



Strasbourg, 7 March 2022

CDL-REF(2022)008rev

Opinion No. 1079 / 2022

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ROMANIA

DRAFT LAW

**ON THE DISMANTLING
OF THE SECTION FOR INVESTIGATING CRIMINAL OFFENCES
WITHIN THE JUDICIARY,
AS AMENDED**

AND

**ON THE AMENDMENT OF LAW 135/2010
REGARDING THE CODE OF CRIMINAL PROCEDURE**

Draft Law
on the dismantling of the Section for investigating criminal offences
within the judiciary
and on amendment of Law no. 135/2010
regarding the Code of Criminal Procedure

The Romanian Parliament adopts this law:

Art. 1 – (1) On the date of entry into force of this law, the Section for investigating criminal offences within the judiciary within the Prosecutor's Office attached to the High Court of Cassation and Justice, hereinafter referred to as the *Section*, shall be dismantled.

(2) Cases currently being examined at the Section level shall be transmitted administratively, within 60 working days from the date of entry into force of this law, by the Prosecutor's Office attached to the High Court of Cassation and Justice, to the competent prosecutor's offices according to art. 3, which continues to solve the cases.

(3) The completed cases whose files are in the archives of the Section shall be transmitted by administrative means within 180 working days from the date of entry into force of this law, by the Prosecutor's Office attached to the High Court of Cassation and Justice, to the competent prosecutor's offices according to art. 3.

(4) The acts of procedure accomplished in the cases provided in par. (2) and (3), in compliance with the legal provisions in force at the date of their fulfilment, remain valid.

(5) The dismissal, the waiver of criminal prosecution and the indictment solutions ordered by the prosecutors of the Section, which were not subject to the hierarchical control prior to the entry into force of this law, are subject, from the date of dismantling of the Section, to the control exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the provisions of art. 318, 328, 335 and of art. 339 of Law no. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, applying accordingly.

(6) The acts performed and the measures taken by the prosecutors of the Section in the cases provided in par. (2), which were not subject to the hierarchical control prior to the entry into force of this law, are subject, from the date of the dismantling of the Section, to the control exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the provisions of art. 304 and of art. 336-339 of Law no. 135/2010, with subsequent amendments and completions, applying accordingly.

(7) From the date of dismantling of the Section, at the trial of the cases transmitted according to para. (2) and (3), as well as in the settlement of proposals, appeals, complaints or any other requests made in these cases, prosecutors from the prosecutor's offices attached to the courts before these requests are brought participate. These provisions also apply with regard to the cases related to the offences provided by art. 3 which were pending before the courts at the date of the operationalization of the Section and were not completed until the date of entry into force of this law.

(8) Appeals declared by the Section may be withdrawn only by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

Art. 2 - (1) The positions in the scheme of functions and staff of the Section at the date of entry into force of this law remain in the scheme of the Prosecutor's Office attached to the High Court of Cassation and Justice and are taken over by the Section for investigating criminal offences.

(2) Starting with the date of dismantling of the Section, the prosecutors within it, including those with leading positions, return to the prosecutor's offices where they come from or to the prosecutor's offices where they promoted according to the law during the activity within the Section. From the date of returning to the prosecutor's office where they come from or to the prosecutor's offices where they promoted according to the law, the prosecutors who worked in the Section shall regain their professional degree of execution and the corresponding salary they had previously or those acquired as a result of promotion, under the law, during the activity within the Section.

(3) Ongoing staff secondments on the other categories of posts from those provided in para. (1) shall be maintained within the Section for investigating criminal offences of the Prosecutor's Office attached to the High Court of Cassation and Justice, until the fulfillment of the term for which these were ordered.

Art. 3 - (1) From the date of entry into force of this law, the criminal offences committed by judges and prosecutors, members of the Superior Council of Magistracy, by judges of the High Court of Cassation and Justice and by the prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, by the judges from the courts of appeal and the Military Court of Appeal, as well as by the prosecutors from the prosecutor's offices attached to these courts and by the judges of the Romanian Constitutional Court are also within the competence of the Criminal Prosecution Section of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(2) From the date of entry into force of this law, the offences committed by judges from courts of first instance, tribunals, military tribunals and by prosecutors from prosecutor's offices attached to these courts are also within the competence of the prosecutor's office attached to the court of appeal.

