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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**ROMANIA**

**DRAFT LAW N° 419**

**AMENDING THE LAW N° 317/2004**

**ON THE SUPERIOR COUNCIL OF MAGISTRACY**

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*(\*) received from the Presidential Administration of Romania on 14 May 2018*



**LAW****amending and supplementing Law no. 317/2004 on the organisation and functioning of the Superior Council of Magistracy****The Senate shall adopt this bill of law**

**Art. I.-** Law no. 317/2004 on the Superior Council of Magistracy, republished in the Official Journal of Romania, Part I, no. 628 of 1 September 2012, as further amended, shall be amended and supplemented as follows:

**1. Article 5, letter a) shall be amended and shall read as follows:**

“a) a prosecutor from the Prosecutor’s Office attached to the High Court of Cassation and Justice, from the National Anti-Corruption Directorate or from the Directorate for Investigating Organised Crime and Terrorism;”

**2. Article 7 (1) and (2) shall be amended and shall read as follows:**

“Art.7.- (1) The members of the Superior Council of Magistracy shall be elected amongst the judges and prosecutors appointed by the President of Romania, having a seniority of at least 7 years as tenured judges or prosecutors, who had no disciplinary sanctions in the past 3 years.

(2) Judges and prosecutors may apply for election as members of the Superior Council of Magistracy before the collective bodies of judges and prosecutors, until 2 days at the most before elections. The applications of judges and prosecutors may be promoted by teams of judges and prosecutors and by their professional associations.”

**3. Article 7, preamble of paragraph (4) and letters c)-e) shall be amended and shall read as follows:**

“(4) The applications shall be submitted to the Management Board of the High Court of Cassation and Justice, or the Management Board of the Prosecutor’s Office attached to the High Court of Cassation and Justice, including for prosecutors of the National Anti-Corruption Directorate and of the Directorate for Investigating Organised Crime and Terrorism, as well as with the management boards of the courts of appeal or of the prosecutor’s offices attached to these courts, accompanied by:

c) A declaration on own responsibility indicating that they had not been part of the intelligence services before 1990 and have not cooperated with these services, in case of persons who were 16 years old or older on 1 January 1990;

d) A declaration on own responsibility stating that they are not and they have not been intelligence operatives, including undercover, informants or collaborators of intelligence services;

e) A declaration on own responsibility stating that they do not have a personal interest which influences or might influence the objective and impartial fulfilment of duties provided by law.”

**4. Article 7 (5) and (6) shall be amended and shall read as follows:**

“(5) Judges and prosecutors posted from other authorities than courts of law and prosecutor’s offices may not apply for the position of member of the Superior Council of Magistracy, and judges and prosecutors delegated or posted to other courts of law or prosecutor’s offices may only apply for the court of law or the prosecutor’s office they were delegated or posted from. Judges and prosecutors who were part of the intelligence services or cooperated with them outside the legal framework, as well as those who have a personal interest which influences or might influence the objective and impartial fulfilment of duties provided by law may not be elected as members of the Superior Council of Magistracy.

(6) The management boards of the High Court of Cassation and Justice, of the

Prosecutor's Office attached to the High Court of Cassation and Justice, of the courts of appeal and of the prosecutor's offices attached to them shall check compliance with the requirements provided by paragraphs (1) - (5) by the judges and prosecutors who submitted their applications, within 5 days from the application submission deadline. The decision of the management board shall be published without delay on the website of that court or prosecutor's office."

**5. Three new paragraphs, paragraphs (7)-(9) shall be introduced under Article 7, after paragraph (6), and shall read as follows:**

"(7) Applicants or, as applicable, judges or prosecutors from the courts of law or prosecutor's offices where the application was submitted may appeal against the decisions of the management boards provided by paragraph (6), within 5 days after publication.

(8) The appeal shall be lodged with the Superior Council of Magistracy and shall be solved by decision of the appropriate section of the Superior Council of Magistracy, within 7 days after its registration.

(9) The decision of the appropriate section of the Superior Council of Magistracy provided by paragraph (8) may be appealed against by the persons provided by paragraph (7), with the Civil Section I of the High Court of Cassation and Justice. The complaints shall be solved within 7 days from registration, summoning the parties. Counterstatement is not mandatory, and the provisions of Art. 200 and 201 of Law no. 134/2010 on the Civil Procedure Code, republished, as further amended, are not applicable. The decision ruled is final."

**6. Article 8 (2) and (3) shall be amended and shall read as follows:**

"(2) Prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, prosecutors from the National Anti-Corruption Directorate and prosecutors from the Directorate for Investigating Organized Crime and Terrorism shall elect, in the joint general meeting of prosecutors, by secret, direct and personal vote, one member for the Superior Council of Magistracy from the prosecutors who submitted their applications. Prosecutors from the territorial structures of these prosecutor's offices shall vote in the general meeting as well.

(3) Two judges from the High Court of Cassation and Justice, one prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice or from the National Anti-Corruption Directorate or from the Directorate for Investigating Organised Crime and Terrorism who obtained the majority of votes in the general meetings shall be elected as members of the Superior Council of Magistracy."

**7. Article 9 (3) and (4) shall be amended and shall read as follows:**

"(3) The management boards of the courts of appeal, tribunals and courts of first instance shall organise their own general meeting.

(4) The management boards of the prosecutor's offices attached to the courts of appeal, of the prosecutor's offices attached to the tribunals and of the prosecutor's offices attached to the courts of first instance shall organise their own general meeting."

**8. Article 10 (1)-(3) shall be amended and shall read as follows:**

"Art.10.- (1) The judges from each courts of appeal, the judges from all tribunals and specialist tribunals within the jurisdiction of each court of appeal and the judges from each court of first instance within the jurisdiction of each court of appeal shall appoint, by secret, direct and personal vote, one candidate each for the position of member of the Superior Council of Magistracy from the judges who submitted their applications.

(2) The prosecutors from each prosecutor's office attached to the courts of appeal, the prosecutors from each prosecutor's office attached to the tribunals and specialist tribunals within the jurisdiction of each court of appeal and the prosecutors from the prosecutor's offices attached to courts of first instance within the jurisdiction of each court of appeal shall appoint, by secret, direct and personal vote, one candidate each for the position of member of the Superior Council of Magistracy from the prosecutors who submitted their applications.

(3) Judges and prosecutors who obtained a majority of votes in the general meetings provided by Art. 9 (3) and (4) shall be appointed to apply for the position of member of the Superior Council of Magistracy. The decisions of the general meetings shall be submitted to

the management board of the court of appeal, and to the prosecutor’s office attached to it, respectively, and they shall decide on the results of the vote.”

**9. Article 11 (1) a)-f) shall be amended and shall read as follows:**

- “a) The list of candidates from the courts of appeal shall be submitted to all courts of appeal;
- b) The list of candidates from the prosecutor’s offices attached to the courts of appeal shall be submitted to all prosecutor’s offices attached to the courts of appeal;
- c) The list of candidates from tribunals and specialist tribunals shall be submitted to all tribunals and specialist tribunals;
- d) The list of candidates from the prosecutor’s offices attached to tribunals and specialist tribunals shall be submitted to all prosecutor’s offices attached to tribunals and specialist tribunals;
- e) The list of candidates from the courts of first instance shall be submitted to all courts of first instance;
- f) The list of candidates from the prosecutor’s offices attached the courts of first instance shall be submitted to all prosecutor’s offices attached to the courts of first instance.”

**10. Article 14 (1)-(3) shall be amended and shall read as follows:**

“Art.14.- (1) In the procedure for the appointment of applicants and for the election of members of the Superior Council of Magistracy, general meetings shall be legally convened in the presence of the majority of judges or prosecutors in office, as appropriate. Judges and prosecutors delegated or posted to other courts of law or prosecutor’s offices shall participate in the general meeting of the court of law or the prosecutor’s office they were delegated or posted from.

(2) General meetings shall be chaired by the magistrate with the longest standing as a judge or prosecutor, who did not apply for the position of member of the Superior Council of Magistracy.

(3) In the procedure for the election of members of the Superior Council of Magistracy, each judge and prosecutor shall vote for a maximum number of applicants equal to the number of members of the Superior Council of Magistracy, representing the category of courts or prosecutor’s offices where the judge or the prosecutor, as appropriate, undertake their activity.”

**11. Article 17 (1)-(3) and (5) shall be amended and shall read as follows:**

“Art.17.- (1) The Superior Council of Magistracy shall check the legality of appointment and election procedure, either *ex officio* or upon notification by any judge or prosecutor.

(2) In view of drafting such notification, judges and prosecutors are entitled to check the minutes on the procedures provided by paragraph (1) and their results, as well as the ballot papers.

(3) Complaints against the legality of the appointment and election procedures may be lodged with the appropriate section of the Superior Council of Magistracy, within 15 from the date when the vote result was established.

.....  
(5) In case any violations of the law are identified in the appointment and election procedures, the appropriate section of the Superior Council of Magistracy shall order the necessary actions to eliminate them, including repetition of the elections, only in the courts of law or prosecutor’s offices where the violations of law influenced the elections results.”

**12. A new paragraph, paragraph (6), shall be introduced under Article 17, after paragraph (5), and shall read as follows:**

“(6) The provisions of Art. 7 (9) shall apply accordingly.”

**13. Article 18 (2)-(4) shall be amended and shall read as follows:**

“(2) Before the submission of the list to the Standing Bureau of the Senate:

- a) The National Council for the Study of Intelligence Services Archives shall

verify and communicate, within 15 days from the request by the Superior Council of Magistracy, whether the judges and prosecutors elected were part of the intelligence services before 1990 or whether they collaborated with the intelligence services;

b) The Supreme Council of National Defence shall verify and communicate to the Superior Council of Magistracy the result of the verifications on the capacity of the judges and prosecutors elected as undercover officer, collaborator or informant of the intelligence services, within 15 days from the request of the Superior Council of Magistracy.

(3) The Standing Bureau of the Senate shall submit the list provided by paragraph

(1) to the Legal Committee for appointments, discipline, immunities and validation, to draft a report.

(4) The Senate, in the presence of the majority of its members, based on the report of the Legal Committee for appointments, discipline, immunities and validation, shall validate the list of magistrates elected as members of the Superior Council of Magistracy.”

**14. Article 19 (2) a) and c) shall be amended and shall read as follows:**

“a) Shall be legal professionals, with a seniority of at least 7 years in a legal profession or in higher education in the field of law;

c) Had not been part of the intelligence services before or after 1990 and they had not cooperated with them in any way, and do not have a personal interest which influences or might influence the objective and impartial fulfilment of duties provided by law. They shall submit an authentic declaration indicating that they have not been operational staff and have not cooperated in any way with any intelligence services, before or after 1990;”

**15. Article 23 (2) shall be amended and shall read as follows:**

“(2) Members of the Superior Council of Magistracy undertake permanent and activity which is not subject to a specific workload and shall not exercise activities as judges or prosecutors, except for members by right.”

**16.** Article 23 (3) and (4) shall be repealed.

**17. Article 24 (1) and (2) shall be amended and shall read as follows:**

“Art.24. - (1) The Superior Council of Magistracy is headed by a President, who is helped by a Vice-president, both elected by the Plenum from the ranks of the judges and prosecutors stipulated at Art.3 lett. a), and are members of different Chambers, for a one-year term of office, in the presence of at least 15 members of the Superior Council of Magistracy, by the vote of a majority of the attending members. The President’s term of office cannot be renewed.

(2) Running for President and Vice-president shall be a judge and a prosecutor nominated by the Chamber for Judges and respectively Chamber for Prosecutors of the Superior Council of Magistracy, from their own membership, in the presence of at least 2/3 of the membership of the Chambers, by a vote of the majority of attending members.”

**18. In Article 24, after paragraph (2) another two paragraphs shall be inserted, Par. (2<sup>1</sup>) and (2<sup>2</sup>), which shall read as follows:**

“(2<sup>1</sup>) The candidates for President and Vice-president shall file their candidacy together with a project detailing their goals, in the Chambers they are a member of.

(2) The relevant Chambers of the Superior Council of Magistracy shall examine and discuss the candidacies that were filed and nominate the candidates for President and Vice-president of the Superior Council of Magistracy.”

**19. Article 24 (3), d) and g) shall be amended and shall read as follows:**

“d) Shall propose the Plenum the necessary measures to fill the vacancies caused by the dismissal of some members of the Superior Council of Magistracy;

f) Shall appoint the members of the Superior Council of Magistracy who may be consulted for the development of draft legislation, upon proposal of the Plenum;”

**20. Article 24 (6) shall be amended and shall read as follows:**

“(6) The procedure provided by paragraph (2) shall apply in case the positions of president or vice-president become vacant.”

**21. Article 29 (8) and (10) shall be amended and shall read as follows:**

“(8) The complaint lodged by the judge or prosecutor targeted by the decision provided by paragraph (5) shall suspend the enforcement of the measure ordered with his/her career and rights.

(10) The draft agenda and the draft decisions subject to the vote of the Plenum or of the sections shall be published 3 days in advance on the website of the Superior Council of Magistracy. The agenda published does not include the requests for approval of searches, detainment, remand or house arrest, conditional release or bail regarding judges, prosecutors of assistant magistrates. The decisions of the Superior Council of Magistracy shall be published in the Official Journal of the Superior Council of Magistracy and on the webpage of the Superior Council of Magistracy. For additional points on the agenda, the transparency procedure shall apply accordingly.”

**22. A new paragraph, paragraph (11), shall be introduced under Article 29, after paragraph (10), and shall read as follows:**

“(11) In order to ensure transparency, the meetings of the Superior Council of Magistracy shall be public:

a) The public meetings of the Plenum and of the Sections shall be broadcasted live, audio-video, on the webpage of the Council, shall be recorded and published on the webpage of the Council, except for disciplinary deliberations and hearings;

b) The decisions adopted by the Plenum and by the Sections shall be subject to the provisions of Law no. 52/2003 on decision-making transparency in the public administration, as republished, except for decisions on disciplinary matters and on magistrate career, as well as for decisions adopted for the enforcement of the provisions of Art. 32 of this law;

c) The final part of the decisions adopted by the Plenum and by the Sections shall mention, without prejudice to the secrecy of the vote, the number of votes “for”, the number of votes “against” and the number of votes “abstention”, as applicable.”

**23. Article 30 shall be amended and shall read as follows:**

“Art.30.- (1) The appropriate sections of the Superior Council of Magistracy have the right, and the correlative obligation, respectively, to take action *ex officio* to defend judges and prosecutors against any interference with their professional activity or in relation to it, which might affect the independence and impartiality of judges, and the independence and impartiality of prosecutors, respectively, in ruling solutions, pursuant to Law no. 304/2004 on the organisation of the judiciary, republished, as further amended and supplemented, and against any action which might give rise to suspicion with regard to these. Also, the sections of the Superior Council of Magistracy shall safeguard the professional reputation of judges and prosecutors. Notifications on safeguarding the independence of the authority of the judiciary shall be solved upon request or *ex officio* by the Plenum of the Superior Council of Magistracy.

(2) The Plenum of the Superior Council of Magistracy, the sections, the president and the vice-president of the Superior Council of Magistracy, either *ex officio* or upon notification by the judge or prosecutor, shall call upon the Judicial Inspection to perform verifications, in order to safeguard the independence, impartiality ad professional reputation of judges and prosecutors.

(3) In circumstances where the independence, impartiality or professional reputation of a judge or of a prosecutor are affected, the appropriate section of the Superior Council of Magistracy shall take the necessary actions and shall publish them on the website of the Superior Council of Magistracy, may notify the competent bodies to decide on the necessary measures or may order any other appropriate action, pursuant to law.

(4) A judge or a prosecutor who considers that his or her independence, impartiality or professional reputation are being affected in any manner may notify the Superior

Council of Magistracy, and the provisions of paragraph (2) shall apply accordingly.

(5) Upon request of the targeted judge or prosecutor, the notification published on the website of the Superior Council of Magistracy shall be posted in the institution where he/she works and/or published on the website of this institution.

(6) The Superior Council of Magistracy shall ensure the observance of the law and of the criteria of competence and professional ethics in the course of the professional career of judges and prosecutors.

(7) The prerogatives of the Plenary of the Superior Council of Magistracy and of its sections, regarding the career of judges and prosecutors, shall be exercised according to Law no. 303/2004 on the statute of judges and prosecutors, republished, as further amended and supplemented and to Law no. 304/2004 on the organisation of the Judiciary, as further amended and supplemented.”

