

## LAW No. 303 of 28 June 2004

on the by-law magistrate's profession

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It must be specified that the only text which shall produce legal effects is the text in the Romanian language.

## TITLE I

## General provisions

## CHAPTER I

## Principles

## ART. 1

(1) Justice shall be enforced by judges in the name of the law and for the purpose of defending the lawful order and guaranteeing the observance of a person's rights, freedoms and legitimate interests.

(2) Judges shall be independent, only subject to the law, and impartial.

(3) All persons, organisations, authorities, or institutions shall be bound to observe the judges' independence.

## ART. 2

The judges, public prosecutors, and assistant magistrates of the High Court of Cassation and Justice shall have the capacity as magistrates and belong to the magistracy.

## ART. 3

(1) Judges appointed by the President of Romania shall be irremovable from their positions under the present law.

(2) Irremovable judges may be moved only by permanent transfer, delegation, temporary transfer, or promotion, based on their consent, and suspended or released from their positions under the terms stipulated by the present law.

## ART. 4

(1) Public prosecutors appointed by the President of Romania shall enjoy stability, under the terms of the present law and the Law on the Superior Council of Magistracy.

(2) Public prosecutors who enjoy stability may be moved only by permanent transfer, temporary transfer, or promotion, based on their consent. They may be delegated, suspended or discharged from their positions under the terms stipulated by the present law.

## ART. 5

(1) In their entire activity, magistrates shall ensure the supremacy of the law, observe the persons' rights and freedoms, as well as their equality before the law, make sure a non-discriminatory treatment is applied to all participants in judicial procedures, irrespective of their capacity, comply with the deontological rules of the magistrate's profession, and participate in their own constant professional training.

(2) Judges may not refuse to judge a cause on the assumption that the law does not make stipulations, is unclear or incomplete.

## CHAPTER II

## Incompatibilities and interdictions

## ART. 6

The positions of judge, public prosecutor, assistant magistrate, and judicial assistant are incompatible with any other public or private positions, except for the teaching positions in higher education, under the terms of the law.

## ART. 7

(1) Magistrates are prohibited from:

- a) carrying out trading activities, directly or by means of agents;
- b) carrying out arbitration activities in civil, trading, or any other kind of disputes;
- c) acting as partners or members in the managing, administration or control bodies of civil companies, trading companies, including banks or other credit institutions, insurance or financial companies, public corporations, national companies or autonomous regies;
- d) acting as members of a group of economic interest.

(2) As an exemption from the rules set up under paragraph (1) c), magistrates may be stockholders or partners as a result of the law on mass privatisation.

## ART. 8

(1) Magistrates shall not be subordinated to political purposes or doctrines.

(2) Magistrates shall not be members of political parties or organisations, or carry out political activities.

(3) In the exercise of their powers, magistrates shall be bound to abstain from expressing or showing their political beliefs, in any manner whatsoever.

## ART. 9

(1) Magistrates shall not be allowed to express their opinions on pending lawsuits or causes brought to the attention of the Public Prosecutor's Office.

(2) Magistrates shall not be allowed to comment on or justify, in the press or in audio-visual shows, the decisions or solutions issued in the cases solved by them.

(3) Magistrates shall not be allowed to give written or oral consultations in matters in dispute, even if such lawsuits are filed with courts of law or Public Prosecutor's Offices other than those where they exercise their position, and may not carry out any other activity that, under the law, belongs to a lawyer's competence.

(4) Magistrates shall be allowed to plead, under the terms of the law, only in their personal causes, those of their ascendants or descendants, of their spouses, as well as those of persons under their guardianship or trusteeship. However, even in such instances, magistrates shall not be allowed to use their capacity to influence the solution issued by the court of law or Public Prosecutor's Office, and shall abstain from giving the impression they could influence the solution in any way whatsoever.

## ART. 10

(1) Magistrates may participate in preparing specialised publications or studies, literary or scientific papers, or in audio-visual shows, except for political ones.

(2) Magistrates may be members of examination boards or commissions preparing draft laws, and internal or international documents, based on the consent of the head of the court of law or Public Prosecutor's Office.

(3) Magistrates may be members of scientific or academic societies, as well as scientific or professional associations or foundations.

## TITLE II

## Magistrates' career

## CHAPTER I

## Magistrates' recruitment and initial professional training

## ART. 11

Magistrates' recruitment shall take place following an examination, based on their professional competence, abilities, and good reputation.

## ART. 12

Recruitment and initial professional training in view of taking up a magistrate's position shall be provided by the National Institute of Magistracy.

## ART. 13

(1) Admission to the National Institute of Magistracy shall take place in compliance with the principles of transparency and equality, only following an examination.

(2) The examination for admission to the National Institute of Magistracy may be applied for by any person meeting all the following conditions:

- a) he/she is a Romanian citizen, resides in Romania, and has full exercise capacity;
- b) he/she is a graduate with a law degree;
- c) he/she has no prior criminal record or fiscal record, and enjoys a good reputation;
- d) he/she can speak Romanian;
- e) he/she is medically fit to exercise the position. The medical board shall be appointed by joint order of the Minister of Justice and the Minister of Health.

## ART. 14

(1) The admission examination shall be organised annually on the date and at the location set by the National Institute of Magistracy, with the approval of the Superior Council of Magistracy. The date, location, and manner in which the admission examination takes place, as well as the number of positions put up for contest shall be made public in a press release and published in the Official Gazette of Romania, Part III, on the web page of the Superior Council of Magistracy, and on that of the National Institute of Magistracy, at least 90 days before the date set for the examination.

(2) The Superior Council of Magistracy shall decide annually on the number of students, depending on the vacant positions of judges and public prosecutors, as well as those to be created.

(3) The admission board, the board preparing the subjects, and the contestation solving board shall be appointed by a decision of the Superior Council of Magistracy. The admission board shall be in charge of checking the candidates' files and seeing that the terms stipulated under Article 13 (2) are met.

(4) The results of the examination shall be posted at the headquarters of the National Institute of Magistracy and made public on the web page of the Superior Council of Magistracy and on that of the National Institute of Magistracy.

(5) The candidates who are not satisfied with the results of the examination may file contestations with the contestation solving board within 3 days of the results being posted. That board shall solve their contestation within 3 days. The decision by the contestation solving board is irrevocable, the provisions of paragraph (4) being applicable accordingly.

## ART. 15

(1) The students of the National Institute of Magistracy shall act as justice auditors.

(2) The initial professional training within the National Institute of Magistracy shall consist of the justice auditors' theoretical and practical training, so that they can become judges or public prosecutors.

(3) The length of the justice auditors' professional training courses shall be of 2 years. After the first year of studies, justice auditors shall choose between the judge's or public prosecutor's position, in the descending order of their average marks and depending on the number of available positions.

(4) During the courses, the justice auditors shall attend periods of probation within the courts of law and the Public Prosecutor's Offices, attending the sessions of the courts and criminal investigation activities, in order to get acquainted directly with the activities carried out by magistrates and the auxiliary specialised personnel.

(5) The justice auditors' professional training programme shall be approved by the Superior Council of Magistracy, based on the proposal by the National Institute of Magistracy.

## ART. 16

(1) Justice auditors shall benefit from a monthly emolument corresponding to the position of probationary magistrate, depending on their length of service as auditors.

(2) The nature and legal status of the justice auditors' emolument stipulated under paragraph (1) shall be that of common wages and shall be established based on the gross income stipulated by the law for probationary magistrates.

(3) Justice auditors' emoluments shall be paid from the fund stipulated in the annual budget approved by the Superior Council of Magistracy.

(4) The time during which a person has acted as a justice auditor, if he/she has passed the graduation examination at the National Institute of Magistracy, shall be deemed length of service in magistracy.

(5) The provisions of paragraphs (1) - (4) shall also apply to justice auditors from other countries, based on the agreements concluded with the ministries of justice in those countries.

#### ART. 17

(1) The justice auditors' disciplinary departures from their duties according to the law or the Regulations of the National Institute of Magistracy shall be sanctioned.

(2) The disciplinary sanctions applicable to justice auditors shall be as follows:

a) warning;

b) emolument decrease by up to 15% for a period from one to 3 months, or in proportion to the number of absences without leave, if they should exceed 8 hours in a month;

c) exclusion from the National Institute of Magistracy.

(3) The director of the National Institute of Magistracy shall apply a written warning that may be contested before the Institute's scientific council.

