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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ROMANIA

THE GOVERNMENT EMERGENCY ORDINANCE (*)

N°12/2019 OF 5 MARCH 2019
(GEO 12)

AMENDING AND SUPPLEMENTING SOME NORMATIVE ACTS
IN THE FIELD OF JUSTICE

(*) Translation provided by the Romanian authorities

Annex 1

**Government Emergency Ordinance no. 12/2019 of March 5th, 2019
amending and supplementing
some normative acts in the field of justice**

Considering that since the publication in the Official Gazette of Romania, Part I, no. 137 of February 20th, 2019 of Government Emergency Ordinance no. 7/2019 regarding some temporary measures concerning the admission contest at the National Institute of Magistracy, the initial professional training of judges and prosecutors, the graduation exam of the National Institute of Magistracy, the internship and the exam capacity of judges and prosecutors as well as for amending and supplementing Law no. 303/2004 on the statute of judges and prosecutors, Law no. 304/2004 on the organization of the Judiciary, and Law no. 317/2004 on the Superior Council of Magistracy and so far there have been a number of negative reactions regarding certain legislative solutions contained in this normative act,

given that these reactions come mainly from the representatives of the institutions of the Judiciary - the Superior Council of Magistracy, the High Court of Cassation and Justice, the Public Ministry - as well as the professional associations of judges and prosecutors,

noting that these reactions focused in particular on the intervention in the field of the delegation of prosecutors to the leading positions within the prosecutors' offices for which the appointment is carried out by the President of Romania, as well as the modification brought by Government Emergency Ordinance no. 7/2019 to the provisions of art. 54 par. (1) of Law no. 303/2004 on the statute of judges and prosecutors, republished, as further amended and supplemented, a legislative amendment that gave judges the possibility to run for and be appointed to the highest leading positions in the prosecutor's offices, in the latter case claiming an impairment of the statute and independence of the judges, the only ones who perform the justice, as well as of the principle of separating the careers of judges and prosecutors, including by moving a duty of the Prosecutors Section to the Plenum of the Superior Council of Magistracy,

noting that these complaints of members of the body of magistrates are currently affecting the optimal functioning of the courts and prosecutors' offices attached to them and generates the danger of dividing the society in the general context of misunderstanding,

noting that the existing tensions can be eliminated by immediately removing the provision that raised these reactions,

also, given the importance of the process of informatization of the Judiciary in order to achieve a qualitative act of justice, a process that cannot be achieved without ensuring a highly qualified human resource in the field, it is necessary to urgently take legislative measures for a proper remuneration of IT specialists in this system,

in this respect, it is proposed to return to the legislative solution prior to the entry into force of Government Emergency Ordinance no. 7/2019, regarding the remuneration of IT specialists in the judicial system, as it was included in Law no. 304/2004 on the organization of the judiciary, republished, as further amended and supplemented, a solution which also ensures an uniform remuneration regime of them.

Taking into account that by Law no. 234/2018, art. 44 of Law no. 317/2004 on the Superior Council of Magistracy, republished, as further amended and supplemented, paragraph 3 of this article stating that "the disciplinary action in the event of misconduct committed by judges, prosecutors and magistrates-assistants is exercised by the Judicial Inspection, through the judicial inspector", being, thus eliminated the previous legislative solution which provided the

quality of holder of the the disciplinary action of the minister of justice, the president of the High Court of Cassation and Justice and the Prosecutor General of the Prosecutor's office attached to the High Court of Cassation and Justice. Therefore, for the purpose of correlating the rules on disciplinary liability, it is necessary to remove the provisions referring to the exercise of the prerogatives arising from the quality of the disciplinary action by such persons,

taking into account the necessity to regulate, without delay the rights, the statute and the role of Judiciary police officers and agents seconded within the Section for investigating the offences within the Judiciary, as well as of its specialists, categories of personnel that are very necessary for the accomplishment, in optimal conditions, of the prosecution activity carried out by this prosecutor's office structure,

whereas, in accordance with the provisions of art. 64 par. (3) of Law no. 24/2000 regarding the legislative technique norms for drafting of normative acts, republished, as subsequently amended and supplemented, "the repeal of a provision or of a normative act has a definitive character. It is not admitted that through abrogation of an earlier repeal act the initial normative act to be reinstated. The provisions of Government Ordinances that provided for repealing rules and were rejected by law by Parliament are an exception to the previously mentioned rule", considering that all of these represent an extraordinary situation, the regulation which cannot be postponed, within the meaning of art. 115 par. (4) of the Constitution of Romania, republished, so that any modality of regulating other than legislative delegation, even in an emergency procedure, would not be able to remove immediately these negative consequences,

On the grounds of art. 115 par. (4) of the Constitution of Romanian, republished,
The Government of Romania adopts this emergency ordinance.

Art. I - Law no. 303/2004 on the statute of judges and prosecutors, republished in the Official Gazette of Romania, Part I, no. 826 of September 13, 2005, as amended and supplemented, is amended as follow:

1. Article 54 para (1) shall have the following content:

"(1) The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the first deputy and his deputy, the Chief Prosecutor of the National Anticorruption Directorate, his deputies, the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism, his deputies as well as the chief prosecutors of sections of these prosecutors' offices, are appointed by the President of Romania, at the proposal of the Minister of Justice, with the opinion of the Prosecutor's Section of the Superior Council of Magistracy, among the prosecutors who have a minimum seniority of 15 years in the position of judge or prosecutor, for a period of three years, with the possibility of re-investing once".