**24. A new article, article 34<sup>1</sup> shall be introduced after Article 34, and shall read as follows:**

“Art.34<sup>1</sup>.- (1) The Superior Council of Magistracy may undertake cooperation activities with other institutions of the judiciary from other states.

(2) Pursuant to the requirements established by Government Decision, the Superior Council of Magistracy may use funds from its own budget or, as appropriate, from external funds, to cover the expenditure for the participation of representatives of institutions from other countries in the cooperation actions undertaken in Romania.”

**25. Article 35, letters a)-c) shall be amended and shall read as follows:**

“a) Shall defend the independence and the professional reputation of judges and prosecutors pursuant to Art.30;

a) Shall appoint and dismiss the Chief Inspector, pursuant to law;

b) Shall adopt the decision on compliance with the good repute requirement, based on the report drafted by the Judicial inspection, pursuant to law;”

**26. Article 35 (d) shall be repealed.**

**27. Article 35 (f) shall be amended and shall read as follows:**

“f) Shall carry out any other duties established by law or by regulation.”

**28. Article 36 (1), letters d)-f) shall be repealed.**

**29. Article 36 (2) shall be repealed.**

**30. Article 37 (b) shall be amended and shall read as follows:**

“b) Shall approve the list of localities which fall under the jurisdiction of courts of first instance, with the endorsement of the Minister of Justice, by decision published in the Official Journal of Romania, Part I;”

**31. Article 38 (1) shall be amended and shall read as follows:**

“Art.38.- (1) The Plenum of the Superior Council of Magistracy shall adopt the Deontological Code for Judges and Prosecutors, the Regulation on the organisation and functioning of the Superior Council of Magistracy, the Regulation on the procedure for election of the members of the Superior Council of Magistracy, as well as other regulations and decisions under the remit of the Plenum pursuant to Law no. 303/2004, republished, as further amended and supplemented, and to Law no. 304/2004 republished, as further amended and supplemented.”

**32. Article 40 shall be amended and shall read as follows:**

“Art.40.- (1) The Section for Judges of the Superior Council of Magistracy shall have the following duties concerning the career of judges:

a) Shall decide on the delegation and posting of judges, pursuant to law;

b) Shall appoint and dismiss the president, vicepresidents and presidents of sections of the High Court of Cassation and Justice;

c) Shall propose the President of Romania the appointment and removal from office of judges;

d) Shall appoint debutant judges based on their results in the



graduation examination from the National Institute of Magistracy;

- e) Shall remove from office debutant judges;
- f) Shall analyse compliance with legal requirements by debutant judges who passed the capacity exam, by other legal professionals who passed the exam for admission in magistracy, by judges who applied for a promotion exam and by judges proposed for appointment in management positions;
- g) Shall solve complaints against the appraisals granted by the committees for the annual assessment of professional activity of judges, set up pursuant to law;
- h) Shall decide on the promotion of judges;
- i) Shall appoint judges in management positions, pursuant to law and regulations;
- j) Shall approve the transfer of judges;
- k) Shall decide on the suspension from office of judges;
- l) Shall convoke the general meetings of judges, pursuant to law;
- m) Shall approve measures to supplement or decrease the number of positions for courts of law;
- n) Shall take actions to solve the complaints received from court users or from other persons on the inappropriate conduct of judges;
- o) Shall adopt the internal Rules of Procedure of courts of law;
- p) Shall fulfil any other duties set forth by laws or regulations.

(2) The Section for Prosecutors of the Superior Council of Magistracy shall have the following duties concerning the career of prosecutors:

- a) Upon proposal of Minister of Justice, shall submit to the President of Romania the proposal on the appointment of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, of his/her first deputy and deputy, of the Chief Prosecutor of the National Anti-Corruption Directorate, of his/her deputies, of the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism and of their deputies;
- b) Shall endorse the proposal of the Minister of Justice on the appointment and dismissal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, of the Chief Prosecutor of the National Anti-Corruption Directorate, of their deputies, of the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism and of his/her deputies;
- c) Shall appoint and dismiss the chief prosecutors of the sections of the Prosecutor's Office attached to the High Court of Cassation and Justice, of the National Anti-Corruption Directorate and of the Directorate for Investigating Organised Crime and Terrorism;
- d) Shall propose to the President of Romania the appointment and removal from office of prosecutors;
- e) Shall appoint debutant prosecutors based on their results in the graduation examination from the National Institute of Magistracy;
- f) Shall remove from office debutant prosecutors;
- g) Shall analyse compliance with legal requirements by debutant prosecutors who passed the capacity exam, by other legal professionals who passed the admission exam, by prosecutors who applied for a promotion exam and by prosecutors proposed for appointment in management positions;
- h) Shall solve complaints against the appraisals granted by the committees for the annual assessment of professional activity of prosecutors, set up pursuant to law;
- i) Shall decide on the promotion of prosecutors;
- j) Shall appoint prosecutors in management positions, pursuant to law and regulations;
- k) Shall approve the transfer of prosecutors;

- l) Shall decide on the suspension from office of prosecutors;
- m) Shall decide on the delegation and posting of prosecutors, pursuant to law;
- n) Shall convoke the general meetings of prosecutors, pursuant to law;
- o) Shall approve measures to supplement or decrease the number of positions for prosecutor's offices;
- p) Shall take actions to solve the complaints received from court users or from other persons on the inappropriate conduct of prosecutors;
- q) Shall fulfil any other duties set forth by laws or regulations."

**33. Article 41 is hereby amended and shall read:**

"Article 41.- (1) The division for judges of the Superior Council of Magistracy shall have the following responsibilities regarding the organisation and operation of the courts of justice:

- a) approve the establishment and dissolution of divisions in the courts of appeal, other courts of justice in the jurisdiction of the courts of appeal, as well as the setting up of secondary premises of courts of justice and their jurisdictions, according to the law;
- b) approves the measures for supplementing or reducing the number of posts for courts of justice and prosecutor's offices;
- c) establishes the categories of trials or applications to be judged / settled in the City of Bucharest only by certain courts of justice, while observing the substantive jurisdiction provided for by the law;
- d) at the proposal of the presidents of courts of appeal, establishes the number of vice-presidents for the courts of appeal, tribunals and specialised tribunals, as well as the first instance courts of justice where one vice-president works;
- e) fulfils any other duties set forth by laws or regulations;
- f) adopts the Internal Regulations of courts of justice.

(2) The division for prosecutors of the Superior Council of Magistracy shall have the following responsibilities regarding the organisation and operation of courts of justice:

- a) approves the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice or of the Chief Prosecutor of the National Anti-Corruption Department or of the Chief Prosecutor of the Department for Investigation of Organised Crime and Terrorism to establish or dissolve divisions within the prosecutor's offices;
- b) upon the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, approves the number of deputies of the general prosecutors within prosecutor's offices attached to courts of appeal and of prime-prosecutors within prosecutor's offices attached to tribunals, as well as prosecutor's offices attached to first instance courts, where prime-prosecutors are assisted by deputies;
- c) fulfils any other duties set forth by laws or regulations;
- d) adopts the Internal Regulations of prosecutors' offices."

**34. Article 44 (3) is hereby amended and shall read:**

"(3) In the case of disciplinary offences committed by judges, prosecutors and assistant-magistrates, the disciplinary action shall be taken by an Inspector of the Judicial Inspection Service.

**35. In Article 44, paragraphs (4) and (5) are repealed.**

**36. In Article 44, paragraph (6) shall be amended and read as follows:**

(6) In order to take the disciplinary action, the Judicial Inspection Service shall be required to carry out a preliminary investigation."

**37. Article 45 (1)-(4) are hereby amended and shall read:**

"Article 45.- (1)The Judicial Inspection Service may act *ex officio* or be notified in writing and motivated by any person concerned, including by the Superior Council of Magistracy, regarding the disciplinary offences committed by judges and prosecutors.

(2) Where the notification is not signed, does not include the offender's identification details or specific information on the facts that prompted the notification, the notification shall be closed

and an answer to such effect will be issued. A new notification may be lodged, in compliance with the law.

(3) The facts notified according to Paragraph (1) shall be subject to a prior inquiry by the inspectors of the Judicial Inspection Service, for the purpose of determining whether indications of a disciplinary offence exist. The inquiries will be carried out within 45 days from the date of the notification of the Judicial Inspection Service, according to (1) above. The Chief Inspector may order the extension of the deadline of the prior inquiry by not more than 45 days, if there are sound reasons for taking such a measure.

(4) If no indications of a disciplinary offence are found during the prior inquiries, the notification shall be closed and the resolution communicated directly to the person who made the notification and the person about whom the notification was made. The closing resolution is subject to confirmation by the Chief Inspector. The Chief Inspector may invalidate the resolution once only and may order the extension of the inquiry by a written and motivated order.”

**38. Article 45 (5) c) is hereby amended and shall read:**

“c) to order the commencement of the disciplinary investigation;”

**39. At Article 45 (5), after Letter c), a new Letter d) will be introduced, reading:**

“d) should indications of a disciplinary offence be found, the Judicial Inspector shall issue a resolution ordering the commencement of the disciplinary investigation.”

**40. Article 45 (6) and (7) are hereby amended and shall read:**

“(6) When several notifications concern the same offence and person, the notifications shall be connected.

(7) The deadlines set forth in this Article are limitative.”

**41. After Article 45, a new Article 45<sup>1</sup> is introduced, reading:**

“Article 45<sup>1</sup>.- (1) The person that lodged the notification may submit to the Chief Inspector a complaint against the resolution to close the notification issued under the terms of Article 45 (4), within 15 days from the receipt of the communication thereof. The complaint shall be dealt with within 20 days from its registration at the Judicial Inspection Service.

(2) The Chief Inspector may resolve either to:

a) Reject the complaint and maintain the challenged resolution;

b) Admit the complaint and extend the inquiry. The inquiries are to be completed by the Judicial Inspector within 30 days from the order issued by the Chief Inspector.

(3) The Chief Inspector’s resolution to reject the complaint and the resolution to close the notification itself may be appealed by the person that made the notification with the Administrative Litigations Division of the Bucharest Court of Appeal, within 15 days from receipt of the relevant notice. The case shall be tried with speed and priority.

(4) The Administrative Litigations Division of the Bucharest Court of Appeal may resolve to:

a) reject the appeal;

b) admit the appeal, quash the resolution of the Chief Inspector and return the case file to complete the inquiry.

(5) The Decision pronounced on the grounds of Paragraph (4) b) should include the reasons for which the appealed resolutions were quashed and indicate the facts and circumstances that need further clarification, as well as the evidence to be administered to complete the inquiry.

(6) The Decision of the Administrative and Financial Litigations Division of the Bucharest Court of Appeal may be appealed against with the High Court of Cassation and Justice - Administrative and Financial Litigations Division, within 15 working days from the its communication.”

**42. Article 46 (1) and (6) are hereby amended and shall read:**

“Article 46. - (1) The disciplinary investigation establishes the facts and their consequences, the circumstances in which they were committed, as well as any other conclusive data that can lead to a decision upon the existence or inexistence of guilt. It is obligatory to hear the person concerned and to check the defence brought by the judge or prosecutor who is being investigated. Refusal by

the judge or prosecutor under investigation to make statements or to appear for the inquiry shall be recorded in an official record and shall not prevent the inquiry from being concluded. The judge or prosecutor under investigation is entitled to learn of all the acts of the investigation and to request evidence for his or her defence. The disciplinary proceedings shall be compliant with the process and procedure guarantees provided by Law no.134/2010, recast, as amended.

(6) The disciplinary investigation shall be carried out within 60 days from it being ordered, except when suspended. The disciplinary investigation may be extended by up to 30 days, if sound reasons exist for such extension.”

**43. Article 47, the preamble of Paragraph (1) and Letter b) are hereby amended and shall read:**

“Article 47.- (1) After the disciplinary investigation, by written and motivated resolution, the Judicial Inspector may determine to:

b) reject the notification, if during the disciplinary investigation it is found that the requirements for taking disciplinary action are not met.”

**44. Article 47 (1) c) is hereby repealed.**

**45. Article 47 (2) is hereby repealed.**

**46. Article 47 (4)-(7) is hereby amended and shall read as follows:**

“(4) By written and reasoned decision, the chief inspector may invalidate once only the resolution of the judicial inspector and, by written and reasoned resolution, may order the disciplinary investigation to be completed. On completion of the disciplinary investigation, by written and reasoned resolution, the chief inspector may order one of the solutions provided for at Paragraph (1) a) or b).

(5) The person that notified the alleged disciplinary offence may appeal against the resolution to reject the notification provided for in Paragraph (1) b) and Paragraph (4) before the Administrative and Fiscal Litigations Division of the Bucharest Court of Appeal, within 15 days from receiving notice of such rejection, without a prior procedure. The case shall be tried with speed and priority.

(6) The Court may:

a) reject the appeal;

b) grant the appeal and quash the resolution of the judicial inspector for continuation of the disciplinary proceedings.

(7) The decision issued under Paragraph (6) b) should include the reasons for which the resolution of the judicial inspector was quashed and indicate the facts and circumstances that need further clarification, as well as the evidence to be administered to complete the disciplinary investigation.”

**47. At Article 47, after Paragraph (7), a new Paragraph (8) is introduced, reading:**

“(8) The decision may be appealed against at the High Court of Cassation and Justice - Division for Administrative and Fiscal Litigations, within 15 days from receiving notice thereof. The case shall be settled within 6 months.”

**48. Article 48 is hereby repealed.**

**49. After Article 48, a new Article 48<sup>1</sup> is introduced, reading:**

“Article 48<sup>1</sup>.- (1) In cases that are urgent or of high public interest, the division for judges or the division for prosecutors of the Superior Council of Magistracy, as applicable, may set shorter deadlines than those laid down in Articles 45 and 46. In such cases, on request by the judicial inspector, the division for judges or the division for prosecutors a Superior Council of Magistracy, as applicable, may grant extensions of deadlines.

(2) In the situations provided for at Paragraph (1), the chief inspector may order *ex officio* the reduction of the deadlines set forth by law.”

**50. Article 49 (2) is hereby amended and shall read:**

“(2) The disciplinary action is sustained before the Sections by one of the judicial inspectors who exercised it and, only if none of the judicial inspectors that carried out the action is available, by a judicial inspector appointed by the chief inspector.

**51. Article 49 (3) is hereby repealed.**

**52. Article 49 (7) is hereby amended and shall read:**

(7) The provisions of the this Law regulating the procedure for solving the disciplinary action shall be completed by the provisions of Law no.134/2010, recast, as amended, to the extent to which they are not incompatible.”

**53. After Article 49, a new Article 49<sup>1</sup> is hereby introduced, reading:**

“Article 49<sup>1</sup>.- The disciplinary proceedings shall continue even when the judge is appointed as prosecutor or the prosecutor is appointed as judge.”

**54. Article 52 (1) is hereby amended and shall read:**

“Article 52.- (1) During the disciplinary proceedings, the relevant Division of the Superior Council of Magistracy may order, ex officio or at the proposal of the judicial inspector, the suspension from office of the magistrate until the decision solving the disciplinary action becomes final, if the continuance in exercising the office could influence the impartiality of the disciplinary proceedings or if the disciplinary proceedings are likely to seriously affect the prestige of justice. The suspension may be reconsidered at any time throughout the disciplinary action, before the relevant Division issues a decision.”

**55. At Article 52, after Paragraph (1), new Paragraphs (1<sup>1</sup>)-(1<sup>4</sup>) are introduced, reading:**

“(1<sup>1</sup>) The suspended judge or prosecutor may appeal against the suspension from office ordered under Paragraph (1) within 5 days from receiving notice thereof. The appeal shall be judged by the panel of five judges of the High Court of Cassation and Justice, of which the voting members of the Superior Council of Magistracy may not be part.

(1<sup>2</sup>) The appeal shall be tried with speed and priority and shall not stay the implementation of the decision of the relevant division of the Superior Council of Magistracy. The Court decision shall be final.

(1<sup>3</sup>) On request, the Court may order the stay of the order until the appeal is settled.

(1<sup>4</sup>) If the order suspending the judge or prosecutor from office is annulled, the suspension from office shall end and the person in question be returned to his/her the initial status, be paid the wages he/she did not receive during the suspension, according to Law no.303/2004, recast, as amended, and be recognised the time in service and in magistracy for the same period of time.”

**56. After Article 52, a new Article 52<sup>1</sup> is hereby introduced, reading:**

“Article 52<sup>1</sup>.- (1) The dismissal of a judge or prosecutor under the terms of Article 65 of Law no. 303/2004, recast, as amended, or the appointment of a judge as prosecutor or of a prosecutor as a judge shall not preclude the continuation of the disciplinary proceedings.

