

LAW No. 317 of 1 July 2004

on the Superior Council of Magistracy

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

CHAPTER I

General provisions

ART. 1

(1) The Superior Council of Magistracy, a representative of the judicial authority, shall be the guarantor of the independence of justice.

(2) The Superior Council of Magistracy shall be independent and only subject to the law in its activity.

ART. 2

The Superior Council of Magistracy shall act as a legal entity and its headquarters shall be in Bucharest.

ART. 3

Through the exercise of its powers, the Superior Council of Magistracy shall ensure the effective functioning of the judicial system and the upholding of the law in the progress of the magistrates' professional career.

CHAPTER II

Organisation of the Superior Council of Magistracy

Section 1

Structure of the Superior Council of Magistracy

ART. 4

The Superior Council of Magistracy shall be comprised of 19 members, of whom:

a) 9 judges and 5 public prosecutors elected in the general meetings of the magistrates who form the two divisions of the Council, one for judges and the other for public prosecutors;

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

c) the Minister of Justice, the president of the High Court of Cassation and Justice, and the general public prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice, who are ex officio members of the Council.

ART. 5

The judges' division of the Superior Council of Magistracy shall be comprised of:

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

b) 4 judges from courts of appeal;

c) 2 judges from tribunals;

d) a judge from courts of first instance.

ART. 6

The public prosecutors' division of the Superior Council of Magistracy shall be comprised of:

a) a prosecutor from the Public Prosecutor's Office next to the High Court of Cassation and Justice;

b) a public prosecutor from the National Anti-Corruption Public Prosecutor's Office;

c) a public prosecutor from Public Prosecutor's Offices next to courts of appeal;

d) a public prosecutor from Public Prosecutor's Offices next to tribunals;

e) a public prosecutor from Public Prosecutor's Offices next to courts of first instance.

Section 2

Election of members of the Superior Council of Magistracy

ART. 7

(1) Magistrates who are members of the Superior Council of Magistracy, as stipulated under Article 4 a), shall be elected in the general meetings of the judges or, as the case may be, of the public prosecutors.

(2) The date on which the general meetings of the judges and public prosecutors take place shall be set by the Plenum of the Superior Council of Magistracy, at least 60 days before the expiry of its members' term of office, and shall be published in the Official Gazette of Romania, Part III, and on the web page of the Superior Council of Magistracy.

ART. 8

(1) The members of the Superior Council of Magistracy shall be elected from amongst judges and public prosecutors appointed by the President of Romania and who have a length of service in the magistrate's position of at least 6 years.

(2) Judges and public prosecutors that meet the requirements stipulated under paragraph (1) may submit their candidatures for election as members of the Superior Council of Magistracy.

(3) The period during which candidatures may be submitted shall be set by the Plenum of the Superior Council of Magistracy and published in the Official Gazette of Romania, Part III, and on the web page of the Superior Council of Magistracy.

(4) Candidacies shall be filed with the managing college of the High Court of Cassation and Justice, the managing college of the Public Prosecutor's Office next to the High Court of Cassation and Justice, the managing college of the National Anti-Corruption Public Prosecutor's Office, or the managing colleges of the courts of appeal or Public Prosecutor's Offices next to the latter, accompanied by CVs.

(5) The managing colleges of the High Court of Cassation and Justice, 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, of the courts of appeal and of the Public Prosecutor's Offices next to the latter shall check that the requirement stipulated under paragraph (1) is met by the judges and public prosecutors having submitted their candidatures.

ART. 9

(1) The judges of the High Court of Cassation and Justice shall elect, in a general meeting, by means of secret, direct and personal ballot, 2 members for the Superior Council of Magistracy, from amongst the judges having submitted their candidatures.

(2) The public prosecutors from the Public Prosecutor's Office next to the High Court of Cassation and Justice, and the public prosecutors from the National Anti-Corruption Public Prosecutor's Office shall elect, in the general meetings of the public prosecutors in such Public Prosecutor's Offices, by secret, direct and personal ballot, a member each for the Superior Council of Magistracy from amongst the public prosecutors having submitted their candidatures.

(3) Two judges from the High Court of Cassation and Justice, one public prosecutor from the Public Prosecutor's Office next to the High Court of Cassation and Justice, and one public prosecutor from the National Anti-Corruption Public Prosecutor's Office, who have obtained the highest number of votes in the general meetings, shall be elected as members of the Superior Council of Magistracy.

(4) If two or more candidates have obtained the same number of votes, the magistrate with the longer actual length of service in magistracy shall be pronounced elected.

ART. 10

(1) The managing college of each court of appeal and of each Public Prosecutor's Office next to such courts shall draw up a unified list of candidatures submitted by the judges and public prosecutors within their districts.

(2) Candidatures shall be listed per categories of courts of law and Public Prosecutor's Offices and sent to the courts of law and Public Prosecutor's Offices within the district of the court of appeal.

(3) The managing college of each court of appeal shall convene its own general meeting, the general

meeting of the judges from the tribunals and specialised courts within the district of that court of appeal, and the general meeting of the judges from the courts of first instance within the district of that court of appeal.

(4) The managing college of each Public Prosecutor's Office next to courts of appeal shall convene its own general meeting, the general meeting of the public prosecutors from Public Prosecutor's Offices next to tribunals and specialised courts within the district of that court of appeal, and the general meeting of the public prosecutors from Public Prosecutor's Offices next to courts of first instance within the district of that court of appeal.

