ROMANIAN JUDGES` FORUM ASSOCIATION

Regarding cases no. 2978AI/2017, no. 2978AI/2017, no. 2955AI/2017, no. 2962AI/2017,
no.2964AI/2017, no.2972AI/2017 and no.2965AI/2017

23 January 2018

AMICUS CURIAE BRIEF
FOR THE CONSTITUTIONAL COURT OF ROMANIA

The Romanian Judges' Forum Association hereby requests the approval to submit the following arguments in connection to the constitutional objections on the provisions of the Law regarding the amendment of Law no. 303/2004, the Law regarding the amendment of Law no. 304/2004 and the Law regarding the amendment of Law no. 317/2004, raised by the High Court of Cassation and Justice, the Parliamentary group of the National Liberal Party of the Romanian Chamber of Deputies (52 deputies) and the Parliamentary group of the National Liberal Party of the Romanian Senate (29 senators).

I. Preamble

The **undersigned** Romanian Judges' Forum Association**, an independent, non-profit, non-governmental and apolitical association of Romanian judges, having legal personality established by the Slatina District Court's decision no. 671/08.06.2007, is aware of the fact that, from a procedural perspective, it does not have the status of intervenient (party) in these constitutional procedures.**

Therefore, we submit the present *amicus curiae,* a legal institution that distinguishes itself from an intervention, recognised as such by the *common law* system Courts, including the European Court of Human Rights. The *amicus curiae* allows persons who are qualified in a particular field to participate in the procedure, their observations being meant to support the correct solution in the case.

Throughout the Constitutional Court's jurisprudence, the *amicus curiae* briefs were received and examined together with the requests of the parties, for example:

Decision no. 780 of 17 November 2015 on the constitutional challenge of the provisions of Article 1 of Law no. 41/1994 regarding the organisation and operation of the Romanian Radio-Broadcasting Corporation and of the Romanian Television Corporation, published in the Official Gazette of Romania, Part I, no. 108 of 11 February 2016 – *amicus curiae by the Romanian Transparency Association*; Decision no. 308 of 28 March 2012 on the constitutional challenge of the provisions of Article 1, letter g) of the Lustration Law regarding the temporary limitation of access to certain public positions and titles for people who were part of the power structures and the repressive apparatus of the communist regime during the 6 March 1945-22 December 1989 period, published in the Official Gazette of Romania, Part I, no. 309 of 9 May 2012 - *amicus curiae by the Romanian Ombudsman and the Association of Romanian Prosecutors' Board of Directors,* Decision no. 887 of 15 December 2015 on the constitutional challenge of the provisions of Article 38 point 2, Article 38 point 3 para. (1), (3) and (5), Article 38 point 9, Article 41 point 1 and Article 41 point 2 of the Urgent Government Ordinance no. 77/2014 regarding national procedures in the field of state aid, as well as for the amendment of the Competition Law no. 21/1996, as well as of the provisions of Article II of the Law no. 20/2015 regarding the approval of this Urgent Government Ordinance, published in the Official Gazette of Romania, Part I, no. 191 of 15 March 2016 - *amicus curiae by the European Commission;* Decision no. 637 of 13 October 2015 on the constitutional challenge of the provisions of Article 26 para. (3) of the Law no. 360/2002 regarding the status of the policeman, published in the Official Gazette of Romania, Part I, no. 906 of 8 December 2015 - *amicus curiae by the Romanian Police Officers Union "The diamond", Emil Florin Dinca, Armin Marian Gherman and the National Union of Police and Customs Officers Pro Lex*; Decision no. 56 of 5 February 2014 on the constitutional challenge of the provisions of the Law regarding the modification and the amendment of the Government Ordinance no. 26/2000 on associations and foundations, published in the Official Gazette of Romania, Part I, no. 179 of 13 March 2014 - *amicus curiae by the Association for the Defense of Human Rights in Romania – Helsinki Committee;* Decision no. 75 of 26 February 2015 on the constitutional challenge of the provisions of Article 19 para. (1) and (3) of the Law regarding political parties no. 14/2003, published in the Official Gazette of Romania, Part I, no. 265 of 21 April 2015 - *amicus curiae by the Association for Pertinent Minds AMPER from Târgu Mureș*; Decision no. 462 of 17 september 2014 on the the constitutional challenge of the provisions of Article 12 para. (2), Article 83 para. (3) and Article 486 para. (3) of the Civil Procedure Code, published in the Official Gazette of Romania, Part I, no. 775 of 24 October 2014 - *amicus curiae by the National Association of Romanian Bars*; Decision no. 283 of 21 May 2014 on the constitutional objection on the provisions of Article 39 para. (6), Article 42 para. (1) and (10), Article 43 para. (2), Article 48 para. (1) and (8), Article 51 para. (6), Article 57 para. (6), Article 59 para. (6), Article 62 para. (2), Article 75 para. (4), Article 77 para. (4), Article 111 para. (2) and Article 160 para. (5) of the Law regarding the procedures of insolvency prevention and of insolvency, as well as the provision of the law as a whole, published in the Official Gazette of Romania, Part I, no. 454 of 20 June 2014 - *amicus curiae by the Romanian National Association of Practitioners in Insolvency*; Decision no. 447 of 29 October 2013 on the the constitutional challenge of the provisions of the Urgent

Government Ordinance no. 91/2013 regarding the procedures of insolvency prevention and of insolvency, published in the Official Gazette of Romania, Part I, no. 674 of 1 November 2013 - *amicus curiae by the Association for the Defense of Human Rights in Romania – Helsinki Committee*).

II. Opinions consistently expressed by the Venice Commission on similar or close changes operated by the legislative power in other Member States of the Council of Europe

Founded in 1990, the Venice Commission represents an advisory body of the Council of Europe on constitutional matters. The Commission is internationally recognised as an instance of independent reflection. The Venice Commission equally contributes to the dissemination and development of the common constitutional heritage, playing an unique role in providing prompt constitutional solutions to transition countries, pursuant to standards and best practices in the field. The Venice Commission aims to disseminate and to develop the constitutional justice, particulary through the exchange of information.

1. Regarding the possibility of suspending judges and appointing them as ministers of justice or in other public positions

"Judges can not be members of political parties or participate in political activities."

CDL-AD (2005)003, Joint Opinion on a proposal for a Constitutional Law on changes and amendments to the Constitution of Georgia by the Venice Commission and OSCE/ODIHR, par.104[1]

"Moreover, judges should not put themselves into a position where their independence or impartiality may be questioned. This justifies national rules on the incompatibility of judicial office with other functions and is also a reason why many states restrict political activities of judges."

CDL-AD (2010)004, Report on the Independence of the Judicial System, Part I: The independence of judges, par.62[2]

"[...] A judge should first resign before being able to run for political office, because if a judge is a candidate and fails to be elected, he or she is nonetheless identified with a political tendency to the detriment of judicial independence."

CDL-AD (2008)039, Opinion on the Draft Amendments to the Constitutional Law on the Status of Judges of Kyrgyzstan, par.45[3]

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[1] See web page http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)003-e [last visited on 3 January 2018].
[2] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)004-e [last visited on 3 January 2018].
[3] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)039-e [last visited on 3 January 2018].

2. Regarding the professional evaluation of judges

"[...] This provision looks problematic as it defines the President of the Court as a central figure in the process of the evaluation of judges. This may not only lead to a conflict of interest, but also result in malpractice, limiting the independence of individual judges."

CDL-AD (2013)015, Opinion on the Draft Law on the Courts of Bosnia and Herzegovina, par.66[4]

"Regular evaluations of the performances of a judge are important instruments for the judge to improve his/her work and can also serve as a basis for promotion. It is important that the evaluation is primarily qualitative and focuses on the professional skills, personal competence and social competence of the judge. There should not be any evaluation on the basis of the content of the decisions and verdicts, and in particular, quantitative criteria such as the number of reversals and acquittals should be avoided as standard basis for evaluation."

CDL-AD (2011)012, Joint Opinion on the Constitutional Law on the Judicial System and Status of Judges of Kazakhstan adopted by the Venice Commission and OSCE/Office for Democratic Institutions and Human Rights, par.55[5]

"It is important that the evaluation system be neither used nor seen to be used as a mechanism to subordinate or influence judges."

CDL-AD (2013)015, Opinion on the Draft Law on the Courts of Bosnia and Herzegovina, par.68[6]

3. Regarding the judicial "immunity"

"[...] Magistrates [...] should not benefit from a general immunity [...]. According to general standards they indeed needed protection from civil suits for actions done in good faith in the course of their functions. They should not, however, benefit from a general immunity which protected them against prosecution for criminal acts committed by them for which they should be answerable before the courts. [...]"

CDL-AD (2003)012, Memorandum: Reform of the Judicial System in Bulgaria, par.15. See also CDL-AD (2003)016, Opinion on the Constitutional Amendments reforming the Judicial System in Bulgaria, par.8[7]

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[4] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)015-e [last visited on 3 January 2018].
[5] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)012-rus [last visited on 3 January 2018].
[6] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)015-e [last visited on 3 January 2018].
[7] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2003)012-e [last visited on 3 January 2018].

”It is reasonable to grant immunity from civil suits to a judge acting in good faith in the performance of his or her duty. But, it should not be extended to a corrupt or fraudulent act carried out by a judge.”

CDL-AD (2008)039, Opinion on the Draft Amendments to the Constitutional Law on the Status of Judges of Kyrgyzstan, par.24[8]

”In the Commission’s view, there is no justification, in principle, for treating judges differently in matters of discipline and removal according to whether they are members of superior or inferior courts. All judges should enjoy equal guarantees of independence and equal immunities in the exercise of their judicial functions. [...]“

CDL (1995)074rev, Opinion on the Albanian law on the organisation of the judiciary, par.2[9]

4. Regarding the budget of the judiciary

”[...] In order to guarantee judicial independence, it is paramount that the courts receive sufficient funds to live up to their obligations to ensure fair trials in accordance with international standards. [...] In order to ensure that the funds allocated to the judiciary are sufficient, *it would be advisable to ensure that the views of the judiciary are taken into consideration in budgetary procedures*. The High Judicial Council could represent the judiciary in this regard and have some influence on budgetary decisions regarding the needs of the judiciary. [...]”