(4) The sanctions stipulated under paragraph (2) b) and c) shall be applied by the scientific council of the National Institute of Magistracy.

(5) The decisions by the scientific council stipulated under paragraphs (3) and (4) may be appealed in a competent administrative court for contentious business and tax suit.

(6) In the event of an exclusion from the National Institute of Magistracy, the person being sanctioned shall have to reimburse the emolument and the tuition fees.

(7) The procedure for finding departures and passing disciplinary sanctions shall be set up in the Regulations of the National Institute of Magistracy.

#### ART. 18

(1) After the courses with the National Institute of Magistracy are completed, the justice auditors shall take a graduation examination, which consists of theoretical and practical tests, in order to prove they have acquired the knowledge needed for exercising the judge's or public prosecutor's position.

(2) The justice auditors having passed the examination stipulated under paragraph (1) shall be appointed, according to the law, as a rule, to the positions they chose at the end of the first year of studies within the National Institute of Magistracy.

(3) The justice auditors who do not pass the graduation examination may take it once again in the next session organised by the National Institute of Magistracy. If a justice auditor does not take the examination, without good grounds, or he/she fails to pass the examination in the second session, he/she shall be prevented from being appointed as a magistrate and shall have to reimburse the emolument and tuition fees.

#### ART. 19

(1) Graduates of the National Institute of Magistracy shall be bound to act as judges or public prosecutors for 6 years.

(2) If a magistrate having graduated from the National Institute of Magistracy should be released from his/her position before the expiry of the 6-year period, on his/her initiative or for reasons imputable to him/her, he/she shall have to reimburse the justice auditor's emolument and tuition fees incurred for his/her training, in proportion to the time left until the period established under paragraph (1) is completed.

## CHAPTER II

### Probationary magistrates

#### ART. 20

(1) Probationary judges and probationary public prosecutors shall be appointed to their positions by the Superior Council of Magistracy, based on their results in the graduation examination with the National Institute of Magistracy.

(2) Probationary judges and probationary public prosecutors may be appointed only to positions with

courts of first instance or, as the case may be, with Public Prosecutor's Offices next to these.

#### ART. 21

(1) The length of the probationary period is 3 years.

(2) During the probationary period, judges and public prosecutors shall be bound to continue their professional training, under the co-ordination of a judge or public prosecutor specially designated by the president of the court of first instance or, as the case may be, by the senior public prosecutor of the Public Prosecutor's Office next to that court.

(3) The heads of the courts of law and Public Prosecutor's Offices shall be bound to ensure all proper conditions for the proper progress of the probationary period.

#### ART. 22

(1) Probationary judges shall be entitled to be members of a panel of judges only along with an irremovable judge.

(2) Probationary public prosecutors shall be entitled to draw conclusions in courts of law, and to prepare and sign procedural documents, under the co-ordination of a public prosecutor that enjoys stability.

#### ART. 23

(1) The judge or public prosecutor in charge of the co-ordination of probationary magistrates shall draw up, on an annual basis, an individual assessment report on how well the practical knowledge typical of the judge's or public prosecutor's activity has been acquired.

(2) With a view to taking the ability examination, the last individual assessment report shall include, by all means, the advisory opinion of the president of the court of appeal or of the general public prosecutor of the Public Prosecutor's Office next to that court of appeal.

#### ART. 24

(1) After the completion of the probation period, probationary magistrates shall have to take an ability examination. If a probationary magistrate should not pass the ability examination, he/she shall have to take it during the next session.

(2) A candidate who has missed the ability examination without good grounds or has failed to/pass the examination in two sessions shall lose his/her probationary judge's or probationary public prosecutor's position.

(3) A person who, for good grounds, has not taken the ability examination may take that examination, if no more than 2 years have elapsed since the completion of the probation period up to the date set up for the examination. The provisions of paragraph (2) shall apply accordingly.

(4) After the 2-year period has passed, the persons shown under paragraph (3) shall have to attend the probation period again, according to the law.

#### ART. 25

(1) The probationary magistrates' ability examination shall be organised annually by the Superior Council of Magistracy, by means of the National Institute of Magistracy.

(2) The date, location, and manner in which the ability examination takes place shall be published in the Official Gazette of Romania, Part III, as well as on the web page of the Superior Council of Magistracy and on that of the National Institute of Magistracy, at least 90 days before the date set for the ability examination.

(3) Applications for taking the ability examination, accompanied by the assessment reports and other documents needed under the Regulations on the probationary magistrates' ability examination, shall be filed with the National Institute of Magistracy within 60 days from the publication of the examination date.

#### ART. 26

(1) The ability examination board shall be comprised of judges from the High Court of Cassation and Justice, public prosecutors from the Public Prosecutor's Office next to the High Court of Cassation and Justice, public prosecutors from Public Prosecutor's Offices next to courts of appeal, members of the teaching personnel from the accredited higher legal education system or from the National Institute of Magistracy, appointed by decision of the Superior Council of Magistracy.

(2) Ability examination boards shall be comprised, as the case may be, of judges, and public prosecutors, respectively, as well as of members of the teaching personnel from the accredited higher legal education system.

#### ART. 27

(1) The ability examination shall consist of checking one's theoretical and practical knowledge by means of written and oral tests.

(2) The object of theoretical tests shall be the constitutional foundations of the rule of law, the basic institutions of law, the judicial organisation, and the Deontological Code of the Magistrates. At least 3 members of the board stipulated under Article 26 (1) shall participate in the oral tests.

(3) Practical tests consist of case solution and preparation of the judicial documents, distinct per judges and public prosecutors, depending on their typical activity.

#### ART. 28

(1) The results of the ability examination shall be listed in the candidates' ranking table, to be posted at the headquarters of the National Institute of Magistracy and made public on the web page of the Superior Council of Magistracy and on that of the National Institute of Magistracy.

(2) After the candidates' ranking table has been prepared, the Superior Council of Magistracy shall validate the ability examination, in its first meeting following the posting of results.

(3) The Superior Council of Magistracy may invalidate the ability examination, in part or in all, if finding that the terms stipulated by the law or by the regulations have not been met for examination organisation, or that there is proof of fraud.

#### ART. 29

(1) After the validation of the ability examination, the list of all vacant positions in courts of first instance and Public Prosecutor's Offices next to such courts shall be published right away, separately for judges and public prosecutors, in the Official Gazette of Romania, Part III, and posted at the headquarters of the courts of law and Public Prosecutor's Offices, under the care of the Superior Council of Magistracy.

(2) The candidates pronounced admitted following the ability examination shall be entitled to choose their positions, in the descending order of their average marks, within 15 free days of their being published in the Official Gazette of Romania, Part III. Probationary judges may only choose judge's positions, and probationary public prosecutors, public prosecutor's positions.

(3) A candidate who has not exercised his/her right to choose a position within the time limit stipulated under paragraph (2) shall be offered a position, ex officio, by the Superior Council of Magistracy. His/her refusal to take the proposal shall be deemed a resignation.

(4) In the event of equal average marks, the priority in choosing a position goes, in the following order, to the holder of a Ph.D. in law, the person who has a longer length of service in magistracy, or the magistrate who already functions in the court of law or the Public Prosecutor's Office which he/she has chosen.

(5) Distribution per positions shall be posted at the headquarters of the Superior Council of Magistracy, of the courts or law and Public Prosecutor's Offices, shall be notified to the interested persons, and published on the web page of the Superior Council of Magistracy.

### CHAPTER III

#### Magistrates' appointment

#### ART. 30

(1) Irremovable judges and public prosecutors who enjoy stability shall be appointed by the President of Romania, on the proposal by the Superior Council of Magistracy.

(2) The nominations shall be made within 3 months of the date of ability examination validation at the latest.

(3) During the period between the date of ability examination validation and the date of the document of appointment by the President of Romania coming into effect, magistrates in office shall receive wages corresponding to the position immediately superior to that of probationary magistrate.

## ART. 31

(1) The legally specialised personnel equal in rank to magistrates under the present law, as well as lawyers, notaries, judicial assistants, legal advisers, persons having been in judicial speciality positions in the personnel of the Parliament, Presidential Administration, Government, Constitutional Court, People's Advocate, Court of Auditors, or the Legislative Council, with a length of service of at least 5 years in this speciality, may be appointed to magistracy through competitive examination.