ART. 11

(1) The judges from each court of appeal, the judges from all tribunals and specialised courts within the district of each court of appeal, and the judges from all courts of first instance within the district of each court of appeal shall designate, in their 3 general meetings, by secret, direct and personal ballot, a candidate each for the position of member of the Superior Council of Magistracy from amongst the judges having submitted their candidatures.

(2) The public prosecutors from each Public Prosecutor's Office next to courts of appeal, the public prosecutors from all the Public Prosecutor's Offices next to tribunals and specialised courts within the district of each court of appeal, and the public prosecutors from Public Prosecutor's Offices next to courts of first instance within the district of each court of appeal, shall designate, in their 3 general meetings, by secret, direct and personal ballot, a candidate each for the position of member of the Superior Council of Magistracy from amongst the public prosecutors having submitted their candidatures.

(3) The judges and public prosecutors that have obtained the highest number of votes in the general meetings stipulated under paragraphs (1) and (2) shall be designated as candidates for the position of member of the Superior Council of Magistracy.

(4) Military judges and military prosecutors shall submit their candidatures with the military court of appeal or, as the case may be, with the Military Prosecutor's Office next to that court. The provisions of paragraphs (1) - (3) shall apply accordingly. The territorial military court and the military courts, as well as the Public Prosecutor's Offices next to these shall designate a candidate each to be included on the lists stipulated under Article 12 (1) c) and d).

(5) The Superior Council of Magistracy shall draw up lists with the judges and public prosecutors to candidate for the position of member of the Superior Council of Magistracy, per categories of courts of law and Public Prosecutor's Offices.

(6) The lists stipulated under paragraph (5) shall be published on the web page of the Superior Council of Magistracy.

(7) The provisions of Article 9 (4) shall apply accordingly.

ART. 12

(1) The lists of the judges and public prosecutors who have been designated for the position of member of the Superior Council of Magistracy shall be sent to the courts of law or, as the case may be, to the Public Prosecutor's Offices, by the Superior Council of Magistracy, at least 15 days before the date set for the general meetings, as follows:

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

b) the list comprising the 16 candidates from Public Prosecutor's Offices next to courts of appeal shall be sent to all the Public Prosecutor's Offices next to courts of appeal;

c) the list comprising the 16 candidates from tribunals and specialised courts shall be sent to all the tribunals and specialised courts;

d) the list comprising the 16 candidates from Public Prosecutor's Offices next to tribunals and specialised courts shall be sent to all the Public Prosecutor's Offices next to tribunals and specialised courts;

e) the list comprising the 15 candidates from courts of first instance shall be sent to all the courts of first instance;

f) the list comprising the 15 candidates from Public Prosecutor's Offices next to courts of first instance

shall be sent to all the Public Prosecutor's Offices next to courts of first instance.

(2) The lists stipulated under paragraph (1) shall be posted at the headquarters of the courts of law and Public Prosecutor's Offices.

ART. 13

(1) The lists stipulated under Article 12 (1) shall be sent to the courts of law and Public Prosecutor's Offices by the Superior Council of Magistracy, being accompanied by the ballot papers and CVs.

(2) The Superior Council of Magistracy shall send each court of law and each Public Prosecutor's Office a number of ballot papers equal to the number of judges in that court of law or of public prosecutors in that Public Prosecutor's Office.

(3) The form and content of ballot papers shall be established by the Plenum of the Superior Council of Magistracy.

(4) The Superior Council of Magistracy shall be in charge of the ballot papers' printing.

ART. 14

(1) With a view to electing the members of the Superior Council of Magistracy, the general meeting of the judges or, as the case may be, of the public prosecutors shall be convened within each court of law and each Public Prosecutor's Office.

(2) The judges from courts of appeal and the public prosecutors from Public Prosecutor's Offices next to such courts shall elect in their general meetings, by secret, direct and personal ballot, 4 judges from courts of appeal and one public prosecutor from Public Prosecutor's Offices next to these as members of the Superior Council of Magistracy.

(3) The judges from tribunals and specialised courts and the public prosecutors from Public Prosecutor's Offices next to such courts shall elect in their general meetings, by secret, direct and personal ballot, 2 judges from tribunals and specialised courts and one public prosecutor from Public Prosecutor's Offices next to these as members of the Superior Council of Magistracy.

(4) The judges from courts of first instance and the public prosecutors from Public Prosecutor's Offices next to such courts shall elect in their general meetings, by secret, direct and personal ballot, one judge from courts of first instance and one public prosecutor from Public Prosecutor's Offices next to these as members of the Superior Council of Magistracy.

ART. 15

(1) According to the procedure for designating candidates and electing members of the Superior Council of Magistracy, the general meetings shall be lawfully constituted in the presence of at least two thirds of the number of judges or, as the case may be, of public prosecutors in office, including those delegated or temporarily transferred to other courts of law or Public Prosecutor's Offices.

(2) The general meetings shall be presided over by the magistrate with the longer length of service in magistracy who has not submitted his candidature for the position of member of the Superior Council of Magistracy.

(3) According to the procedure for electing members of the Superior Council of Magistracy, each judge and public prosecutor shall be entitled to vote a number of candidates equal to the number of members of the Superior Council of Magistracy, who represent the category of courts of law or Public Prosecutor's Offices at the level of which that magistrate is carrying out his activity.

ART. 16

(1) The magistrate having presided over the general meeting of the judges or, as the case may be, of the public prosecutors:

a) shall make sure that the votes are counted;

b) shall draw up the report on the election progress and the results of the vote, and shall send it to the Superior Council of Magistracy;

c) shall notify the names of the judges or public prosecutors designated for candidature to the position of members of the Superior Council of Magistracy according to Article 11 (5) or, as the case may be, shall draw up and send to the Superior Council of Magistracy the list of candidates registered in the descending order of the votes obtained in the general meetings stipulated under Article 9 (3) and under Article 14 (2) - (4).