(2) Except when a judge was appointed as prosecutor or a prosecutor was appointed as judge, during the disciplinary proceedings continued under Paragraph (1), if disciplinary action is taken, when the relevant Division finds that the notification is grounded, it may decide to apply one of the disciplinary sanctions set forth in the law, in relation to the severity of the disciplinary offence and personal circumstances of the person in question. The disciplinary sanction thus established shall not be enforced. When the judge is appointed as prosecutor or the prosecutor is appointed as judge, the provisions of Article 49 (6) shall apply.

(3) The disciplinary action against a judge who was appointed as prosecutor after committing the disciplinary offence shall be judged by the Division for Judges. The disciplinary action against a prosecutor who was appointed as judge after committing the disciplinary offence shall be judged by the Division for prosecutors.”

**57. Article 53 is hereby amended and shall read:**

“Article 53.- If a judge or a prosecutor is excluded from magistracy, the final decision shall be submitted to the President of Romania, in order to issue the decree for the removal from office.”

**58. After Article 53, a new Article (53<sup>1</sup>) is hereby introduced, reading:**

“Article 53<sup>1</sup>.- (1) Working groups shall be set up in order to discharge the responsibilities of the Superior Council of Magistracy via its Plenum and Divisions. The working groups shall act as specialised preparatory bodies and be comprised of members of the Council.

(2) The organisation, operation and responsibilities of the working groups shall be determined in

a Regulation developed by the Plenum of the Superior Council of Magistracy or by the relevant Divisions, as the case may be.

**(3)** The specialised working groups shall have the following responsibilities:

- a) analyse and propose solutions for the items on the agenda of the Plenum and Divisions, except for disciplinary and career matters;
- b) submit draft decisions subject to being included on the agenda and approval in the Plenum and Divisions, except for disciplinary and individual career matters;
- c) where divergent points of view exist in the working groups and the draft decision cannot be adopted by consensus, the decision shall be made by the casting of votes. Alternative draft decisions on the issues on the agenda of the Plenum or Divisions will be included on the agenda, indicating the majority and minority opinions, as the case may be;
- d) reviews the requests related to the scope of work of the Council received from members, professional associations, civil society organisations, other public authorities and agencies and set priorities for activities on specific themes;
- e) other responsibilities set forth by law and the regulation.”

**59. Article 54 (1) and (2) are hereby amended and shall read:**

“Article 54.- (1) The length of the term of office for elected members - judges, prosecutors and representatives of the civil society - of the Superior Council of Magistracy shall be 6 years, not renewable, and carrying the same rights and obligations. The members of the Superior Council of Magistracy carry out their work on a permanent and non-standardised basis and have the statute of dignitaries. The provisions of Government Ordinance no. 32/1998 on the organisation of the cabinet of the dignitary of central public authorities, as amended, shall apply accordingly.

(2) The capacity as representative of the civil society elected as member of the Superior Council of Magistracy shall be recognised as time in specialised service, in the legal profession; such office shall be incompatible with the capacity as member of the Parliament, civil servant, local elected authority, judge, prosecutor, notary public, lawyer, legal advisor, mediator, arbiter, court enforcement officer, insolvency practitioner, court clerk, probation officer and any other regulated legal professions.”

**60. At Article 54, after Paragraph (5), a new Paragraph (6) is hereby introduced, reading:**

“(6) The representatives of the civil society elected as members of the Superior Council of Magistracy shall not participate in the meetings of the Divisions for Judges and/or Prosecutors and have the following specific duties:

- a) constantly inform the civil society organisations on the work of the Superior Council of Magistracy;
- b) consult civil society organisations on their proposals and suggestions of actions that CSM should take to improve the operation of the judicial bodies, as a public service to the society, preparing a quarterly review and digest report of such proposals. The report shall be submitted to the Plenum or Divisions, as applicable, for analysis and decision;
- c) monitor the Superior Council of Magistracy’s obligations to comply with the transparency requirements, ensure public access to information and deal with petitions from the civil society; prepare an annual report that shall be published on the Council’s web site.”

**61. Article 55 (1)-(5) are hereby amended and shall read:**

“Article 55.- (1) The revocation from office of an elected member of the Superior Council of Magistracy may be ordered at any time during the term of office, in the following cases: a) the person in question no longer meets the legal requirements for being an elected member of the Superior Council of Magistracy;

- b) the person in question has been subject to one of the disciplinary sanctions provided by law for judges and prosecutors, and the sanction decision is final;
- c) the majority of judges or prosecutors, as applicable, that effectively work in the courts that the person in question represents withdraw confidence in the same person.

(2) The relevant Division of the Superior Council of Magistracy finds that one of the

assumptions set forth at (1) a) and b) above is fulfilled, on the notification from the majority of judges comprised in the Division for Judges or the majority of prosecutors comprised in the Division for Prosecutors, as the case may be, as well as on the notification from a General Meeting.

(3) In the case provided for at (1) c) above, the procedure for dismissing a member of the Council from office shall be thus:

a) the withdrawal of confidence maybe initiated by any General Meeting of courts or prosecutors' offices represented by the member of the Superior Council of Magistracy whose dismissal is requested. The professional associations of judges and prosecutors may petition the general meetings of judges and prosecutors to start the proceedings for withdrawal of confidence;

b) the Council initiates the proceedings to withdraw confidence on request from at least General meetings, in the case of judges or prosecutors from first instance courts; three general meetings, in the case of judges or prosecutors from tribunals; one general meeting, in the case of judges or prosecutors from courts of appeal; and the general meeting of judges and prosecutors from the High Court of Cassation and Justice;

c) the decisions taken in general meetings to initiate or support the proceedings for withdrawal of confidence shall be taken by majority of votes of the judges or prosecutors who effectively work at that court or prosecutors' office, by secret, direct and personal ballot;

d) within 10 days from being notified, in compliance with the requirements set forth under a) and b) above, the Plenum of the Council shall summon all the general meetings of courts or prosecutors' offices represented by the member of the Superior Council of Magistracy whose dismissal is being requested, determining one date and hour only for such meetings, but not later than 20 days form the time of the summoning. The judge of prosecutor in question shall be notified immediately the decision(s) to initiate the dismissal proceedings;

e) the person against whom a no-confidence vote was requested may address the judges or prosecutors in support of his/her position, at any rate, no later than the commencement of voting;

f) within 5 days form the completion of the general meetings summoned according to then provisions of d) above, the Plenum of the Council shall validate the results of the ballot;

g) if the majority of the valid votes cast by the judges or prosecutors in general meetings at the courts or prosecutors' offices represented by the member of the Superior Council of Magistracy are in favour of withdrawing the confidence in such member, this member's status as elected member of the Council shall cease by operation of law at the time when the ballot results be validated by the Plenum of the Council;

(4) In the situation provided for at (1) c) above, if the petition to withdraw confidence is owned to by holograph signature by the majority of the judges or prosecutors, as the case may be, that effectively work at the courts or prosecutors' offices represented by the elected member of the Superior Council of Magistracy, the Plenum of the Council, without summoning the general meetings, shall take note of the withdrawal of confidence. In such a case, the status as elected member of the Superior Council of Magistracy shall cease at the time when the Plenum of the Council takes note of the withdrawal of confidence.

(5) In the case of a joint general meeting of the prosecutors' office of the High Court of Cassation and Justice, National Anti-corruption Department and the Department for Investigation of Organised Crime and Terrorism, the decision to dismiss their representative shall be taken by the majority vote of the prosecutors effectively working in these organisations, including their territorial offices."

**62. Article 55 (6) - (8) is hereby repealed.**

**63. Article 55, paragraph (9) shall be amended and this shall read as follows:**

"(9) Decisions to revoke the members elected from among the High Court of Cassation and Justice shall be made with the vote of the majority of the judges exercising their term of office with the High Court of Cassation and Justice."

**64. Two new paragraphs, para. (10) and (11) shall be inserted in article 55, following paragraph (9), and they shall read as follows:**

“(10) Impeachment of the President or Vice-president in case of failed or flawed discharge of the responsibilities stipulated in Art. 24 par. (3) letters a) through g), is to be proposed by one-third of the total number of members of the Superior Council of Magistracy and to become effective by vote of a majority of the Council’s Plenum in the presence of at least 2/3 of its members. The Plenum’s Decision shall be put on paper in no more than 20 days and shall be communicated without delay.

(10) The impeachment Decision can be challenged, within 15 of its having been communicated, at the Administrative and Tax Litigations Chamber of the High Court of Cassation and Justice. The challenge shall be heard by a panel of 3 Justices. Filing the challenge lawfully suspends enforcement of the Decision. The Court’s judgment on the challenge shall be final.”

**65. A new article, art. 55<sup>1</sup>, shall be inserted following article 55 and this shall read as follows:**

„Art.55<sup>1</sup>.- (1) Throughout their entire term of office, the members of the Superior Council of Magistracy may be questioned by a minimal number of 30 judges or prosecutors or by professional associations in relation to the activities undertaken, the manner in which they fulfil their tasks or in relation to their compliance with the commitments made in the programme that they used to run for their office.

(2) Such questions are addressed to the Superior Council of Magistracy and to the questioned member.

(3) The questioned member of the Superior Council of Magistracy must answer within 30 days since the date the questions were submitted.

(4) The contents of the questions, as well as the answer provided by the member of the Superior Council of Magistracy shall be published on the Council’s web-site.

**66. A new paragraph, para. (3), shall be inserted in article 57, following paragraph, and this shall read as follows:**

“(3) In the case mentioned by para. (1), the person elected to take over the vacant seat shall exercise his/her position as a member of the Superior Council of Magistracy for the remaining term of office until the expiry of the 6 year period.”

**67. Article 60, paragraph (3) shall be amended and this shall read as follows:**

(3) The president of the Superior Council of Magistracy acts as a main credit chief accountant, and this position may be assigned to the vice-president, to the general secretary, to the deputy general secretary or to the financial manager. ”

**68. Article 63, paragraph (4) shall be amended and this shall read as follows:**

(4) The civil servants and the personnel with labour contracts within the organizational chart of the Superior Council of Magistracy are to be deemed equal, in terms of their professional rank and remuneration, with the equivalent staff within the system of the Parliament, thus benefiting from similar rights. ”

**69. A new paragraph, para. (4<sup>1</sup>), shall be inserted in article 63, following paragraph, and this shall read as follows:**

“(4<sup>1</sup>) The IT experts within the organization chart of the Superior Council of Magistracy and within the institutions that the Council coordinates, as well as the staff from the own organizational chart of the Judicial Inspection, benefits from the same remuneration as the IT experts within the High Court of Cassation and Justice and they have the same rights and duties as those stipulated for this category of staff by Law no. 567/2004 on the status of the specialised ancillary staff of courts and prosecutor’s offices attached to courts and that of the staff operating within the National Institute for Forensic Reports, as further amended and supplemented, as well as by other regulations.”

**70. Article 65 shall be amended and this shall read as follows:**

Art. 65 - (1) The Judicial Inspection operates as a legal entity within the Superior



Council of Magistracy, based in Bucharest city.

(2) The Judicial Inspection is managed by a Chief-Inspector, judge, appointed through a competition organized by the Superior Council of Magistracy, supported by a Deputy Chief-Inspector, prosecutor, designated by the Chief Inspector.

(3) The Judicial Inspection acts in accordance with the principle of operational independence from the Superior Council of Magistracy, courts, prosecutors attached thereto and in relation with the other public authorities, exercising its duties in terms of analysis, review and control in its specific areas of activity, based on the law and in order to ensure compliance with the law.

(4) The rules for performing inspection activities shall be approved by the Chief-Inspector, through an internal Regulation.

(5) The Chief Inspector acts as a main credit chief accountant.”

**71. Article 66, paragraphs (2) and (4) shall be amended and they shall read as follows:**

“(2) The own organizational chart of the Judicial Inspection consists from departments, units and offices. The own organizational chart of the Judicial Inspection includes judicial inspectors, specialised legal staff similar to magistrates, civil servants, labour contract- based staff and IT staff.

(4) The Judicial Inspection operates with an optimal number of positions able to provide the possibility to work in optimal conditions.”

**72. Article 66, paragraph (5) shall be repealed.**

**73. Article 66, paragraphs (6) and (7) shall be amended and they shall read as follows:**

“(6) The maximum number of positions for the organizational chart of the Judicial Inspection may be amended through a Government’s Decision, based on the proposal of the Chief-Inspector.

(7) Funding for current expenses and capital expenses of the Judicial Inspection shall be fully covered by the state budget.”

**74. Article 67, paragraphs (1) and (3) shall be amended and they shall read as follows:**

“Art. 67 - (1) The Chief-Inspector is appointed by the Plenary of the Superior Council of Magistracy among the acting judicial inspectors, following a competition consisting from the presentation of a project on exercising the tasks specific to the respective management position, focused on managerial skills, efficient management of resources, ability to commit to decisions and responsibilities, communication skills and resistance to stress.

(3) The organization of a competition for the chief-inspector position must be announced at least 3 months prior to its date.

**75. A new paragraph, para. (3<sup>1</sup>), shall be inserted in article 67, following paragraph (3), and this shall read as follows:**

„(3<sup>1</sup>) The composition of the evaluation board for this competition shall be the following:

a) 3 members - judges, from the Section for judges and who have worked at a court level similar to that required in order to occupy the position as a judicial inspection, assigned by the Section for Judges;

b) one member - prosecutor, from the Section for prosecutors and who has worked at a prosecutor’s office attached to a court similar to the level required in order to occupy the position as a judicial inspection, assigned by the Section for Prosecutors;

c) one member of the Superior Council of Magistracy, representative of the civil society, assigned by the Plenary of the Superior Council of Magistracy;

d) a psychologist assigned by the Plenary of the Superior Council of Magistracy, who must submit an advisory report, following the presentation of the project on exercising the tasks specific to a management position by each candidate.”

**76. A new paragraph, para. (4<sup>1</sup>), shall be inserted in article 67, following paragraph, and this shall read as follows:**

„(4<sup>1</sup>) The term of office as a judicial inspector is extended by virtue of law until the

expiry of the term of office as Chief-Inspector or Deputy Chief-Inspector”.

**77. Article 67, paragraphs (5) and (6) shall be amended and they shall read as follows:**

“(5) The Chief-Inspector may be revoked from his/her position by the Plenary of the Superior Council of Magistracy, in case of failure to fulfil or improper fulfilment of management tasks. Such an action is taken based on the audit report stipulated under art. 68, only following the proposal submitted for this purpose by a board that had been made up according to art. (3<sup>1</sup>), however without the participation of a psychologist.

(6) The decision of the Plenary of the Superior Council of Magistracy to revoke the Chief-Inspector may be appealed with an appeal based on a point of law, within 15 days since the day it has been served, in front of the Section for administrative and fiscal law of the High Court of Cassation and Justice. The appeal suspends the enforcement of the decision of the Superior Council of Magistracy. The decision settling the appeal on a point of law is rendered final.”

**78. Article 69, paragraph (1), letter a) shall be amended and this shall read as follows:**

a) shall designate, from among the judicial inspectors, the management team - the deputy chief-inspector, the heads of departments - based on a procedure which evaluates the management projects specific to each position, so that managerial cohesion, professional competence and efficient communication are ensured. The term of office for such positions shall cease once the term of office for the chief-inspector expires.”

**79. Two new letters, letter a<sup>1</sup>) and a<sup>2</sup>) shall be inserted in article 69, following letter a), and they shall read as follows:**

„a<sup>1</sup>) shall exercise the management and organization functions for the Judicial Inspection activity;

a<sup>2</sup>) shall take measures in order to coordinate the activity of the Judicial Inspection staff, other than the judicial inspectors themselves;”

**80. Article 69, paragraph (1), letter s) shall be amended and this shall read as follows:**

e) shall set out the specific areas of activity in which control actions are exercised, annually or whenever this is called for, following the consultation with the judicial inspectors;”

**81. A new letter, letter f<sup>1</sup>) shall be inserted in article 69, following letter f), and they shall read as follows:**

„f<sup>1</sup>) shall ensure the coordination of the vocational training activity for the judicial inspectors and the harmonization of practice within the Judicial Inspection;”

**82. A new letter, letter i<sup>1</sup>) shall be inserted in article 69, following letter i), and they shall read as follows:**

„i<sup>1</sup>) shall ensure coordination of the activity of health and labour safety.”