CDL-AD (2011)012, Joint Opinion on the Constitutional Law on the Judicial System and Status of Judges of Kazakhstan adopted by the Venice Commission and OSCE/Office for Democratic Institutions and Human Rights, par.24,25[10]

„[Unlike the principle that the judiciary has its own budget, the practice according to which the Ministry of Justice in fact controls every detail of the courts’ operational budgets] contains obvious dangers of undue interference in the independent exercise of their functions”

CDL(1995)074rev, Opinion on the Albanian law on the organisation of the judiciary, par.3[11]

5. Regarding the election of the president of the Superior Council of Magistracy and the further maintaining of the magistrate status for prosecutors (the situation in Romania)

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[8] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)039-e [last visited on 3 January 2018].

[9] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL(1995)074rev-e [last visited on 3 January 2018].

[10] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)012-rus [last visited on 3 January 2018].

[11] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL(1995)074rev-e [last visited on 3 January 2018].

"190. Until present time, each one of the 14 judges and prosecutors that were elected was eligible as president of the Council. Due to the proposed amendment to article 133 (3) from the Constitution, the president of this organism has to be elected among these 9 judges (...) According to the opinion of the Venice Commission, this proposal represents a step backwards. If it is needed to exist only one Council, whose mission is to represent the two branches of the magistracy, it would not be right that the president could not be possible to be elected among the members of the two branches. Likewise, it is difficult to understand the reason of this modification, because the prosecutor can not be elected as president of CSM without a substantial support from judges. Another possibility can be to create two different councils.

191. The Commission reminds that in Romania took place a debate regarding weather the prosecutor is a magistrate. At the present moment, adopting such a modification could undermine the fragile independence of the prosecutors. This modification could mean that it is wanted a decrease of the prosecutors` independence.

196 (...) The Venice Commission considers that it is difficult to understand why the other members of the Superior Council of Magistracy (the members of the civil society) should not participate in the sections to discuss the appointment matter.

CDL-AD (2014)/010, The Notice no. 731/2013 due to the legislative proposal to modify Romania`s Constitution, 24th of March 2014, par. 190-191, 196 ind 11.

6. Regarding to the material liability of magistrates. The exclusion of the simple fault.

"77. A) Liability of magistrates is permitted, indeed, but only when there exists a guilty mental component (intention or serious negligence) of the judge.

B) The responsibility of judges, as a consequence of a CEDO decision which has a negative effect, should be based on the ascertainment of a national court regarding the intention or the serious negligence of the judge. The CEDO decision should not be used as a unique base for holding the judge to account.

C) Additionally, judge's accountability, initiated as a consequence of an amicable settlement in a CEDO case or as a consequence to a unilateral statement that recognises the infringement of the Convention, should be based on the decision of a national court that settles on the intention or serious negligence of the judge.

D) Generally, judges should not be held liable using the action for damages when they exercise the judiciary function according to the profession standards settled by law (functional immunity).

E) The fact that an ECtHR decision settled on an infringement of the Convention does not necessarily mean that the national judge can be criticized for the interpretation and application of law (the infringement can be based on the systemic deficiency of the member states; for e.g. the reasonable period of time, cases in which the judge cannot be individually responsible).

F) Also, applying ECHR as a live instrument, due to a response to the evolution of the society, could create a difficulty to predict CEDO decision by the national courts.

78. As a result of the above, the procedure of the action for damages against the judge can lead to arbitrary results in those cases in which the responsibility of the national judges is nothing more than a consequence of a CEDO decision (or of an amicable settlement or an individual statement) that settles on an infringement of the Convention.

79. Additionally, holding the judges to account for the application of the Convention, without settling on the individual liability, can have an impact on their independence, which means the professional liberty to interpret the law, to establish the facts and to appreciate on the evidence, in every single case. Wrong decisions should be contested using the legal remedies, and not by applying the individual liability of judges, as long as a miscarriage of justice is not a result of the bad intention or of the serious negligence of the judge.

80. Judges` liability can be in accordance to their independence, only if it is based on the law. However, the relevant provisions should not interfere with the principle of judges` independence.

CDL-AD (2016)015 – e, Republic of Moldova – Amicus curiae opinion for the Constitutional Court regarding the action for damages used by the state against judges (article 27 of the Law regarding the governmental agent no. 151 from 31 July 2015), Venice, 10 -11 June 2016, par. 77-80/12.

7. Regarding the magistrates` freedom of speech

83. When The European Court of Human Rights evaluates the proportionality of an interference on the judge`s freedom of speech, it takes into account all the circumstances of the case, including the function, the content of the statement, the context, the nature or the gravity of the applied sanctions.

84. Regarding the participation of judges to public debates, the national politic circumstances on the debate are also an important element, which has to be taken into consideration to establish the limits of the freedom of speech. Otherwise, the historical, political and legal context of the debate – may it be that the debate targets or not on an issue that is of general interest, may it be that the contested statements were released or not during an election campaign – is extremely important. A democratic crises or reversal of the constitutional order has to be considered decisive in the concrete context of a case and essential to establish the field of application on judges` fundamental liberties.

CDL-AD (2015) 018, Notice no. 806/2015 – Report regarding judges` freedom of speech, Venice, 9-20 June, par. 83, 84/12.

III. General aspects

a. The adoption of the present laws infringe article 148 paragraph 4 of the Constitution

The last MCV Report recommends expressly, in Romania`s case, that "in order to continuously improve the transparency and predictability of the

legislative proceedings, as well as to consolidate the national guarantees in matter of irreversibility", the Government and Parliament (...) should ensure total transparency and take into account the opinions of the relevant authorities and interested parties in the decisional process and in the legislative activity regarding the Criminal Code and Criminal Proceedings Code, the anticorruption laws, the laws regarding integrity (incompatibilities, conflict of interests, illicit wealth), **the laws regarding the judiciary**, as well as the Civil Code and Civil Proceedings Code.

Under the same aspect, The European Commission noted that ignoring the notices of the Superior Council of Magistracy and the firm position of the entire magistracy rises questions regarding the necessity for the European Commission to re-examine all the progresses made in the field of the judiciary`s independence.

The Decision no.2 from 11 January 2012 issued by the Constitutional Court establishes that, because it is a European Union member state, the Romanian state has the obligation to apply this mechanism and to follow the established recommendations in this context, due to article 148 paragraph 4 of the Constitution, which provides that "The Parliament, Romania`s President, the Government and the judiciary authority guarantee fulfilment of the resulted obligations from the accession treaty and of paragraph 2. "

The parliamentary debate regarding this law project, assumed by 10 deputies and senators, by misappropriation of an assumed project made in Power Point by the Minister of Justice on 23 August 2017, ignored the point of view of the majority of the magistracy and the consecutive negative notices issued by the Plenary of the Superior Council of Magistracy, and as a consequence, it is from the beginning inconsistent to the fundamental law. Also, the legal provisions which claim the notice of the Superior Council of Magistracy must be interpreted in the spirit of loyalty towards the fundamental law and the obligation of public authorities to apply MCV and the recommendations established in this framework.

In October 2017, approximately 4000 Romanian judges and prosecutors, meaning more than half of the total number, itself *The Memorial to withdraw the project for the modification of the judiciary laws* addressed to Romania`s Government, and in November 2017, more than 90% of the general assembly of the courts and public prosecutor offices from Romania have opposed to these present projects which were in the parliamentary debate.

Thus, more than 6000 Romanian judges and prosecutors did not accept this law project and their will was not taken into consideration, being avoided any form of dialog with them. Also, the silent protests of magistrates starting by 18 December 2017, in front of the courts, are notorious and presented by the mass media from all over the world.

The law projects have been severely criticized by tens of occidental embassies in Romania, by the United States of America Department of State, by many nongovernmental organisations from Romania and other states, by the entire civil society and hundred thousand simple citizens, during protests.

Although the law includes proposals of the Superior Council of Magistracy, of the magistrates and of the professional associations, made over time, these represent a simple correction of the current system, and the unserious preparation of a real "judicial experiment", in the absence of any impact studies and prognoses, could determine consequences that are very hard or impossible to be remediated. The legislative initiative includes many modifications which will influence the career and professional activity of the magistrates and will produce imbalances of the judiciary.

The participation to the joint debates of the Special Commission of the Deputies Chamber and Senate was realised only by special invitation, issued by Mr. Florin Iordache, the president of the Commission, the selection was not made by request, but discretionary, at the will of the coordinator of the Commission.

Thus, adopting these law projects flagrantly infringe article 148 paragraph 4 of the Constitution.

b. Also, adopting the present laws infringes articles 61 and 75 of Romania`s Constitution, with the violation of the first Chamber Competence – that did not debate the text and the solutions which were adopted by the Senate, referring to the modifications adopted after the vote of the Plenary of the Deputies Chamber and which were amendments discussed in the first Chamber, as well as the constitutional principles due to which a law cannot be adopted by a single Chamber, as the law is, with the specific contribution of every Chamber, the result of the whole Parliament. In this regard, it is relevant the decision issued by the Constitutional Court no. 1029 from 23 October 2008, published in the Official Journal of Romania, Part I, no. 720 from 23 October 2008.

The Constitutional Court stated – Decision no. 472 from 22 April 2008, published in the Official Journal of Romania, Part I, no. 336 from 30 April 2008 – that: "The parliamentary debate of a law project or of a legislative proposal cannot ignore its evaluation in the Plenary of the two Chambers of our bicameral Parliament. Therefore, the changes to the law project made by the decisional Chamber adopted by the firs Chamber must relate to the matter which was held into account by the initiator and to the form in which was regulated by the first Chamber. Otherwise, it would lead to the situation in which a single Chamber, the decisional one, would legislate, aspect contrary to the principle of bicameralism (...) and to the competences established for the two Chambers, in accordance to article 75 par. 1 of the Constitution.

By establishing **the limits to the bicameralism principle**, thorough the Decision no. 1 from 11 January 2012, published in the Official Journal of Romania, Part I, nr. 53 from 23 January 2012, the Constitutional Court noted that applying the principle cannot lead to an effect as " to deny the role of reflection Chamber of the first Chamber (...) meaning that this would be the Chamber that would definitely establish the content of the law project (and practically, the normative content of the future law), which would lead to the fact that the second Chamber, the decisional one, would not have the possibility to modify or to complete the law adopted by the reflection Chamber, not only the possibility to approve it or to reject it". Under these, "could not be denied that the bicameralism principle implies both - the joint work of the two Chambers in the legislative process, and their obligation to express through vote their position on

adopting the law; thus, by depriving the decisional Chamber of its competence to modify or to complete the law as it had been adopted by the reflection Chamber, would equate to the limitation of its constitutional role and to grant a preponderant role for the reflection Chamber in relation to the decisional one in the legislative process.