(2) In carrying out the powers stipulated under paragraph (1), the magistrate having presided over the general meeting shall be helped by 2 judges or, as the case may be, by 2 public prosecutors, designated at the beginning of the general meeting proceedings from amongst the magistrates not having submitted their candidatures.

ART. 17

(1) The Superior Council of Magistracy shall collect the results of the vote from the districts of all the courts of appeal and Public Prosecutor's Offices next to these.

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

- a) 4 judges from courts of appeal, who have obtained the highest number of votes at a national level;
- b) 2 judges from tribunals and specialised courts, who have obtained the highest number of votes at a national level;
- c) a judge from courts of first instance, who has obtained the highest number of votes at a national level;
- d) a public prosecutor from Public Prosecutor's Offices next to courts of appeal, who has obtained the highest number of votes at a national level;
- e) a public prosecutor from Public Prosecutor's Offices next to tribunals and specialised courts, and a public prosecutor from Public Prosecutor's Offices next to courts of first instance, who have obtained the highest number of votes at a national level.

(3) The provisions of Article 9 (4) shall apply accordingly.

ART. 18

(1) The Superior Council of Magistracy shall check the lawfulness of the election procedures ex officio or upon notification by any magistrate.

(2) Complaints concerning the lawfulness of the election procedures may be lodged with the Superior Council of Magistracy within 5 days of the election date.

(3) Complaints shall be solved by the Plenum of the Superior Council of Magistracy, within 3 days of the notification date. The manner in which the complaints have been solved shall be communicated to the persons having sent the notification.

(4) If violations of the law should be found in the election procedures, the Superior Council of Magistracy shall order the necessary steps for correcting them, including a repetition of the elections, only in the courts of law or Public Prosecutor's Offices where the violation of the law influenced the election results.

ART. 19

(1) The Superior Council of Magistracy shall draw up the final list comprising the magistrates elected under the provisions of Article 9 (3) and Article 17 (2), and shall send it to the Standing Bureau of the Senate.

(2) The Standing Bureau of the Senate shall forward the list stipulated under paragraph (1) to the Legal Commission for appointments, discipline, immunities and validations, which will check that the provisions of the law have been met as regards the election of the members of the Superior Council of Magistracy.

(3) The Senate, in the presence of the majority of its members, based on the report by the Legal Commission for appointments, discipline, immunities and validations, shall validate the list comprising the magistrates elected as members of the Superior Council of Magistracy. The refusal of the validation may only take place in the event of a breach of the law in the procedure for electing members to the Superior Council of Magistracy, and only if such a breach of the law has influenced the election results. The provisions of Article 18 (4) shall apply accordingly.

ART. 20

(1) With a view to electing the two representatives of the civil society to the Superior Council of Magistracy, the jurists' professional organisations, professional councils of accredited law faculties, associations and foundations the only object of which is the protection of human rights, and trade union and employers' confederations that are representative at a national level may propose a candidate each to the Standing Bureau of the Senate.

(2) There may be elected as members of the Superior Council of Magistracy representatives of the civil society, who meet the following conditions:

- a) they are specialists in the field of law, with a length of service of at least 18 years in the legal activity or in higher legal education;
- b) they enjoy a good professional and moral reputation;
- c) they are not members of a political party.

(3) The proposals for candidatures shall be submitted with the Standing Bureau of the Senate, between the 90th and the 60th day before the expiry of the term of office of the Superior Council of Magistracy members.

(4) The period during which the proposals for candidatures are submitted shall be published in the Official Gazette of Romania, Part III, and on the web page of the Superior Council of Magistracy 30 days before the period of time stipulated under paragraph (3) starts to elapse.

(5) The candidates proposed shall submit to the Senate a CV, their declaration of assets, and a statement on their own account that they do not belong to any political party.

(6) The candidatures shall be published on the web page of the Senate and of the Superior Council of Magistracy, within 5 days of the expiry of the period for submitting them.

ART. 21

The Senate shall elect the 2 representatives of the civil society from amongst the candidates stipulated under Article 20, according to the procedure stipulated in the Standing Order of that Chamber.

ART. 22

The decisions of the Senate concerning the validation and election of the members of the Superior Council of Magistracy shall be published in the Official Gazette of Romania, Part I.

CHAPTER III

Functioning of the Superior Council of Magistracy

ART. 23

(1) Within 15 days of the publishing of the decisions stipulated under Article 22, the president of the High Court of Cassation and Justice shall convene the members of the Superior Council of Magistracy in its setting up meeting.

(2) In the setting up meeting, presided over by the president of the High Court of Cassation and Justice, the president and vice-president of the Superior Council of Magistracy shall be elected, and the responsibilities of its members, per fields of activity, shall be established.

ART. 24

(1) The Superior Council of Magistracy shall function as a permanent body. Decisions by the Superior Council of Magistracy shall be made in its plenum or in its divisions, according to the duties incumbent on them.

(2) During their term of office, the president and vice-president of the Superior Council of Magistracy shall not exercise an activity as a judge or public prosecutor.

ART. 25

(1) The Superior Council of Magistracy shall be run by a president, helped by a vice-president, elected for a one-year term of office that may not be renewed, from amongst the magistrates stipulated under Article 4 a), who belong to different divisions.

(2) The president and vice-president of the Superior Council of Magistracy shall be elected by the Council plenum, in the presence of at least 15 Council members, with the vote of the majority of its members.