**83. Article 69, paragraph (4) shall be amended and this shall read as follows:**

“(4) The Deputy chief-inspector is the rightful substitute of the chief-inspector, he/she shall support the chief-inspector in the activity of verification and endorsement of all documents and decisions drafted by the judicial inspectors and he/she shall fulfil all the other tasks given to him/her by the chief-inspector. ”

**84. Article 70, paragraphs (1) and (2) shall be amended and they shall read as follows:**

“Art. 70 - (1) Inspectors within the Judicial Inspection are appointed in their position by the chief-inspector, following a competition organized by the Judicial Inspection, for a term of office of 3 years that may be renewed only once, over another similar term, from among the judges and prosecutors with at least 10 years of seniority in the ranks of magistrates, who have been worked at least at level of tribunal or prosecutor’s office attached to the tribunal and who have earned a “very well” rating during the previous assessment.

(2) The competition shall consist from taking a written test and attending an interview, and the subjects for the competition include the laws, regulations and any other regulations in the field of courts, prosecutor’ s offices and Judicial Inspection organization and operation, as well as the provisions of Law no. 135/2010 on the Criminal Proceedings Code, as further amended and supplemented, or of the Law no. 134/2010, republished, as further amended, depending on the specialization of the candidate judge or prosecutor. The interview shall have a

maximum share of 30% from the final average grade awarded for this competition. The rules for organization and implementation of such a competition must be approved through an order of the Chief-Inspector and must be published in the Official Journal of Romania, Part I.”

**85. Article 73, paragraph (1) shall be amended and this shall read as follows:**

“Art.73 - (1) The manner of distribution of the documents instituting disciplinary proceedings and the disciplinary cases among the judicial inspections shall comply with the principle of random distribution.”

**86. After Article 74 a new Article shall be inserted, Art. 74<sup>1</sup>, which shall read as follows:**

“Art.74<sup>1</sup>. – (1) In the cases and terms stipulated in Art. 96 in Law #303/2004, as republished, with subsequent amendments and supplements, on the report of the Ministry of Public Finance the Judicial Inspection carries out assessments of whether a judge’s or prosecutor’s judicial error was the result of exercising their office in ill faith or in gross negligence.

(2) The assessment described at par. (1) shall be completed within 30 days of receiving the report. The chief inspector can extend that deadline by no more than 30 days if solid reasons exist to justify that step. The maximum duration of the assessment cannot exceed 120 days.

(3) The assessment shall be performed by a committee made up of either 3 judicial inspector judges or 3 judicial inspector prosecutors, depending on the capacity of the assessed person. In case both judges and prosecutors are to be assessed in the same case there shall be two committees performing distinct assessments depending on the capacity of the assessed persons.

(4) During the assessment it is mandatory to hear the assessed judge or prosecutor. Refusal by the assessed judge or prosecutor to give statements or to report for the hearings shall be recorded in a report and will not preclude the assessment from being completed. The assessed judge or prosecutor has the right to know about all the documents and steps in the assessment and to submit evidence in their defense. The inspectors can interview any other persons involved in the case they are assessing.

(5) The assessment shall result in a Report under which, on the basis of the entire body of evidence in the case, the Judicial Inspection finds whether the judge’s or prosecutor’s judicial error was the result of exercising their office in ill faith or in gross negligence.

(6) The assessment stipulated in par. (1) is also to be performed in the situation where the assessed persons are no longer working as a judge or prosecutor.

(7) The Report shall be communicated to the Ministry of Public Finance and to the assessed judge or prosecutor.

(8) The Report stipulated in par. (5) shall be subject to confirmation by the Chief Inspector. By providing proper justification the Chief Inspector can, only once, order the assessment to be taken in more depth. This order shall be executed by the Commission within no more than 30 days of the date when it was issued by the Chief Inspector.”

**87. Article 76, paragraphs (5) and (6) shall be amended and they shall read as follows:**

“(5) The decision of the Section referred to in paragraph (3) may be appealed before the Plenary of the Superior Council of Magistracy, within 15 days since it has been served. The decision of the Plenary may be appealed on a point of law before the Administrative Section of the High Court of Cassation and Justice, within the same period of time; the decision of the High Court is rendered final.

(6) The final decision ascertaining the failure to fulfil the good reputation condition shall be communicated to the President of Romania in order to issue the decree for dismissal from office.”

**88. Article 77, paragraphs (2) and (3) shall be amended and they shall read as follows:**

“(2) The judicial inspectors dissatisfied with the rating awarded to them may bring a complaint before the Plenary of the Superior Council of Magistracy, within 30 days since the decision has been served.

(3) When settling this complaint, the Plenary of the Superior Council of Magistracy

may ask the chief-inspector to provide any information deemed necessary and the summoning of the judicial inspector in question in order to be heard is mandatory.”

**89. A new paragraph, para. (3<sup>1</sup>), shall be inserted in article 77, following paragraph (3), and this shall read as follows:**

„(3<sup>1</sup>) The decision of the Plenary may be appealed on a point of law before the administrative and fiscal law section of the Bucharest Court of Appeal, within 15days since the decision has been served. An appeal on a point of law shall suspend the enforcement of the decision appealed against.”

**90. Article 77, paragraph (4) shall be repealed.**

**91. Article 81 shall be repealed.**

**92. Article 82 shall be amended and this shall read as follows:**

“Art. 82 - The Government shall ensure an appropriate headquarters for the Superior Council of Magistracy.”

**Art. II.-** (1) The chief-inspector, the deputy chief-inspector and the judicial inspectors who are exercising their second term of office or have taken a management or executive position for tow terms of office until the date when this law becomes effective may not take the same position for a new term of office.

(2) The terms of office which are currently being implemented, including those awarded based on competitions implemented pursuant to the previous terms of the law shall stay valid throughout the period specified.

**Art. III.-** Chapter VIII, paragraphs (2) and (5) of article 12 in Annex no. V of the Framework-law for remuneration of staff paid from public funds no.153/2017, as further amended and supplemented, shall be amended in the sense provided by art. 54 para. (1) of this law, and this shall read as follows:

(2) The members elected in the Superior Council of the Magistracy, except for those mentioned under para. (1), shall receive a monthly allowance equal to that of a president of section in the High Court of Cassation and Justice.

.....  
(5) The de jure members of the Superior Council of the Magistracy benefit from a member allowance equivalent to 50% from the maximum gross monthly wage of the judge of the High Court of Cassation and Justice.”

**Art. IV.-** Law no.317/2004 on the Superior Council of the Magistracy, republished in the Official Journal of Romania, Part I, no.628 of 1 September 2012, as further amended, including the changes and additions brought through this law, shall be republished in the Official Journal of Romania, Part I, and the texts of the law shall be provided with a new numbering.

**This law was adopted by the Romanian Parliament, in compliance with the provisions of articles 75 and 76 paragraph (1) of the Romanian Constitution, republished.**

**For President of Chamber of Deputies  
Petru Gabriel Vlase**

**For President of the Senate  
Iulian-Claudiu Manda**

# THE ROMANIAN PARLIAMENT

## LAW

### on the Superior Council of Magistracy

-re-published in the Official Journal of Romania, Part I, No. 827/13.09.2005 as subsequently amended, by Law no. 247/2005 published in the Official Journal of Romania, Part I, No. 653/22.07.2005

-as subsequently amended by Government Emergency Ordinance No.27/29.03.2006 on the remuneration and other rights of magistrates, published in Part I of the Official Journal of Romania no.314/07.04.2006 The Romanian Parliament adopts the present law

## CHAPTER I

### General provisions

**Art. 1** - (1) The Superior Council of Magistracy is the guarantor of the independence of Justice.

(2) The Superior Council of Magistracy is independent and is submitted in its activity only to the law. Members of the Superior Council of Magistracy shall answer before judges and prosecutors for the activity they perform in the exercise of their term of office.

**Art. 2** - The Superior Council of Magistracy has legal capacity and its headquarters in the city of Bucharest.

## CHAPTER II

### The organization of the Superior Council of Magistracy

#### Section 1

#### **The structure of the Superior Council of Magistracy**

**Art. 3** - (1) The Superior Council of Magistracy is composed of 19 members, of which:

a) 9 judges and 5 prosecutors, elected within the general assemblies of judges and prosecutors, who shall make up the two sections of the Council, of which one is for judges and one for prosecutors;

b) 2 representatives of the civil society, specialists in the field of law, who enjoy a high professional and moral reputation, elected by the Senate;

c) The President of the High Court of Cassation and Justice, as a representative of the Judiciary, the Minister of Justice and the General Prosecutor of the Prosecutors' office attached to the High Court of Cassation and Justice, who are *de jure* members of the Council.

**Art. 4** - The section for judges in the Superior Council of Magistracy shall be composed of:

a) 2 judges from the High Court of Cassation and Justice;

b) 3 judges from courts of appeal;

c) 2 judges from tribunals;

d) 2 judges from first instance courts.

**Art. 5** - The section for prosecutors of the Superior Council of Magistracy shall be composed of:

a) one prosecutor from the Prosecutors' office attached to the High Court of Cassation

- and Justice or from the National Anti-Corruption Prosecutor's Department;
- b) 1 prosecutor from the prosecutors' offices attached to the courts of appeal;
  - c) 2 prosecutors from the prosecutors' offices attached to tribunals;
  - d) 1 prosecutor from the prosecutors' offices attached to first instance courts.

## **Section 2**

### **The election of the members of the Superior Council of Magistracy**

**Art. 6** - (1) Judges and prosecutors who are members of the Superior Council of Magistracy, and provided in Article 3 a), shall be elected by the general assemblies of judges or, the case being, of prosecutors.

(2) The date when the first general assemblies of judges and prosecutors are to take place shall be established by the Superior Council of Magistracy's Plenum, at least 90 days before the expiry of the term of office of its members and shall be published in the Official Journal of Romania, Part III, and on the web page of the Superior Council of Magistracy.

**Art. 7** - (1) The members of the Superior Council of Magistracy shall be elected from the judges and prosecutors appointed by the President of Romania.

(2) Judges and prosecutors may support the applications they submit for election as members of the Superior Council of Magistracy before the collective bodies of judges and prosecutors. The applications by judges and prosecutors may be supported by the collective bodies of judges and prosecutors, as well as by their professional associations.

(3) The period during which applications may be submitted shall be established by the Superior Council of Magistracy's Plenum and published in the Official Journal of Romania, Part III, and on the web page of the Superior Council of Magistracy.

(4) The applications shall be submitted to the Leading board of the High Court of Cassation and Justice, the Leading board of the Prosecutor's Department attached to the High Court of Cassation and Justice, the Leading board of the National Anti-Corruption Prosecutors' office or to the leading boards of courts of appeal or of the prosecutors' offices attached to these, accompanied by:

- a) a curriculum vitae;
- b) a project on the main objectives which will be followed by the judges or prosecutors if they are elected in the Superior Council of Magistracy, as well as, the case being, the supporting documents for the candidacy;
- c) a statement on one's own responsibility that he or she was not part of the intelligence services before 1990 and did not collaborate with them either;
- d) an authentic statement on one's own responsibility according to criminal law, showing that they are not operative employees, including undercover, informers or collaborators of the intelligence services;
- e) an updated statement of interests.

(5) Judges and prosecutors who were part of the intelligence services before 1990 or collaborated with them or those who have a personal interest that influences or could influence the objective and unbiased fulfilment of the duties provided by the law may not be elected as members of the Superior Council of Magistracy.

(6) The leading boards of the High Court of Cassation and Justice, of the Prosecutors' office attached to the High Court of Cassation and Justice, of the National Anti-Corruption

Prosecutor's Department, of the courts of appeal and of the prosecutors' offices attached to the courts of appeal shall check the fulfilment of the requirements under paragraphs (1) - (5) by the judges and prosecutors who applied for CSM.

**Art. 8** - (1) The judges of the High Court of Cassation and Justice shall elect, in the general assembly, through secret, direct and personal vote, 2 members for the Superior Council of Magistracy, among the judges who submitted their applications.

(2) Prosecutors from the Prosecutors' office attached to the High Court of Cassation and Justice and prosecutors from the National Anti-Corruption Prosecutor's Department shall elect, within the joint general assembly of prosecutors from these prosecutors' offices, by secret, direct and personal ballot, one member for the Superior Council of Magistracy from the prosecutors who applied. In these general assemblies, the prosecutors from the territorial structures of these prosecutors' offices shall vote as well.

(3) As members of the Superior Council of Magistracy shall be elected 2 judges from the High Court of Cassation and Justice, one prosecutor from the Prosecutors' office attached to the High Court of Cassation and Justice or from the National Anti-Corruption Prosecutor's Department, who obtained the majority of votes in the general assemblies.

(4) In the event that one of the candidates fails to obtain the majority of votes, a second ballot shall be held, with the participation of the judges and prosecutors who took the first two positions in the list of candidates. The candidate who obtains the highest number of votes in the second round of elections shall be elected as member of the Superior Council of Magistracy.

**Art. 9** - (1) The leading board in each court of appeal and in each prosecutors' office attached to a court of appeal shall centralise the applications submitted by the judges and prosecutors in their jurisdictions.

(2) Candidacies shall be centralised by each category of courts and prosecutors' offices and sent to the courts and prosecutors' offices in the jurisdiction of the court of appeal, accompanied by the documents provided in Article 7 paragraph (4).

(3) The leading board of each court of appeal shall organize its own general assembly, the general assembly of judges from tribunals and specialized tribunals in the jurisdiction of the court of appeal and the general assembly of judges from the courts of first instance within the jurisdiction of the court of appeal.

(4) The Leading board of each prosecutors' office attached to the courts of appeal shall organize its own general assembly, the general assembly of prosecutors from the prosecutors' offices attached to the tribunals and specialized tribunals in the jurisdiction of the court of appeal and the general assembly of prosecutors from the prosecutors' offices attached to the courts of first instance in the jurisdiction of the court of appeal.

**Art. 10** - (1) The judges from each court of appeal, the judges from all tribunals and specialized tribunals within the jurisdiction of each court of appeal and the judges from all courts of first instance within the jurisdiction of each court of appeal shall designate each, in the three general assemblies, by secret, direct and personal vote, one candidate for the function as member of the SCM, among the judges who submitted their application.

(2) The prosecutors from each prosecutors' office attached to the courts of appeal, the prosecutors from all prosecutors' offices attached to the tribunals and specialized tribunals in the jurisdiction of each court of appeal and the prosecutors from the prosecutors' offices attached to the courts of first instance within the jurisdiction of each court of appeal shall designate each, in the 3 general assemblies, through secret, direct and personal vote, one candidate for the position of member of the Superior Council of Magistracy, from among the prosecutors who submitted their applications.

(3) Judges and prosecutors who obtained the majority of votes in the general

assemblies in paragraphs (1) and (2) shall be designated in view of applying for the position of member of the Superior Council of Magistracy. Article 8 paragraph (4) shall apply accordingly.

(4) Military judges and military prosecutors shall submit their applications to the Military Court of Appeal in Bucharest or, the case being, the Military Prosecutors' office attached to the Bucharest Court of Appeal. Paragraphs (1) - (3) shall apply accordingly. The Bucharest Military Territorial Tribunal and the military tribunals, as well as the prosecutors' offices attached to them, shall each designate one candidate who is to be included in the lists provided in Article 11 paragraph (1) c) and e), and respectively d) and f).

(5) The SCM draws up the lists with the judges and prosecutors designated to apply for the position of member of the Superior Council of Magistracy, for categories of courts and prosecutors' offices.

(6) The lists under paragraph (5) and the documents under Article 7 paragraph (4) shall be published on the web page of the Superior Council of Magistracy.

(7) The provisions of Art. 8 para (4) shall apply accordingly.

**Art. 11** - (1) The lists of judges and of prosecutors who were designated to apply for the position of member of the Superior Council of Magistracy shall be sent to the courts or, the case being, to the prosecutors' offices, by the Superior Council of Magistracy, at least 20 days before the date established for the general assemblies, as follows:

a) the list of 16 candidates from the courts of appeal shall be sent to all the courts of appeal;

b) the list of 16 candidates from the prosecutors' offices attached to courts of appeal shall be sent to all the prosecutors' offices attached to courts of appeal;

c) the list of 16 candidates from tribunals and specialized tribunals shall be sent to all the tribunals and specialized tribunals;

d) the list of 16 candidates from the prosecutors' offices attached to tribunals and specialized tribunals shall be sent to all the prosecutors' offices attached to tribunals and specialized tribunals;

e) the list of 16 candidates from first instance courts shall be sent to all the first instance courts;

f) the list of 16 candidates from prosecutors' offices attached to first instance courts shall be sent to all the prosecutors' offices attached to first instance courts;

(2) The lists under paragraph (1) and the documents in Article 7 paragraph (4) shall be posted at the premises of courts and prosecutors' offices.