(2) Within 3 months of the validation date of the examination stipulated under paragraph (1) at the latest, the Superior Council of Magistracy shall suggest to the President of Romania the appointment of the candidates admitted as judges or public prosecutors, as the case may be.

(3) After being appointed to the magistrate's position, the persons stipulated under paragraph (1) shall have to attend, for a 6-month period, a professional training course within the National Institute of Magistracy.

(4) Judges of the Constitutional Court who, on the date of being appointed, acted as judges or public prosecutors shall be entitled to return to the position they held before, after their term of office is over.

(5) Professors within the accredited higher legal education system, as well as persons who have acted as magistrates or assistant magistrates with the High Court of Cassation and Justice for at least 5 years from being appointed, under the law, and who have terminated their activity for non-imputable reasons, may be appointed to magistracy without further competitive examination.

## ART. 32

(1) Before starting to exercise their position, judges and public prosecutors shall take the following oath: "I swear to uphold the Constitution and the laws of the country, to defend the fundamental rights and freedoms of the people, and to carry out my duties in honour, good conscience and without bias."

(2) The refusal to take the oath entails, by right, the nullity of the appointment to that position.

(3) The oath shall be taken in a solemn meeting, before the magistrates of the court of law or, as the case may be, of the Public Prosecutor's Office the magistrate has been appointed to, after the appointment act is read.

(4) Taking the oath shall be recorded in a written statement to be signed by the head of the court of law or, as the case may be, of the Public Prosecutor's Office, and by two of the magistrates present, as well as by the person having taken the oath.

(5) Taking the oath shall not be necessary if the judge or public prosecutor has been permanently transferred or promoted to another position within the magistracy.

(6) The acts carried out by the magistrate before taking the oath shall be deemed null.

## CHAPTER IV

## Further professional training and periodical evaluation of magistrates

## ART. 33

(1) The further professional training of the magistrates constitutes the guarantee of independence and impartiality in the exercise of their office.

(2) The further professional training shall take into consideration the dynamics of the legislative process and consists mainly of becoming familiar with and knowing deeply the home legislation, the European and international documents Romania is a party to, the jurisprudence of the courts of law and the Constitutional Court, the jurisprudence of the European Court for Human Rights and of the Court of Justice of the European Communities, comparative law, the deontological rules of the magistrate's profession, as well as the multidisciplinary approach to new institutions.

## ART. 34

The responsibility for the magistrates' further professional training belongs to the National Institute of Magistracy, the heads of the courts of law or Public Prosecutor's Offices where they carry out their activity, as well as to each magistrate, by means of individual training.

## ART. 35

(1) Magistrates shall participate, at least once every 3 years, in further professional training programs

organised by the National Institute of Magistracy, Romanian or foreign higher education institutions, or by means of other forms of professional training improvement.

(2) The Superior Council of Magistracy shall approve the magistrates' further professional training programme, on an annual basis, based on the proposal by the National Institute of Magistracy.

(3) The further professional training of magistrates shall be achieved by taking into account the need for their specialisation.

#### ART. 36

(1) Within each court of appeal and within each Public Prosecutor's Office next to a court of appeal, further professional training activities shall be organised periodically, consisting of consultations, debates, seminars, sessions or round tables, with the participation of the National Institute of Magistracy. The topics for such reunions shall be approved by the Superior Council of Magistracy.

(2) The president of the court of appeal or, as the case may be, the general public prosecutor of the Public Prosecutor's Office next to that court of appeal shall designate the magistrates in charge of organising the further professional training activity for the magistrates in the court of appeal and the courts of law within its district, or for those in the Public Prosecutor's Office next to that court of appeal and the subordinate Public Prosecutor's Offices, respectively.

#### ART. 37

(1) In order to check that the magistrates' professional competence criteria are met, their activity shall be subjected to an annual evaluation concerning the quick solving of cases, the cassation practice, or, as the case may be, the quashing of judgements, the obligation to undergo the further professional training, the behaviour in their relationships at work, and the compliance with the other professional duties stipulated by the law.

(2) The evaluation stipulated under paragraph (1) shall be made by commissions established in the district of that court of appeal, or the Public Prosecutor's Office next to that court of appeal, respectively, by decision of the Superior Council of Magistracy, separately for judges and public prosecutors.

(3) The evaluation of the judges of the High Court of Cassation and Justice, public prosecutors of the Public Prosecutor's Office next to the High Court of Cassation and Justice and of the National Anti-Corruption Public Prosecutor's Office shall be carried out by commissions established by decision of the Superior Council of Magistracy.

(4) The criteria for evaluating the magistrates' professional activity shall be stipulated in the annex that is an integral part of the present law.

(5) The regulations on the procedure for evaluating the magistrates' professional activity shall be approved by decision of the Superior Council of Magistracy.

#### ART. 38

(1) The evaluation report of a magistrate's professional activity, prepared by the commissions stipulated under article 37 (2) or (3) may grant one of the following marks: very good, good, satisfactory, or poor.

(2) Judges or public prosecutors that are dissatisfied with the mark granted to them may file a contestation with that division of the Superior Council of Magistracy, within 30 days of the notification.

(3) In solving the contestation, the divisions of the Superior Council of Magistracy may ask the head of the court of law or the Public Prosecutor's Office, or the commissions stipulated under article 37 (2) or (3) for any information that they deem necessary, and the summoning of the magistrate for hearings is mandatory.

(4) The decisions by the court divisions may be appealed to the plenum of the Superior Council of Magistracy. The decisions by the plenum of the Superior Council of Magistracy, as a court, shall be final and irrevocable.

#### ART. 39

(1) Magistrates who receive the mark "poor" shall be bound to attend special courses organised by the National Institute of Magistracy, for a period between 3 and 6 months.

(2) Magistrates who receive the mark "satisfactory", following two consecutive evaluations, shall be bound to attend special courses organised by the National Institute of Magistracy, for a period between 3 and 6 months.

(3) The courses stipulated under paragraphs (1) and (2) shall end with an examination, under the terms of the present law.

(4) A magistrate who receives the mark "poor" following two consecutive evaluations or the one who has not passed the examination stipulated under paragraph (3) shall be released from position for professional inability, by the President of Romania, following the proposal by the Superior Council of Magistracy.

#### ART. 40

(1) The evolution of a magistrate's career from the time of entering magistracy and up to the termination of his/her office shall be recorded in his/her chart in the professional file to be prepared and kept by the Superior Council of Magistracy.

(2) The data contained in the professional file shall be confidential, under the terms stipulated by the law.

(3) A magistrate shall be granted access to his/her own professional file and allowed to get copies of the documents in the file.

#### ART. 41

(1) The Superior Council of Magistracy shall establish and keep an updated database comprising the magistrates who have distinguished themselves in their professional activity.

(2) When assessing one's professional activity, the following criteria shall be deemed of importance:

- a) results of evaluations of the magistrate's professional activity;
- b) the magistrate's holding of academic or teaching degrees or titles in the higher legal education system;
- c) graduation of specialisation courses;
- d) the magistrate's delivering of scientific communications, reports, or other papers within congresses, seminars, round tables or other forms of scientific debates;
- e) the magistrate's publishing of legal works;
- f) the magistrate's holding of speciality positions in home or international research institutes;
- g) the magistrate's knowledge of foreign languages;
- h) the magistrate's familiarity with computer operation;
- i) any other such elements that may characterise a magistrate's career.

(3) The processing of the personal data present in the database stipulated under paragraph (1) shall take place according to the law.

## CHAPTER V

### Magistrates' promotion and access to management positions

#### Section 1

#### Promotion to execution positions in tribunals, courts of appeal, and Public Prosecutor's Offices

#### ART. 42

(1) A promotion to execution positions represents the recognition of the magistrates' professional performance and constitutes a component of their career.

(2) Magistrates' promotion shall be based only on their own consent.

#### ART. 43

(1) Magistrates' promotion to execution positions shall take place only following a national examination, taking into consideration their length of service in magistracy and their professional activity, as well as the vacancies existing with tribunals and courts of appeal or Public Prosecutor's Offices, as the case may be.

(2) The examination for the magistrates' promotion to execution positions shall be organised annually or whenever necessary by the National Institute of Magistracy by means of a decision by the Superior Council of Magistracy.

(3) The date, location, manner in which the examination takes place, and vacancies for which the

examination is being organised shall be notified to all magistrates, by means of the courts of appeal and Public Prosecutor's Offices, at least 60 days before the date set for the examination.