(3) The president of the Superior Council of Magistracy shall have the following main powers:

- a) to represent the Superior Council of Magistracy in the domestic and international relationships;
- b) to co-ordinate the activity of the Superior Council of Magistracy and distribute the proceedings for the plenum and the divisions;
- c) to preside over the proceedings of the Plenum of the Superior Council of Magistracy, except when

the proceedings are attended by the President of Romania;

d) to suggest to the plenum the necessary steps for starting the procedures aimed at dismissing members of the Superior Council of Magistracy and filling the seats thus vacated;

e) to sign the acts issued by the Plenum of the Superior Council of Magistracy;

f) to notify the Constitutional Court with a view to settling the legal conflicts of a constitutional kind among public authorities;

g) to appoint the admission board and the board preparing the subjects for admission to the National Institute of Magistracy, under the terms stipulated by the Regulations for the organisation of the entrance examination to the National Institute of Magistracy;

h) to designate the members of the Superior Council of Magistracy that can be consulted in drawing up some draft statutory instruments;

i) to present, in the open session of the plenum, the annual report on the activity of the Superior Council of Magistracy, that shall be sent to the courts of justice and Public Prosecutor's Offices and published.

(4) The president of the Superior Council of Magistracy shall carry out any other powers established by the law, by the Regulations for the administrative organisation and functioning of the Superior Council of Magistracy, and by the plenum.

(5) In the absence of the president of the Superior Council of Magistracy, the powers stipulated under paragraphs (3) and (4) shall be exercised by the vice-president.

(6) If the president's position should be vacant, within one month of recording the presence of the vacancy, the Plenum of the Superior Council of Magistracy shall hold election for a new president, whose term of office shall be exercised for the time left.

ART. 26

The President of Romania shall preside, without a right to vote, over the proceedings of the Plenum of the Superior Council of Magistracy that he is attending.

ART. 27

(1) The proceedings of the Superior Council of Magistracy divisions shall be lawfully constituted in the presence of the majority of their members, and presided over by the president or, as the case may be, by the vice-president of the Superior Council of Magistracy. In their absence, the division members shall elect a meeting president, based on the vote of the majority of those present.

(2) The magistrate who presides over the proceedings of the division shall sign the decisions and the other documents issued by it.

ART. 28

(1) The Superior Council of Magistracy shall be convened in its plenum and in divisions whenever necessary, following the convening by the president, vice-president, or the majority of the members of the plenum or, as the case may be, of the divisions.

(2) The proceedings of the Plenum of the Superior Council of Magistracy shall take place in the presence of at least 15 members.

(3) The decisions by the Plenum of the Superior Council of Magistracy shall be made based on the vote of the majority of the Council members, and division decisions shall be made based on the vote of the majority of the divisions' members.

ART. 29

(1) The President of the High Court of Cassation and Justice shall participate in the proceedings of the division for judges, the general public prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice in the proceedings of the division for public prosecutors, and the Minister of Justice, in the proceedings of both divisions.

(2) The Minister of Justice, the president of the High Court of Cassation and Justice, and the general public prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice shall not have the right to vote when the divisions act as courts dealing with matters of disciplinary liability.

(3) The representatives of the civil society shall only participate in the proceedings of the Plenum of the Superior Council of Magistracy.

ART. 30

(1) The proceedings of the plenum and divisions of the Superior Council of Magistracy shall be, as a rule, open to the public. The members of the plenum or divisions shall decide, with the majority of votes, on the cases when proceedings are not open.

(2) The agenda of the proceedings of the plenum and divisions of the Superior Council of Magistracy shall be approved by these, following the proposal of the president or, as the case may be, of the vice-president of the Superior Council of Magistracy.

(3) The decisions of the Superior Council of Magistracy, in its plenum and divisions, shall be made by direct and secret ballot.

(4) The agenda and decisions of the Superior Council of Magistracy shall be published in the Official Bulletin of the Superior Council of Magistracy or on the web page of the Superior Council of Magistracy.

CHAPTER IV

Powers of the Superior Council of Magistracy

Section 1

Common provisions

ART. 31

(1) The Superior Council of Magistracy shall defend the magistracy and its members from any act liable to affect the independence or impartiality of the magistrate in administering justice or to create suspicions about these. The Superior Council of Magistracy shall also protect the professional reputation of magistrates.

(2) A magistrate who believes that his professional independence, impartiality, or reputation are being affected in any way whatsoever may address the Superior Council of Magistracy which, as the case may be, may order a check of the aspects notified, the publishing of its results, may inform the competent authority about taking adequate steps, or may order any other proper measure, according to the law.

(3) The Superior Council of Magistracy shall make sure that the law and the criteria of professional competence and ethics are observed in the magistrates' professional career development.

(4) The powers of the Plenum of the Superior Council of Magistracy and its divisions, regarding the career of magistrates, shall be exercised in compliance with the provisions of the Law on the by-law of the magistrate's profession No. 303/2004 and of the Law on judicial organisation No. 304/2004.

ART. 32

(1) In the exercise of its powers, the Superior Council of Magistracy may ask the Ministry of Justice, the courts of law and Public Prosecutor's Offices, the National Institute of Magistracy, other public authorities and institutions, as well as natural or legal entities, for the information or documents it deems necessary.

(2) With a view to being informed on the activity of the courts of law and Public Prosecutor's Offices, the members of the Superior Council of Magistracy shall travel to the headquarters of courts of law and Public Prosecutor's Offices and set up meetings with judges, public prosecutors, and representatives of the civil society.

