prosecutors and account councillors from the jurisdictional section, who exercised their duties at the Accounts Court, shall be able to retire, at their request, before reaching the age of 60 years and shall enjoy the pension in paragraph (1), if they have at least 25 years' length of service only in these offices. The time while a judge, prosecutor, assistant-magistrate within the High Court of Cassation and Justice, judicial specialised personnel equated to judges and prosecutors, and the former financial judges, prosecutors and account councillors from the jurisdictional section, who exercised their duties at the Accounts Court practiced as lawyer, judicial specialised personnel within the former state arbitration committees or legal adviser shall be included into this period of 25 years.

(3) The service pension provided for in paragraph (1) shall benefit, at reaching the age of 60 years old, to judges and prosecutors with a length of service between 20 and 25 years, in this case the pension quantum stipulated in paragraph (1) being reduced by 1% for each year missing from the whole length of service.

(4) For each year that exceeds the length of service provided for in paragraphs (1) and (2), 1% shall be added to the pension, without being possible to exceed the base for calculation.

(5) The persons who meet the requirements of length of service as provided for by paragraphs (1) and (3) only as judges, prosecutors, assistant-magistrates within the High Court of Cassation and Justice, judicial specialised personnel equated to judges and prosecutors, and also the former financial judges, prosecutors and account councillors from the jurisdictional section, who exercised their duties at the Accounts Court shall enjoy, when reaching 60 years old, a service pension, even if at the retirement date they have a different occupation. In this case, the pension shall be established based on the salary rights of an active judge or prosecutor being in identical conditions of position, length of service and level of court or prosecutor's office, and benefits, in percentage, applicable at the date of retirement. The service pension applies only to persons who have been removed from the office of judge or prosecutor for reasons that are not imputable to them.

(6) Paragraphs (1), (3) and (4) shall apply to judges and prosecutors previously retired, who benefit from pension in the public system and who fulfil the conditions provided for in the present law for receiving a service pension. In this case, the pension shall be established based on the salary rights of a judge or prosecutor in office, being in identical conditions of

position, length of service and level of court or prosecutor's office, and benefits, in percentage, applicable at the date of retirement.

(7) Judges and prosecutors may choose between service pension and the pension from the public system. Military judges and prosecutors may choose between the service pension and the military service pension.

(8) The pension provided for in this article has the juridical regime of a pension for age limit.

Art. 83 - (1) The judges, prosecutors, the assistant-magistrates of the High Court of Cassation and Justice and the judicial specialised personnel provided in Article 87 paragraph (1) may be maintained in office after they reach the retirement age provided by the law, until the age of 70 years. Until the age of 65, the magistrate has the option of keeping his position, but after this age, in order to be kept in office it is necessary the endorsement of the Superior Council of Magistracy.

(2) The judges and prosecutors who retired may cumulate their service pension with the revenues from a professional activity, regardless of the level of those revenues.

(3) The readmission in the position of judge, prosecutor or assistant-magistrate can be made without any exam and with the annual endorsement of the Superior Council of Magistracy, only to the court and prosecutors offices where the person practiced until retirement. In this case, the appointment as assistant-magistrate is made by the Superior Council of Magistracy, and the appointment as judge or prosecutor is made by the President of Romania, at the proposal of the Superior Council of Magistracy.

Art. 83^{1*} - (1) The judges and prosecutors may retire in advance, with the decrease of the retirement age provided for in the law with maximum 5 years, if they exceed the length of service in magistracy provided for in art.82 paragraphs (1) with at least 5 years. The ones that fulfil the conditions for receiving the pension as provided for in the present article, and provided in art.82 paragraph (2) may choose between the two pensions.

(2) The pension provided in paragraph (1) has the judicial nature of an anticipated service pension.

(3) The beneficiaries of the service pension provided for in paragraph (1) cannot cumulate their service pension with the revenues from a professional activity, until the age of 60 years old, regardless of the level of those revenues.

(4) The amount of the anticipated pension is established in accordance with the provisions of art. 82 paragraph (1) and (4).

Art.83¹ was introduced by Government Emergency Ordinance no.100/2007, published in the Official Journal of Romania no.684/8.10.2007

Art.84 - (1) The surviving spouse of judges and prosecutors has the right, when reaching 60 years old, to an inheritor's pension according to Law no.19/2000 on the public pensions system and other social insurance rights, as subsequently amended, at a percentage calculated out of the paid service pension or out of the pension entitled to the holder at the date of the death, actualized if necessary.