**Art. 12** - (1) The lists provided for in Article 11 paragraph (1) and the documents in Article 7 paragraph (4) shall be sent by the Superior Council of Magistracy to the courts and prosecutors' offices, together with the voting papers.

(2) The Superior Council of Magistracy shall send each court and each prosecutors' office a number of voting papers bearing the official seal that is equal to the number of judges and prosecutors in that court or prosecutors' office, with an extra 10%.

(3) The form and the contents of the ballots shall be established by the Superior Council of Magistracy's Plenum.

(4) The printing of the ballots shall be ensured by the Superior Council of Magistracy.

**Art. 13** - (1) In order to elect the members of the Superior Council of Magistracy, at the level of each court and each prosecutors' office, the general assembly of the judges or, as



the case may be, of the prosecutors shall be summoned.

(2) Judges from courts of appeal and prosecutors from the prosecutors' offices attached to these, in their general assemblies, shall elect 3 judges from the courts of appeal and 1 prosecutor from the prosecutors' offices attached to these, as members of the Superior Council of Magistracy, by secret, direct and personal ballot.

(3) Judges from tribunals, and specialized tribunals and prosecutors from the prosecutors' offices attached to these shall elect 2 judges from tribunals and specialized tribunals and 2 prosecutors from the prosecutors' offices attached to these, as members of the Superior Council of Magistracy, in their general assemblies, by secret, direct and personal ballot.

(4) Judges from first instance courts and prosecutors from the prosecutors' offices attached to first instance courts shall elect 2 judges from first instance courts and one prosecutor from the prosecutors' offices attached to these, as members of the Superior Council of Magistracy, in their general assemblies, by secret, direct and personal ballot.

**Art. 14** - (1) In the procedure for the designation of the candidates and the election of the members of the Superior Council of Magistracy, the general assemblies shall be legally constituted in the presence of at least two thirds of the number of judges or, as the case may be, prosecutors in office, including those delegated or seconded from other courts or prosecutors' offices.

(2) The general assemblies are chaired by the magistrate with the longest standing in magistracy, who did not submit his application for the position of member of the Superior Council of Magistracy.

(3) In the procedure of electing the members of the Superior Council of Magistracy, every judge and prosecutor shall vote for a number of candidates that equals the number of members of the Superior Council of Magistracy, which represents the category of courts or prosecutors' offices at the level of which the judge or, the case being, the prosecutor works.

(4) In the event that fewer people than those provided in paragraph (3) have been voted for, the vote shall be null.

(5) Judges and prosecutors seconded to authorities, other than courts and prosecutors' offices may not participate in the election of members of the Superior Council of Magistracy.

**Art. 15** - (1) The judge or the prosecutor who chaired the general assembly of judges, together with two judges or prosecutors designated by the general assemblies before the ballot shall:

a) count the votes;

b) draw up the official record regarding the course of the elections and the results of the ballot and send it to the Superior Council of Magistracy;

c) communicate the names of judges or of prosecutors who were designated for applying for the position of member of the Superior Council of Magistracy according to Article 10 paragraph (5) or, where appropriate, compile and send to the Superior Council of Magistracy the list of candidates who enrolled, in the descending order of the number of votes obtained in the general assemblies under Article 8 paragraph (3) and under Article 13 paragraphs (2) - (4).

(2) To fulfil the tasks in paragraph (1), the judge or the prosecutor who presided over the general assembly shall be assisted by 2 judges or, the case being, by 2 prosecutors, designated by the general assemblies, from the judges or prosecutors who did not enter their candidacies.

**Art. 16** - (1) The Superior Council of Magistracy centralises the results of the ballot

from the jurisdiction of all courts of appeal and of all prosecutors' offices attached to these.

(2) The following shall be elected as members of the Superior Council of Magistracy:

a) 3 judges from courts of appeal, who obtained the highest number of votes nationwide;

b) 2 judges from tribunals and specialized tribunals, who obtained the highest number of votes nationwide;

c) 2 judges from first instance courts, who obtained the highest number of votes nationwide;

d) 1 prosecutor from prosecutors' offices attached to courts of appeal, who obtained the highest number of votes nationwide;

e) 2 prosecutors from the prosecutors' offices attached to tribunals and specialized tribunals, who obtained the highest number of votes nationwide;

f) one prosecutor from the prosecutors' offices attached to first instance courts, who obtained the highest number of votes nationwide.

(3) The provisions of Art. 8 paragraph (4) shall accordingly apply.

**Art. 17** - (1) The Superior Council of Magistracy shall check the legality of the election proceedings, either *ex officio* or upon notification from any judge or prosecutor.

(2) In view of drafting a notification, judges and prosecutors shall be entitled to check the official records regarding the course of the elections and their results, as well as the ballots.

(3) Any objections relating to the legality of election proceedings may be lodged at the Superior Council of Magistracy within 15 days from the date of the elections.

(4) Objections shall be dealt with by the Superior Council of Magistracy's Plenum, within 5 days from the notification date. The reasoned decision to the objection shall be sent to the persons who made the notification.

(5) In case of infringements of the law in the election procedures, the SCM shall order the necessary measures with a view to eliminate them, including repetition of the elections, only at those courts and prosecutors' offices where the infringement of the law had influenced the elections result as a consequence.

**Art. 18** - (1) The Superior Council of Magistracy draws up the final list comprising the magistrates elected according to the provisions of Art. 8 para. (3) and Art. 16 Para (2) and send it to the Permanent Office of the Senate.

(2) Before sending the list to the Permanent Office, the National Council for the Study of Archives of the Intelligence shall check and send, within 15 days from the request by the Superior Council of Magistracy, information on whether the judges and prosecutors elected were part of the intelligence services before 1990 or collaborated with them.

(3) The Permanent Office of the Senate shall forward the list provided for by paragraph (1) to the Juridical, Appointment, Discipline, Immunities and Validation Commission in order to examine whether the legal provisions concerning the election of the SCM members have been observed.

(4) The Senate, in presence of the majority of its members, on the basis of the report delivered by the Juridical, Appointment, Discipline, Immunities and Validation Commission, shall validate the list comprising the magistrates elected as members of the Superior Council of Magistracy. The refusal of validation may occur only in case of infringement of the law in the procedure for the election of the members of the Superior Council of Magistracy and only

if this infringement of law has an influence over the result of the elections. Art. 17, paragraph (5) shall accordingly apply.

**Art. 19** - (1) In view of electing the two representatives of the civil society in the Superior Council of Magistracy, the professional organizations of jurists, the professional councils of accredited law faculties, the associations and foundations that work to protect human rights, may each propose one candidate to the Permanent Office of the Senate.

(2) Representatives of the civil society may be elected as members of the Superior Council of Magistracy if they fulfil the following requirements:

- a) they are specialists in law, with a length of juridical service of at least 7 years;
- b) they have a high professional and moral reputation;
- c) they were not part of the intelligence services before 1990, did not collaborate with them and do not have a personal interest that influences or could influence their objective and unbiased fulfilment of their duties provided in the law;
- d) they are not members of any political parties and they have not held any offices of public dignity within the previous 5 years.

(3) Proposals for applications shall be submitted to the Permanent Office of the Senate, from the 90<sup>th</sup> day to the 60<sup>th</sup> day before the expiry of the term of office of members of the Superior Council of Magistracy, together with the court decision or, the case being, the legal act of setting up, the memorandum of association and the statute of the legal entities under paragraph (1), as well as with their fiscal record.

(4) The timeframe in which the applications are submitted shall be published in the Official Journal of Romania, Part III, and on the website of the Superior Council of Magistracy, 30 days prior the timeframe provided for by paragraph (3) starts to run.

(5) The proposed candidates shall provide the Senate with the documents specified in Article 7 paragraph (4), as well as with their criminal record.

(6) The list of candidates and the documents in Article 7 paragraph (4) shall be published on the internet pages of the Senate and of the Superior Council of Magistracy, within 5 days from the expiry of the period established for their submission.

**Art. 20** - (1) The Senate shall elect amongst the candidates provided for by Art. 19 the 2 representatives of the civil society, in accordance with the procedure regulated in the Regulation of the Senate.

(2) Article 18 paragraph (2) shall apply accordingly

**Art. 21** - The decisions of the Senate for the validation and the election of the members of the Superior Council of Magistracy shall be published in the Official Journal of Romania, Part I.

### CHAPTER III

#### **The Functioning of the Superior Council of Magistracy**

**Art. 22** - (1) Within 15 days from the date of publishing the decisions provided by Art. 21, the President of the High Court of Cassation and Justice shall summon the members of the Superior Council of Magistracy, in the constitutive meeting.

(2) In the constitutive meeting, which shall be chaired by the President of the High Court of Cassation and Justice, the president and the deputy-president of the Superior Council of Magistracy shall be elected.

(3) Within 15 days from the constitutive meeting of the Superior Council of Magistracy, the tasks and the duties of each permanent member shall be established, according

to the activity fields.

**Art. 23** - (1) The SCM functions as a body with permanent activity. The decisions of the SCM shall be made in Plenum or in Sections, according to the attributions assigned to them.

(2) The activity of members of the Superior Council of Magistracy shall be permanent

(3) The President and Vice-President of the Superior Council of Magistracy shall not exercise the activity as judge or prosecutor. The judges and prosecutors elected as members of the Superior Council of Magistracy shall suspend their activity as judge or prosecutor as regards the participation of judges in panels and respectively the conducting of the criminal prosecution activity by prosecutors. Upon cessation of their term of office, those who had opted for suspending their activity shall restart their activity as judges or prosecutors.

(4) The elected members of the Superior Council of Magistracy, who are in office on the date of entry into force of the present law, may opt for suspending their activity as judge or prosecutor for the period left until the end of their term of office. The option shall be written and submitted to the President of the Superior Council of Magistracy, within 30 days from the entry into force of the present law.

(5) The leading positions held by the judges and prosecutors elected as members of the Superior Council of Magistracy are suspended *de jure* at the date when the decision of the Senate is published in the Official Journal, Part I. The elected members of the Superior Council of Magistracy who are holding a leading position in courts or prosecutors' offices on the date of entry into force of the present law may opt for suspension from the respective leading position, under the conditions of paragraph (3).

(6) The period during which a judge or a prosecutor is a member of the Superior Council of Magistracy shall constitute length of service in these offices.

**Art. 24** - (1) The Superior Council of Magistracy is chaired by a president assisted by one vice-president, both elected from the judges and prosecutors provided in Article 3 a), and they shall be part of different sections, and shall be elected for a non-renewable term of office of one year.

(2) The president and the vice-president of the SCM shall be elected by the Plenum, in the presence of at least 15 members of the Council, with the votes of the majority of the Council's members.

(3) The President of the Superior Council of Magistracy has the following main attributions:

- a) he/she shall represent the Superior Council of Magistracy in its internal and international relations;
- b) shall coordinate the activity of the SCM and shall distribute the works for the Plenum and for the sections;
- c) he/she shall chair the sessions of the Superior Council of Magistracy's Plenum, except for the case when the President of Romania is attending the proceedings;
- d) shall propose to the Plenum the measures to be undertaken with the view to initiate the revocation procedures for the members of the Superior Council of Magistracy and the procedures for filling the vacancies;
- e) he/she shall sign the acts issued by the Superior Council of Magistracy's Plenum
- f) he/she shall call upon the Constitutional Court to solve the legal disputes of constitutional nature arising between public authorities;

g) he/she shall designate the members of the Superior Council of Magistracy who may be consulted for the elaboration of draft normative acts;

h) he/she shall draw up and present, in a public session of the Plenum, the annual report on the activity of the Superior Council of Magistracy to be sent to the courts and prosecutors' offices and made public.

(4) The President of the SCM shall fulfil any other attributions established by law, by the Regulation for the organization and administrative functioning of the Superior Council of Magistracy and the Plenum.

(5) In the absence of the President of the SCM, the attributions provided in para. (3) and (4) shall be exercised by the vice-president.

(6) In case of vacancy of the position of president or vice-president, the Superior Council of Magistracy's Plenum shall, within one month from the acknowledgement of the vacancy, elect a new president, and respectively deputy-president.

**Art. 25** - The President of Romania shall chair, with no right to vote, the sessions of the Superior Council of Magistracy's Plenum to be attended by him/her.

**Art. 26** - (1) The sessions of the SCM sections shall be legally constituted in the presence of majority of the members and shall be chaired by the President and, as the case may be, the Vice-president of the SCM. In their absence, the section members elect a session chairman, with the votes of the majority of the attending members.

(2) The judge or the prosecutor who chairs the session of a section shall sign the decisions and the other documents issued by it.

**Art. 27** - (1) The Superior Council of Magistracy shall meet both in general assembly and by sections, upon convocation by the president, the vicepresident, or the majority of its members or, the case being, the majority of the section members.

(2) The Superior Council of Magistracy's Plenum shall work in the presence of at least 15 members, and the sections shall work in the presence of the majority of their members.

(3) The Superior Council of Magistracy's Plenum and the sections shall make decisions with the vote of the majority of the attending members.

**Art. 28** - (1) The President of the High Court of Cassation and Justice shall participate in the sessions of the section for judges, the General Prosecutor of the Prosecutors' office attached to the High Court of Cassation and Justice, in the sessions of the section for prosecutors, and the Minister of Justice, in the sessions of both sections.

The President of the High Court of Cassation and Justice, the Minister of Justice and the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice shall not have a right to vote in situations where the sections act as courts in the disciplinary liability area, in relation to the settlement of complaints concerning the good reputation of judges and prosecutors and of applications for the approval of search, detainment, remand custody or home arrest concerning judges, prosecutors or assistant magistrates.

(3) The representatives of the civil society shall attend only the proceedings of the SCM Plenum.

**Art. 29** - (1) As a rule, meetings of the Superior Council of Magistracy's Plenum and sections are public. Members of the Plenum and of sections decide, based on a majority vote, the situations in which the meetings are not public. Section meetings in which applications for the approval of search, detainment, remand custody or home arrest concerning judges, prosecutors or assistant magistrates, as well as those in which complaints referring to the good reputation of judges and prosecutors are decided upon are not public.

(2) Professional associations of judges and prosecutors may participate in the Plenum and section meetings, and may express, when they deem necessary, opinions on the discussed topics, at their own initiative or upon request by the Superior Council of Magistracy.

(3) The agenda the proceedings of the Plenum and of the sections of the SCM shall be determined by the President or, as the case may be, the vice-president of the Superior Council of Magistracy.

(4) The Superior Council of Magistracy, whether it is in Plenum or in a section, shall make decisions by direct and secret ballot and decisions shall be reasoned.

(5) Decisions of the Plenum that regard the career and rights of judges and prosecutors shall be reasoned within 20 days and communicated immediately.

(6) The decisions in paragraph (5) shall be published in the Official Journal the Superior Council of Magistracy and on the web page of the Superior Council of Magistracy within 10 days from drafting the decision.

(7) The decisions set forth under para. (5) may be appealed by a challenge by any interested person, within 15 days after their communication or publication, with the Administrative and Tax Litigation Section of the High Court of Cassation and Justice. Such challenges are decided upon by a panel composed of 3 judges.

(8) Such challenges suspend the enforcement of the Superior Council of Magistracy's decisions.\*)

(9) The decision rendered in appeal on points of law in paragraph (7) is irrevocable.

(10) The agenda shall be published 3 days in advance on the website of the Superior Council of Magistracy. The published agenda shall not include applications for the approval of search, detainment, remand custody or home arrest concerning judges, prosecutors or assistant magistrates. Decisions of the Superior Council of Magistracy shall be published in the Official Bulletin of the Superior Council of Magistracy and on the website of the Superior Council of Magistracy.

## **CHAPTER IV** **Attributions of the SCM**

### **Section 1**

#### **Common provisions**

**Art. 30** - (1) The Superior Council of Magistracy is entitled and obliged to take note, even ex officio in order to protect judges and prosecutors against any acts that could affect their independence or impartiality or that could give rise to suspicion with regard to these. Also, the Superior Council of Magistracy shall protect the professional reputation of judges and prosecutors.

(2) A judge or a prosecutor who considers that his or her independence, impartiality or professional reputation are being affected in any manner may complain to the Superior Council of Magistracy, which may, the case being, dispose that the aspects signalled be verified, that the results of verification be published, may notify the competent body to decide upon the measures called for or may dispose any other measure that is appropriate, according to the law.