ART. 33

(1) When the law provides for the certified opinion, the approval or consent of the Superior Council of Magistracy, the point of view issued by this shall be mandatory. If the law stipulates a consultation or opinion of the Superior Council of Magistracy, the point of view issued by this shall not be mandatory.

(2) Unless the law stipulates a deadline for the Superior Council of Magistracy to issue such opinions, these shall be issued within 30 days of the notification. The exceeding, by the Superior Council of Magistracy, of the deadline for issuing the opinion shall not affect the validity of the document.

ART. 34

The Superior Council of Magistracy shall prepare and keep the professional records of magistrates, shall establish a database concerning their activity and keep it updated.

ART. 35

The Superior Council of Magistracy shall coordinate the activity of the National Institute of Magistracy and of the National School for Clerks of the Court.

Section 2

Powers of the Plenum of the Superior Council of Magistracy

ART. 36

(1) The Plenum of the Superior Council of Magistracy shall have the following powers in connection with the magistrates' career:

- a) to propose to the President of Romania the appointment and dismissal of judges and public prosecutors, except for the probationary ones. In the case of the High Court of Cassation and Justice judges in office, the plenum shall also examine the recommendations received from the Managing College of that Court;
- b) to propose to the President of Romania the appointment and dismissal of the president, vice-president and division presidents of the High Court of Cassation and Justice, of the general public prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice and of the general public prosecutor of the National Anti-Corruption Public Prosecutor's Office, as well as of their assistants;
- c) to order the promotion of magistrates to execution positions;
- d) to order the promotion of magistrates to management positions within courts of law and Public Prosecutor's Offices, after consulting the magistrates in such courts of law and Public Prosecutor's Offices;
- e) to appoint probationary judges and probationary public prosecutors, based on the results obtained by them in the National Institute of Magistracy final examination;
- f) to dismiss probationary judges and probationary public prosecutors;
- g) to approve the magistrates' transfer;
- h) to order the magistrates' suspension from their positions;
- i) to appoint retired career magistrates to vacant positions, for limited periods of time;
- j) to propose to the President of Romania the granting of awards for magistrates, under the terms of the law.

ART. 37

(1) The Plenum of the Superior Council of Magistracy shall have the following powers as regards the magistrates' recruitment, assessment, training, and examinations:

- a) based on the proposal by the Scientific Council of the National Institute of Magistracy, to establish the annual number of students of the National Institute of Magistracy, to approve the date and place for the organisation of the annual examination for admission to the National Institute of Magistracy, to establish the topics of the examination for admission to the National Institute of Magistracy and to approve the programme for the justice auditors' professional training, to issue opinions and adopt regulations, in the instances and under the conditions stipulated by the law;
- b) to organise and validate, according to the law and regulations, the magistrates' ability examination and to approve the programme for magistrates' further professional training, based on the proposal by the Scientific Council of the National Institute of Magistracy, as well as the topics of the further professional training activities, organised by courts of appeal and Public Prosecutor's Offices next to these;
- c) to order the organisation of magistrates' promotion examination;
- d) to appoint the commissions for the annual evaluation of magistrates' professional activity, under the terms of the law;
- e) to appoint and dismiss the director and assistant directors of the National Institute of Magistracy, based on the proposal by the Scientific Council of the National Institute of Magistracy, and to designate the judges and public prosecutors taking part in the Scientific Council of the National Institute of Magistracy;

f) based on the proposal by the Scientific Council of the National Institute of Magistracy, to approve the organisational structure, lists of positions and lists of personnel for the National Institute of Magistracy;

g) to appoint the director and assistant directors of the National School for Clerks of the Court, and to designate magistrates as members of the Board of Governors of the school.

(2) The Plenum of the Superior Council of Magistracy shall function as a court competent to solve the complaints lodged by magistrates against the decisions issued by the divisions of the Superior Council of Magistracy, except for those in disciplinary matters.

ART. 38

The Plenum of the Superior Council of Magistracy shall have the following powers as regards the organisation and functioning of the courts of law and Public Prosecutor's Offices:

a) to approve the establishment and termination of the divisions of courts of appeal, of the courts of law within their districts and of the Public Prosecutor's Offices next to these, as well as the establishment of secondary headquarters of courts of law and the districts thereof, under the terms of the law;

b) to issue an opinion on the draft Government decision concerning the list of localities belonging to the districts of courts of first instance;

c) to establish the categories of lawsuits or petitions to be solved in Bucharest municipality only by certain courts of law, in compliance with the material competence stipulated by the law;

d) based on the proposal by the presidents of courts of appeal, tribunals, and specialised courts, as well as the courts of first instance where a vice-president is in office;

e) based on the proposal by the general public prosecutor of the Public Prosecutor's Office next to the High Court of Cassation and Justice, to establish the number of assistant general public prosecutors for Public Prosecutor's Offices next to courts of appeal and of senior public prosecutors of the Public Prosecutor's Offices next to tribunals, as well as the Public Prosecutor's Offices next to courts of first instance, where senior public prosecutors are helped by assistants;

f) to convene the general meetings of the magistrates, under the terms of the law;

g) to approve the steps for increasing or reducing the number of positions for courts of law and Public Prosecutor's Offices;

h) to prepare its own draft budget, with the advisory opinion of the Ministry of Public Finance, and to issue certified opinions for the draft budgets of the courts of law and Public Prosecutor's Offices.