#### ART. 44

(1) Magistrates who, in the last 3 years before the examination, have received the mark "very good", have shown no disciplinary departures, and meet the following minimal conditions of length of service may participate in the examination for promotion to execution positions:

- a) 8 years' length of service in magistracy, for promotion to the positions of judge in a tribunal or a specialised court of law and of public prosecutor in the Public Prosecutor's Office next to the tribunal or the Public Prosecutor's office next to the juvenile and family specialised court of law;
- b) 12 years' length of service in magistracy, for promotion to the positions of judge in a court of appeal and of public prosecutor in the Public Prosecutor's Office next to a court of appeal;
- c) 15 years' length of service in magistracy, for promotion to the position of public prosecutor in the Public Prosecutor's Office next to the High Court of Cassation and Justice.

(2) The Superior Council of Magistracy shall see that the conditions stipulated under paragraph (1) are met.

#### ART. 45

The magistrates who meet the conditions stipulated under Article 44 may participate in the examination with a view to being promoted right away, within the limits of the number of places approved annually by the Superior Council of Magistracy.

#### ART. 46

(1) The examination for the promotion to execution positions shall consist in written and oral tests with both theoretical and practical character, as well as in the elaboration of a speciality study.

(2) The written and oral tests shall be taken in one of the following subject matters, depending on the magistrate's specialisation: civil law, criminal law, commercial law, administrative law, financial and tax law, labour law, family law, private international law, as well as, irrespective of specialisation, civil procedure or criminal procedure. The speciality study shall approach issues pertaining to the competence of the court of law or Public Prosecutor's Office for which the magistrate is requesting the promotion, jurisprudence of the courts of law and of the Constitutional Court, jurisprudence of the European Court for Human Rights, jurisprudence of the Court of Justice of the European Communities, and comparative law.

#### ART. 47

Within 30 days of the notification of the results, at the latest, the Superior Council of Magistracy shall order, by means of a decision, the promotion of the magistrates having passed the examination.

### Section 2

Access to management positions within courts of first instance, tribunals, courts of appeal, and Public Prosecutor's Offices

#### ART. 48

(1) The promotion to management positions in courts of law and Public Prosecutor's Offices shall be carried out by the Superior Council of Magistracy, for a 5-year period, with no provisions for re-investiture, from amongst magistrates who have received the mark "very good" in the last 5 years, have not been subjected to disciplinary sanctions, have obtained good results in their professional activity, and have shown a good capability for organisation and decision-making.

(2) The list of vacant management positions in courts of law and Public Prosecutor's Offices shall be made public and available constantly on the web page of the Superior Council of Magistracy.

(3) Magistrates may submit their candidacies accompanied by a project concerning the exercise of the powers typical of the management position with the court of law or Public Prosecutor's Office they apply for, as well as any other documents deemed relevant, to the Superior Council of Magistracy within 30 days of the advertising.

(4) The selection of magistrates for promotion to management positions shall be carried out by the

Superior Council of Magistracy, based on the professional files, the criteria set up by decision of the Superior Council of Magistracy, on the information present in the database stipulated under Article 41 (1), the project stipulated under paragraph (3), and an interview.

(5) At least two candidacies shall be necessary for making the selection stipulated under paragraph (4).  
ART. 49

(1) For a magistrate to be promoted to management positions, the following minimal conditions of length of service are required:

a) for the position of president and vice-president of a court of first instance, senior public prosecutor of the Public Prosecutor's Office next to that court of first instance and his/her assistant, an 8 years' length of service in magistracy;

b) for the position of president, vice-president and president of division of a tribunal or specialised court, senior public prosecutor of the Public Prosecutor's Office next to a tribunal or the Public Prosecutor's Office next to a juvenile and family court, his/her assistant and public prosecutor in charge of a division of the Public Prosecutor's Office next to a tribunal or the Public Prosecutor's Office next to a juvenile and family court, a 10 years' length of service in magistracy;

c) for the position of president, vice-president, president of a division of the court of appeal, general public prosecutor of the Public Prosecutor's Office next to a court of appeal and his/her assistant, public prosecutor in charge of a division of the Public Prosecutor's Office next to a court of appeal, inspector judge and inspector public prosecutor, a 15 years' length of service in magistracy;

d) for the position of adviser to the general public prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice, and public prosecutor in charge of a division of the Public Prosecutor's Office next to the High Court of Cassation and Justice, an 18 years' length of service in magistracy.

(2) In order to be promoted to management positions, a magistrate shall be entitled to operate with the court of law or, as the case may be, the Public Prosecutor's Office, where he/she has applied for the management position.

ART. 50

(1) At the end of the term of office in a management position, the magistrate may choose between submitting his/her candidacy for another management position in magistracy with the same court of law or the same Public Prosecutor's Office or with another court of law or Public Prosecutor's Office, or exercising the magistrate's position in any court of law or Public Prosecutor's Office, according to the law.

(2) The Superior Council of Magistracy may order, as the case may be, the dismissal from a management position *ex officio*, based on proposals by the managing colleges of the courts of law or Public Prosecutor's Offices, or as a disciplinary sanction, under the terms of the law.

### Section 3

Promotion to the position of judge with the High Court of Cassation and Justice and access to management positions within the High Court of Cassation and Justice and the Public Prosecutor's Office next to the High Court of Cassation and Justice

ART. 51

(1) The Superior Council of Magistracy shall take care of the promotion to the position of judge with the High Court of Cassation and Justice, from amongst the judges or public prosecutors who have received the mark "very good" in the last 5 years, have not been subjected to disciplinary sanctions, have obtained good results in their professional activity and have an actual length of service in magistracy or in the accredited higher legal education system of at least 15 years.

(2) The list of vacant judge's positions with the High Court of Cassation and Justice shall be made public and available permanently on the web page of the Superior Council of Magistracy and on that of the High Court of Cassation and Justice.

(3) Magistrates who comply with the requirements stipulated under paragraph (1) may submit their candidacies for the judge's position with the High Court of Cassation and Justice, accompanied by any

other documents deemed relevant, within 30 days of the advertising, to the Superior Council of Magistracy.

(4) The candidacies stipulated under paragraph (3) shall be reviewed by the managing college of the High Court of Cassation and Justice, which will submit a consultative report on promotion to the Superior Council of Magistracy.

#### ART. 52

(1) The president, vice-president, and division presidents of the High Court of Cassation and Justice shall be appointed by the President of Romania, based on the proposal by the Superior Council of Magistracy, from amongst the judges of the High Court of Cassation and Justice who have a minimum length of service of 18 years in magistracy or in the accredited higher legal education system, for a 5-year period, without provisions for re-investiture.

(2) The President of Romania shall not deny appointments to the management positions stipulated under paragraph (1) unless for good grounds, notifying the Superior Council of Magistracy on the reasons for denial.

(3) The judges of the High Court of Cassation and Justice who meet the requirements stipulated under paragraph (1) may submit their candidacies for the positions of president or vice-president of the High Court of Cassation and Justice or court division president to the Superior Council of Magistracy, within 30 days of the date on which the position of president or vice-president, or court division president was vacated.

(4) The President of Romania shall dismiss from office the president, vice-president, or division presidents of the High Court of Cassation and Justice, based on the proposal by the Superior Council of Magistracy, as a disciplinary sanction.

#### ART. 53

(1) The general public prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice, his/her senior assistant and the latter's assistant, as well as the general public prosecutor of the National Anti-Corruption Public Prosecutor's Office shall be appointed by the President of Romania, based on the proposal by the Superior Council of Magistracy, following the recommendation of the Minister of Justice, from amongst public prosecutors who have a minimum length of service of 18 years in magistracy, for a 5-year period, without provisions for re-investiture. The provisions of Article 52 (2) shall apply accordingly.

(2) The President of Romania shall dismiss from office the public prosecutors with management positions stipulated under paragraph (1), based on the proposal by the Superior Council of Magistracy, as a disciplinary sanction.

#### ART. 54

At the end of his/her term of office for the management positions stipulated under Articles 52 and 53, a magistrate may choose between submitting his/her candidacy for another management position in magistracy to the same court or the same Public Prosecutor's Office and to another court or Public Prosecutor's Office, or exercising the magistrate's position in any court of law or Public Prosecutor's Office.

### CHAPTER VI

#### Delegation, temporary transfer, and permanent transfer

#### ART. 55

(1) If a court of first instance, a court of law or a specialised court cannot function properly due to the temporary absence of judges, the presence of vacancies or any other such causes, the president of the court of appeal may delegate, based on the proposal by the president of such a court within the district of that court of appeal, judges from other courts within the above-mentioned district, with their consent.