(3) For the offences provided in para. (1) and (2), the criminal investigation is carried out by prosecutors specially appointed by General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and, at the proposal of the Plenum of the Superior Council of Magistracy, for a period of four years, according to the procedure provided by this law, hereinafter referred to as the designated prosecutors.

(4) The designated prosecutors also carry out the criminal investigation in other cases than those provided in para. (1) and (2) of the competence of the Criminal Prosecution Section of the Prosecutor's Office attached to the High Court of Cassation and Justice, respectively of the prosecutor's offices attached to the courts of appeal.

(5) The specific appointed prosecutors carry out the criminal investigation also in the situation where, together with the persons provided in para. (1) and (2), other persons are also investigated, if, for reasons of good conduct of the prosecution, the case cannot be disjoined.

(6) In the situation where, together with the persons provided in para. (2), are investigated other persons for whom, according to the law, the competence to carry out the criminal investigation belongs to the Prosecutor's Office attached to the High Court of Cassation and Justice, the criminal investigation is carried out by prosecutors appointed from the Criminal Prosecution Section of the Prosecutor's Office attached to the High Court of Cassation and Justice.

(7) In the cases regarding the offences provided in para. (2) taken over under the conditions of art. 325 of Law no. 135/2010, with the subsequent amendments and completions, the criminal investigation is carried out by the designated prosecutors.

(8) In the case of offences committed by military judges and prosecutors, the provisions of art. 56 para. (4) of Law no. 135/2010, as subsequently amended and supplemented, are not applicable.

Art. 4 - (1) They may be appointed to carry out the criminal investigation in the cases provided in art. 3 para. (1) prosecutors who meet the following conditions:

- a) have a professional rank corresponding to the Prosecutor's Office attached to the High Court of Cassation and Justice;
- b) have a seniority of at least 15 years in the position of prosecutor;
- c) have the grade "very good" at the last two professional evaluations and have not been subject to disciplinary sanctions in the last 3 years;
- d) have an impeccable moral conduct;
- e) have significant professional experience in supervising or prosecuting criminal files.

(2) The significant professional experience of the prosecutors to be proposed for appointment shall be assessed also by reference to the specifics and complexity of the cases investigated by the respective prosecutors, based on information or documents relevant to their activity, requested from the prosecutor's offices within they have activated.

(3) In order to be appointed, the prosecutors who meet the conditions provided in para. (1) submit their option to the Superior Council of Magistracy.

(4) The specialized department within the Superior Council of Magistracy checks the fulfillment of the conditions provided in para. (1) points a) - c) and, in order to check the fulfillment of the condition provided in para. (1) point e), requests from the prosecutor's offices within they have activated statistical data regarding the activity for the last 5 years, including the rate of acquittals, restitutions, convictions, possible notifications made by the investigated persons and the solutions given to them, as well as any other relevant aspects .

(5) In order to check the fulfillment of the condition provided in para. (1) point d), the specialized department within the Superior Council of Magistracy requests from the prosecutor's offices where the prosecutor has activated for the last 5 years, from the courts attached to them and the from the bar the opinion on the conduct in the exercise of professional duties, relations with prosecutors, judges, other staff of the prosecutor's office and of the court, with lawyers, litigants, experts and interpreters, conduct in society, integrity, avoidance of conflicts of interest of any kind and impartiality, as well as any other relevant issues. The specialized department also requests the Judicial Inspection to communicate the data and information on the integrity and impartiality of the prosecutor from its records and attaches the data and information of the same nature from the records of the Superior Council of Magistracy. The Judicial Inspection makes available to the Plenum of the Superior Council of Magistracy the dismissal resolutions regarding the activity of the prosecutor.

(6) The Plenum of the Superior Council of Magistracy proposes to the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice the prosecutors who will carry out the criminal investigation for the offences provided in art. 3 para. (1) among those who meet the conditions provided in art. 4 para. 1. If it deems it necessary, the Plenum of the Superior Council of Magistracy may invite the prosecutors to hold an interview.

(7) Within 30 days from the date of receipt of the proposals, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice shall rule on them. Reasons shall be given for refusal.

(8) From the date of appointment, the prosecutors shall activate within the Criminal Prosecution Section of the Prosecutor's Office attached to the High Court of Cassation and Justice, in positions specifically assigned for this purpose.

(9) Upon termination of the capacity as a designated prosecutor, the designated prosecutors shall return in the positions previously held.