ART. 39

(1) The Plenum of the Superior Council of Magistracy shall adopt the Deontological Code of the magistrate's profession, the Regulations for the organisation and functioning of the Superior Council of Magistracy, the Regulations on the procedure for electing members of the Superior Council of Magistracy, the Standing Orders of courts of law, as well as other regulations and decisions stipulated in the Law on the by-law of the magistrate's profession No. 303/2004 and the Law on judicial organisation No. 304/2004.

(2) The Plenum of the Superior Council of Magistracy shall see that the Deontological Code of the magistrate's profession, and the regulations stipulated under paragraph (1) are published in the Official Gazette of Romania, Part I, and on the web page of the Superior Council of Magistracy.

(3) The Plenum of the Superior Council of Magistracy shall issue an opinion on the draft statutory instruments concerning the activity of the judicial authority.

(4) The Plenum of the Superior Council of Magistracy shall issue opinions on the draft regulations and orders to be approved by the Minister of Justice, in the instances stipulated by the law.

(5) The Plenum of the Superior Council of Magistracy may inform the Minister of Justice about the need to initiate or amend some statutory instruments in the matter of justice.

(6) The Plenum of the Superior Council of Magistracy shall publish the report on the condition of justice on an annual basis, in the Official Gazette of Romania, Part III, and on the web page of the Superior Council of Magistracy.

ART. 40

The Plenum of the Superior Council of Magistracy shall appoint the secretary general and the personnel holding managing positions in the organisation chart of the Superior Council of Magistracy.

Section 3

Powers of the divisions of the Superior Council of Magistracy

ART. 41

The divisions of the Superior Council of Magistracy shall have the following powers regarding magistrates' careers:

- a) to order the temporary transfer and delegation of magistrates, under the terms of the law;
- b) to check that the requirements of the law have been met by the probationary magistrates who have passed the ability examination, by other jurists who have passed the examination for admission to magistracy, by the magistrates registered for the examination for promotion to execution positions and by those who have submitted their candidature for promotion to management positions;
- c) to solve the complaints against marks given by the annual evaluation commissions for magistrates' professional activity, established under the law;
- d) to issue the certified opinion for maintaining magistrates in office or, as the case may be, for reinstating retired magistrates, until they reach the age of 68;
- e) to take steps for solving the notifications received from justiciable persons or other persons regarding the inadequate conduct of magistrates.

ART. 42

(1) The division for judges of the Superior Council of Magistracy shall approve the search, arrest or holding in custody of judges and assistant magistrates.

(2) The division for public prosecutors of the Superior Council of Magistracy shall approve the search, arrest or holding in custody of public prosecutors.

(3) The provisions stipulated under paragraphs (1) and (2) shall not apply in case of flagrant crimes.

ART. 43

The division for judges of the Superior Council of Magistracy shall appoint and promote assistant magistrates of the High Court of Cassation and Justice, under the terms of the law.

Section 4

Powers of the Superior Council of Magistracy in the matter of magistrates' disciplinary liability

ART. 44

(1) The Superior Council of Magistracy, by means of its divisions, shall accomplish the role of a court dealing with matters of magistrates' and public prosecutors' disciplinary liability, for actions stipulated under the Law on the by-law of the magistrate's profession No. 303/2004, as well as for the exercise of their position in bad faith or showing gross negligence, unless the action represents a crime.

(2) The division for judges shall also act as a disciplinary court for the assistant magistrates of the High Court of Cassation and Justice.

ART. 45

(1) A disciplinary action shall be brought by:

- a) the Managing College of the High Court of Cassation and Justice, for the president, vice-president, judges and assistant magistrates of the High Court of Cassation and Justice, as well as for the presidents of the courts of appeal;
- b) the managing colleges of the courts of appeal, for judges within the courts of appeal and other courts of law within their district;
- c) the Managing College of the Public Prosecutor's Office next to the High Court of Cassation and Justice, for the general public prosecutor, senior assistant public prosecutor and his assistants, as well as for the public prosecutors of the Public Prosecutor's Office next to the High Court of Cassation and Justice and the general public prosecutors of the Public Prosecutor's Offices next to the courts of appeal;

d) the Managing College of the National Anti-Corruption Public Prosecutor's Office, for the general public prosecutor, his assistants, and the public prosecutors of the National Anti-Corruption Public Prosecutor's Office;

e) the managing colleges of the Public Prosecutor's Offices next to courts of appeal, for the public prosecutors within the Public Prosecutor's Offices next to the courts of appeal and the Public Prosecutor's Offices within their district.

(2) In the event of bringing a disciplinary action, the proceedings of the managing colleges shall not be attended by the judges, inspector judges or, as the case may be, inspector public prosecutors and the magistrate against whom the disciplinary action is brought.

ART. 46

(1) With a view to bringing a disciplinary action, a prior investigation shall be mandatory, being ordered by the person in charge of that action.

(2) The prior investigation shall be carried out by the judges designated by the Managing College of the High Court of Cassation and Justice, by the inspector judges within the courts of appeal or, as the case may be, by the inspector public prosecutors within the Public Prosecutor's Office next to the High Court of Cassation and Justice, the National Anti-Corruption Public Prosecutor's Office or within the Public Prosecutor's Offices next to the courts of appeal.

(3) The prior investigation shall establish the facts and their consequences, the circumstances under which they were committed, the presence or absence of guilt, and any other conclusive data. Hearing the person in question and checking the defence of the magistrate under investigation shall be mandatory. The refusal of the magistrate under investigation to make declarations or to appear for the investigations shall be stated in a written report, and shall not prevent the investigation from being concluded. The magistrate under investigation shall be entitled to be informed about all the investigation facts and to request evidence in his/her defence.