(2) The minor children of the deceased judge or prosecutor, as well as children over 18, until the termination of their studies, but no more than 26 years old, are entitled to an inheritor's pension, at a percentage calculated out of the paid service pension or out of the

pension entitled to the holder at the date of the death, actualized if necessary, according to Law no.19/2000 on the public pensions system and other social insurance rights, as subsequently amended, in the percentages provided by the law, according to the number of inheritors.

(3) If at the date of the death, the judge or prosecutor does not fulfil the conditions provided for receiving a service pension, the minor children, as well as children over 18, until the termination of their studies, but no more than 26 years old, are entitled to an inheritor's pension, at a percentage of 75% of the gross salaries of the deceased holder, in the previous month of activity, according to Law no.19/2000, as subsequently amended and supplemented.

Art.85 - (1) The amount of the service pension that exceeds the level of the pension in the public social insurance system, the one provided for in article 82 paragraph (2), article 83¹ and article 84 paragraph (3), as well as the service pension of those that do not fulfil the age limit condition provided by Law no.19/2000, as subsequently amended and supplemented, shall be covered by the State budget.

(2) The service pensions of judges and prosecutors, as well as the inheritor's pensions in article 84 shall be updated in relation to the increase of the gross monthly salary of a judge and prosecutor in service, in identical conditions of position, length of service and level of court or prosecutor's office, and benefits taken into consideration when calculating the service pension, and the benefit for length in service. If, after the actualization, the service pension is inferior to the present pension, then the judge or the prosecutor can choose to maintain that pension.

(3) The requests for retirement submitted by judges and prosecutors in service, in order to be granted the service pension provided by the present law shall be submitted to the competent territorial office for pensions. The payment of the pension shall be made starting with the date provided by the decree of the President of Romania as retirement date or, in lack of such a date, from the date when the President's decree of retirement is published in the Official Journal of Romania, Part I.

Art.86 - It is considered length of service into magistracy the period while judges, prosecutors, the judicial specialised personnel provided by art.87 paragraph (1) or assistant-magistrates held the offices of judge, prosecutor, law-specialised personnel in the former State arbitration, assistant-magistrate, auditor of justice, financial judge, financial judge-inspector, financial prosecutor, financial prosecutor-inspector, legal adviser within the jurisdictional section of the Court of Accounts, court clerk with higher education or judicial specialised personnel under art.87 paragraph (1), as well as the period during which they worked as lawyers, notaries, judicial assistants, professors at law in accredited institutions, judicial councillor, legal advisers, judiciary police officers with higher legal education, criminologist expert with higher judicial education, authorised according to law, probation personnel with higher legal education or who held legal offices in the Juridical Research Institute within the Romanian Academy, the Romanian Institute for Human Rights, the Parliament or its apparatus, or within the Presidential Administration, the Government, the Constitutional Court, of the Ombudsman, of the Court of Accounts or of the Legislative Council.

Art.87 - (1) For their term of office, the judicial specialised personnel within the Ministry of Justice and Civic Freedoms, the Public Ministry, the Superior Council of Magistracy, the National Institute of Magistracy, the National Institute of Criminology, National Institute for Criminologist Expertises shall be equated to judges and prosecutors as regards their rights and

duties, including the exam of admission, the evaluation of professional activity, the capacity and promotion exams, the provisions of the present law shall apply accordingly.

(2) The establishment of the acts that are to be considered as disciplinary offences, the procedure for the inquiry and the application of the disciplinary sanctions shall be made by order of the persons in charge of the authorities in paragraph (1).

Art. 88 - (1) For outstanding merits in their activity, the judges and prosecutors may be granted the Diploma "Judicial Merit".

(2) The Diploma "Judicial Merit" shall be granted by the President of Romania, at the proposal of the Superior Council of Magistracy, for judges and at the proposal of the Minister of Justice and Civic Freedoms, for the prosecutors.

Art. 89 - The design of the diplomas and their manufacture shall be established, with endorsement from the Superior Council of Magistracy, by the Minister of Justice and Civic Freedoms.

Art. 90 - (1) The judges and prosecutors shall have the obligation to refrain from any act that is likely to compromise their dignity in their profession and in society.

(2) The relations between judges and prosecutors at the workplace and in society shall be based on respect and good faith.