(2) The Superior Council of Magistracy shall order the delegation of judges of the courts of appeal, with their consent, at the request of the president of the court of appeal, in compliance with the other terms stipulated under paragraph (1).

(3) In the best interest of the job, public prosecutors may be delegated by the general public prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice.

(4) The delegation of magistrates may be done for a period of 60 days at most and may be extended by 60 days in a year at most, based on that magistrate's consent.

(5) During the delegation, magistrates shall enjoy all the rights stipulated by the law.

#### ART. 56

(1) The Superior Council of Magistracy may order the temporary transfer of magistrates, based only on the latter's written consent, to other courts of law or Public Prosecutor's Offices, the Superior Council of Magistracy, the National Institute of Magistracy, the Ministry of Justice or to the subordinate institutions, or other public authorities.

(2) The length of the temporary transfer shall be between 6 months and 3 years. The temporary transfer may be extended for a period of up to 3 years only once, in compliance with the terms stipulated under paragraph (1).

(3) During the temporary transfer, judges and public prosecutors shall keep their magistrates' status and benefit from the rights stipulated by the law for temporarily transferred personnel. When the wages and the other financial rights stipulated for the position to which a magistrate is being temporarily transferred are lower than those he/she enjoys in his/her capacity as magistrate, he/she shall maintain the monthly emolument and the other financial rights accompanying the magistrate's position he/she holds.

(4) After the temporary transfer ceases, the magistrate shall return to the position previously held.

#### ART. 57

Delegation and temporary transfer may not be carried out to courts or Public Prosecutor's Offices superior to the ones such a magistrate is entitled to function with under the law.

#### ART. 58

The Superior Council of Magistracy shall approve the magistrates' transfer from one court of law to another or from one Public Prosecutor's Office to another or to a public institution, at the request of the persons in question.

#### ART. 59

At their request, judges may be appointed as public prosecutors, and public prosecutors as judges, by decree of the President of Romania, following a proposal by the Superior Council of Magistracy, in compliance with the terms stipulated in the present law.

## CHAPTER VII

### Suspension from office and termination of the magistrate's position

#### ART. 60

(1) A magistrate shall be suspended from office in the following instances:

a) when a criminal lawsuit has been brought against him/her;

b) when he/she suffers from a mental disease which prevents him/her from exercising his/her position adequately.

(2) The magistrate's suspension from office shall be ordered by the Superior Council of Magistracy.

(3) During the suspension from office, a magistrate shall not receive wages. That period shall not be deemed as length of service in magistracy.

#### ART. 61

(1) In the instance stipulated under Article 60 (1) a), the Superior Council of Magistracy shall notify at once the magistrate and the management of the court of law or the Public Prosecutor's Office he/she functions with about the decision ordering his/her suspension from office.

(2) Provided that a magistrate's nonsuit, acquittal or discontinuance of action are decided, the suspension from office shall cease, and the magistrate shall be reinstated to his/her original status, he/she shall receive the wages he/she has been deprived of during the suspension from office, and his/her length of service in magistracy for that period shall be acknowledged.

#### ART. 62

(1) In the instance stipulated under Article 60 (1) b), the mental disease shall be found by means of a specialised examination, at the request of the president of the court of law or, as the case may be, of the head of the Public Prosecutor's Office, and the suspension from office shall be ordered for the period recommended by the specialised medical commission appointed under the terms of Article 13 (2) e).

(2) After the expiry of the period stipulated under paragraph (1), based on a new examination, the Superior Council of Magistracy may decide to terminate the suspension and reinstate the magistrate to his/her original status, to extend the suspension or, if the disease is irreversible, to propose the magistrate's release from office to the President of Romania.

(3) During the suspension, the magistrate's health insurance rights shall be paid according to the law.  
ART. 63

(1) The Magistrates shall be released from office in the following instances:

- a) resignation;
- b) retirement, according to the law;
- c) transfer to another position, according to the law;
- d) professional incapability;
- e) as a disciplinary sanction;
- f) final judgement passed against the magistrate for a criminal offence;
- g) failure to meet any one of the conditions stipulated under Article 13 (2).

(2) The release from office of magistrates shall be ordered by decree of the President of Romania, following the proposal by the Superior Council of Magistracy. In the instance stipulated under paragraph (1) e), the Superior Council of Magistracy shall notify the decision for enforcing the irrevocable sanction to the Presidential Administration, so that the President of Romania may issue the decree releasing the magistrate from office.

(3) The Superior Council of Magistracy shall be in charge of releasing probationary magistrates from office.

(4) If a magistrate applies for release from office by resignation, the Superior Council of Magistracy may set up a period of 30 days at most after which the resignation becomes effective, should the presence of the magistrate be necessary.

(5) A magistrate released from office for non-imputable reasons shall preserve his/her professional rank acquired in the hierarchy of the courts of law or Public Prosecutor's Offices.

ART. 64

(1) Magistrates may be kept in office, after having turned the retirement age stipulated by the law, up to the age of 68, based on the favourable opinion of the Superior Council of Magistracy, following the proposal by the president of the court of appeal or, as the case may be, the general public prosecutor of the Public Prosecutor's Office next to the court of appeal, the president of the High Court of Cassation and Justice, the general public prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice or the public prosecutor of the National Anti-Corruption Public Prosecutor's Office.

(2) Exceptionally, magistrates retired with full pension may be reinstated to office up to the age of 68, in compliance with the procedure stipulated under paragraph (1).

## CHAPTER VIII

### Assistant magistrates of the High Court of Cassation and Justice

ART. 65

The senior assistant magistrate, chief assistant magistrates, and assistant magistrates of the High Court of Cassation and Justice shall be part of the magistracy and shall enjoy stability.

(2) The Superior Council of Magistracy shall appoint and promote assistant magistrates to office, based on an examination.

(3) The general terms for appointing assistant magistrates shall be those stipulated for the magistrate's position.

ART. 66

(1) A senior assistant magistrate shall be promoted from amongst chief assistant magistrates with a length of service of at least 4 years in that position.

(2) Third degree chief assistant magistrates shall be promoted from amongst assistant magistrates with a length of service of at least 3 years in that position. After a 2-year period spent as chief assistant magistrates they may be promoted to 2nd degree, and after another 5 years, to 1st degree.

(3) Third degree assistant magistrates shall be appointed without an examination from amongst the judges or public prosecutors with a length of service of at least 4 years in magistracy. After a 3-year period in that position, assistant magistrates may be promoted to 2nd degree, and after another 3 years, to 1st degree.

(4) Third degree assistant magistrates may also be appointed, following an examination, from amongst lawyers, notaries, legal advisers, members of the higher education system teaching staff with a length of service of at least 6 years, as well as higher legal education graduates acting as clerks with courts of appeal and the High Court of Cassation and Justice, with a length of service of at least 10 years.

#### ART. 67

The powers of a senior assistant magistrate shall be as follows:

a) to co-ordinate the activity of the assistant magistrates in court divisions and officials in the Chancellery of the High Court of Cassation and Justice;

b) to participate in the sessions of the United Divisions of the High Court of Cassation and Justice and of the Panel of 9 judges, as a disciplinary court.

(2) A senior assistant magistrate shall also have other powers established through the Regulations on the administrative organisation and functioning of the High Court of Cassation and Justice.

#### ART. 68

The powers of the chief assistant magistrates shall be as follows:

a) to participate in the sessions of the court divisions and of the Panel of 9 judges;

b) to distribute the assistant magistrates who participate in the sessions;

c) to make sure the records of the court divisions are properly kept and all paperwork is completed in due time.

#### ART. 69

Assistant magistrates shall participate in the sessions of the court divisions.

#### ART. 70

Assistant magistrates who participate in the sessions of the High Court of Cassation and Justice shall draw up the findings, participate in deliberations with a consultative vote and draw up decisions, according to the distribution made by the president for all members of the court panel.

#### ART. 71

Assistant magistrates shall put into effect all the assignments entrusted by the President of the High Court of Cassation and Justice, the vice-president, or the court division president.

### TITLE III

#### Magistrates' rights and duties

#### ART. 72

Establishing the magistrates' rights shall take into consideration the role and place of justice in a state ruled by law, the responsibility and complexity of the magistrate's position, the interdictions and incompatibilities stipulated by the law for magistrates, and is aimed at guaranteeing their independence and impartiality.