2. Article 57 para. (7¹) shall be repealed.

3. In Article 65 para (1), letter (i) shall have the following content:

"i) the non-fulfilment of the conditions stipulated in art. 14 par. (2) letter a) and e) or of the condition regarding the lack of the fiscal record, if in the latter case it is considered that it is not necessary to maintain the position; "

Article II - Law no. 304/2004 on the organization of the Judiciary, republished in the Official Gazette of Romania, Part I, no. 827 of 13 September 2005, as subsequently amended and supplemented, is supplemented as follows:

1. After art. 88⁹, two new articles are introduced, namely art. 88¹⁰ and 88¹¹, having the following content:

"Art. 88¹⁰

(1) In order to carry out the specific activities provided by the Criminal procedure code, within the Section for investigating the offences within the Judiciary function, by secondment, Judiciary police officers or agents under the direct leadership and control of the prosecutors of the Section, in the limit of the positions provided by the law.

(2) The secondment of the Judiciary police officers and agents is disposed, at the request of the chief prosecutor of the Section for investigating the offences within the Judiciary, by the minister for internal affairs, for a period of no more than 3 years, with the possibility of extension every 3 years, with their consent.

(3) The appointment in office of the Judiciary police officers and agents provided in para (1) is carried out by order of the chief prosecutor of the Section for investigating the offences within the Judiciary.

(4) The termination of the secondment of the Judiciary police officers and agents may be disposed before the period provided in para (2), by motivated order of the chief prosecutor of the Section for investigating the offences within the Judiciary.

(5) During the secondment, the Judiciary police officers and agents shall not receive any assignment from the hierarchic superior bodies within the Judiciary police.

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6) The orders of the prosecutors within the Section for investigating the offences within the Judiciary are mandatory for the Judiciary police officers and agents. The acts drafted by these ones following the prosecutor's written order are carried out on behalf of the latter.

(7) The Judiciary police officers and agents provided in para (1) have the rights and obligations provided by the law for the police officers and police agents, with the exceptions provided by the present law and accordingly benefit from the rights provided in art. 13 and 23 of the Government Emergency Ordinance no. 27/2006 on the payment and other rights of the judges, prosecutors and other categories of personnel within the Judiciary, approved with amendments and supplements by Law no. 45/2007, as further amended and supplemented.

(8) The payment of the Judiciary police officers and agents provided in para (1) is carried out according to the legal provisions applicable to the Judiciary police officers and agents within the National Anticorruption Department.

(9) The duties provided by the law for the minister for internal affairs regarding the rights and accountabilities of the seconded Judiciary police officers and agents are exercised by the chief prosecutor of the Section for investigating the offences within the Judiciary. The duties on granting the professional degrees for the seconded Judiciary police officers and agents are exercised by the minister for internal affairs following the proposal of the chief prosecutor of the Section for investigating the offences within the Judiciary.

(10) The provisions of art. 6 of Law no. 364/2004 on the organisation and functioning of the Judiciary police, republished, as further amended, are applicable accordingly with respect to the activity of the Judiciary police officers and agents provided in para (1).

Art. 88¹¹

(1) In the Section for investigating the offences within the Judiciary are hired specialists in the field of processing and valorising economic, financial, customs, IT information, as well as in other fields, in order to clarify certain technical or specialised aspects within the prosecution activity.

(2) The specialists provided in para (1) are appointed within the Section for investigating the offences within the Judiciary by order of its chief prosecutor and enjoy the status of public servants.

(3) The specialists provided in para (1) carry out their activity under the direct leadership, supervision and control of the prosecutors of the Section for investigating the offences within the Judiciary and have the rights and obligations provided by the law for the public servants. The basic salaries for the specialists within the Section for investigating the offences within the Judiciary are those provided in art. 28 para (2) of the Framework Law no. 153/2017 on the payment of the personnel paid from public funds, as further amended and supplemented, corroborated with art. 1 letter e) and art 22 para (1)-(3) of Chapter VIII of Annex no. 5 from the same law. The specialists accordingly benefit from the rights provided in art. 13 and 23 of Government Emergency Ordinance no. 27/2006 approved with amendments and supplements by Law no. 45/2007, as further amended and supplemented".

2. After para (5) of art. 120, two new paragraphs are introduced, namely para (5¹) and (5²), having the following content:

"(5¹) Starting with March 2019, the IT specialists in the courts and prosecutors' offices, within the own structure of the Superior Council of Magistracy and of the institutions in its coordination, of the Ministry of Justice and of the Judicial Inspection, enjoy the same salary rights as the specialists from the Prosecutor's Office attached to the High Court of Cassation and Justice established according to the legislation regarding the salaries of the staff paid from public funds.

(5²) The staff provided in par. (2) benefit from the salary rights provided for the specialists from art. 116 par. (5)".

Article III

Paragraph (5) of Article 45 of Law no. 317/2004 on the Superior Council of Magistracy, republished in the Official Gazette of Romania, Part I, no. 628 of 1 September 2012, as amended and supplemented, shall be amended and shall have the following content:

"(5) Where it is found that there are indications of committing a disciplinary misconduct, the judicial inspector disposes, by resolution, the initiation of the disciplinary investigation."

Article IV

Article 17 of Government Emergency Ordinance no. 7/2019 regarding some temporary measures related to the admission contest at the National Institute of Magistracy, the initial professional training of judges and prosecutors, the graduation exam of the National Institute of Magistracy, the traineeship and the examination of the capacity of the judges and prosecutors, as well as the modification and supplementing Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on the organization of the judiciary and Law no. 317/2004 on the Superior Council of Magistracy, published in the Official Gazette of Romania, Part I, no. 137 of 20 February 2019, shall be repealed.