Art. 91 - (1) The judges and prosecutors shall be obliged to solve their works within the appointed time limit, as well as to solve the cases in a reasonable time, according to their complexity, and to observe professional secrecy.

(2) The judges shall be obliged to keep the secrecy of deliberations and voting in which they partake, including after cessation of their office.

Art. 92 - (1) During the court sessions, the judges and prosecutors shall wear the outfits that are appropriate for the court in which they work.

(2) The outfits shall be established by decision of the Government, with the endorsement of the Superior Council of Magistracy, and provided free of charge.

Art. 93 - The judges and prosecutors shall be obliged to provide, in the conditions and at the terms provided by the law, their statements of wealth, as well as the ones of interests.

TITLE IV

The liability of judges and prosecutors

CHAPTER I

General provisions

Art. 94 - The judges and prosecutors shall be civilly, disciplinarily and criminally liable according to the law.

Art.95 - (1) The judges, prosecutors and the assistant-magistrates may be searched, restrained or held in custody only with the approval of the sections of the Superior Council of Magistracy.

(2) In case of flagrant offences, the judges, prosecutors and the assistant-magistrates may be held in custody and searched according to the law. The body that decided the custody or the search shall be obliged to inform at once the Superior Council of Magistracy.

Art. 96 - (1) The State shall bear the patrimonial liability for any prejudice caused as a result of judicial errors.

(2) The State's liability shall be established according to the law and it shall not remove the liability of judges and prosecutors who exercised their office in bad faith or with serious negligence.

(3) The cases in which the damaged person is entitled to compensations for the prejudices caused through judicial errors committed in criminal trials are established by the Criminal Procedure Code.

(4) An injured person's right to compensation for the material damages caused through judicial errors committed in trials other than the criminal trials can be exercised only if a final decision has previously established the criminal or disciplinary liability, according to case, of the judge or prosecutor for an act committed during trial and if this act is likely to determine a judicial error.

(5) A person who has, during the trial, contributed in any manner in the commission of the judicial error by the judge or prosecutor shall not be entitled to compensation.

(6) In order to repair the prejudice, the damaged person may sue only the State, represented by the Ministry of Public Finances.

(7) After the damages have been covered by the State on grounds of an irrevocable decision handed down according to paragraph (6), the State may lodge an action for compensation against the judge or prosecutor who committed, either in bad faith or with serious negligence, the judicial error that caused the damages.

(8) The prescription term for suing in all cases provided by the present article is of one year.

Art. 97 - (1) Any person may notify the Superior Council of Magistracy, either directly or through the persons in charge of courts or prosecutor's offices, on the inappropriate activity or conduct of the judges or prosecutors, on the breach of professional duties with regard to the justice users or the commission of a disciplinary offence by a judge or prosecutor.

(2) Exercising the right provided by paragraph (1) may not concern the judgements which are subject only to appeal.

CHAPTER II

The disciplinary liability of judges and prosecutors

Art. 98 - (1) The judges and prosecutors shall be disciplinarily liable for the non observance of their office duties, as well as for the actions that affect the prestige of justice.

(2) The disciplinary liability of military judges and prosecutors may be established only according to this Law.

Art. 99 - (1) The followings shall be disciplinary offences:

- a) violation of legal provisions regarding their statements of wealth and interests, their incompatibilities and interdictions regarding judges and prosecutors;
- b) interventions for solving applications, requesting or accepting the solving of one's

personal interests or of those of one's family or of other persons, otherwise than within the legal framework accessible to all citizens, as well as interference in the activity of another judge or prosecutor;

- c) carrying out public political activities or expressing their political opinions when exercising their office duties;
- d) non-observance of the secrecy of deliberations or of the acts or documents that have a secret nature;
- e) repeated non-observance from imputable reasons, of the legal provisions on solving cases with celerity;
- f) unjustified refusal to receive applications, conclusions, memorandums or documents filed by the parties to a trial;
- g) unjustified refusal to fulfil a office duty;
- h) exercising the office with bad faith or serious negligence including the non-observance of the procedural provisions, unless the act is an offence;
- i) delays in carrying out the office duties, for imputable reasons;
- j) repeated unjustifiable absence from work;
- k) un-dignifying attitude towards colleagues, lawyers, experts, witnesses or litigants., when exercising their office duties;
- l) non-fulfilment of the obligation related to transferring the basic office norm to the court or prosecutor's office where they work;
- m) non-observance of the provisions on random case distribution;
- n) direct or through intermediaries participation in pyramid-type games, gambling or investments systems for which the transparency of funds is not ensured according to the law.