In this situation, the reflection Chamber would eliminate the possibility for the decisional Chamber to cooperate in the legislative process, the last one having only the possibility to express through vote its position regarding the law project already adopts by the reflection Chamber, which would be in-conceivable. The Constitutional Court noted, by issuing the Decision no. 624 from 26 October 2016, published in the Official Journal of Romania, Part I, no. 937 from 22 November 2016, that article 75 paragraph 3 of the Constitution, by using the phrase “definitely decides” regarding the decisional Chamber, does not exclude, but on the contrary, implies that the law project adopted by the first Chamber should be debated in the decisional Chamber, where it can suffer changes. The Court noted that, in this case, the decisional Chamber cannot substantially change the object and the configuration of the law project, with the consequence to change the law project scope of the initiator.

The Decision no. 62 from 7 February 2017, published in the Official Journal of Romania, Part I, no. 161 from 3 March 2017, paragraph 32, issued by the Constitutional Court, noted that, also, by starting from the premise that the law is, with the specific contribution of each Chamber, the result of the entire Parliament, it implies that the legislative authority has to respect the constitutional principles which provide that a law cannot be adopted by only one Chamber. But, by analysing of the provisions subject to the constitutional control, the Court stated that the decisions adopted by the Chamber of Deputies have not been the subject of the legislative initiative, neither debated by the Senate. As a conclusion, the Chamber of Deputies, by adopting the law on changing the Emergency Ordinance no. 50/2010 regarding the credit contracts for consumers, has eliminated the debate and the approval of the first Chamber on the changes regarding the essential aspects in the structure and philosophy of the law, aspect contrary to article 61 of the Constitution. The Court also finds that the law adopted by the Chamber of Deputies departs from the purpose envisaged by its initiators. "

In the absence of an explicit consecration of the principle of bicameralism in the body of the Fundamental Law and summarizing the findings of the principle contained in the Constitutional Court's jurisprudence in the matter, it can be said that this principle is characterized by several immutable elements, according to which one can decide its observance. Thus, it is necessary to consider: the original purpose of the law, in the sense of the political will of the authors of the legislative proposal or philosophy, the original conception of the normative act; if there are major, substantial legal differences between the forms adopted by the two Chambers of Parliament and, respectively, if there is a significantly different configuration between the forms adopted by the two Chambers of Parliament.

c. At the same time, the present laws violate the provisions of art. 79 par. 1 of the Constitution, stipulating: The Legislative Council is a specialized consultative body of the Parliament, which approves the draft normative acts for the systematization, unification and coordination of the entire legislation. He keeps official records of

Romania's legislation. The Legislative Council was asked for an opinion on draft law registered in the Chamber of Deputies, which essentially differs from the forms adopted by the plenum of the two chambers.

Therefore, the Legislative Council could not fulfill its constitutional function of approving the draft normative acts for the purpose of systematization, unification and coordination of the entire legislation.

d. Also, in the following arguments, we formulate punctual observations that develop aspects of unconstitutionality for a considerable number of articles of the three laws.

Arguments regarding the unconstitutionality of certain specific provisions of the Law for amending and changing the Law no.303 / 2004

1. In Article 1, after paragraph (1), a new paragraph (2) shall be inserted, with the following wording:
"(2) The career of the judge is separate from the career of the prosecutor, the judges being unable to interfere in the career of the prosecutors and the prosecutors in the judges'."

This newly introduced provision violates art.133 para.(1) and art.134 para.(4) of the Constitution.

The Constitutional Court stated, by the Decision no.331 of 3 April 2007 on the objection of unconstitutionality of the provisions of art. 29 para. (7), art.35 referring to art.27 paragraph (3) and art.35 lit.f) of the Law no. 317/2004 on the Superior Council of Magistracy and Article 52 paragraph (1) of the Law no.303 / 2004 on the statute of judges and prosecutors, that the provisions of art.35 referring to the provisions of art.27 par.) of the Law no.317/2004 give expression to the attributions of the Superior Council of Magistracy, as they were regulated by art.134 of the Basic Law.

The Constitution expressly provides only for the attribution regarding the fulfillment of the role of a court in the field of disciplinary liability of judges and prosecutors that the Council performs it through its sections (Article 134, paragraph 2). Such an explanation is missing from the article art. 134 par. (1) and (4) of the Constitution. These provisions state the role of the Superior Council of Magistracy as a whole, respectively in its Plenum, regarding the adoption of judgments in general (both for the proposal to the President of Romania for the appointment of judges and prosecutors in office, except for the trainees, according to the law, as well as for other

attributions established by its organic law, in fulfilling its role as guarantor of the independence of justice).

The separation of decision-making powers regarding magistrates' career should not affect the role of the Superior Council of Magistracy, which, in its plenary composition, is the guarantor of the independence of justice according to art. 133 par. (1) of the Romanian Constitution. Therefore, all the tasks of the SCM that concern the general and common aspects of the magistrates 'career and the organization of the courts and prosecutors' offices rest exclusively on the competence of the SCM Plenary

The fact that there are separate sections with regard to judges or prosecutors does not imply that the judgments given by these sections are final or that the complaints against them are solved by each of the sections concerned. The constitutional architecture of the Superior Council of Magistracy, a collegial body, involves the attack on the Plenum of the decisions of each section (except for the decisions of the disciplinary sections, also following the exception enshrined in a constitutional text).

The only way to perform the strict separation of judges and prosecutors' careers without the risk of unconstitutional declaration of such a change is a constitutional review. In France or Belgium, traditional constitutional models for Romania, the presidents of the supreme courts have recently pronounced for the unity of magistrates within the same council.[12]

This newly introduced provision violates art.1 para.(5) of the Constitution.

The phrase "the judges can not interfere in the career of prosecutors, nor the prosecutors in the judges" is not foreseeable, and it is not clear and precise what is the subject of the regulation, any interference (in the sense of interference) in the career or the activity of a prosecutor or judge constituting a disciplinary offense. The formulation of the normative act with sufficient precision allows the persons concerned to reasonably foresee, in the circumstances of the case, the consequences which may result from a particular act. Of course, it is difficult to adopt laws drafted with absolute precision but also with some flexibility, but too general and sometimes even elliptical must not affect the foreseeability of the law (see, to that effect, the judgment of the European Court of Human Rights of 25 November 1996 in the Wingrove case v. the United Kingdom, paragraph 40, judgment of 4 May 2000 in Rotaru v. Romania, paragraph 55, or Case C-9/06 Leempoel & SA ED, Who Revue Against Belgium, par.59).

Pursuant to Article 125 (2) of the Constitution, proposals for appointment, as well as the promotion, transfer and sanctioning of judges are within the competence of the

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[12] A se vedea, pentru detalii, Revista Forumul Judecătorilor nr.1/2017, pg.15-16 - http://www.forumuljudecatorilor.ro/index.php/archives/2706 [consultată ultima dată la 20.11.2017], precum şi pagina web https://www.courdecassation.fr/venements_23/derniers_evenements_6101/magistrature_bertrand_37040.html [consultată ultima dată la 20.11.2017].

Superior Council of Magistracy, under the terms of its organic law, according to Article 133 (2) of the Constitution, the Council The Superior Council of Magistracy is made up of 19 members, out of which: 14 are elected in the General Assemblies of Magistrates and validated by the Senate; they are part of two sections, one for judges and one for prosecutors; the first section consists of 9 judges, and the second of 5 prosecutors, and on the basis of art. 133 paragraph (3) of the Constitution, the President of the Superior Council of Magistracy is elected for a one-year term, which can not be renewed, among the magistrates referred to in paragraph 2 (a). It can be observed that, according to the constitutional provisions above mentioned in the SCM, inevitably, judges interfere with prosecutors' career and vice versa.

14. In Article 15, paragraphs (1) to (7) shall be amended and shall have the following content:

(2) The Superior Council of Magistracy through the corresponding sections shall determine each year the number of students, separately, for judges and prosecutors, depending on the positions of the vacant judges and prosecutors, as well as those that will be established.

30. Article 19 shall be amended and shall have the following content:

(2) A Theoretical and Practical Examination Board will be composed of 7 persons: 5 judges, one lawyer and one university professor appointed by the Judicial Section of the Superior Council of Magistrates between judges or attorneys with at least 12 years of professional experience and, of the law faculties teachers who have attained the university professor degree of at least 5 years. Another board of theoretical and practical examination will consist of 7 persons: 5 prosecutors, one lawyer and one university professor appointed by the Prosecutors' Section of the Superior Council of Magistrates between prosecutors or attorneys with at least 12 years of professional experience and among teachers of law faculties who have attained the university professor degree of at least 5 years.

(6) The composition of the boards referred to in paragraphs (3) and (4) shall be determined by the Section for Judges or the Prosecutor's Section of the Superior Council of Magistracy, as the case may be.

32. Article 21 shall be amended and shall have the following content:

"Art.21- (1) The justice auditors shall choose the places for trainee judges and prosecutors who have been admitted to the competition, and their assignment shall be based on the final graduation note of the National Institute of Magistracy provided for in Article 19 paragraph (7). The options are made before the National Institute of Magistracy, which will forward the table with the distribution proposals made in this way to the corresponding sections of the Superior Council of Magistracy for appointment.

(2) The trainee judges and trainee prosecutors shall be distributed and appointed by the appropriate sections of the Superior Council of Magistracy, on the basis of the options expressed in accordance with paragraph (1).