Art. 5 - (1) They may be appointed to carry out the criminal investigation in the cases provided in art. 3 para. (2) prosecutors who activate in the criminal prosecution sections of the prosecutor's offices attached to the courts of appeal, who meet the following conditions:

- a) have a seniority of at least 12 years in the position of prosecutor;
- b) have the qualification "very good" at the last two professional evaluations and have not been subject to disciplinary sanctions in the last 3 years;
- c) have an impeccable moral conduct;
- d) have significant professional experience in supervising or prosecuting criminal files.

(2) The specialized department within the Superior Council of Magistracy draws up the list of all prosecutors who meet the conditions provided in para. (1) points a) and b) and, in order to check the fulfillment of the condition provided in para. (1) point d), requests from the prosecutor's offices where they activated statistical data regarding the activity of the last 5 years, including the rate of acquittals, restitutions, convictions, possible notifications made by the investigated persons and the solutions given to them, as well as any other relevant aspects.

(3) The provisions of art. 4 para. (2), (3) and para. (5) - (7) shall apply accordingly.

Art. 6 - Appointment of prosecutors to carry out the criminal investigation in the cases provided in art. 3 para. (1) or art. 3 para. (2) may be renewed, for a new period of 4 years, the provisions of art. 4 and art. 5 being applicable accordingly.

Art. 7 – Prosecutors designated under this law may not be moved to another section of the prosecutor's office without their consent.

Art. 8 - (1) The cessation of the quality of prosecutor designated in order to carry out the criminal investigation of the offences provided in art. 3 para. (1) and (2) may be ordered in the following cases:

- a) for professional inefficiency which is assessed according to the efficiency and quality of the activity;
- b) at the request of the designated prosecutor, for duly justified reasons;
- c) in case of application of a disciplinary sanction;
- d) the impossibility of exercising the attributions for a period longer than 3 months by the designated prosecutor.
- e) moving the prosecutor to another section of the prosecutor's office, delegating, seconding or transferring him.
- f) expiration of the period of 4 years, if the appointment has not been renewed.

(2) The Plenum of the Superior Council of Magistracy, ex officio or at the notification of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, analyzes the existence of one of the cases provided in para. (1) and, if necessary, makes proposals for the cessation of the quality of designated prosecutor in order to carry out criminal investigation in cases concerning offences committed by judges and prosecutors.

(3) The General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice orders the cessation of the quality provided in para. (1) within 10 days from the communication of the decision of the Plenum of the Superior Council of Magistracy.

(4) The termination of appointment does not have the effect of dismissal and does not affect the professional rank of the prosecutor, acquired according to law.

Art. 9 - For the prosecutors with senior positions performing the duties of superior prosecutor of the appointed prosecutors, the designation according to the provisions of Article 4 or, where applicable, of Article 5 is not necessary, for exercising hierarchical control.

Art. 10 – (1) The maximum number of prosecutors within the Criminal Prosecution Section designated under the terms of Article 4 is 14, and the maximum number of prosecutors in the prosecution offices attached to the courts of Appeal designated under the terms of Article 5 is 3 for each of them.

(2) Assessing the need for prosecutors appointed in order to prosecute the offences provided by art. 3 para. (1) and (2) shall be made once every 6 months, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation Justice making appropriate proposals to modify the number of prosecutors provided in para. (1).

Art. 11 - (1) In order to carry out quickly and thoroughly the prosecution of offences provided in art. 3 para. (1) and (2), within the Prosecutor's Office attached to the High Court of Cassation and Justice and the prosecutor's offices attached to the courts of appeal operates, by secondment, officers and judicial police officers, within the limits of the positions approved according to the law.

(2) The provisions of art. 120² para. 2, 4 and 5, art. 120³ and 120⁴ of Law No 304/2004 on the judicial organization republished, as amended and supplemented, shall apply accordingly to the officers and police officers referred to in paragraph 1.

Art.12 - (1) The Chief Prosecutor of the Criminal Prosecution Section within the Prosecutor's Office attached to the High Court of Cassation and Justice, in the case of the offences provided in art. 3 para. (1), as well as the General Prosecutor of the prosecutor's office attached to the court of appeal, in the case of the offences provided in art. 3 para. (2), performs the activity of criminal prosecution without the need for designation according to art. 4 or, as the case may be, art. 5:

- a) in case the designated prosecutor is unable to exercise his duties for a period longer than 3 months or in case of incompatibility, and within the prosecutor's office there is no other prosecutor designated according to this law;
- b) in case the designated prosecutor is unable to exercise his duties for a period of less than 3 months, the execution of the criminal prosecution acts is not postponed, and within the prosecutor's office there is no other prosecutor designated according to this law.
- c) until the appointment of the prosecutors, under the conditions of the present law, for the performance of the criminal investigation acts that do not suffer postponement.