(4) After receiving the result of the prior investigation, the person in charge of the disciplinary action shall notify the divisions of the Superior Council of Magistracy, in view of judging the disciplinary action.

(5) The disciplinary action shall be brought within 60 days of the date on which the document recording the offence was filed, but not later than a year from the date on which the offence was committed.

ART. 47

The prior investigation in the event of disciplinary offences committed by the judges, inspector judges or inspector public prosecutors stipulated under Article 46 (2) shall be conducted by the judges or, as the case may be, the public prosecutors designated by the managing college of the court of law or Public Prosecutor's Office the judge, inspector judge, or inspector public prosecutor belongs to.

ART. 48

(1) In the disciplinary procedure before the divisions of the Superior Council of Magistracy, the calling of the magistrate against whom the disciplinary action is being brought shall be mandatory. The magistrate may be represented by another magistrate, or may be assisted or represented by an attorney.

(2) The magistrate and, as the case may be, his/her representative or attorney shall be entitled to become acquainted with all the file documents and may wish to produce evidence in his/her defence.

(3) In case the divisions of the Superior Council of Magistracy find that the notification has good grounds, they shall apply one of the disciplinary sanctions stipulated by the law, in relation to the seriousness of the disciplinary offence committed by the magistrate and to his/her personal circumstances.

ART. 49

The divisions of the Superior Council of Magistracy shall solve the disciplinary action by means of a decision including, mainly, the following:

- a) description of the action constituting a disciplinary offence and its legal classification;
- b) lawful grounds for passing the sanction;
- c) reasons for which the defence set out by the magistrate has been removed;
- d) sanction applied and reasons for it;

e) the legal means and the time limit for contesting the judgement;

f) court having competence to judge the legal means.

ART. 50

(1) The decisions of the divisions of the Superior Council of Magistracy based on which the disciplinary action is solved shall be drawn up, by all means, within 20 days of pronouncement, at the latest, and notified in writing to the magistrate and to the person in charge of the disciplinary action. The General Secretariat of the Superior Council of Magistracy shall be in charge of the notification of the decisions.

(2) Against the decisions stipulated under paragraph (1) may be lodged an appeal within 15 days of notification. The competent court for solving the appeal shall be the Panel of 9 judges within the High Court of Cassation and Justice. The members of the Superior Council of Magistracy who are eligible to vote and the magistrate being given a disciplinary sanction shall not be included in the Panel of 9 judges.

(3) The appeal shall suspend the enforcement of the decision by the division of the Superior Council of Magistracy for applying the disciplinary sanction.

(4) The decision under which is given the solution for the appeal stipulated under paragraph (2) shall be irrevocable.

ART. 51

If the exclusion of a judge or public prosecutor from magistracy has been ordered, the irrevocable decision shall be sent to the President of Romania, so he can issue the dismissal decree.

CHAPTER V

By-law of the members of the Superior Council of Magistracy

ART. 52

(1) The term of office for the elected members of the Superior Council of Magistracy shall be 6 years. The members of the Superior Council of Magistracy are deemed to be dignitaries.

(2) The capacity as representative of the civil society elected as member of the Superior Council of Magistracy shall be incompatible with the capacity as member of the Parliament, elected representative, civil servant, magistrate in office, notary public, lawyer, legal adviser or judicial executor in office.

(3) The capacity as member of the Superior Council of Magistracy shall cease, as the case may be, on the expiry of the term of office, by resignation, dismissal, failure to solve the status of incompatibility within 15 days of the date of election, or in the event of that person losing the position having caused his/her designation as member of the Superior Council of Magistracy, as well as by death.

(4) The capacity as member of the Superior Council of Magistracy shall be rightfully suspended if his/her suspension from the magistrate's position has taken place, according to the law.

ART. 53

(1) The dismissal from the position of elected member of the Superior Council of Magistracy shall be proposed by the president or vice-president of the Council, if the person in question no longer meets the requirements of the law for being an elected member of the Superior Council of Magistracy or if he/she has failed to fulfil his/her duties within the Superior Council of Magistracy.

(2) The Plenum of the Superior Council of Magistracy, following the notification of the Council president or, as the case may be, of the vice-president, may order the dismissal from the position of elected member of the Superior Council of Magistracy.

(3) A disciplinary sanction ordered against a magistrate elected as member of the Superior Council of Magistracy shall entail the rightful loss of the capacity as member of the Superior Council of Magistracy.

ART. 54

If one's capacity as member of the Superior Council of Magistracy should cease before the expiry of his/her term of office, the Plenum of the Superior Council of Magistracy shall propose to the Senate to validate the magistrate having obtained the second highest number of votes in the elections organised under Article 9 (3) or Article 14 or, as the case may be, to select one of the candidates stipulated under Article 20. The term of office for the new member shall last until the expiry of the term of office of the

person instead of whom he/she has been elected.

ART. 55

(1) During the term of office, the president and the vice-president of the Superior Council of Magistracy shall receive a monthly emolument equal to that of the president and vice-president of the High Court of Cassation and Justice, respectively.

(2) The members of the Superior Council of Magistracy, except for those stipulated under paragraphs (1) and (2), shall receive, for their activity, the monthly emolument stipulated under Annex No. 2 to Government Emergency Ordinance No. 177/2002 on magistrates' wages and other rights, approved by Law No. 347/2003.

ART. 56

(1) Magistrates elected members of the Superior Council of Magistracy shall not be promoted during their term of office.