#### ART. 73

(1) For their activity, magistrates shall be entitled to wages established next to the level of the court of law or Public Prosecutor's Office, the position held, the length of service in magistracy, and other criteria stipulated by the law.

(2) The magistrate's wages can be diminished or suspended only in the instances stipulated by the present law. The level of wages for magistrates shall be set up by a special law.

(3) The level of wages for the judges of the High Court of Cassation and Justice shall be established by the law on the emoluments for persons who hold positions of public dignity.

ART. 74

(1) The Superior Council of Magistracy, a guarantor of the independence of justice, shall have the right and obligation to defend the magistracy and its members from any act that might affect a magistrate's independence or impartiality in enforcing the act of justice, or cause suspicions about them.

(2) A magistrate who believes his/her independence and impartiality are affected in any way whatsoever by acts of interference with the judicial activity or influence on his/her professional evolution may address the Superior Council of Magistracy, requesting necessary steps to be taken, according to the law.

(3) Public interest information concerning magistrates' judicial activity, which are stipulated under Law No. 544/2001 on the free access to public interest information, may be requested only through the information and public relations offices within the courts of law or Public Prosecutor's Offices, or by means of the Superior Council of Magistracy.

ART. 75

(1) Magistrates shall be free to join together or join local, national or international professional organisations, with a view to defending their professional interests, as well as those stipulated under Article 10 (3).

(2) It shall be prohibited for magistrates' professional organisations to establish or join other associations than the professional ones.

ART. 76

(1) Magistrates in office or retired shall be entitled to special protection measures against threats, violence or any actions that may endanger them, their families and their property.

(2) The special protection measures, the conditions and manner in which they are achieved shall be established by Government decision, following a proposal by the Ministry of Justice and the Ministry of Administration and of the Interior.

ART. 77

(1) Magistrates shall benefit from an insurance for professional risk, paid from the budgetary funds of the High Court of Cassation and Justice, the Ministry of Justice, or, as the case may be, the Department of the Public Prosecutor, for life, health and property, within the limits of the income for the years of service in those positions, but no longer than 15 years of activity.

(2) When a magistrate is released from office, the insurance stipulated under paragraph (1) shall cease.

(3) The insurance stipulated under paragraph (1) shall be concluded under the terms established by Government decision.

(4) Magistrates may take out an insurance for professional risk beyond the limit stipulated under paragraph (1).

(5) The Magistrates' Insurance Fund may be established based on a Government decision.

ART. 78

(1) Magistrates shall benefit from annual paid leave of 35 working days.

(2) Magistrates shall be entitled to paid leaves for speciality studies so that they can attend courses or participate in other specialisation forms organised in Romania or abroad, to prepare and take the ability or doctorate examination, as well as to unpaid leaves, according to the Regulations on magistrates' leaves.

(3) Magistrates shall be entitled to sick leaves and other leaves, in accordance with the legislation in force.

(4) Magistrates in office or retired, as well as the spouses and children supported by them, shall benefit, free of charge, from medical care, drugs, and prosthetic devices, provided that the provisions of the law on the payment of the social security contribution have been complied with.

(5) Magistrates shall be entitled to receive job-related dwellings, and after 10 years' length of service in magistracy they shall be entitled to purchase them.

ART. 79

Each year, magistrates shall benefit from 6 free round trips inside Romania, on first-class railway, by

road, ship, and air, or shall be reimbursed the equivalent of 7.5 litres of fuel per one hundred kilometres for 6 round trips inside Romania, if they travel by car.

#### ART. 80

(1) Magistrates with continuous length of service in magistracy for the last 20 years before the date of retirement or release from office for other non-imputable reasons shall benefit from an emolument equal to 7 gross monthly emoluments, to be taxed under the law.

(2) The emolument stipulated under paragraph (1) shall be granted only once during a magistrate's career and recorded, according to the law.

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

(4) The provisions of paragraph (1) shall also apply in the event of the death of a practising magistrate. In such an instance, the spouse and children supported by the magistrate on the date of his/her death shall benefit from the emolument.

#### ART. 81

(1) Magistrates with a length of service of at least 25 years in magistracy shall benefit, when turning the age stipulated by the law, from a service pension, equal to 80% of the gross revenue obtained during the last month of activity before retirement.

(2) For each year beyond the limit for length of service in magistracy stipulated under paragraph (1), the pension shall be increased by 1% of the revenue, without, however, exceeding the gross revenue existing on the date of retirement.

(3) A service pension shall also be enjoyed by magistrates with a length of service in magistracy between 20 and 25 years, in this case the amount of the pension stipulated under paragraph (1) being decreased by 1% for every year missing from the full length of service.

(4) Persons who meet the length of service requirements stipulated under paragraphs (1) and (3), only for the judge's or public prosecutor's position, shall benefit from a service pension, even if they have another occupation on the date of retirement. In this instance, the pension shall be calculated based on the wages a magistrate has under identical conditions regarding the length of service and the level of the court of law or Public Prosecutor's Office.

(5) Only the persons who have been released from the magistrate's position for reasons not imputable to them may benefit from the provisions of paragraph (4).

#### ART. 82

The surviving spouse and children of magistrates entitled to a service pension under Article 81 shall benefit from a survivor's pension if they meet the requirements stipulated for this by Law No. 19/2000 on the public pension system and other social insurance rights, with subsequent amendments and additions.

#### ART. 83

(1) The part of the service pension that exceeds the level of the pension in the public system of social insurance shall be covered by the state budget.

(2) The magistrates' service pensions shall be updated in relation to the level of the gross emolument of the practising magistrates.

(3) Retired magistrates shall also benefit from the provisions of paragraph (2).

#### ART. 84

Magistrates may benefit from early retirement pension under the terms of Law No. 19/2000 on the public pension system and other social insurance rights, with subsequent amendments and additions, adequately complying with the rights stipulated in the present law.

#### ART. 85

The length of service in magistracy shall include the period during which a magistrate or a person working in a similar position acted as a judge, public prosecutor, member of the legally specialised personnel in the former state arbitration courts, assistant magistrate, justice auditor or member of the legally specialised personnel equal in rank to magistrates, as well as the period during which a person acted as a lawyer, notary, judicial assistant, legal adviser or held positions of legal speciality in the personnel of the Parliament, Presidential Administration, Government, Constitutional Court, People's

Advocate, Court of Auditors, or Legislative Council, under the present law.

#### ART. 86

(1) The legally specialised personnel in the Ministry of Justice, the Department of the Public Prosecutor, the Superior Council of Magistracy, the National Institute of Criminology, and the National Institute of Magistracy shall be deemed equal in rank to magistrates during the time they hold such an office.

(2) The provisions of the present law regarding the magistrates' rights and duties, including the taking of the admission examination, the annual evaluation of one's professional activity, the taking of the ability and graduation examination shall also apply accordingly to the legally specialised personnel stipulated under paragraph (1).

#### ART. 87

(1) For special merits in their activity, for complying with the duties stipulated by the law, and for extended length of service in magistracy as judges or public prosecutors, practising magistrates who have obtained only the mark "very good" in the last 10 years may be awarded the Judicial Merit Diploma, 1st to 3rd class.

(2) Exceptionally, the Judicial Merit Diploma may also be awarded to retired magistrates who meet the requirements stipulated under paragraph (1) and who brought a special contribution to the act of justice, as well as to members of the legally specialised personnel similar to magistrates, if they have made a special contribution to justice organisation and administration, to preparing the legislation, or to the initial and further training of personnel in the justice system.

(3) The Judicial Merit Diploma shall be awarded by the President of Romanian, following the proposal of the Superior Council of Magistracy.

#### ART. 88

(1) The Judicial Merit Diploma shall be awarded as follows:

- a) Judicial Merit Diploma, 1st class, for 20 years' length of service;
- b) Judicial Merit Diploma, 2nd class, for 15 years' length of service;
- c) Judicial Merit Diploma, 3rd class, for 10 years' length of service.

(2) The diplomas' design and printing shall be established by the Minister of Justice, based on the opinion of the Superior Council of Magistracy.

#### ART. 89

(1) Magistrates shall be bound to abstain from any acts or actions liable to compromise their dignity in their profession and in society.

(2) The magistrates' relationships at their workplace and in society shall be based on respect and good faith.