(3) The Superior Council of Magistracy shall ensure the observance of the law and of the criterion of competence and professional ethics in the course of the professional career of judges and prosecutors.

(4) The prerogatives of the Superior Council of Magistracy's Plenum and of its sections, regarding to the career of judges and prosecutors, shall be exercised by observing Law No.303/2004 on the statute of judges and prosecutors, as subsequently amended and

supplemented and Law No.304/2004 on the organization of the Judiciary, as subsequently amended and supplemented.

**Art. 31** - (1) In exercising its attributions, the SCM may request the Minister of Justice, the courts and prosecutors' offices, the National Institute of Magistracy, other public authorities and institutions, as well as natural and legal persons, the information or documents deemed necessary.

(2) To the end of being informed with regard to the activity of the courts and prosecutors' offices, the members of the Superior Council of Magistracy pay visits to the seats of the courts or prosecutors' offices and organize meetings with the judges, prosecutors and representatives of civil society.

**Art. 32** - (1) Where the law requires the *avis conform* (conformity endorsement), the approval or the agreement of the SCM, the opinion issued by the same shall be binding. If the law provides the consultation or *avis* (endorsement) of the SCM, the opinion issued shall not be binding.

(2) Where the law does not provide a specific deadline for the *avis* (endorsements) to be issued by the SCM, such endorsements shall be issued within 30 days from notification of the relevant matter. The exceeding by the SCM of the time limit for the issue of the relevant endorsement shall not affect the validity of the document.

**Art. 33** - The Superior Council of Magistracy shall compile and keep the professional records of judges and prosecutors.

**Art. 34** - The Superior Council of Magistracy shall coordinate the activity of the National Institute of Magistracy and of the National Court Clerk School.

## Section 2

### Attributions of the Plenum of the SCM

**Art. 35** - (1) The Superior Council of Magistracy's Plenum shall have the following duties pertaining to the career of judges and prosecutors:

- a) proposing to the President of Romania the appointment and removal from office of judges and prosecutors, except for debutant judges and prosecutors;
- b) appointing debutant judges and debutant prosecutors, based on the results they obtain in the examination of graduation of the National Institute for Magistracy;
- c) ordaining the promotion of judges and prosecutors;
- d) removing debutant judges and debutant prosecutors from office;
- e) proposing to the President of Romania the bestowing of distinctions upon judges and prosecutors, according to the law;
- f) fulfilling any other duties set forth by laws or regulations.

**Art. 36** - (1) The Superior Council of Magistracy's Plenum shall have the following duties as regards the admission to the magistracy, the evaluation, training and examinations of judges and prosecutors:

- a) at the proposal the Scientific Council of the National Institute for Magistrates, establishing the annual number of auditors of justice for the National Institute for Magistracy, annually approving the date and place of the exam for admission to the National Institute for Magistracy, establishing the subject-matters for the examination for admission to the National Institute for Magistracy and approving the programme of professional training for auditors of justice, issuing endorsements and adopting regulations, in the cases and on the conditions provided in the law;

b) appointing the commission for the admission exam and the commission for elaboration of the subjects for the admission exam to the National Institute for Magistracy, according to the Regulation on the organization of the exam for admission to the National Institute for Magistracy;

c) organising and validating, according to laws and regulations, the capacity exam for judges and prosecutors and approving the programme for the in-service professional training of judges and prosecutors, at the proposition of the Scientific Council of the National Institute for Magistracy, as well as the subject-matters for the activities of in-service professional training organised by courts of appeal and the prosecutors' offices attached to these;

d) organising and validating, according to laws and regulations, the competitive examinations for appointment of judges and prosecutors to leading position;

e) ordaining the organization of competitive examinations for the promotion of judges and prosecutors;

f) appointing the commission for the evaluation of the professional activity of judges and prosecutors, according to the law;

g) appointing and revoking the director and deputy-directors of the National Institute for Magistracy, at the proposal the Scientific Council of the National Institute for Magistrates, and designating the judges and prosecutors who will be part of the Scientific Council of the National Institute for Magistrates;

h) approving the organizational structure and the personnel establishments of the National Institute for Magistracy at the proposal the Scientific Council of the National Institute for Magistracy;

i) appointing the director and the deputy-directors of the National School for Court Clerks and designating judges and prosecutors as members of the School's Leading board.

j) fulfilling any other duties set forth in laws or regulations.

(2) The Superior Council of Magistracy's Plenum shall deal with objections lodged by judges and prosecutors against decisions rendered by the sections of the Superior Council of Magistracy, except for those on disciplinary matters.

**Art. 37** - The Superior Council of Magistracy's Plenum shall have the following duties relating to the organization and operation of courts and prosecutors' offices:

a) convoking the general assemblies of judges and prosecutors, according to the law;

b) approving the measures for supplementing or reducing the number of posts for courts and prosecutors' offices;

c) elaborating its own draft budget, with the consultative endorsement of the Minister of Public Finance, and issuing the endorsements for the draft budgets of courts and prosecutors' offices;

d) fulfilling any other duties set forth by laws or regulations.

**Art. 38** - (1) The Superior Council of Magistracy's Plenum shall adopt the Deontological Code for Judges and Prosecutors, the Regulation on the organization and operation of the Superior Council of Magistracy, the Regulation on the proceedings for electing the members of the Superior Council of Magistracy, the Interior Regulations for law courts, as well as other regulations and decisions provided in Law No.303/2004 on the statute of judges and prosecutors and in Law No.304/2004 on the organization of the Judiciary.

(2) The Superior Council of Magistracy's Plenum shall ensures the publication of the Deontological Code for Judges and Prosecutors and the regulations provided in paragraph (1)



in the Official Journal of Romania, Part I, and on the web page of the Superior Council of Magistracy.

(3) The Plenum of the SCM shall issue the *avis* (endorsement) for the draft normative acts concerning the activity of the judicial authority.

(4) The Plenum of the SCM shall issue the *avis* (endorsement) for the draft regulations and orders to be approved by the Minister of Justice, in the cases provided by the law.

(5) The Plenum of the SCM may notify the Minister of Justice with regard to the necessity to initiate or to amend some normative acts in the field of justice.

(6) Every year, the Superior Council of Magistracy shall elaborate a report on the status of the Judiciary and a report on its own activity, which shall be presented to the Joint Chambers of the Romanian Parliament by 15 February the next year and publish in the Official Journal of Romania, Part III, and on the web page of the Superior Council of Magistracy.

**Art. 39** - The Plenum of the SCM appoints the secretary general and the personnel with leading functions within the apparatus of the SCM.

### **Section 3**

#### **Attributions of the SCM sections**

**Art. 40** - The sections of the Superior Council of Magistracy shall have the following tasks pertaining to the career of judges and prosecutors:

a) ordaining delegation of judges and assign secondments of judges and prosecutors, according to the law;

b) appointing judges and prosecutors in leading positions, according to the law and to the regulation;

c) examining recommendations received from the leading board of the High Court of Cassation and Justice on the appointment of judges to this Court;

d) analysing the fulfilment of legal requirements by debutant judges and debutant prosecutors who succeed to the capacity examination, by other jurists who succeed to the examination for admission to the magistracy, by the judges and prosecutors who enrolled for the examination for promotion and by the judges and prosecutors proposed for appointment in leading positions;

e) solving objections against evaluation marks granted by the legally set up boards of evaluation of the professional activity of judges and prosecutors;

f) taking measures to solve notifications received from litigants or from other persons on inappropriate conduct of judges and prosecutors;

g) proposing to the President of Romania the appointment and revocation from office of the president, vice-president of sections and section presidents of the High Court of Cassation and Justice;

h) endorsing the proposal made by the Minister of Justice on the appointment and revocation of the General Prosecutor of the Prosecutors' office attached to the High Court of Cassation and Justice, of the General Prosecutor of the National Anti-Corruption Prosecutors' office, of their deputies, of the chief-prosecutors of section within these prosecutors' offices, as well as of the chief prosecutor of the Directorate for Investigation of Offences of Organised Crime and Terrorism and of his deputy;

i) approving the transfer of judges and prosecutors;

- j) ordaining the suspension of judges and prosecutors from office;
- k) fulfilling any other duties set forth by laws or regulations.

**Art. 41** - The sections of the Superior Council of Magistracy shall have the following duties pertaining to the organization and operation of courts and prosecutors' offices:

a) approving the setting up and closing down of sections in courts of appeal, of courts in the latter's jurisdiction, as well as the setting up of secondary premises of courts, according to the law;

b) approving the proposal the General Prosecutor of the Prosecutors' office attached to the High Court of Cassation and Justice or of the General Prosecutor of the National Anti-Corruption Prosecutor's Department on the setting up or closing down of sections in prosecutors' offices;

c) endorsing the draft Government decision regarding the list of places that are part of the jurisdictions of first instance courts;

d) establishing the categories of trials or applications to be solved in the city of Bucharest only by certain courts, while observing the substantive competence provided in the law;

e) at the proposal the presidents of courts of appeal, establishing the number of vice-presidents for the courts of appeal, tribunals and specialized tribunals, as well as the first instance courts where one vice-president works;

f) upon proposition by the Prosecutor General Romania or by the General Prosecutor of the National Anti-Corruption Prosecutors' office, the case being, establishing the number of deputies of General Prosecutors in prosecutors' offices attached to courts of appeal and of prime-prosecutors in prosecutors' offices attached to tribunals, as well as prosecutors' offices attached to first instance courts , where prime-prosecutors are assisted by deputies;

- g) fulfilling any other duties set forth by laws or regulations.

**Art. 42** - (1) The Section for Judges of the Superior Council of Magistracy approves searches, detainments, remand custodies or home arrests concerning judges and assistant magistrates.

(2) The Section for Prosecutors of the Superior Council of Magistracy approves searches, detainments, remand custodies or home arrests concerning prosecutors.

(3)The provisions of paragraphs (1) and (2) on searches and custody shall not apply in case of flagrant offence.

(4) The sections of the Superior Council of Magistracy render a decision immediately after they receive a complaint.

**Art. 43** - The Judges Section of the SCM appoints and promotes the assistant magistrates of the High Court of Cassation and Justice, according to the law.

#### **Section 4**

##### **Attributions of the SCM in the matter of disciplinary liability of magistrates**

Art. 44. - (1) The Superior Council of Magistracy, through its sections, acts as court in the area of disciplinary liability of judges and a prosecutors for acts set forth by Law no. 303/2004, as republished and subsequently amended.

(2) The Section for Judges acts as a disciplinary court also for assistant magistrates of

the High Court of Cassation and Justice. The provisions of this law shall apply accordingly also to assistant magistrates of the High Court of Cassation and Justice.

(3) A disciplinary action in case of acts of misconduct committed by a judge shall be filed by the Judicial Inspection, through the judicial inspector, by the Minister of Justice or by the President of the High Court of Cassation and Justice.

(4) A disciplinary action in case of acts of misconduct committed by prosecutors shall be filed by the Judicial Inspection, through the judicial inspector, by the Minister of Justice or by the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice.

(5) A disciplinary action in case of acts of misconduct committed by an assistant magistrate shall be filed by the President of the High Court of Cassation and Justice or by the Judicial Inspection, through the judicial inspector.

(6) For filing of a disciplinary action, a preliminary disciplinary investigation shall be compulsorily conducted by the Judicial Inspection.

Art. 45. (1) In cases where the Minister of Justice, the President of the High Court of Cassation and Justice or, as applicable, the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice are the authors of a disciplinary action, they can notify the Judicial Inspection in relation to acts of disciplinary misconduct committed by judges and prosecutors.

(2) In situations where the Judicial Inspection is the author of a disciplinary action, it can act *ex officio* or can be notified in writing and in a reasoned manner by any interested party, including by the Superior Council of Magistracy, in relation to acts of disciplinary misconduct committed by judges and prosecutors.

(3) The aspects flagged as per para. (1) and (2) are subject to a preliminary inquiry, which is conducted by the judicial inspectors of the Judicial Inspection, under which they establish whether indications related to the perpetration of a disciplinary misconduct exist. Such inquiry is conducted within maximum 45 days after the date of the request submitted by the author of a disciplinary action pursuant to para. (1), or from the date when the Judicial Inspection was notified pursuant to para. (2). The Chief Inspector may order an extension of the term for conducting a preliminary inquiry by maximum 45 days, if grounded reasons justifying such measure exist.

(4) If following a preliminary inquiry, it is found that there are no indications related to the perpetration of a disciplinary misconduct:

a) the judicial inspector shall transmit, within maximum 10 days after its completion, a case closure proposal to the Minister of Justice, the President of the High Court of Cassation and Justice or, as applicable, to the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice, if the Judicial Inspection was notified under the terms of para. (1);

b) the complaint is closed, and the result is communicated directly to the person having filed such complaint and to the person concerned by the complaint, if the Judicial Inspection was notified under the terms of para. (2).

(5) After receiving a case closure proposal specified under para. (4) item a), the Minister of Justice, the President of the High Court of Cassation and Justice or, as applicable, the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice can:

a) order the action closure and the result communication to the person having filed the complaint and to the person concerned by the complaint;

b) request that the preliminary inquiry be supplemented, on a justified basis, when he/she believes that this is not complete. The inquiry shall be supplemented by the judicial

inspector within maximum 30 days after the date when this was requested by the author of the disciplinary action;

c) order the initiation of a preliminary disciplinary investigation.

(6) In cases where it is found that indications related to the perpetration of a disciplinary misconduct exist, judicial inspectors:

a) shall transmit a proposal to initiate a preliminary disciplinary investigation to the complaint author, within 7 days following completion of the preliminary inquiry, if the Judicial Inspection was notified under the terms of para. (1);

b) shall order, by a resolution, the initiation of a preliminary disciplinary investigation, if the Judicial Inspection was notified under the terms of para. (2).

(7) After receiving a proposal to initiate a preliminary inquiry provided for by para. (6) item a), the Minister of Justice, the President of the High Court of Cassation and Justice or, as applicable, the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice may order the initiation of a preliminary disciplinary investigation.

(8) In cases where several complaints concern the same act and the same person, complaints shall be joined.

Art. 46. - (1) Under a disciplinary investigation, one establishes the acts and their consequences, the circumstances under which they have been perpetrated, as well as any other conclusive data based on which he/she can assess the existence or inexistence of guilt. The hearing of the person concerned and the verification of the investigated judge's or prosecutor's defenses are mandatory. The refusal of a judge or prosecutor subject to investigation to give statements or to appear for investigations shall be confirmed by a minutes and shall not preclude the investigation completion. A judge or prosecutor subject to investigation has a right to know all the documents of the investigation and to request for evidence in his/her defense.

(2) A disciplinary investigation shall be conducted by observing the legal provisions referring to classified information and to the protection of personal data.

(3) A disciplinary investigation shall be suspended when the initiation of a criminal action was ordered for the same act against the judge or prosecutor subject to investigation.

(4) Criminal prosecution bodies have an obligation to communicate the document whereby the criminal action was initiated to the Superior Council of Magistracy and the Judicial Inspection within a reasonable time interval.

(5) Suspension of a disciplinary investigation shall be ordered by the judicial inspector, through a resolution, and operates until the decision rendered in the case having triggered the suspension remains final. The provisions of para. (4) shall apply accordingly.

(6) A preliminary investigation is conducted within 60 days as from the date when it was ordered, except for situations in which suspension occurs. A disciplinary investigation may be extended by maximum 30 days, if grounded reasons justifying such measure exist.

(7) A disciplinary action may be filed within 30 days as from the completion of a disciplinary investigation, but no later than 2 years after the date when the act was committed.

Art. 47. - (1) In cases where a complaint was filed under Art. 45 para. (2), the judicial inspector may order, by a written and reasoned resolution:

a) admission of the complaint, by filing a disciplinary action and notifying the relevant section of the Superior Council of Magistracy;

b) closure of the complaint, if such complaint is not signed, does not contain the identification data of its author or indications related to the identification of the factual situation underlying the complaint, as well as in the situation provided for by Art. 45 para. (4)

item b); a case closure resolution is final;

c) dismissal of the complaint, if following a disciplinary investigation, it finds that the requirements for filing an action are not met.

(2) In the case specified under para. (1) item b), one may file a new complaint, in compliance with the requirements set by law.

(3) A resolution of the judicial inspector is subject to confirmation by the chief inspector. The chief inspector may order the supplementing of the disciplinary investigation by the judicial inspector. The investigation shall be supplemented by the judicial inspector within maximum 30 days after the date when such measure was ordered by the chief inspector.