Art. 13 - When judging the cases investigated by the prosecutors designated according to the provisions of art.3 para. (3) , as well as in the settlement of proposals, appeals, complaints or any other requests formulated in the respective cases prosecutors from the prosecutor's offices attached to the competent courts before which these cases are brought take part in.

Art. 14 - The Plenum of the Superior Council of Magistracy proposes to the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice the prosecutors to be appointed under the conditions of art. 4 and 5 within a maximum of 60 days from the entry into force of this law.

Art. 15 - On the date of entry into force of this law, are repealed:

a) Section 2¹ - "Section for the investigation of criminal offences in the judiciary" comprising art. 88¹ – 88¹¹ of Chapter II of Title III of Law no. 304/2004 regarding the judicial organization, republished in the Official Gazette of Romania, Part I, no. 827 of September 13, 2005, as subsequently amended and supplemented;

b) Art. II and III of Law no. 207/2018 for the amendment and completion of Law no. 304/2004 on judicial organization, published in the Official Gazette of Romania, Part I, no. 636 of July 20, 2018;

c) Government Emergency Ordinance no. 90/2018 regarding measures for the operationalization of the Section for the investigation of criminal offenses in the judiciary, published in the Official Gazette of Romania, Part I, no. 862 of October 10, 2018.

Art. 16 - Law no. 135/2010 on the Code of Criminal Procedure, published in the Official Gazette of Romania, Part I, no. 486 of July 15, 2010, as subsequently amended and supplemented, is amended as follows:

1. Article 38 (1), point (f) shall read as follows:

"f) the offences committed by the assistant magistrates of the High Court of Cassation and Justice".

2. Article 40, paragraph 1 shall read as follows:

"Art. 40 - (1) The High Court of Cassation and Justice rules in the first instance on the offences of high treason, the offences committed by Romanian senators, deputies and members of the European Parliament, members of the Government, judges of the Constitutional Court, members of the Superior Council of Magistracy, judges of the High Court of Cassation and Justice and the prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, the judges from the courts of appeal and the Military Court of Appeal, as well as the prosecutors from the prosecutor's offices attached to these courts".

Art. 17 - (1) The cases regarding the offences committed by judges and prosecutors, pending in the first instance at the date of entry into force of this law and in which the court investigation has not started, shall be solved by the competent court according to this law.

(2) The cases concerning the offences committed by judges and prosecutors, pending in the first instance on the date of entry into force of this law and in which the court investigation was initiated prior to its entry into force, remain within the jurisdiction of that court.

Art. 18 - (1) The limitation periods of criminal liability shall not start to run, and if they have started to run, they shall be suspended from the date of entry into force of this law until the first working day after the expiration of the period provided in art. 1 para. (2).

(2) The deadlines provided by Law no. 135/2010 for the performance of procedural acts, for the formulation of complaints, appeals of any kind shall not start to run, and if they started to run, they are interrupted from the date of entry into force of this law. New deadlines, of the same duration, will start to run from the first working day after the expiration of the period provided in art. 1 para. (2).

(3) In cases where preventive measures, precautionary measures or other urgent measures have been taken, the General Prosecutor shall send the files to the competent prosecutor's offices immediately upon the publication of this law.

(4) The Chief Prosecutor of the Criminal Prosecution Section and the General Prosecutors of the prosecutor's offices attached to the courts of appeal shall decide on the pending measures mentioned in para. (3), being able to seize the court with requests related to them.

Art. 19 - (1) Law no. 304/2004 regarding the judicial organization, republished in the Official Gazette of Romania, Part I, no. 827 of September 13, 2005, with the subsequent amendments and completions, as well as with the amendments brought by this law, will be republished in the Official Gazette of Romania, Part I, giving the articles a new numbering.

(2) Law no. 135/2010 on the Code of Criminal Procedure, published in the Official Gazette of Romania, Part I, no. 486 of July 15, 2010, with subsequent amendments and completions, as well as with the amendments brought by this law, will be republished in the Official Gazette of Romania, Part I.