Art. 100 - The disciplinary sanctions that may be applied to judges and prosecutors, according to the seriousness of their transgressions, are:

- a) warning;
- b) decreasing the initial gross monthly indemnity by up to 15% for a period from one to 3 months;
- c) disciplinary transfer for a period from one to 3 months to a court or prosecutor's office within the jurisdiction of the same court of appeal or within the jurisdiction of the same prosecutor's office attached to it;
- d) exclusion from the magistracy.

Art. 101 - (1) The disciplinary sanctions provided under article 100 shall be decided by the sections of the Superior Council of Magistracy, according to its organic law.

TITLE V Transitory and final provisions

Art. 102 - (1) The judges in office of the High Court of Cassation and Justice shall continue their activity until the end of their term of office for which they have been appointed.

(2) The judges of the High Court of Cassation and Justice whose terms of office expired or, as the case may be, are dismissed for non-imputable reasons, preserve the rank acquired in the hierarchy and may hold the position of judge at the High Court of Cassation and Justice or

may return to the previous position as magistrate, to a different position as judge or prosecutor or they may choose to become lawyers or public notaries, without being subject to passing a mandatory exam.

Art. 103 - The judges and prosecutors having, at the date when this law enters into force, their basic office norm in institutions of higher legal education, shall be obliged, beginning with the following academic year, either to transfer their basic office norm to the court or prosecutor's office where they work or to renounce to the quality of judge or prosecutor.

Art. 104 - (1) The judges and prosecutors in office, as well as the judicial specialised personnel in art.87 paragraph (1) who enjoyed length of service in the magistracy according to Law no.92/1992 on judicial organisation, as republished, as subsequently amended and supplemented, shall keep this length of service.

(2) The remuneration of the assistant-magistrates shall be made as provided in Annex 1 to the Government Emergency Ordinance no.27/20026 on the remuneration and other benefits of the magistrates.

Art. 105 - (1) The military judges and prosecutors who continue their activity in military courts and prosecutor's offices, while assigned to lower offices, shall keep their salary rights that were theirs at the date of re-assignment. The other provisions of this Law shall apply accordingly also to the military judges and prosecutors.

(2) The transfer of the military judges and prosecutors, either at their request or following the reduction of positions, shall be made to civil courts and prosecutor's offices of equal ranks, according to their expressed choice, within the limits of available positions.

Art. 106 - The Superior Council of Magistracy shall approve, by decision published in the Official Journal of Romania, Part I:

a) the Regulation on the competitive exam for admission and for graduating the National Institute of Magistracy, which provides the manner of organisation, the subject-matters, the bibliography, the exam tests, the procedure for holding the admission and the graduation exam, as well as the minimum average mark for admission to and for graduation of the National Institute of Magistracy;

b) the Regulation of the National Institute of Magistracy;

c) the Regulation on the capacity exam for the debutant judges and for debutant prosecutors, which provides the manner of organisation, the subject-matters, the bibliography, the exam tests, the procedure for holding the examination and the minimum average mark for succeeding in the capacity exam for the debutant judges and for debutant prosecutors;

d) the Regulation on the organisation and holding of the exam for admission into magistracy;

e) the Regulation on the holding of the courses of continuous training for judges and prosecutors and on the certification of the obtained results;

f) the Regulation on organising and holding of promotion exam for judges and prosecutors;

g) the Regulations on the appointment of judges and prosecutors into leading position;

h) the Regulations on the evaluation of the professional activity of judges and prosecutors;

i) the Regulation on the leave of absence of judges and prosecutors.

Art.107 - (1) The present Law shall come into force within 90 days from the moment when it's published in the Official Journal of Romania, Part. I.

(2) When the present law shall come into force, the following provisions shall be repealed:

a) the provisions of art.6, art12, art 14-16, art.36-43, art.55, art.58 and art.59-69 of the Law no.56/1993 on the Supreme Court of Justice, republished in the Official Journal of Romania, part I, no.56/08.02.1999, as subsequently amended;

b) the provisions of art.2 paragraph (2), art.3, art.42-69, art.91-120¹, art.121-131¹ of Law no.92/1992 on the judicial organisation, republished in the Official Journal of Romania, part I, no.259/30.09.1997, as subsequently amended, except the provisions of art.66 on the length of service in magistracy required for promotion in the office of judge or prosecutor, which shall be repealed starting with 1st of January 2005.