(4) A resolution of the judicial inspector may be refuted by the chief inspector, in writing and on a justified basis, and the latter may order one of the solutions provided for under para. (1) items a) or c) by a written and reasoned resolution.

(5) The resolution on dismissing a complaint provided for under para. (1) item c) and para. (4) may be appealed by the person having filed the complaint with the Administrative and Tax Litigation Section of Bucharest Court of Appeals, within 15 days after its communication, without fulfilling any preliminary proceedings.

(6) The decisions that can be rendered by the Administrative and Tax Litigation Section of Bucharest Court of Appeals are:

a) to dismiss the appeal;

b) to admit the appeal and to nullify the resolution of the judicial inspector or, as applicable, of the chief inspector and to send the case for the continuation of disciplinary proceedings.

(7) Decisions of the Administrative and Tax Litigation Section of Bucharest Court of Appeals shall be irrevocable.

Art. 48. - (1) In the situation provided for by Art. 45 para. (7), the Judicial Inspection shall communicate the results of the preliminary inquiry to the author of the disciplinary action within maximum 7 days after its completion. If he/she believes that the investigation is incomplete, the author of the disciplinary action may request the Judicial Inspection, only once, to supplement it. The judicial inspector shall supplement it within maximum 30 days after the date when this was requested, and its results shall be communicated to the author of the disciplinary action within maximum 7 days after its completion.

(2) After receiving the results of a preliminary inquiry under the terms of para. (1), the Minister of Justice, the President of the High Court of Cassation and Justice or, as applicable, the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice may file a disciplinary action, by notifying the relevant section of the Superior Council of Magistracy.

Art. 49. - (1) Under disciplinary proceedings before the sections of the Superior Council of Magistracy, the summoning of the judge or prosecutor against whom a disciplinary action was filed and of the Judicial Inspection or, as applicable, the Minister of Justice, of the President of the High Court of Cassation and Justice or of the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice is mandatory. The judge or prosecutor may be represented by another judge or prosecutor or may be assisted by a lawyer. Failure of a judge or prosecutor subject to investigation to appear when the action is examined shall not preclude the continuation of the proceedings.

(2) A disciplinary action is upheld before the sections by the judicial inspector having filed it and, only if this is impossible for him/her, by a judicial inspector appointed by the chief inspector.

(3) If a disciplinary action is filed by the Minister of Justice, the President of the High Court of Cassation and Justice or, as applicable, the General Prosecutor of the Prosecutors' Office under the High Court of Cassation and Justice, such disciplinary action shall be defended by its author or by a representative appointed by him/her/it.

(4) The parties have a right to take knowledge of all documents of the case file and may request for the production of evidence.

(5) The provisions of Art. 46 para. (3) and (4) shall apply accordingly. Suspension of an investigation shall be ordered by a resolution by the relevant section the Superior Council of Magistracy.

(6) If the sections of the Superior Council of Magistracy find that a complaint is well grounded, they shall apply one of the disciplinary sanctions provided for by law, depending on the seriousness of the disciplinary misconduct committed by a judge or prosecutor and by considering his/her personal circumstances.

(7) The provisions of this law regulating the proceeding for the settlement of disciplinary actions shall be supplemented by the provisions of the Civil Procedure Code.

Art. 50. (1) The sections of the Superior Council of Magistracy decide upon disciplinary actions by a decision, which shall basically contain the following:

a) a description of the act representing a disciplinary misconduct and its legal classification;

b) the legal basis for applying the sanction;

c) the reasons why the judge's or prosecutor's defenses were rebutted;

d) the applied sanction and the grounds underlying its application;

e) the means of appeal and the term within which the decision can be appealed;

f) the court having jurisdiction to decide on the appeal.

(2) The provisions of para. (1) shall be supplemented by the provisions of the Civil Procedure Code referring to the contents of decisions.

Art. 51. - (1) Decisions of the sections of the Superior Council of Magistracy deciding on disciplinary actions shall be compulsorily written within maximum 20 days after their rendering and shall be communicated forthwith, in writing, to the concerned judge or prosecutor, as well as to the Judicial Inspection or, as applicable, to the author of the disciplinary action. The communication of decisions shall be secured by the General Secretariat of the Superior Council of Magistracy.

(2) A member of the Superior Council of Magistracy against whom a disciplinary action is filed shall not take part in the deliberations of the section deciding upon such action.

(3) A second appeal can be filed against the decisions provided for under para. (1), within 15 days after their communication to the sanctioned judge or prosecutor or, as applicable, to the Judicial Inspection or to the other authors who filed the disciplinary action. The jurisdiction to decide on the second appeal rests upon the 5-judge panel of the High Court of Cassation and Justice. The 5-judge panel may not include members with a right to vote of the Superior Council of Magistracy or the disciplinarily sanctioned judge.

(4) A second appeal shall suspend the enforcement of the decision rendered by the section of the Superior Council of Magistracy on the application of a disciplinary sanction.

(5) The ruling deciding upon the second appeal set forth under para. (3) shall be irrevocable.

Art. 52. (1) During disciplinary proceedings, the relevant section of the Superior

Council of Magistracy, *ex officio* or upon proposal by the judicial inspector, may order suspension of the magistrate from its position until the final adjudication of the disciplinary action, if the further holding of the position by him/her affects the unbiased conducting of disciplinary proceedings or if the disciplinary proceedings are of nature to seriously prejudice the prestige of justice.

(2) During disciplinary proceedings, a decision concerning an application for special pension shall be suspended until the final adjudication of a disciplinary action.

Art. 53. - In situations where exclusion from the magistracy of a judge or prosecutor is ordered, the irrevocable decision shall be transmitted to the Presidency of Romania for the issuance of a decree on his/her release from the position.

## CHAPTER V

### Status of the members of the SCM

**Art. 54** - (1) The length of the term of office for elected members of the Superior Council of Magistracy shall be 6 years, and the term of office is not renewable. The members of the Superior Council of Magistracy shall hold the statute of dignitary.

(2) The position of representative of the civil society elected as member of the Superior Council of Magistracy is incompatible with the position of member of Parliament, elected local official, public official, sitting judge or prosecutor, active public notary, lawyer, legal adviser or bailiff.

(3) Articles 6 and 7 of Law No.303/2004 shall apply also to members of the Superior Council of Magistracy.

(4) of the term of office as a member of the Superior Council of Magistracy shall cease, the case being, upon expiry of, the term of office by resignation, revocation from office, by failure to solve a state of incompatibility within 15 days from the date of election as member of the Superior Council of Magistracy, non-observance of Article 7 of Law No. 303/2004, inability to exercise duties for a period longer than three months, as well as by death.

(5) The term of office as a member of the Superior Council of Magistracy shall be suspended *de jure*, for the reasons provided in Article 62 of Law No.303/2004, as subsequently amended and supplemented.

**Art. 55** - (1) Revocation from the office of elected member of the Superior Council of Magistracy shall be proposed by the president or the vicepresident of the Council, or by one third of the members, if the person concerned no longer fulfils the legal requirements for being an elected member of the Superior Council of Magistracy, in case of failure to fulfil or to properly fulfil the duties within the Superior Council of Magistracy or in case of application of any disciplinary sanction.

(2) The Superior Council of Magistracy's Plenum may, upon notification made according to paragraph (1), ordain revocation from the office of elected member of the Superior Council of Magistracy.

(3) Revocation from the office of president or vice-president shall be proposed by one third of the number of members of the Superior Council of Magistracy. Paragraph (2) shall apply accordingly.

(4) Repealed

(5) In case of the joint general assembly of the Prosecutors' office attached to the High Court of Cassation and Justice and of the National Anticorruption Prosecutors' office, decisions of revocation of the representative of these prosecutors' offices shall be made with

the vote of the majority of prosecutors. In the general assembly shall vote also the prosecutors from the territorial structures of these prosecutors' offices.

(6) Decisions to revoke the representative of the High Court of Cassation and Justice shall be made with the vote of the majority of the judges in the general assembly.

(7) The procedure for revocation may be initiated by any general assembly of a court or prosecutors' office that is represented by the member of the Superior Council of Magistracy whose revocation is being requested, as well as by the professional organizations of judges and prosecutors.

(8) The centralisation of the ballot results is the task of the general assembly that initiated the procedure or the first general assembly to be notified by the professional organizations of judges or prosecutors.

(9) Repealed

Art. 56. - (1) Members of the Superior Council of Magistracy who are judges or prosecutors shall be held civilly, disciplinarily and criminally liable under the law.

(2) The provisions of Art. 45-49 shall apply accordingly.

(3) A member of the Superior Council of Magistracy against whom a disciplinary action is filed shall not participate as member in the meetings of the section in which his/her disciplinary action is decided upon.

Art. 57. - (1) In case of termination of the capacity as member of the Superior Council of Magistracy prior to the mandate expiry, new elections shall be organized for the remained vacancy according to the procedure stipulated by law.

(2) Until the election of a new member, the judge or prosecutor who obtained the next number of votes in the elections conducted pursuant to Art. 8 para. (3) or Art. 13 or, as applicable, Art. 19, shall act as interim.

Art. 58. - During the same mandate, spouses, blood or in-law relatives up to the 4th degree, including, may not be members of the Superior Council of Magistracy.

## **CHAPTER VI**

### **The technical administrative apparatus of the SCM**

**Art. 59** - The SCM has its own technical administrative apparatus.

**Art. 60** - (1) The financing of the current and capital expenses of the SCM shall be ensured out of the state budget.

(2) The budgets of the NIM and the National Clerks' School shall be distinctly included in the budget of the SCM.

(3) The president of the SCM has the quality of main credit chief accountant, quality which may be delegated to the secretary general.

(4) The Minister of Justice, shall administer the budget for the courts of appeal, tribunals, specialized tribunals and courts of first instance the Minister of Justice being main credit chief accountant.

**Art. 61** - (1) The apparatus of The Superior Council of Magistracy shall be run by a secretary general.

(2) The secretary general is appointed and revoked by the Superior Council of Magistracy's Plenum from the judges and prosecutors with at least 8 years' length of service in magistracy.



(2) The secretary general the Superior Council of Magistracy may be assisted by a deputy specialized in management, human resources or financial issues.

(3) The secretary general The Superior Council of Magistracy shall receive a monthly indemnity equal to that of the secretary general the Minister of Justice, which is provided in the Government Emergency Ordinance No.27/2006 on the remuneration and other rights of magistrates, and his deputy shall receive a monthly indemnity equalling that of a deputy secretary general state within the Minister of Justice, which is provided in the same normative act.

**Art. 62** - (1) The technical apparatus of the SCM shall be organized in directorates, services and offices.

(2) The organizational structure of the SCM technical apparatus shall be established by means of a Plenum decision, within the limits of the budget.

**Art. 63** - (1) The personnel acting within the technical apparatus of the SCM shall be appointed after a contest or exam.

(2) The leading personnel acting within the technical apparatus of the SCM shall be appointed by the Plenum, and the execution personnel by the secretary general.

(3) The offices implying legal background within the technical apparatus of the SCM may be taken also by seconded judges and prosecutors, under the law.

(4) The civil servants and the personnel with labour contracts acting within the technical apparatus of the SCM are remunerated according to the legal provisions applicable to the same categories of personnel acting within the system of the Parliament.

(5) The lists of functions and the lists of personnel shall be approved by the Plenum of the SCM, within the limits of the budget.

**Art. 64** - The attributions of the secretary general and of the personnel acting within the technical apparatus of the SCM, and the organization and functioning of the departments within the own system of the SCM shall be determined by the Regulations on the organization and operation of the SCM.

## CHAPTER VII

### Organization of the Judicial Inspection and status of judicial inspectors

**Art. 65.** (1) The Judicial Inspection shall be created as a structure with legal personality within the Superior Council of Magistracy, with its seat in Bucharest, through a reorganization of the Judicial Inspection.

(2) The Judicial Inspection is run by a chief inspector, assisted by a deputy chief inspector, both appointed based on a contest organized by the Superior Council of Magistracy.

(3) The Judicial Inspection shall act according to the principle of operational independence, by performing analyses, inspections and controls in specific activity areas through its judicial inspectors appointed under the law.

(4) The norms for conducting inspection activities shall be approved, upon proposal by the chief inspector, by a regulation adopted by a decision of the of the Superior Council of Magistracy's Plenum, which shall be published in Part I of the Official Journal of Romania.

**Art. 66.** (1) For the performance of its duties and prerogatives, the Judicial Inspection has its own staff.

(2) The Judicial Inspection's own staff is organized per directorates, services and

offices. The Judicial Inspection's staff comprises judicial inspectors, legal specialized personnel assimilated to magistrates, public servants and contractual personnel.

(3) The organization and operation of the Judicial Inspection, the organizational structure and the duties and prerogatives of compartments shall be established by a regulation approved by an order of the chief inspector, which shall be published in Part I of the Official Journal of Romania.

(4) The Judicial Inspection operates with a maximum number of 70 positions.

(5) The positions of the Judicial Inspection specified under para. (4) shall be taken from the maximum number of positions of the Superior Council of Magistracy funded through the annual budget law.

(6) The maximum number of positions for the Judicial Inspection's staff may be adjusted by a government decision, upon proposal by the chief inspector, and based on an endorsement from the Superior Council of Magistracy.

(7) The funding for the Judicial Inspection's current and capital expenses shall be fully secured from the state budget, and the funds intended to the Judicial Inspection shall be recorded separately in the budget of the Superior Council of Magistracy.

**Art. 67.** (1) The chief inspector and the deputy chief inspector are appointed by the Superior Council of Magistracy's Plenum from among the judicial inspectors in office, based on a contest consisting of a presentation of a project referring to the performance of duties and prerogatives specific to the relevant management position and of a written test regarding the management, communication, human resources, the applicants' capacity to make decisions and to take responsibility, resistance to stress, and a psychological test.

(2) Such contest shall be organized by the Superior Council of Magistracy according to a regulation approved by a decision of the Superior Council of Magistracy's Plenum, which shall be published in Part I of the Official Journal of Romania.

(3) The organization of contests for filling chief inspector and deputy chief inspector positions shall be announced at least 3 months prior to their date.

(4) A mandate of the chief inspector and of the deputy chief inspector is of 3 years and may be renewed only once, in compliance with the provisions of para. (1).

(5) The chief inspector and the deputy chief inspector may be revoked from their position by the Superior Council of Magistracy's Plenum, if they fail to perform or improperly perform their management duties and prerogatives. Such revocation is ordered based on an annual audit report specified at Art. 68.

(6) A decision of the Superior Council of Magistracy's Plenum ordering their revocation can be challenged by a second appeal, within 15 days after its communication, with the Administrative and Tax Litigation Section of the High Court of Cassation and Justice. Such second appeal suspends the enforcement of the Superior Council of Magistracy's decision. The ruling deciding on the second appeal shall be irrevocable.

**Art. 68.** (1) The quality of the Judicial Inspection's management is assessed by an external independent audit.

(2) The audit specified at para. (1) shall be funded from the budget of the Judicial Inspection. The entity to conduct such audit shall be selected in compliance with the legal provisions referring to public procurement.

(3) Entities of the public or private sector in which the state is a shareholder may not participate in the public procurement procedure.

(4) The audit report shall be prepared in the first 3 months of the year, and shall compulsorily include recommendations on the performance of management duties and prerogatives, on efficient organization, on conduct of and accountability of the management of

the Judicial Inspection, as well as recommendations on the need to diminish or, as applicable, to increase the number of its positions.

(5) Within maximum 5 days after the receipt of the audit report, the chief inspector shall communicate it to the Superior Council of Magistracy.

**Art. 69.** (1) The chief inspector performs basically the following duties and prerogatives:

a) performs prerogatives related to the management and organization of the Judicial Inspection's activities;

b) represents the Judicial Inspection in its relations with the Superior Council of Magistracy or with other domestic or international institutions;

c) performs the legal duties and prerogatives resting on him/her as budget manager;

d) takes steps for the random assignment of cases within the Judicial Inspection;

e) on a yearly basis or whenever this is necessary, he/she establishes the specific activity areas in respect of which inspections will be conducted, following consultations with the judicial inspectors or upon proposal by any of the authors of disciplinary actions;

f) establishes the inspection teams in the area specified at item e);

g) appoints, under the law, the judicial inspectors and other categories of personnel of the Judicial Inspection, orders the change, suspension or termination of their employment or work relations;

h) sets the individual duties and tasks of the staff under his/her supervision, by approving their job descriptions;

i) assesses the personnel under his/her supervision under the law;

j) performs any other duties and prerogatives provided for by law.