39. Article 26 shall be amended and shall have the following content:

(3) The capacity examination is organized at the end of each internship, based on the regulations developed by the corresponding sections of the Superior Council of

Magistracy, through the National Institute of Magistracy.
(5) The manner of passing the examination, the criteria for its assessment, the procedure and the evaluation criteria of the internship material shall be established by Regulations proposed by the National Institute of Magistracy and approved by the Judicial Section, respectively the Prosecutor's Section of the Superior Council of the Magistracy. "

41. Article 28 shall be amended and shall have the following content:
"Art.28.- (1) The Judicial Capacity Review Board and the Board for appeal solving shall be composed of judges from the High Court of Cassation and Justice and judges from the Courts of Appeal appointed by decision of the Section for Judges of Superior Council of Magistracy.
(2) The prosecutors' capacity examination board and the appeal board shall be made up of prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice and prosecutors from the Prosecutor's Offices attached to the Courts of Appeal appointed by decision of the Section for Prosecutors of the Superior Council of Magistracy.
(3) The competition boards are appointed by decision of the corresponding sections of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

42. Article 29 shall be amended and shall have the following content:
"(4) After drawing up the classification table of candidates, each of the sections of the Superior Council of Magistracy shall validate the capacity examination in the first session following the display of the results.
(5) The sections of the Superior Council of Magistracy may invalidate, in whole or in part, the capacity examination in cases where it finds that the conditions stipulated by the law or regulation on the organization of the examination have not been complied with or that there is evidence of fraud. "

53. Article 39 shall be amended and shall have the following content:
"(3) The evaluation provided for in paragraph (1) shall be made by committees set up separately for judges and prosecutors consisting of the president of the court or the head of the prosecutor's office of which the assessed person belongs and 2 or more judges or prosecutors from the court or the hierarchically superior prosecutor's office, appointed by the governing board of that court or prosecutor's office, with the same specialization as the judge or prosecutor assessed. The evaluation of the president of the court and of the vice-president is made by a commission consisting of the president of the higher court, the president of the department responsible for the specialization of the assessed judge, as well as a judge from the higher court, appointed by the governing board. The evaluation of the head of the Prosecutor's Office, his deputy and the chief prosecutor of the department is carried out by a commission from the higher hierarchical prosecutor's office, which includes the head of the prosecutor's office, a prosecutor with a leading position corresponding to the specialization of the prosecutor evaluated and another prosecutor appointed by the governing college. The evaluation of

the presidents, vice-presidents and section presidents from the courts of appeal or the Military Appeal Court is made by a commission composed of judges from the High Court of Cassation and Justice designated by the governing board of that court and the evaluation of the prosecutors General, Deputy General Prosecutors and Heads of Section from the Prosecutor's Offices attached to the Courts of Appeal or the Prosecutor's Office attached to the Military Appeal Court is made by a commission composed of Prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, nominated by the governing board of this Prosecutor's Office. The evaluation of the president and vice-presidents of the High Court of Cassation and Justice is made by a commission composed of judges, elected members of the Section for Judges of the Superior Council of Magistracy, with at least a court of appeal rank, appointed by the Judicial Section of the Superior Council of Magistracy. The evaluation of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice and the Chief Prosecutors of the specialized directorates is made up of a commission composed of prosecutors, elected members of the Prosecutor's Section within the Superior Council of Magistracy, with at least a county court rank, appointed by the Prosecutor's Section of the Superior Council of Magistracy.
(5) For the judges and county courts and, respectively, for the prosecutor's offices attached thereto, the commissions provided for in para. (4) shall be constituted by decision of the management board of the court of appeal or of the prosecutor's office attached to it. For the courts of appeal and for the prosecutor's offices attached to them, the evaluation commissions are constituted by a decision of the management board of the High Court of Cassation and Justice. For the High Court of Cassation and Justice, the evaluation committee is constituted by a Judge's Section decision of 3 judges appointed from among the elected members of the Section for judges, with at least a court of appeal rank. For the Prosecutor's Office attached to the High Court of Cassation and Justice, the Evaluation Board is constituted by a decision of the Prosecutor's Section of three prosecutors, appointed from among the elected members of the Prosecutor's Section, at least with a county court rank.
(6) The Regulation on the evaluation of the professional activity of judges and prosecutors shall be approved by decision of each of the respective sections of the Superior Council of Magistracy. "

54. In Article 40, paragraphs 1, 3 and 4 shall be amended and shall have the following content:
"(4) The decisions of the sections may be appealed with appeal, at the administrative and fiscal contentious division of the court of appeal, within 15 days from the communication, without going through the preliminary procedure. The court of appeal's decision is final. "

57. Article 43 shall be amended and shall have the following content:
"Art.43.- The contest for the promotion of judges and prosecutors is organized annually or whenever necessary by the corresponding sections of the Superior Council of Magistracy, through the National Institute of Magistracy."

58. Article 44 shall be amended and shall have the following content:
"(3) The Superior Council of Magistracy, through its sections, shall verify fulfilment of the conditions set out in paragraph (1).
(5) The Superior Council of Magistracy shall verify through the relevant sections the fulfilment of the conditions provided for in paragraphs (1) to (4). "

59. Article 45 shall be amended and shall have the following content:
"Art. 45. - Judges and prosecutors who meet the conditions stipulated in art. 44 may take part in the contest in order to promote on the spot, within the limits of the number of seats approved annually by the corresponding sections of the Superior Council of Magistracy."

64. In Article 48, paragraphs (1), (4) - (6) shall be amended and shall have the following content:
"Art. 48. - (1) The appointment to the positions of president and vice-president in the courts, tribunals, specialized courts and courts of appeal shall be made only by competition or examination, whenever necessary, by the Judges Section of the Superior Council of the Magistracy, through the National Institute of Magistracy.
(5) The Examination Board is appointed by the Judges Section of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy, and consists of 2 judges from the High Court of Cassation and Justice, 2 judges from the Courts of Appeal and 3 specialists in institutional management and organization. The commissions will take into consideration the judges who have attended management courses.
(6) The date, the place, as well as the Regulations for organizing the competition or the exam elaborated by the National Institute of Magistracy shall be approved by the Judges Section within the Superior Council of Magistracy and shall be displayed on the website of the National Institute of Magistracy, Ministry of Justice, the Superior Council of Magistracy and at the courts, at least 30 days before the date of its execution. "

66. In Article 48, paragraphs (7) and (9) shall be amended and shall have the following content:
"(7) The Judges Section of the Superior Council of Magistracy shall validate the result of the contest or the examination and appoint the judges to the managerial positions provided in paragraph (1) within 15 days from the date of the final results. The provisions of Article 21 paragraph (3) shall apply accordingly.
(9) The appointment of the judges in the other senior positions shall be for a period of three years, with the possibility of re-investing only once, by the Judges Section within the Superior Council of Magistracy, at the proposal of the President of the Court. "

69. In Article 49, paragraphs 1 and 5 shall be amended and shall have the following content:
"Art. 49. - (1) The appointment in the positions of general prosecutor of the prosecutor's office attached to the court of appeal, first prosecutor of the prosecutor's office attached to the tribunal, first prosecutor of the prosecutor's office attached to the juvenile and

family tribunal, or first prosecutor of the prosecutor's office attached to the court and their deputies shall be held only through organized competition or examination, whenever necessary, by the Prosecutor's Section of the Superior Council of Magistracy, through the National Institute of Magistracy.

.....

(5) The Examination Board is appointed by the Prosecutor's Section of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy, and consists of 2 prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, 2 prosecutors from the prosecutor's offices attached to courts of appeal and 3 specialists in institutional management and organization. When boards are set up, prosecutors who have attended management courses will be mainly taken into consideration."

71. In Article 49, paragraphs 6, 7 and 9 shall be amended and shall have the following content:

"(6) The date, place, as well as the Regulations for organizing the competition or the exam elaborated by the National Institute of Magistracy are approved by the Section for Prosecutors of the Superior Council of Magistracy and are displayed on the website of the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Institute of Magistracy, the Superior Council of Magistracy, the Ministry of Justice and at the offices of the prosecutor's offices, at least 30 days before the date of its performance.

(7) The Prosecutor's Section of the Superior Council of Magistracy shall validate the result of the contest or the examination and appoint the prosecutors in the management positions provided in paragraph (1) within 15 days from the date of the final results. The provisions of Article 21 paragraph (3) shall apply accordingly.

.....

(9) The appointment in the other positions of management at the Prosecutor's Office is made for a period of 3 years, with the possibility of re-investing only one time, by the Prosecutor's Section of the Superior Council of Magistracy, at the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice. "

78. In Article 52^1 paragraph (2), point (b) shall be amended and shall have the following content:

"b) an interview held before the Judges Section of the Superior Council of Magistracy."

80. In Article 52^1, paragraphs 3 to 5 shall be amended and shall have the following content:

"(3) The competition commissions are appointed by decision of the Section for Judges of the Superior Council of Magistracy, at the proposal of the National Institute of Magistracy.

(4) The competition commissions are made up of judges from the High Court of Cassation and Justice, university professors having a lecturer degree or university professor from law faculties from advanced research universities and education as they

are classified according to art. 193 para. (4) point c) of the National Education Law no. 1/2011, as amended and supplemented.
(5) The members of the commissions referred to in paragraph (3) may not have political affiliation at the time the commissions are formed and throughout the duration of the contest."

81. In Article 52^2, paragraph 1 shall be amended and shall have the following content:
"Art.52^2.- (1) Within the examination provided by art.52^1 paragraph (2) point a), at the request of the competition commissions, the Section for Judges of the Superior Council of Magistracy shall request, through the courts of appeal, court judgments of the last 5 years of activity, as well as the other data necessary for the assessment under this law."

84. Article 52^4 shall be amended and shall have the following content:
"Art.52^4.- (1) Within the interview examination, the Section for judges of the Superior Council of Magistracy assesses issues related to the integrity of the candidates and how the candidates relate to values such as the independence of the judiciary and the impartiality of the judges, the motivation of the candidates and their human and social competences.
(2) At the session of the Judges Section of the Superior Council of Magistracy in which the interview is held, a psychologist appointed by the Section for Judges will also take part in the interview, who will be able to ask questions to the candidates for the purpose of assessing the motivation and the human and social competences of them. "

86. In Article 52^7, paragraph 1 shall be amended and shall have the following content:
"Art.52^7.- (1) Within 15 days from the communication of the results of the promotion contest to the position of judge at the High Court of Cassation and Justice, the Section for Judges has, by decision, the promotion of the candidates declared admitted."

87. Article 53 shall be amended and shall have the following content:
"Art. 53. - (1) The President and Vice-Presidents of the High Court of Cassation and Justice shall be appointed by the President of Romania, upon proposal of the Superior Council of Magistracy - Section for judges, between the judges of the High Court of Cassation and Justice who functioned in this court at least 2 years old and who have not had any disciplinary sanction for the last 3 years.