#### ART. 90

(1) Magistrates shall be bound to complete paperwork within the set time limits and to solve causes within reasonable time limits, depending on their complexity.

(2) Magistrates shall be bound to carry out their judicial activity independently, showing an impartial conduct, and to observe professional secrecy.

(3) A judge shall be bound to keep secret the deliberations and votes he/she has participated in, even after he/she has ceased to practise.

#### ART. 91

(1) Magistrates shall be bound to wear the adequate clothing for that specific court during the sessions.

(2) The clothing shall be established by Government decision and supplied free of charge.

#### ART. 92

Magistrates shall be bound to submit their declarations of assets and declarations of interests under the terms and within the time limits provided by the law.

### TITLE IV

#### Magistrates' liability

## CHAPTER I

### General provisions

#### ART. 93

Magistrates shall be liable from the civil, disciplinary, administrative, and criminal point of view, under the terms of the law.

#### ART. 94

(1) The state shall be materially liable for the prejudice due to miscarriages of justice.

(2) The state's liability shall be established under the law and shall not exempt from liability the magistrates having exercised their duties in bad faith or with gross negligence.

(3) The instances in which an injured party is entitled to reparations for prejudice caused by miscarriages of justice made in criminal actions shall be set up in the Criminal Procedure Code.

(4) An injured party's right to reparations for material prejudice caused by miscarriages of justice made in actions of law other than criminal ones may be exercised only if the magistrate's criminal or disciplinary liability, as the case may be, was established previously, by final judgement, for a fact accomplished during the legal proceedings and if such a fact is liable to cause a miscarriage of justice.

(5) A person who, during the legal proceedings, has contributed in any manner whatsoever to the magistrate's making the miscarriage of justice shall not be entitled to reparations for damages.

(6) For reparations following a prejudice, an injured party may institute an action only against the state, represented by the Ministry of Public Finance.

(7) After the prejudice has been covered by the state based on an irrevocable judgement issued in compliance with the provisions of paragraph (6), the state may institute an action for damages against the magistrate having caused, in bad faith or with gross negligence, the miscarriage of justice that generated the prejudice.

(8) The prescription time limit for the right to sue in all the cases stipulated by the present article shall be one year.

#### ART. 95

(1) Any person may notify the Superior Council of Magistracy, directly or by means of the heads of the courts of law or Public Prosecutor's Offices, about the inadequate activity or conduct of a magistrate, his/her violation of the professional duties in his/her relationships with justiciable persons, or committing disciplinary departures.

(2) The exercise of the right stipulated under paragraph (1) may not question the solutions passed by means of judgements, which are subject to the legal means.

## CHAPTER II

### Magistrates' disciplinary liability

#### ART. 96

Magistrates shall be liable from the disciplinary point of view for departures from the job duties, as well as for actions affecting the prestige of the institution.

#### ART. 97

The following shall be deemed disciplinary departures:

a) violation of the provisions of the law concerning incompatibilities and interdictions related to magistrates;

b) failure to comply with the provisions of the Deontological Code of the Magistrates;

c) interventions for the solution of petitions regarding the satisfaction of personal interests or interests of family members or of other persons, as well as interference with another magistrate's activity;

d) carrying out public political activities or expressing political convictions in the exercise of a magistrate's service duties;

e) failure to comply with the secrecy of deliberations or confidentiality of paperwork of such nature;

f) failure to repeatedly comply with the provisions of the law on the quick solving of causes;

g) refusal to file the petitions, conclusions, memoranda or papers submitted by the parties in the trial;  
h) repeatedly keeping the files beyond the time needed for completing the paperwork or studying a file;  
i) unjustified refusal by the magistrate to accomplish a duty incumbent on him/her according to the law, or ordered, under the law, by the head of a court of law or of the Public Prosecutor's Office;  
j) gross or repeated negligence in solving paperwork;  
k) delayed completion of paperwork;  
l) missing work without leave, repeatedly being late from or leaving work sooner;  
m) disrespectful attitude towards colleagues, lawyers, witnesses, or justiciable persons during the exercise of their job duties.

#### ART. 98

The disciplinary sanctions that may be applied to magistrates, in proportion to the severity of their departures, shall be:

- a) warning;
- b) reduction of the gross monthly emolument by up to 15% for a period from one to 3 months;
- c) disciplinary temporary transfer for a period of one to 3 months to a court of law or Public Prosecutor's Office in the district of the same court of appeal or of the same Public Prosecutor's Office next to that court of appeal;
- d) recalling from the management position held;
- e) exclusion from magistracy.

#### ART. 99

The disciplinary sanctions stipulated under Article 98 shall be enforced by the divisions of the Superior Council of Magistracy, under the terms of its organic law.

### TITLE V

#### Transitory and final provisions

#### ART. 100

(1) Magistrates in office on the date of the present law coming into effect shall be deemed to meet the lawful requirements for holding the positions they are appointed to.

(2) Judges, public prosecutors, or assistant magistrates may be searched, detained or placed in temporary custody only with the consent of the divisions of the Superior Council of Magistracy. Until the new Superior Council of Magistracy is established, the consent shall be given by the Minister of Justice.

(3) In the event of a flagrant crime, judges, public prosecutors, or assistant magistrates may be detained and searched, with the Superior Council of Magistracy being informed without delay by the body having ordered the detainment or search. Until the new Superior Council of Magistracy is established, the Minister of Justice shall be the person informed.

#### ART. 101

(1) Judges in office with the High Court of Cassation and Justice shall continue their activity until the expiry of the term of office for which they have been appointed.

(2) Judges of the High Court of Cassation and Justice, whose term of office for which they have been appointed has expired, or who are released from office for reasons not imputable to them, where applicable, shall keep the rank acquired in the hierarchy and may take up a judge's position with the High Court of Cassation and Justice, and may return to the magistrate's position they used to hold previously, or may choose to become lawyers or notaries, without having to take an examination.

#### ART. 102

Magistrates who, on the date of the present law coming into effect, have the basic teaching load with legal higher education institutions, shall be bound, starting with the next academic year, to transfer the basic teaching load to the court of law or Public Prosecutor's Office where they carry out their activity, or give up the magistrate's position.

#### ART. 103

(1) The practising magistrates and the members of the legally specialised personnel similar to them

who have benefited from length of service in magistracy under the Law No. 92/1992 for judicial organisation, republished, with subsequent amendments and additions, shall preserve that length of service.

(2) The wage plan for assistant magistrates shall be according to Annex No. 1 to Government Emergency Ordinance No. 177/2002 on magistrates' wages and other rights, approved by Law No. 347/2003, based on the multiplication quotients stipulated under Nos. 19, 20, 18 for assistant magistrates degrees I, II, and III, under Nos. 12, 13, 19 for chief assistant magistrates, degrees I, II, and III, and under No. 12 for a senior assistant magistrate.

#### ART. 104

(1) The provisions of the present law on the necessary length of service for taking up the judge's or public prosecutor's position and for promotion to such positions shall apply starting with 1 January 2005.

(2) By 1 January 2005, may also be appointed to magistracy, under the terms of Article 31, persons who have held for at least 5 years the position of member of the legally specialised personnel in the former state arbitration courts, consulting magistrate, judicial assistant, lawyer, notary, jurist, legal adviser, member of the teaching staff in the accredited higher education system or in research with the Legal Research Institute of the Romanian Academy, or positions of legal speciality with the public administration, in the personnel of the Parliament, Presidential Administration, Government, Constitutional Court, Court of Auditors, People's Advocate, or Legislative Council.

#### ART. 105

(1) The provisions of the present law shall apply accordingly to military magistrates, too.

(2) The period during which financial judges, financial inspector judges, financial public prosecutors and counsellors of the jurisdictional division of the Court of Auditors have exercised such positions with the Court of Auditors shall be deemed length of service in magistracy.

(3) The period during which members of the legally specialised personnel acted in the former state arbitration courts shall be deemed length of service in magistracy.

#### ART. 106

(1) The Superior Council of Magistracy shall approve the following, by means of a decision to be published in the Official Gazette of Romania, Part I:

a) Regulations on the admission examination and graduation examination with the National Institute of Magistracy, stipulating the examination organisation, topics, and tests, the procedure for the admission examination and graduation examination to take place, as well as the minimum admission and graduation average mark for the National Institute of Magistracy;

b) Regulations of the National Institute of Magistracy;

c) Regulations on the ability examination for probationary magistrates, stipulating the examination organisation, topics and tests, the procedure and minimum average mark for passing the ability examination for probationary magistrates;

d) Regulations on the organisation and holding of the admission examination for magistracy;

e) Regulations on the manner of progress of magistrates' further professional training courses and certification of the results obtained;

f) Regulations on the examination for promotion to magistrates' execution positions;

g) Regulations on magistrates' leaves of absence.