(2) The chief inspector of the Judicial Inspection shall not request and shall not receive instructions from any authority, institution or person in fulfilling his/her duties and prerogatives related to the initiation, conducting or revaluation of inspections, except for the situations set forth by this law.

(3) The chief inspector of the Judicial Inspection is a budget manager under the law.

(4) The deputy chief inspector performs the following duties and prerogatives:

a) coordinates the activities of the Judicial Inspection's staff other than judicial inspectors;

b) assists the chief inspector in its activities related to the verification and approval of documents and resolutions prepared by judicial inspectors;

c) coordinates the work protection and safety activity;

d) coordinates the professional training of judicial inspectors and the practice unification activities carried out at the level of the Judicial Inspection;

e) is the *de jure* replacement of the chief inspector;

f) performs any other duties and prerogatives delegated by the chief inspector.

**Art. 70.** (1) Inspectors of the Judicial Inspection are appointed in their positions by the chief inspector, based on a contest, for a 6-year mandate, from among judges and prosecutors having a seniority of at least 8 years in the magistracy, working at least at the level of tribunals or prosecutors' offices under tribunals, and having obtained a "very good" qualification in the last appraisal.

(2) The contest consists of a written test and an interview, and the contest topics

include the laws, rules and any other regulations in the area of organization of courts, prosecutors' offices and of the Judicial Inspection, as well as the provisions of the Criminal Procedure Code or of the Civil Procedure Code, depending on the specialization of applicant judges or prosecutors. The interview has a ponder of maximum 30% in the final media of the contest. The regulation for the contest organization and conducting is approved by a decision of the Superior Council of Magistracy's Plenum, upon proposal by the chief inspector, and is published in Part I of the Official Journal of Romania.

(3) The organization of contests for filling judicial inspector positions in the Judicial Inspection and vacancies tendered for contest shall be announced at least 3 months prior to the contest date. Such contests shall be organized at least 3 months prior to the expiry of a judicial inspector's mandate.

**Art. 71.** (1) During their mandate as chief inspectors, deputy chief inspectors and judicial inspectors, judges and prosecutors are suspended by operation of law from the position held by them with courts and prosecutors' offices. Judges and prosecutors holding management positions have an obligation to choose between the management position and that of judicial inspector within 30 days as from the date when they acquire a right to continue to fill a judicial inspector position. After the 30 days, the management or judicial inspector position in relation to which a choice has not been made shall remain vacant automatically.

(2) The provisions referring to sanctions and acts of disciplinary misconduct, and to disciplinary proceedings shall apply to judicial inspectors accordingly.

(3) Inspectors of the Judicial Inspection are revoked from their positions if a disciplinary sanction was applied to them or in the situation specified by Art. 77 para. (5).

(4) Upon termination of a judicial inspector position, judges and prosecutors shall return to the courts and prosecutors' offices where they worked previously or, based on their consent, to other courts or prosecutors' offices where they have a right to work under the law. Art. 1341 para. (2) - (5) of Law no. 304/2004, as republished and subsequently amended, shall apply accordingly.

**Art. 72.** (1) Judicial inspectors perform their activities independently and in an unbiased manner.

(2) Judicial inspectors may not conduct a disciplinary investigation or any other works concerning judges or prosecutors of courts or prosecutors' offices with which they worked previously. In such situation, the case shall be randomly assigned to another judicial inspector, in compliance with the provisions of Art. 73.

**Art. 73.** (1) Disciplinary complaints and cases are assigned to judicial inspectors through a computerized system or other method securing the random assignment of cases.

(2) Works assigned randomly can be reassigned to judicial inspectors only in the following cases, with the application of para. (1):

- a) one's inability to perform his/her duties and prerogatives for at least 20 days;
- b) upon justified request by the judicial inspector to whom the work was assigned;
- c) suspension from activity under the law;
- d) any time when, based on the capacity of the person subject to investigation, the impartiality of a disciplinary investigation could be affected;
- e) conflict of interests.

(3) Any acts, documents or other information requested by the Judicial Inspection or that are necessary for conducting a disciplinary investigation shall be transmitted directly to the Judicial Inspection.

(4) Judicial inspectors may request, under the law, including to heads of courts or

prosecutors' offices, any information, data or documents or may conduct any inspections deemed necessary by them for conducting a disciplinary investigation or for the performance of other duties and prerogatives provided for by the law or by regulations.

(5) Any acts, documents or other information pending with the Judicial Inspection are of confidential nature, except for those representing information of public interest, under the law.

**Art. 74.** (1) Judicial inspectors have the following duties and prerogatives:

a) in the disciplinary area, they order and conduct disciplinary investigations for filing disciplinary actions against judges, prosecutors, including against those who are members of the Superior Council of Magistracy, as well as against assistant magistrates of the High Court of Cassation and Justice, under the terms of this law;

b) conduct inspections in courts in relation to the observance of procedure norms regarding the receipt of applications, the random assignment of cases, the setting of hearing terms, continuity of judge panels, the rendering, writing and communication of decisions, the referral of cases to the competent courts, and the enforcement of criminal and civil judgments, and inform the Section for Judges of the Superior Council of Magistracy by preparing adequate proposals;

c) conduct inspections in prosecutors' offices in relation to the observance of procedure norms regarding the receipt and registration of works, the assignment of cases based on objective criteria, continuity in the assigned works and independence of prosecutors, the observance of deadlines, and the writing and communication of procedure documents, and inform the Section for Prosecutors of the Superior Council of Magistracy by preparing adequate proposals;

d) check the managerial efficiency and the way in which the duties and prerogatives deriving from laws and regulations are performed in order to ensure a proper operation of courts and prosecutors' office, a proper quality of services, flag the deficiencies identified and make adequate proposals for their remedy, which are presented to the relevant section;

e) check complaints sent to the Judicial Inspection or act *ex officio* in relation to any improper conduct of judges, prosecutors, including of those who are members of the Superior Council of Magistracy, and of assistant magistrates of the High Court of Cassation and Justice, or in relation to any breach of their professional obligations;

f) upon request by the Superior Council of Magistracy, conduct inspections regarding the observance of the good reputation requirement by judges and prosecutors in office;

g) conduct inspections ordered by the Superior Council of Magistracy's Plenum for the settlement of applications concerning the defense of the professional reputation and independence of judges; present reports containing results of inspections to the Superior Council of Magistracy's Plenum;

h) conduct any other inspections or controls ordered by the Superior Council of Magistracy's Plenum, the sections of the Superior Council of Magistracy or by the chief inspector of the Judicial Inspection under the law.

(2) The duties and prerogatives provided for under para. (1) item b), c) and d) shall be performed *ex officio* or upon request by the Superior Council of Magistracy's Plenum or the sections of the Superior Council of Magistracy.

**Art. 75.** (1) In performing their duties and prerogatives provided for under Art. 74, except for those referring to the conducting of disciplinary investigations, judicial inspectors prepare inspection reports, which they bring to the knowledge of courts/prosecutors' offices subject to inspection for the latter to raise objections.

(2) The inspection reports provided for under para. (1), together with the objections raised shall be forwarded to the relevant section of the Superior Council of Magistracy, which

shall establish the measures required to remedy the situation.

(3) If it decides that the objections are well grounded, the section of the Superior Council of Magistracy may order, in writing and on a reasoned basis, the retransmission of the report for the inspection supplementing, by indicating expressly the aspects that must be supplemented.

**Art. 76.** (1) Complaints referring to the good reputation of judges and prosecutors in office shall be verified by the Judicial Inspection *ex officio* or upon request by any interested party.

(2) An inspection report prepared following inspections related to the good reputation shall be communicated to the magistrate concerned by the complaint and to the person who filed the complaint within 15 days after its preparation, to enable them to raise objections.

(3) The inspection report provided for under para. (2), together with the objections raised, shall be forwarded to the relevant section of the Superior Council of Magistracy. Based on the report and the objections raised, the relevant section shall adopt a decision acknowledging that the good reputation requirement was met or not by a magistrate or, if it believes that the objections are well grounded, may order, in writing and on a reasoned basis, retransmission of the report for the inspection supplementing, by indicating expressly the aspects that must be supplemented. The decision acknowledging the non-fulfillment of the good reputation requirement shall include also a proposal for release from the position under Art. 65 para. (1) item i) of Law no. 303/2004, as republished and subsequently amended.

(4) During the procedure for verifying and acknowledging the fulfillment of the good reputation requirement, the relevant section the Superior Council of Magistracy, *ex officio* or upon proposal by the judicial inspector, may order suspension of the magistrate from his/her position until the proceedings are completed, if the further holding of that position by him/her could affect the unbiased conducting of the verification proceedings or if such proceedings are of nature to seriously prejudice the prestige of justice.

(5) The section's decision provided for under para. (3) may be appealed by a challenge with the Superior Council of Magistracy's Plenum, within 15 days after its communication, and the Plenum's decision may be appealed by a second appeal with the Administrative Litigation Section of the High Court of Cassation and Justice, within the same term. The decision of the court shall be irrevocable.

(6) An irrevocable decision acknowledging the non-fulfillment of the good reputation requirement shall be communicated to the Presidency of Romania, for the issuance of a decree for release from the position.

**Art. 77.** (1) The professional activity of judicial inspectors is appraised on a yearly basis, by a commission comprising the chief inspector and other 2 members elected by the general meeting of judicial inspectors, by awarding a "very good", "good", "satisfactory" or "dissatisfactory" qualification.

(2) Judicial inspectors dissatisfied with their qualifications may file a challenge with the relevant section the Superior Council of Magistracy, within 30 days after its communication.

(3) In deciding on such challenges, the sections of the Superior Council of Magistracy may request from the chief inspector or the appraised inspector any information they deem necessary, and the summoning of judicial inspector for hearing is mandatory.

(4) Decisions of the sections can be appealed with the Superior Council of Magistracy's Plenum, pursuant to Art. 36 para. (2).

(5) Judicial inspectors who obtain a "dissatisfactory" qualification or who obtain two consecutive times a "satisfactory" qualification shall be revoked from the position of judicial

inspector.

(6) The criteria for the appraisal of the professional activity of judicial inspectors and the appraisal procedure shall be established by a regulation for the organization and operation of the Judicial Inspection.

**Art. 78.** (1) The time interval while a judge or prosecutor is judicial inspector represents seniority as judge or prosecutor.

(2) During their mandate, judicial inspectors have all rights of seconded judges and prosecutors, as well as the obligations set forth by law for judges and prosecutors.

(3) During their mandate, judicial inspectors may participate in contests or selection procedures for promotion to magistrate executive positions. In case of promotion, inspectors may choose between continuing their mandate as inspector, by acquiring the new professional degree, and the effective promotion in the executive position for which they applied, within 30 days as from the validation of results of the promotion exam.

(4) The inspectors' salaries and rights are established under the law.

**Art. 79.** The guard of the premises of the Judicial Inspection, of the assets and values belonging to it, the supervision of access and the maintaining of internal order shall be secured by the Romanian Gendarmerie, through its specialized structures, free of charge.

## CHAPTER VII

### Transitory and final provisions

**Art. 80** - (1) The number of positions required for the operation of the system of the SCM shall be determined by a Plenum decision, within the limits of the budget.

**Art. 81** - The personnel from the Minister of Justice and the Prosecutors' office attached to the HCCJ, taken over into the technical-administrative apparatus of the SCM shall be considered as being transferred.

**Art. 82** - Within 60 days from the publishing of this law, the Government shall ensure an appropriate office for the SCM.

**Art. 83** - On the day when this law comes into force, the name "Centre for Training and Further Training of Clerks and the Other Specialty Auxiliary Personnel" mentioned in the normative acts in effect at this moment shall be replaced by "National Clerks' School".

**Art. 84** - (1) The protection of the SCM headquarters, the goods and values belonging thereto, the supervision of the access and the maintaining of the internal order necessary for the normal process of the activity in this headquarters shall be ensured, free of charge, by the Romanian Gendarmerie.

(2) The magistrates elected members of the SCM shall enjoy protection, according to the law, under the conditions provided by the protocol concluded between the President of the SCM and the Minister of Administration and Interior.

**Art. 85** - (1) The present Law shall come into effect within 90 days from the publishing in the Official Journal of Romania, Part I, except Article 67.

(2) At the day of this law coming into effect, the provisions of TITLE V "The Superior Council of Magistracy" articles 86 - 90 of the Law on judiciary organization no. 92/1992 as republished in the Official Journal of Romania, Part I, no. 259 of September 30, 1997, as later amended and supplemented, and any other provisions to the contrary shall be repealed.

The following articles II-V from Title XV "The amended and supplemented provisions of Law no 317/2004 regarding The Superior Council of Magistracy" of Law no. 247/2005, which are not included in the supplemented body of Law 317/2004, are still applied as own provisions of Law no 247/2005

**Article II** - (1) In case of cessation of the term of office of one of the judges elected in the current Superior Council of the Magistracy as representative of the courts of appeal, elections shall be held so as to designate the second representative of first instance courts, according to this law.

(2) In case of cessation of the term of office of the representative of the Prosecutors' office attached to the High Court of Cassation and Justice or of the National Anti-Corruption Prosecutor's Department in the current Superior Council of the Magistracy, elections shall be held so as to designate the second representative of prosecutors' offices attached to tribunals, according to this law.

(3) Within 60 days from the entry into force of this law, the Superior Council of Magistracy shall appoint the deputy to the secretary general, according to Article 60.

**Article III** - (1) The provisions of Art. II shall apply 120 days after this law comes into force\*), a date on which the Judicial Inspection becomes operational. On the same date, the discipline committees shall be dissolved.

\*) Law no. 24/2012 came into force on 26 January 2012.

(2) Works and cases pending with the discipline committees as of the date specified under para. (1) shall be finalized by the judicial inspectors working on them or by other inspectors appointed by the chief inspector under the provisions of this law.

**Art. IV.** - (1) By the reorganization of the Superior Council of Magistracy, the positions of the Judicial Inspection under the Superior Council of Magistracy shall be taken over by the Judicial Inspection organized under this law, and the staff shall be taken over and employed with the new structure under the terms of this law.

(2) The expenses related to the staff and positions taken over by the Judicial Inspection from the Superior Council of Magistracy shall be transferred from the budget of the Superior Council of Magistracy to the budget of the Judicial Inspection.

(3) The expenses required for the operation of the Judicial Inspection other than those provided for under para. (2) shall be allocated from the budget of the Superior Council of Magistracy. IT equipment, furniture, office devices and other assets required for the activity of the Judicial Inspection shall be transferred based on a handover-takeover protocol from the management of the Superior Council of Magistracy to the management of the Judicial Inspection.

(4) The Ministry of Public Finance is authorized to introduce, upon proposal by budget managers, the changes deriving from the application of the provisions of this law in the structure of the budget of the Superior Council of Magistracy and of the Judicial Inspection.

**Art. V.** - (1) The head of the Inspection Service for Judges and the head of the Inspection Service for Prosecutors shall continue to work as inspectors of the Judicial Inspection until expiry of their inspector mandate.

(2) Judicial inspectors who are in office on the date when this law comes into force shall continue their mandate until the date of its expiry, while the procedure set forth by this law for filling judicial inspector positions shall apply to the new appointments.

(3) Within 45 days as from the date when this law comes into force, the Superior Council of Magistracy shall adopt a decision approving the regulation specified by Art. 64<sup>3</sup> para. (2)\*) of Law no. 317/2004 on the Superior Council of Magistracy, as subsequently amended, and shall organize the contest for filling the positions of chief inspector and deputy chief inspector. The chief inspector in office shall continue his/her activity until the date of appointment of the chief inspector of the Judicial Inspection under the terms of this law.

(4) Within 30 days as from the appointment, the chief inspector:



**a)** shall approve the Regulation for the Organization and Operation of the Judicial Inspection;

**b)** shall propose for approval to the Superior Council of Magistracy's Plenum the regulation provided for under Art. 64<sup>6</sup> para. (2)\*\*) of Law no. 317/2004, as subsequently amended, and the norms specified by Art. 64<sup>1</sup> para. (4)\*\*\*) of the same law."

\*) Art. 64<sup>3</sup> para. (2) became Art. 67 para. (2) due to renumbering.

\*\*\*) Art. 64<sup>6</sup> para. (2) became Art. 70 para. (2) due to renumbering.

\*\*\*\*) Art. 64<sup>1</sup> para. (4) became Art. 65 para. (4) due to renumbering.