108. In Article 62, after paragraph (1^1), two new paragraphs (1^2) and (1^3) are inserted, with the following content:
"(1^3) In special personal circumstances, at the request of the judge or prosecutor, the Section for Judges or, as the case may be, the Prosecutor's Office of the Superior Council of Magistracy may order the suspension of office for a maximum of 3 years if the measure does not affect the proper functioning of the court or prosecutor's office. "

109. In Article 62, paragraphs 2 to 4 are amended and shall have the following

content:
"(2) Suspension from office of judges and prosecutors shall be ordered by the Judges Section or, as the case may be, by the Prosecutor's Section of the Superior Council of Magistracy.
(3) During the suspension period from the office, ordered under the paragraph (1), point a)- a^2) and point c)- e), paragraph (1^1) and paragraph (1^3), the judge and the prosecutor shall not be subject to the provisions concerning the prohibitions and incompatibilities provided for in Articles 5 and 8 and is not paid wage entitlements. During this period, the judge or the prosecutor is paid the social health insurance rights, according to the law. This period is not seniority in work and magistracy.
(4) During the period of suspension ordered under paragraphs (1) point (b) and paragraph (1^2), an allowance equal to 80% of the net monthly indemnity in the last month of activity before the date the suspension of office is paid and the provisions on the prohibitions and incompatibilities referred to in Articles 5 and 8 are applicable."

112. After Article 62^1, three new articles, Articles 62^2 - 62^4, shall be inserted, with the following wording:

Art.62^4.- At the express request of the judge or prosecutor, a voluntary suspension from the magistracy can be ordered for a maximum of 3 years, with the possibility of extending for another 3 years.
Suspension shall be determined by decision of the corresponding section at the express request of the judge or prosecutor. The competent section has the obligation to rule on the application within a maximum of 15 days from the date of its registration. Voluntary suspension may terminate before the expiry of the period referred to in the section's decision only at the express request of the Judge or Prosecutor concerned. The relevant section has the obligation to discuss the request for termination of the voluntary suspension within a maximum of 15 days from the date of registration. There are no specific incompatibilities and prohibitions during the voluntary suspension."

123. In Article 65, paragraphs 2, 4 and 5 shall be amended and shall have the following content:
"(2) The dismissal from office of judges and prosecutors shall be ordered by a decree of the President of Romania, at the proposal of the Section for Judges or, as the case may be, of the Section for Prosecutors.
.....
(4) The dismissal from office of the trainee judges and of the trainee prosecutors shall be made by the Judges Section or, as the case may be, by the Prosecutor's Office Section.
(5) If the judge or prosecutor requests the dismissal from office by resignation, the Section for Judges or, as the case may be, the Prosecutor's Section may set a maximum of 30 days from which the resignation becomes effective, if the presence of the judge or the prosecutor is necessary."

135. Article 75 shall be amended and shall have the following content:

"Art.75.- (1) The appropriate section of the Superior Council of Magistracy has the right, respectively the correlative obligation to observe ex officio to defend judges and prosecutors against any act of interference in or in connection with the professional activity, which - could affect the independence or impartiality of the judges, namely the impartiality or independence of prosecutors in settling the solutions, according to the Law no. 304/2004, republished, with the ulterior modifications and completions, as well as against any act that would create suspicions about them. The sections of the Superior Council of Magistracy also defend the professional reputation of judges and prosecutors. The reports on the defence of the independence of the judiciary as a whole shall be resolved, upon request or ex officio, by the Plenum of the Superior Council of Magistracy.
(2) Judges or prosecutors who are in one of the situations referred to in paragraph (1) may address the appropriate sections of the Superior Council of Magistracy in order to order the necessary measures, according to the law. "

148. In Article 83, paragraphs (1) and (3) shall be amended and shall have the following content:
"Art. 83. - (1) The judges, prosecutors, assistant magistrates from the High Court of Cassation and Justice, as well as the legal specialists referred to in Article 87 paragraph(1) may be kept in office after the age of retirement age under the law, up to the age of 70. Until the age of 65, the magistrate may choose to remain in office, but after this age, the annual opinion of the Section for Judges or, where applicable, the Prosecutor's Section is required to be maintained in activity.
.....
(3) The re-appointment as a judge, prosecutor or assistant magistrate shall be made without contest by the appropriate section of the Superior Council of Magistracy, to the courts or, where appropriate, to the prosecutor's offices attached to them, within which they were entitled to work until at the date of retirement and which cannot function normally due to lack of personnel. In this case the appointment to the position of assistant magistrate is made by the Superior Council of Magistracy, and the appointment to the position of judge or prosecutor is made by the President of Romania, at the proposal of the Superior Council of Magistracy. The former judges, prosecutors or assistant magistrates who have been dismissed by retirement according to the present law and for whom the disciplinary sanction of the exclusion from the magistracy has not been established under Law no. 317 / 2004, republished, as subsequently amended may be re-appointed in the function. During re-appointment, the amount of the pension is reduced by 85%. "

149. In Article 83², paragraphs 1 and 4 shall be amended and shall have the following content:
(4) The conviction decision or the order for the postponement of the punishment, which is final, shall be communicated by the executing court of the Superior Council of Magistracy. The Section for Judges or, as the case may be, the Prosecutor's Section will inform the National Pensions House about the occurrence of one of the situations provided for in this Article which has the effect of granting, suspending, terminating or

resuming the payment of the service pension or, as the case may be, or the resumption of the procedure for the settlement of the application for the granting of the service pension. Information to the Section for Judges or, where applicable, the Prosecutor's Section includes the elements necessary for the application of the measure by the territorial pension houses, including the identification data of the person, the legal basis of the measure and the date from which it applies."

All these newly introduced amendments violate the provisions of art.133 para. (1) și art. 134 para. (4) of the Romanian Constitution, for the reasons indicated in the prior arguments, in relation with the separation of competencies between the secțions of the Council and lack of an appeal to the Plenary of the Council of Magistracy

2. In Article 2, paragraph (3) shall be amended and shall have the following content:
"(3) Judges are independent and subject only to the law. Judges must be impartial having full freedom in settling the cases brought to justice in accordance with the law and impartially, respecting the equality of arms and the procedural rights of the parties. Judges have to make decisions without any restrictions, influences, pressures, threats or interventions, direct or indirect, from any authority, or even judicial authorities. Decisions on appeals do not fall under these restrictions. The purpose of judges' independence is also to ensure that every person has the fundamental right to have his case heard fairly on the basis of law alone. "

The newly introduced amendment violates the provisions of art.1 para.(5) and art.124 of the Romanian Constitution

The syntaxes highlighted in bold and italic are not predictable, it is not clear and precise what is the subject of the regulation, from their corroboration it is understood that the restrictions mentioned in previous paragraphs do not apply when exercising legal remedies and in this situation influences, interventions, pressures can be exerted, which would contravene Article 124 of the Constitution and art. 6 para 3 of the Convention.

The wording of the normative act with sufficient precision allows the persons concerned to reasonably foresee, in the circumstances of the case, the consequences which may result from a particular act. Of course, it is difficult to adopt laws drafted with absolute precision but also with some flexibility, but too general and sometimes even elliptical must not affect the foreseeability of the law (see, to that effect, the judgment of the European Court of Human Rights of 25 November 1996 in Wingrove v. the United Kingdom, paragraph 40, judgment of 4 May 2000 in Rotaru v. Romania, paragraph 55,

or the judgment of 9 November 2006 in Leempoel & SA ED, Who Revue Against Belgium, par.59).

The notion of "impartiality" must be viewed in two ways: the subjective approach, namely the attempt to determine the personal conviction of a judge in a certain circumstance, that is, "subjective impartiality" and the objective approach, which seeks to determine whether the judge of the case provides sufficient guarantees to exclude in his person any legitimate suspicion, that is, "objective impartiality" (ECHR, Piersack v. Belgium, judgment of 1 October 1982, paragraph 30, ECHR, Hauschildt v. Denmark, May 24, 1989, paragraph 46). Also, art. Article 47 of the Charter of Fundamental Rights of the European Union enshrines in clear terms the right to a court: any person has the right to a fair, public and reasonable hearing by an independent and impartial tribunal previously established by law.

In the same sense, by the Decision no. 588 of 21 September 2017 (published in the Official Gazette no.835 of 20.10.2017) the Constitutional Court stated: "24. Regarding the criticism of the author of the objection of unconstitutionality regarding the lack of predictability of the criticized law, the Court notes that, according to its jurisprudence on Article 1 (5) of the Constitution, one of the requirements of the principle of law compliance concerns the quality of normative acts (Decision no. .1 of 10 January 2014, published in the Official Gazette of Romania, Part I, no.123 of February 19, 2014, paragraph 225). In this respect, the Court has found that, in principle, any normative act must meet certain qualitative conditions, including foreseeability, which means that it must be sufficiently clear and precise to be applicable; thus, the wording of the normative act with sufficient precision allows the persons concerned - who may, if necessary, seek advice from a specialist - to reasonably foresee, in the circumstances of the case, the consequences which may result from a particular act. Of course, it may be difficult to draft laws of absolute precision, and some flexibility may even prove desirable, but that does not affect the foreseeability of the law (see, in this respect, the Constitutional Court's decision no. 903 of 6 July 2010, published in the Official Gazette of Romania, Part I, no.584 of August 17, 2010, the Constitutional Court Decision no.743 of June 2, 2011, published in the Official Gazette of Romania, Part I, no.579 of 16 August 2011, Decision No. 1 of 11 January 2012, published in the Official Gazette of Romania, Part I, no. 53 of 23 January 2012, or Decision no.447 of 29 October 2013, published in the Official Gazette of Romania, Part I, no. from 1 November 2013). "

Also, by the provision that "judgments in appeals do not fall under these restrictions", the legislature (perhaps unintentionally) establishes that in judging appeals, it is no longer necessary for judges to be independent and to obey only the law or for judges to either impartial. This provision violates art. 124 of the Constitution stating that: "(1) Justice is done in the name of the law. (2) Justice is unique, impartial and equal for all. (3) Judges are independent and are subject only to the law. "

3. In Article 3, paragraph (1) shall be amended and shall have the following content:

"Art. 3. - (1) The prosecutors shall carry out their activity according to the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice. "

4. In Article 3, after paragraph (1), a new paragraph, paragraph (1^1) shall be inserted, with the following content:
"(1^1) Prosecutors are independent in the settlement of the solutions, under the conditions stipulated by the
Law no.304 / 2004, regarding the judicial organization, republished, with the subsequent amendments and completions."

This newly introduced provision violates the provisions of Article 131 of the Constitution.

In the judicial activity, the Public Ministry represents the general interests of society and defends the rule of law as well as the citizens' rights and freedoms, limiting the prosecutor's independence to the given solutions. Until a solution is adopted, the prosecutor, representing the general interests of society, may propose to the judge of rights and freedoms the preventive arrest, the authorization of supervisory measures, etc., and the proposed text limits his independence to them. Thus, by this rule, the prosecutor can no longer respect the constitutional obligation to defend the rule of law, as well as the rights and freedoms of citizens.