(2) The regulations stipulated under paragraph (1) shall be adopted within 90 days of the present law being published in the Official Gazette of Romania, Part I, and shall come into effect on the date the provisions of the present law come into effect.

#### ART. 107

(1) The present law shall come into effect 90 days after being published in the Official Gazette of Romania, Part I.

(2) On the date of the present law coming into force, the following shall be repealed:

(a) the provisions of Article 6, Article 12, Articles 14 - 16, Articles 36 - 43, Article 55, Article 58 and Articles 59 - 69 of the Law of the Supreme Court of Justice No. 56/1993, republished in the Official Gazette of Romania, Part I, No. 56 of 8 February 1999, with subsequent amendments and additions;

(b) the provisions of Article 2 (2), Article 3, Articles 42 - 69, Articles 91 - 120<sup>1</sup> and Articles 121 - 131<sup>1</sup> of Law No. 92/1992 for judicial organisation, republished in the Official Gazette of Romania, Part I, No. 259 of 30 September 1997, with subsequent amendments and additions, except for the provisions of Article 66 on the length of service in magistracy needed for promotion to the judge's or public prosecutor's position, which shall be repealed on 1 January 2005.

(3) The provisions of Article 13 of the Law of the Supreme Court of Justice, No. 56/1993, republished in the Official Gazette of Romania, Part I, No. 56 of 8 February 1999, with subsequent amendments and additions, shall be repealed on 1 January 2005.

## ANNEX 1

### Evaluation criteria for the magistrates' professional activity

A. Professional training improvement
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#### 1. FORM: TRAINING IMPROVEMENT ORGANISED AT THE LEVEL OF A COURT OF LAW OR, AS THE CASE MAY BE, COURT OF APPEAL, AND AT THE LEVEL OF THE PUBLIC PROSECUTOR'S OFFICES NEXT TO THESE - PROFESSIONAL EDUCATION

TOPIC \_\_\_\_\_  
RESULTS OBTAINED \_\_\_\_\_

#### 2. FORM: CENTRALISED TRAINING IMPROVEMENT (National Institute of Magistracy, higher education institutions in Romania or abroad, or other forms of centralised training improvement)

PERIOD	LOCATION	SUBJECT MATTER	RESULTS
_____	_____	_____	_____
_____	_____	_____	_____

#### 3. FORM: SPECIALISATION, EXCHANGE OF EXPERIENCE

PERIOD	COUNTRY	LOCALITY	SUBJECT MATTER	TOPIC
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

#### PARTICIPATION IN SYMPOSIA, LECTURES, etc.

PERIOD	COUNTRY	LOCALITY	TOPIC	PAPER PRESENTED
(as the case may be)				
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

INSTITUTION HAVING SUGGESTED THE PARTICIPATION \_\_\_\_\_

4. PAPERS PUBLISHED TOTAL NO. \_\_\_\_\_ OF WHICH:

DATE (Printing house, journal, etc.)	PLACE OF ISSUANCE (Article, Paper, etc.)	TYPE	TITLE
_____	_____	_____	_____
_____	_____	_____	_____

5. TEACHING ACTIVITY

INSTITUTION	POSITION	SUBJECT MATTER
_____	_____	_____
_____	_____	_____
B. Judges' professional activity		

I. Judging activity

TOTAL AVERAGE PER  
COURT, AS THE  
CASE MAY BE,  
PER DIVISION

1. NO. OF COURT SESSIONS HE/SHE HAS PARTICIPATED IN \_\_\_\_\_
2. NO. OF COURT SESSIONS PRESIDED OVER \_\_\_\_\_
3. NO. OF PARTICIPATIONS IN SPECIALISED PANELS \_\_\_\_\_
4. NO. OF FILES ON THE ROLL \_\_\_\_\_
5. NO. OF JUDGEMENTS PASSED \_\_\_\_\_
6. PROMPTNESS IN SOLVING CAUSES \_\_\_\_\_
7. NO. OF JUDGEMENTS DRAWN UP \_\_\_\_\_
8. NO. OF JUDGEMENTS DRAWN UP BEYOND THE TIME LIMIT \_\_\_\_\_
9. NO. OF JUDGEMENTS ANNULLED \_\_\_\_\_
10. NO. OF IMPUTABLE ANNULLED DECREES, OF WHICH: \_\_\_\_\_  
 - WITH MAGISTRATE'S OBJECTIONS SEEN  
 AS GROUNDED BY THE COURT/SPECIALISED DIVISIONS

II. Other activities of the judge:

1. Activity as judge on duty or delegate judge  
Department \_\_\_\_\_
2. Remarks on draft statutory instruments \_\_\_\_\_
3. Complaints, claims, petitions solved \_\_\_\_\_
4. Other activities \_\_\_\_\_

## | C. Public prosecutors' professional activity |

| \_\_\_\_\_ |

1. INQUIRY FILES \_\_\_\_\_ of which \_\_\_\_\_ indictments
2. SURVEILLANCE FILES \_\_\_\_\_ of which \_\_\_\_\_ indictments
3. DEFENDANTS sent to court \_\_\_\_\_ of whom \_\_\_\_\_ arrested
4. Promptness in solving causes \_\_\_\_\_
5. CONCLUSIONS on:
  - the criminal side of cause \_\_\_\_\_
  - the civil side of cause \_\_\_\_\_
6. Exercise of civil action ex officio \_\_\_\_\_
7. Denied solutions \_\_\_\_\_
8. Legal means exercised \_\_\_\_\_ of which \_\_\_\_\_ admitted
9. Reports for action for cancellation prepared \_\_\_\_ of which \_\_\_\_ admitted
10. Files returned by courts with a view to redoing or completing the criminal investigation, except for those returned as a result of an extension of action or criminal lawsuit \_\_\_\_\_
11. Files returned to the public prosecutor with a view to redoing the indictment \_\_\_\_\_
12. Other public prosecutor's activities:
  - Study notes \_\_\_\_\_
  - Remarks on draft statutory instruments \_\_\_\_\_
  - Notes, memoranda, reports \_\_\_\_\_

## | D. Criteria and parameters in evaluating performance |

| of magistrates holding management positions |

| \_\_\_\_\_ |

## MARK GRANTED

- a) Organisation and decision-making ability \_\_\_\_\_
- b) Communication degree \_\_\_\_\_
- c) Attitude in relations with:
  - magistrates \_\_\_\_\_
  - auxiliary personnel \_\_\_\_\_
  - petitioners \_\_\_\_\_
  - other institutions \_\_\_\_\_
- d) Degree of cause complexity \_\_\_\_\_
- e) Objectivity in evaluating co-workers \_\_\_\_\_
- f) Organisation and monitoring of professional training \_\_\_\_\_
- g) Ability to manage crisis situations \_\_\_\_\_

## | E. Professional, organisational and conduct |

| parameters |

| \_\_\_\_\_ |

## MARK GRANTED

1. a) Ability to interpret and enforce the law \_\_\_\_\_

- b) Compliance with procedure rules in activity \_\_\_\_\_
- c) Quality of decisions/acts of the criminal proceedings \_\_\_\_\_
- d) Degree of cause complexity \_\_\_\_\_
- e) Paperwork solved in due time \_\_\_\_\_
- f) Knowledge, assimilation and enforcement of Jurisprudence of Constitutional Court and European Court of Human Rights \_\_\_\_\_
2. a) Perseverance \_\_\_\_\_
- b) Initiative \_\_\_\_\_
- c) Authority \_\_\_\_\_
- d) Ability to work hard \_\_\_\_\_
- e) Spirit of analysis and synthesis \_\_\_\_\_
3. a) Compliance with work discipline \_\_\_\_\_
- b) Attitude in relations with colleagues \_\_\_\_\_
- c) Attitude in relations with justiciable persons \_\_\_\_\_
- d) Compliance with the rules of the Magistrates' Deontological Code \_\_\_\_\_
- F. MARK GRANTED: \_\_\_\_\_
- G. FINAL MARK GRANTED AFTER LEGAL CONTESTATION: \_\_\_\_\_
-