(3) The provisions of art.13 of Law no.56/1993 on the Supreme Court of Justice, republished in the Official Journal of Romania, part I, no.56/08.02.1999, as subsequently amended, shall be repealed starting with 1st of January 2005.

The articles II-VIII from Title XVIII of Law no. 247/2005, which are not included in the supplemented body of Law 303/2004, are still applied as own provisions of Law no. 247/2005

Article II - (1) The Regulation on organising and holding of promotion exam for judges and prosecutors shall be approved by the Superior Council of Magistracy within 30 days from the entry into force of this Law and shall enter into force at the date when it is published in the Official Journal of Romania, Part I.

(2) The other Regulations in Article 106 shall be updated and approved within 30 days from the entry into force of this Law.

(3) Within 3 months from the entry into force of this Law, the Government Decision provided in Article 78 paragraph (3) of Law no.303/2004 shall be adopted.

Article III - Upon expiry of the time limit in Article II paragraph (2), the annex to Law no.303/2004 on the Statute of Magistrates, as subsequently amended, shall be repealed.

Article IV - (1) The boards for the first (competitive) exam regarding the leading position in courts and prosecutor's offices shall be appointed within 10 days from the entry into force of this Law, by the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

(2) The Regulations on the organisation of the competitive exam for appointment of judges and prosecutors to leading position shall be elaborated by the National Institute of Magistracy, approved by the Superior Council of Magistracy and posted on the web pages of the National Institute of Magistracy, of the Superior Council of Magistracy, of the Prosecutor's Office attached to the High Court of Cassation and Justice and of the Ministry of Justice, as well as at the premises of the courts and prosecutor's offices, within 10 days from the appointment of the boards.

(3) Within 30 days from publication of the Regulations in paragraph (2), a exam shall be held for appointment into leading position in courts of appeal, tribunals and in the prosecutor's offices attached to these, and within 60 days from the same date, an exam shall be

held for the leading position in first instance courts and the prosecutor's offices attached to these. Article 48 paragraph (7) and art.49 paragraph (9) shall apply accordingly.

(4) The appointments into leading position in courts of appeal, tribunals, specialised tribunals and first instance courts, as well as to the prosecutor's offices attached to these, to which applies the procedure in Article 48 paragraph (9) and Article 49 paragraph (9) shall be performed within 30 days from appointment to leading position of judges and prosecutors who obtained the best result in the competitive exam in paragraph (3).

(5) The non-observance of the time limits and of the procedure for the organisation of the exam provided in this Article is a disciplinary offence.

Article V - (1) The judges and prosecutors who, at the date when this law enters into force, meet the requirements of retirement for having reached the age limit shall be removed from office after 3 months from the entry into force of this law.

(2) The Superior Council of Magistracy shall take the necessary measures for filling in within 4 months from the entry into force of this law, of the posts that are left vacant through the retirement of the persons in paragraph (1).

Article VI - The judges and prosecutors who have not renounced their basic office norm in institutions of higher legal education, according to Article 103 of Law no. 303/2004 re-published, are obliged to transfer their basic office norm to the court or prosecutor's office where they work, within 30 days from the entry into force of this law.

Article VII - (1) The judges, prosecutors, assistant-magistrates, judicial specialised personnel assimilated to magistrates and specialised auxiliary personnel shall submit the statements in Article 5 paragraph (3) or, the case being, in Article 6 and Article 7 of Law no. 303/2004 re-published, within 60 days from the entry into force of this Law.

(2) The National Council for the Study of Archives of the Intelligence shall verify the statements in Article 6 of Law no. 303/2004 re-published, and the Supreme Council of National Defence shall verify the statements in Article 7 of Law no. 303/2004 within 6 months from the entry into force of this law.

Article VIII - Article 83 of Law no.303/2004 re-published shall apply also to the assistant-magistrates of the Constitutional Court and to the judicial specialised personnel assimilated to judges and prosecutors in Article 73 of Law no.47/1992 on the organisation and operation of the Constitutional Court, as republished and subsequently amended and supplemented.

The Parliament of Romania adopted the present law under the conditions of art. 77 paragraph (2), observing the provisions of art.75 and art.76 paragraph (1) from the Constitution of Romania, republished.