Also, the provisions of Art. 79 par. 1 of the Constitution.

The Legislative Council is a specialized consultative body of the Parliament, which approves the draft normative acts for the systematization, unification and coordination of the entire legislation. He keeps official records of Romania's legislation.

On the one hand, the project registered with the Chamber of Deputies under no. PLX 418 differs from the forms adopted by the plenum of the two chambers. The systematization, unification and coordination of legislation is carried out on the basis of the provisions of Law no.24 / 2000, which is the legal instrument by which the Legislative Council fulfills its constitutional function. In Article 16, the law provides that: "(1) In the law-making process it is forbidden to establish the same regulations in several articles or paragraphs of the same normative act or in two or more normative acts. To highlight some legal connections, the referral rule is used. (2) In the case of parallelism, these will be removed either by abrogation or by concentration of matter in unique regulations. (3) Subject to the process of concentration in single regulations and regulations of the same matter dispersed in the legislation in force. (4) In a normative act issued on the basis of and in the execution of another higher-level normative act, the reproduction of some provisions of the higher act is not used, only reference of the reference texts being recommended. In such cases, taking over some of the norms in the lower act can only be done to develop or detach the solutions in the basic act.

The provisions of art. 3 par. 1, as amended, is the ad litteram reproduction of art. 1 of the Constitution, stipulating that "prosecutors operate in accordance with the principles of legality, impartiality and hierarchical control, under the authority of the Minister of Justice." We are in the face of a legal parallelism prohibited by art. 16 of Law no.24 / 2000 . The observations and proposals of the Legislative Council regarding the observance of the normative technical norms will be taken into consideration when finalizing the draft normative act. Their non-acceptance must be substantiated in the act

of presentation of the project or in an accompanying note. The Legislative Council was not able to comment on the observance of the legal technical norms with respect to the amendments to this article because the form submitted for approval did not foresee any modification of the provisions of Art. 3 of the Law no.303 / 2004.

6. In Article 4, after paragraph (2), two new paragraphs (3) and (4) are inserted, with the following content:
"(3) Judges and prosecutors must, as a rule, appear to be independent of each other.

This newly introduced provision violates the provisions of Article 131 paragraph (1) and Article 1 paragraph (5) of the Constitution.

The syntax highlighted in bold and italic, derived from a jurisprudential expression used by European courts strictly in certain factual contexts, is not sufficiently predictable to be of a general nature and is not clear and precise which is subject to regulation, the addressee of the proposed rule being unable to understand which would be the conduct that it should adopt in order to comply with this obligation, especially in relation to the apparent independence of a magistrate from another magistrate. There are no criteria for "appearance of independence".

The formulation of the normative act with sufficient precision allows the persons concerned to reasonably foresee, in the circumstances of the case, the consequences which may result from a particular act. Of course, it is difficult to adopt laws drafted with absolute precision but also with some flexibility, but too general and sometimes even elliptical must not affect the foreseeability of the law (see, to that effect, the judgment of the European Court of Human Rights of 25 November 1996 in Wingrove v. the United Kingdom, paragraph 40, judgment of 4 May 2000 in Rotaru v. Romania, cited above, paragraph 55, or the judgment of 9 November 2006 in Leempoel & SA ED, Who Revue Against Belgium, par.59).

By Decision No. 924 of November 1, 2012, published in the Official Gazette of Romania, Part I, no.787 of November 22, 2012, the Constitutional Court held that the Public Ministry was established, by art.131 and 132 of the Romanian Constitution, as a component magistrate of the judicial authority, having the role of representing in the judicial activity the general interests of society and of protecting the rule of law and the rights and freedoms of citizens. The same decision showed that prosecutors, like judges, have the constitutional status of magistrates, expressly provided in Articles 133 and 134 of the Basic Law, and that they are appointed, like judges, at the proposal of the Superior Council of Magistracy and that the same body of the judicial authority fulfills the role of a court in the field of disciplinary liability of judges and prosecutors. The Court then held that the independence of justice comprises two components, namely the institutional component (which does not refer only to judges but covers the judiciary in its entirety) and the independence of the judge - the individual component.

7. In Article 5, paragraphs (1) and (2) are amended and shall have the following content:

(2) Judges and prosecutors shall be obliged to refrain from any activity related to the act of justice in cases involving a conflict between their interests and the public interest in the performance of justice or the defence of the general interests of society. In other situations that go beyond the activity related to the act of justice, the conflict of interests shall be notified, in writing, to the management college of the court or prosecutor's office who appreciates its existence or non-existence. "

This newly introduced provision violates the provisions of Article 1 (5) of the Constitution.

The syntax highlighted in bold and italic is unpredictable, being unclear and precise as to the subject matter of the regulation, virtually any life situation, any contractual or tortuous relationship involving a magistrate may generate a conflict of interest and exclude it from solving certain types of causes, by object or person.

The formulation of the normative act with sufficient precision allows the persons concerned to reasonably foresee, in the circumstances of the case, the consequences which may result from a particular act. Of course, it is difficult to adopt laws drafted with absolute precision but also with some flexibility, but too general and sometimes even elliptical must not affect the foreseeability of the law (see, to that effect, the judgment of the European Court of Human Rights of 25 November 1996 in the Wingrove case v. the United Kingdom, paragraph 40, judgment of 4 May 2000 in Rotaru v. Romania, paragraph 55, or Case C-9/06 Leempoel & SA ED, Who Revue Against Belgium, par.59).

8. In Article 6, after paragraph (2), a new paragraph, paragraph (2^1) shall be inserted with the following content:

"(2^1) Affiliation as a collaborator of the intelligence bodies, as political police, has the effect of releasing him from his office."

68. In Article 48, paragraph 10 shall be amended and shall have the following content:

"(10) Judges who have been part of the intelligence services or collaborated with them or the judges who have personal interest who influence or could influence the objective and impartial performance of the duties provided by law may not be appointed in management positions."

9. Article 7 shall be amended and shall have the following content:

(5) The verification of the veracity of the data provided in paragraph (2) shall be done by the Supreme Council of Defence of the country and by the special parliamentary commissions for the control of the activity of the intelligence services, annually, ex officio, or whenever they are notified by the Ministry Justice, Superior Council of Magistracy, the judge or prosecutor concerned. The result of the actual verification has the value of conforming information. Erroneous answer is punishable under the law.

The newly introduced amendment violates the provisions of art.1 para. (4), art.1 para. (5) and art.133 para. (1) of the Constitution.

According to the Constitution, the Supreme Council of Country Defense organizes and co-ordinates activities related to the country's defense and national security. Its work is subject to examination and to parliamentary scrutiny. Therefore, in the new context, parliamentary scrutiny will be direct, not mediated. In principle, the more the interference of the legislature, politicians over magistracy is wider, the more the judges' independence requires adequate safeguards. Enabling the verification of information from magistrates' declarations may be a violation of the principle of the separation of powers of the rule of law in the absence of legal safeguards.

By this regulation, a parliamentary committee may require the Judicial Authority to remove a judge or prosecutor, the guaranty of independence of the judiciary offered by the Superior Council of Magistracy being emptied of content. Including later judicial review is flawed, there is no way to talk about a fair trial, because judges are also kept informed without a legal mechanism allowing the court to verify that information. The information and documents are submitted to the parliamentary committee and not to an institution within the Judicial Authority.

The syntax highlighted in bold and italic is unpredictable, not clear and precise which is the subject of the regulation, the criminalization of the wrong answer being incomplete. It is not established whether the deed is an offense when committed intentionally or by fault.

The formulation of the normative act with sufficient precision allows the persons concerned to reasonably foresee, in the circumstances of the case, the consequences which may result from a particular act. Of course, it is difficult to adopt laws drafted with absolute precision but also with some flexibility, but too general and sometimes even elliptical must not affect the foreseeability of the law (see, to that effect, the judgment of the European Court of Human Rights of 25 November 1996 in Wingrove v. the United Kingdom, paragraph 40, judgment of 4 May 2000 in Rotaru v. Romania, cited above, paragraph 55, or the judgment of 9 November 2006 in Leempoel & SA ED, Who Revue Against Belgium, par.59).

12. In Article 9, a new paragraph (3) shall be inserted after paragraph (2) with the following content:
"(3) Judges and prosecutors are obliged, in the exercise of their duties, to refrain from defamatory manifestation or expression, in any way, against the other powers of the state - legislative and executive".

This newly introduced amendment violates the provisions of Article 1 para (4), Article 1 para (5), Article 30 and Article 31 para (2) of the Romanian Constitution.

The term "defamation" evokes such a large number of different meanings in the Explanatory Dictionary of the Romanian language that, from a legal point of view, the notion suffers from a high degree of unpredictability and imprecision which in turn make it unconstitutional. As a general rule, any law, in the broad sense of the term, must comply with a certain standard of quality, including predictability, which in itself implies that it must be sufficiently precise and clear to be applied.

The aforementioned provision would allow the executive and legislative branches of state to file complaints against a judicial officer who, whilst exercising his legal duties, makes judgements regarding the conduct of a certain state authority. For instance, in a ruling or criminal prosecution act, the judge or the prosecutor could make assessments regarding the illicit or unlawful conduct of certain state authorities, institutions or their representatives.

Moreover, there is an absolute lack of criteria for assessing whether a certain statement falls under the term “defamation” against the other powers of state (neither is the term power defined in any shape or form) and for establishing the conditions under which statements regarding the conduct of representatives of those “powers” become relevant to said *power*.

Regarding Article 30 of the Romanian Constitution and the relevant ECHR jurisprudence on the matter, the aforementioned provision would, in certain situations, violate Article 10 of the European Convention on Human Rights, which guarantees the “right to free speech”. **N.B.**, opinions expressed by judicial officers (judges and prosecutors) regarding topics of public interest, such as the proper functioning of the judicial system, benefit from being protected under the ECHR "even if they have political implications, and judges can not be prevented from engaging in the debate on these issues. Fear of sanctions may have a discouraging effect on judges in expressing their views on other public institutions or public policies. This dissuasive effect is detrimental to society as a whole "(ECHR, Baka v. Hungary).

Moreover, as per the provisions of Article 31 para (2) of the Romanian Constitution, public authorities, within the limits of their jurisdiction, are obligated to ensure that citizens are correctly informed on matters of public and personal interest.

Regarding the freedom of expression of magistrates, the Venice Commission laid out the following guidelines:

"83. In assessing the proportionality of an interference with the freedom of expression of a judge, the European Court of Human Rights takes into account all the circumstances of the case, including the function performed, the content of the statement, its context, the nature and severity of the sanctions applied. [...]