(2) Magistrates elected members of the Superior Council of Magistracy shall lose that capacity in the event of their permanent transfer or temporary transfer to positions outside the courts of law or, as the case may be, Public Prosecutor's Offices.

(3) No spouses, relatives or in-laws up to the fourth level, inclusively, may be members of the Superior Council of Magistracy during the same term of office.

CHAPTER VI

The Superior Council of Magistracy's own apparatus

ART. 57

The Superior Council of Magistracy shall have its own technical-administrative apparatus.

ART. 58

(1) The current and capital expenditure of the Superior Council of Magistracy shall be funded from the state budget.

(2) The budgets of the National Institute of Magistracy and of the National School for Court Clerks shall be comprised distinctively in the budget of the Superior Council of Magistracy.

(3) The president of the Superior Council of Magistracy shall act as a main budget holder, and this capacity may be delegated to the secretary general.

(4) The budget for the courts of appeal, tribunals, specialised courts and courts of first instance shall be managed by the Ministry of Justice, with the Minister of Justice acting as a main budget holder.

ART. 59

(1) The Superior Council of Magistracy's own apparatus shall be run by a secretary-general, appointed for a 4-year term of office, with provisions for being re-invested.

(2) The secretary general shall be appointed by the Plenum of the Superior Council of Magistracy from amongst the magistrates who have an effective length of service of at least 10 years in magistracy and meet the other requirements of the law for the promotion to management positions.

(3) The secretary general of the Superior Council of Magistracy may be helped by an assistant secretary-general, appointed according to the terms stipulated under paragraphs (1) and (2).

(4) The secretary general of the Superior Council of Magistracy shall receive a monthly emolument equal to that of a secretary of state, and his assistant, a monthly emolument equal to that of an under-secretary of state.

ART. 60

The Superior Council of Magistracy's own apparatus shall include the judicial inspection. The general inspectors within the judicial inspection shall be appointed by the Plenum of the Superior Council of Magistracy from amongst the persons who meet the requirements stipulated under Article 59 (2).

ART. 61

(1) The Supreme Council of Magistracy's own apparatus shall be organised per divisions, services, and offices.

(2) The organisational structure of the Superior Council of Magistracy's own apparatus shall be

established in a decision of the plenum, within the budget limits.

ART. 62

(1) The personnel in the Superior Council of Magistracy's own apparatus shall be appointed following an examination or contest.

(2) The management apparatus in the Superior Council of Magistracy's own apparatus shall be appointed by the plenum, and the execution personnel, by the secretary-general.

(3) The specialised legal positions within the Superior Council of Magistracy's own apparatus may also be held by temporarily transferred judges and public prosecutors, under the terms of the law.

(4) The civil servants and contract-employed personnel within the Superior Council of Magistracy's own apparatus shall be paid according to the provisions of the law applicable to the same categories of personnel within the Parliament's apparatus.

(5) The lists of positions and of personnel shall be approved by the Plenum of the Superior Council of Magistracy, within the budget limits.

ART. 63

The powers of the secretary-general and of the apparatus within the Superior Council of Magistracy's own apparatus, as well as the organisation and functioning of departments within the Superior Council of Magistracy's own apparatus shall be established by the Regulations of organisation and functioning of the Superior Council of Magistracy.

CHAPTER VII

Transitory and final provisions

ART. 64

The number of positions necessary for the functioning of the apparatus of the Superior Council of Magistracy shall be established by decision of the plenum, within the budget limits.

ART. 65

The new Superior Council of Magistracy shall commence its activity within 90 days of the date of the present law coming into effect.

ART. 66

The paperwork under way for solution regarding the powers transferred to the competence of the Superior Council of Magistracy and the professional records of the magistrates in office on the date of the present law coming into effect shall be sent to the new Superior Council of Magistracy, as a mandatory rule, within 30 days of its establishment.

ART. 67

(1) Up to the establishment of the new Superior Council of Magistracy, the council in office shall continue its activity under the Constitution of Romania, republished.

(2) The Superior Council of Magistracy in office shall take steps for organising the election of the members of the first Superior Council of Magistracy, established under the present law, within the time limit laid down in Article 65.

ART. 68

The personnel within the Ministry of Justice and the Public Prosecutor's Office next to the High Court of Cassation and Justice, taken over in the technical-administrative apparatus of the Superior Council of Magistracy shall be deemed transferred.

ART. 69

Within 60 days of the present law being published, the Government shall provide adequate headquarters for the Superior Council of Magistracy.

ART. 70

On the date of the present law coming into effect, the denomination Centre for the Training and Improvement of the Clerks of the Court and Other Auxiliary Specialised Personnel, mentioned in the statutory instruments in force, shall be replaced by that of National School for Clerks of the Court.

ART. 71

(1) The security of the headquarters of the Superior Council of Magistracy, of its assets and valuables, the monitoring of access and maintenance of the internal order needed for a normal activity in the headquarters shall be provided by the Romanian Gendarmerie, free of charge.

(2) The magistrates elected as members of the Superior Council of Magistracy shall benefit from protection, according to the law, under the conditions stipulated in the protocol concluded between the president of the Superior Council of Magistracy and the Minister of Administration and of the Interior.

ART. 72

(1) The present law shall come into effect 90 days after the date of its publishing in the Official Gazette of Romania, Part I, except for Article 69.

(2) On the date of the present law coming into effect, the provisions of Title V "Superior Council of Magistracy" Articles 86 - 90 of the Law for judicial organisation No. 92/1992, republished in the Official Gazette of Romania, Part I, No. 259 of 30 September 1997, with subsequent amendments and additions, as well as any other provisions to the contrary shall be repealed.