84. Regarding the participation of judges in political debates, the internal political situation of the country in which this debate takes place is also an important element to be taken into account in order to specify the limits regarding their right to freedom of expression. Thus, the historical, political and legal context of the debate - whether or not the debate is on a matter of general interest, or whether the contested statements were made in an election campaign - is particularly important. A democratic crisis or a

reversal of constitutional order must, of course, be assessed as being decisive in the concrete context of a case and essential to determining the scope of the fundamental freedoms of judges. "

CDL-AD (2015) 018, Opinion 806/2015 - Report on Freedom of Speech Judges, Venice, 19-20 June 2015, par.83,84

32. Article 21 shall be amended and shall have the following content:
(3) In the districts of the courts and prosecutor's offices where a national minority has a share of at least 50% of the population, in equal environments, priority shall be given to candidates who know the language of that minority.
(5) In equal environments, the candidate having the domicile within the jurisdiction of the court or Prosecutor's office for which he has opted, or the one who has a longer seniority in magistracy, shall have priority in the election of the position in the following order.

The newly introduced amendment violates Article 16 para (1) of the Romanian Constitution.

The criteria mentioned above are not based on any reasonable or objective justification.

Discrimination is the action by which some individuals are treated differently or are deprived of certain rights unjustifiably (any difference, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation age, disability, chronic non-contagious disease, HIV infection, belonging to a disfavored category and any other criteria enacted in order to or that lead to the restriction, removal, use or exercise of human rights and fundamental freedoms on an equal footing or rights recognized by law in the political, economic, social and cultural spheres or in any other areas of public life.

Within the framework of the European Convention on Human Rights, discrimination is sanctioned only in connection with the exercise of the rights and freedoms recognized in the Convention. Therefore, if an act of discrimination interferes with another right, that doesn't benefit from the protection conferred by the Convention and its additional protocols, then the Court will not sanction that particular behavior (ECHR, X. Germany, 1970).

In the above context, Article 14 of the ECHR stipulates an obligation, on each and every member state, that is not simply a negative obligation, of refraining from acts of discrimination. Therefore, it is possible for the measures applied by the state in question in different parts of its territory or regarding certain categories of its population to be in accordance with the provisions of the Article of the Convention governing that particular right but the difference in treatment created leads to the conclusion that there has been a violation of the Convention if those measures are analyzed from the perspective of art. 14 (ECHR, Affaire linguistique belge v. Belgium, judgment of 23 June 1968, paragraph 9).

Regarding the legal nature of the right against discrimination, stipulated under Article 14 of the Convention, it is widely considered to be a substantive subjective right without an independent existence.

However, under specific circumstances and in certain situations, the aforementioned provision of Article 14 can manifest as an autonomous right. Therefore, it is possible, in a given situation, for the right against discrimination to be violated without a breach of the right alongside which it was invoked (ECHR, Grand Chamber, Sommerfeld v. Germany, judgment of 8 July 2003).

Moreover, Article 14 refers to the following discriminatory criteria: sex, race, color, language, religion, political opinion or other opinion, national or social origin, membership of a national minority, wealth, birth or other status.

The above enumeration is not limitative but indicative, which implies that discrimination may also be based other criteria, that generate the same effects or are enacted towards the same end. For example, the sexual orientation of the individual (ECHR, Salguiero da Silva Moutao v. Portugal, judgment of 21 December 1999), the residence of the parents of the person in question (ECHR, Affaires linguistique belge v. Belgium, judgment of 23 June 1968) or the status of a child, particularly whether he or she was born within or outside marriage (ECHR, Marckx v. Belgium, judgment of 13 June 1979) can all constitute grounds for acts of discrimination.

The non-discrimination stipulated under in Art. 14 covers both direct discrimination (individuals characterized by the same circumstances must be treated equally) and indirect discrimination (individuals characterized by significantly different circumstances must be treated differently).

The Court considered that there is a violation of the right to not be discriminated against, under Article 14 of the Convention, in situations in which the state in question treats individuals, that are in similar situations, differently, without an objective and reasonable justification. However, the Court considers that this is not the only facet of the prohibition of discrimination that falls within the scope of Article 14.

The right not to be discriminated against in the exercise of the rights guaranteed in the Convention is also violated when the member state in question, without any objective and reasonable justification, fails to treat individuals, that present themselves in significantly different situations, differently (ECHR, Thlimmenos v. Greece, judgment of 6 April 2000).

Therefore, before discussing if a certain conduct is an act of discrimination, the situations in question must be comparable. In other words, the difference of treatment becomes an act of discrimination, that falls within the scope of Article 14 of the Convention, only when State authorities enforce distinctions between the same or comparably the same situations without basing them on reasonable and objective justification. This in turn leads to a violation of the principle of equality and non-discrimination if there is evidence of a differential treatment applied in equal situations without objective and reasonable justification or if there is no proportionality whatsoever between the aim pursued and the means used to achieve that aim.

39. Article 26 shall be amended and shall have the following content:
"(5) The manner of passing the examination, the criteria for its assessment, the

procedure and the evaluation criteria of the internship material shall be established by Regulations proposed by the National Institute of Magistracy and approved by the Judicial Section, respectively the Prosecutor's Section of the Superior Council of the Magistracy. "

The aforementioned provision violates Articles 73 para (3) letters j), l) and 1 para (5) of the Romanian Constitution.

The way in which the definitive examination takes place, the criteria for its assessment, the procedure and evaluation criteria of the traineeship period of judicial officers must be stipulated by law, in the strict sense of the word. In this regard, the fact that the National Institute of Magistracy is a public institution that functions under the direct coordination of The Superior Council of Magistracy must be taken into account. As a direct consequence of the fact underlined *supra*, even in the absence of special regulations, the status of the judicial officer trainee can not be inferior to that of a civil servant; which is exactly what the new, criticized, provision would entail.

Regarding this aspect, as outlined in Decision no. 818 of 7 December 2017, the Constitutional Court of Romania declared the provisions of Article 69 para (5) of Law no.188 / 1999 unconstitutional. In order to reach the mentioned conclusion, the Constitutional Court held that the criticized legal provision, which stipulated that the Government enacts the methodology for evaluation of the individual professional performances of civil servants, is unconstitutional because, in its essence, the evaluation of the activity and conduct of a civil servant relates to its status and must therefore be regulated, in accordance with Article 73 (3) (j) of the Romanian Constitution, by organic law. Moreover, by regulating the essential aspects of the evaluation in such a way, the aforementioned provisions violate both Article 1 para (4) of the Constitution that stipulate the principle of separation and balance of powers in the state (by delegating an exclusive duty of the legislative branch to the executive branch of State) and Article 1 para (5) of the Constitution, regarding the predictability and accessibility of the law.

45. In Article 33, paragraph 1 shall be amended and shall have the following content:

"Art.33.- (1) In the magistracy there can be appointed, on the basis of a contest, if they fulfil the conditions stipulated in art. 14 paragraph (2), former judges and prosecutors who have ceased their activity for non-imputable reasons, legal specialty staff stipulated in art. 87 para. (1), lawyers, notaries, judiciary assistants, legal advisors, bailiffs with legal higher education, probation officers with legal higher education, judicial police officers with higher legal education, court clerks with legal higher education, persons who have fulfilled legal specialty positions in the apparatus of the Parliament, the Presidential Administration, the Government, the Constitutional Court, the People's Advocate, the Court of Accounts or the Legislative Council, the Institute of Legal Research of the Romanian Academy and the Romanian Institute for Human Rights, the accredited higher education teachers, as well as magistrates-assistants with a seniority of at least 5 years. "

48. After article 33 a new article, article 33¹, shall be inserted, with the following content:
"Art.33¹.- Persons who have been at least 10 years as judge or prosecutor and magistrate-assistant, who have not had any disciplinary sanction, have only the grading "very well "in all evaluations and have ceased their activity for non-imputable reasons, may be appointed, without contest or examination, to vacant positions of judge or prosecutor, to courts or prosecutors' offices of the same rank as those in which they functioned or to lower courts or prosecutor's offices. "

78. In Article 52¹ paragraph (2), point (b) shall be amended and shall have the following content:
"b) an interview held before the Judges Section of the Superior Council of Magistracy."

129. In Article 67, after paragraph (4), two new paragraphs, paragraphs (5) and (6) are inserted, with the following content:
"(5) The persons who have been at least 10 years as magistrate-assistant, who have not had any disciplinary sanction in the last 3 years, had only the" very good "rating at all evaluations and have ceased their activity for non-imputable reasons, can be appointed without a contest or examination, in the vacant position of magistrate-assistant, with the same degree at the date of dismissal. People who have been part of, or collaborated with, intelligence services cannot be appointed to this function. The provisions of Article 33 paragraphs (2) to (4) shall apply accordingly.
(6) The appointment in the positions of first-magistrate-assistant and chief- magistrate-assistant shall be done for a period of 3 years, with the possibility of reinvestment under the terms of this article. "

The proposed provisions violate Article 148 para (4) of the Romanian Constitution.

The recruitment of judicial officers (judges and prosecutors) must be based solely around an examination, which must be competitive in nature - see the conclusions of the European Commission report of 4 February 2008, the recommendations of the Committee of Ministers of the Council of Europe and the Consultative Council of European Judges.

The European Commission has established that over half of all recruitment procedures in the judiciary were based on an *ad hoc* model, in order to occupy the vacancies within the system. This model is inherently flawed because it is based only on interviews and prior work experience without facilitating a real, comprehensive evaluation of the candidate`s qualifications, training for or compatibility with the office of a judicial officer.

The aforementioned proposed provisions blatantly disregard international accords that underline and emphasize the fundamental principle that must govern the activities of all judicial officers, namely independence – which can

only be attained by ensuring that the selection, training and objective professional conduct standards are rigorously enforced, not only upon admission into the judicial officer corps but also upon being promoted through the ranks of the judiciary.

According to the *Basic Principles on the Independence of the Judiciary* adopted by the Seventh United Nations Congress and and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, the "persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives." (parag. 10) In addition to this, parag. 13 states that the "Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience."

The Committee of Ministers of the Council of Europe recommended to the governments of the member states to adopt and improve all necessary measures to promote the role of judges, individually, but also that of magistrates, în general, in order to promote their independence, especially applying these principles: (…) I.2.c. "all decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency". *(Recommendation No. R (94) 12 to Member States on the Independence, Efficiency and Role of Judges)*

All "objective criteria" that seek to guarantee that the selection and career of judges are based on "merit, having regard to qualifications, integrity, ability and efficiency", can only be defined in general terms. One seeks first and foremost to give content to the general aspirations towards "appointments by merit" and "objectivity", to align theory with reality. Objective standards are required not only to eliminate political influence, but also to prevent the risk of favouritism, conservatism and "nepotism", that exist as long as the appointments are made in an unstructured manner. Although relevant professional experience is an important requirement for a promotion, experience in the modern world is no longer seen as a main criterion to determine a promotion.

Through the *Decision no 556 of 29 April 2010, concerning the constitutional challenge of the single article of the Government Emergency Ordinance no. 46/2008 for the modification of article 33 of the Law no. 303/2004 regarding the status of judges and prosecutors, published in the Official Gazette of Romania no. 406 of 18 June 2010,* the Constitutional Court established that the fact that the Government Emergency Ordinance no. 46/2008 repealed legal provisions that stated the possibility to be appointed as judge or prosecutor without a contest, does not affect the right to work or choose a profession, fundamental rights guaranteed by article 41 parag. 1 of the Constitution, as the legislator has both the power to regulate the requirements to have a position or a profession, as well as the power to modify or repeal them. In the case of the Government Emergency Ordinance no. 46/2008, the delegated legislator, according to article 115 parag. 4 of the Constitution, considered that the possibility to become a magistrate based only on an interview does not offer enough assurances regarding the professional abilities of the future magistrates and does not guarantee the quality

of the act of justice, so that it is necessary to introduce the compulsoriness of taking an exam to become a magistrate.

53. Article 39 shall be amended and shall have the following content:
(6) The Regulation on the evaluation of the professional activity of judges and prosecutors shall be approved by decision of each of the respective sections of the Superior Council of Magistracy.

This newly introduced provision violates article 73 parag. 3 let. j and l and art. 1 parag. 5 of the Constitution.

The evaluation method of the professional activity of judges and prosecutors needs to be established by law, taking into consideration the organisation of The Superior Council of Magistracy, *lato sensu*, as the status of a magistrate cannot be inferior of that of a public servant, even in the absence of separate legislation.

Through the ***Decision no. 818 of 7 December 2017***, the Constitutional Court accepted the constitutional challenge of article 69 parag. 5 of the Law no. 188/1999. In the reasoning of the decision, the Court stated that the legal solution comprised in article 69 parag. 5 of the Law no. 188/1999, concerning the approval through a Government decision of the evaluation methods of the individual professional performance of public servants, is unconstitutional, because, in its essence, the evaluation of the activity and behaviour of a public servant fall under the scope of their status and, thus, should be regulated, according to article 73 parag. 3 let. j of the Constitution, through an organic law. Moreover, by regulating essential aspects of the evaluation through a Government decision, one violates article 1 parag. 4 of the Constitution, concerning the principle of separation and balance of powers (by delegating to the Government a prerogative that is exclusive to the legislator), as well as article 1 parag. 5 of the Constitution, concerning the predictability and accessibility of the law.

Regarding the evaluation procedures of judges, the Venice Commission stated the following: **"[…] This provision looks problematic as it defines the President of the Court as a central figure in the process of the evaluation of judges. This may not only lead to a conflict of interest, but also result in malpractice, limiting the independence of individual judges."**

CDL-AD (2013)015, Opinion on the Draft Law on the Courts of Bosnia and Herzegovina, parag. 66[13]

"Regular evaluations of the performances of a judge are important instruments for the judge to improve his/her work and can also serve as a basis for promotion. It is important that the evaluation is primarily qualitative and

[13] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)015-e [last accessed the 3rd of January 2018].

focuses on the professional skills, personal competence and social competence of the judge. There should not be any evaluation on the basis of the content of the decisions and verdicts, and in particular, quantitative criteria such as the number of reversals and acquittals should be avoided as standard basis for evaluation."

CDL-AD (2011)012, Joint Opinion on the constitutional law on the judicial system and status of judges of Kazakhstan, parag. 55[14]

"It is important that the evaluation system be neither used nor seen to be used as a mechanism to subordinate or influence judges."

CDL-AD (2013)015, Opinion on the Draft Law on the Courts of Bosnia and Herzegovina, parag. 68[15]

56. A new chapter, Chapter IV¹, comprising Article 42¹, shall be inserted after Article 42, with the following wording:
"CHAPTER IV¹ Periodic psychological evaluation
Art.42¹.- (3) The psychological evaluation / re-evaluation procedure, including the way of setting up the psychological evaluation commissions, the payment of their members and the conduct of the psychological counselling program shall be established by a decision of the Plenum of the Superior Council of Magistracy. "

This newly introduced provision violates article 73 parag. 3 let. j and l and art. 1 parag. 5 of the Constitution

The evaluation/psychological reevaluation method of judges and prosecutors established by law falls within the organisation of the Superior Council of Magistracy, *lato sensu,* and the status of a magistrate cannot be inferior to that of a public servant, even in the absence of separate legislation.

Through the ***Decision no. 818 of 7 December 2017***, the Constitutional Court accepted the constitutional challenge of article 69 parag. 5 of the Law no. 188/1999. In the reasoning of the decision, the Court stated that the legal solution comprised in article 69 parag. 5 of the Law no. 188/1999, concerning the approval through a Government decision of the evaluation methods of the individual professional performance of public servants, is unconstitutional, because, in its essence, the evaluation of the activity and behaviour of a public servant fall under the scope of their status and, thus, should be regulated, according to article 73 parag. 3 let. j of the Constitution, through an organic law. Moreover, by regulating essential aspects of the evaluation through a Government decision, one violates article 1 parag. 4 of the Constitution, concerning the principle of separation and balance of powers (by

[14] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)012-rus [last accessed the 3rd of January 2018].
[15] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)015-e [last accessed the 3rd of January 2018].

delegating to the Government a prerogative that is exclusive to the legislator), as well as article 1 parag. 5 of the Constitution, concerning the predictability and accessibility of the law.

58. Article 44 shall be amended and shall have the following content:
(2) When calculating the minimum seniority for participation in the promotion contest, no account shall be taken of the period during which the judge or prosecutor was a justice auditor.

This newly introduced provision violates article 15 parag. 1 of the Constitution, as long as it will concern the seniority already recognised by the law in force until the moment of entry into force of the new law.

The Constitutional Court, through the *Decision no. 436 of 8 July 2014 concerning the constitutional challenge of article 52 parag. 3 of the Law no. 303/2004 concerning the status of judges and prosecutors*, published in the Official Gazette of Romania no. 523 of 14 July 2014, stated that the criteria of the new legislation has to comply, as all legislation, with the principle of non-retroactivity of the civil law, as, according to article 15 parag. 1 of the Constitution, "The law provides only for the future […]." That is why the legislator has to abide by this principle when passing laws (with the single exception of the more favourable criminal and contravention law). At an infraconstitutional level, the principle of non-retroactivity of the civil law is provided in article 6 of the Civil Code under the title "The Application in Time of the Civil Law". Also, article 3 of the Law no. 71/2011 for the application of the Law no. 287/2009 concerning the Civil Code, published in the Official Gazette of Romania, Part I, no. 409 of 10 June 2011, refers to solving temporal conflict between laws*: "Legal actions and events that have begun or taken place before the entry into force of the Civil Code cannot generat other legal effects than the ones provided at the moment of their taking place."*

However, taking into consideration that the principle of non-retroactivity of the civil law is deeply linked to the process of interpretation and application of the law, one can notice that the text creates, from the perspective of temporal conflicts between laws, deficiencies that could affect the constitutional principle of applying civil law only for future events.

Although the new legislation regulates consequences and effects unaccomplished yet and susceptible of progressive/continuous application, it cannot regulate the facts and events that, before its entry into force, modified or terminated a legal situation, or the effects that the legal situation produces before this date.

60. In Article 46, paragraphs (3) and (4) shall be amended and shall have the following content:
"(3) The procedure for conducting the contest, including the way of challenging the results, is stipulated in the Regulation on the organization and running of the contest for

the promotion of judges and prosecutors. Cancelling or modifying in any way the response scale set for any of the competition topics, once this scale has been brought to the attention of the candidates, causes the contest to be invalidated and resumed.
(4) The provisions of Article 21 paragraph (3) shall apply accordingly. "

61. After Article 46, three new articles are inserted, art. 46¹ to 46³, with the following content:
(2) The contest for effective promotion of judges and prosecutors shall be organized annually or whenever necessary by the Superior Council of Magistracy, through the National Institute of Magistracy.

This newly introduced provision violates article 73 parag. 3 let. j and l and art. 1 parag. 5 of the Constitution

The effective promotion contest procedure of judges and prosecutors established by the law falls within the organisation of the Superior Council of Magistracy, *lato sensu,* and the status of a magistrate cannot be inferior to that of a public servant, even in the absence of separate legislation.

Through the ***Decision no. 818 of 7 December 2017***, the Constitutional Court accepted the constitutional challenge of article 69 parag. 5 of the Law no. 188/1999. In the reasoning of the decision, the Court stated that the legal solution comprised in article 69 parag. 5 of the Law no. 188/1999, concerning the approval through a Government decision of the evaluation methods of the individual professional performance of public servants, is unconstitutional, because, in its essence, the evaluation of the activity and behaviour of a public servant fall under the scope of their status and, thus, should be regulated, according to article 73 parag. 3 let. j of the Constitution, through an organic law. Moreover, by regulating essential aspects of the evaluation through a Government decision, one violates article 1 parag. 4 of the Constitution, concerning the principle of separation and balance of powers (by delegating to the Government a prerogative that is exclusive to the legislator), as well as article 1 parag. 5 of the Constitution, concerning the predictability and accessibility of the law.

61. After Article 46, three new articles are inserted, art. 46¹ to 46³, with the following content:
Art. 46². - (1) There can participate in the actual promotion contest at the immediately higher courts and prosecutor's offices the judges and prosecutors who have had the "very good" rating at the last evaluation, have not had any disciplinary sanction in the last 3 years, have obtained the professional grade corresponding to the court or prosecutor's office at which they request the promotion and have actually worked for at least 2 years at the lower court or prosecutor's office, in the case of promotion to the office of a court of appeal, prosecutor at the prosecutor's office attached to it or prosecutor at the Prosecutor's Office attached to the High Court of Cassation and

Justice.
(2) The provisions of Article 44, paragraphs (3) and (4) shall apply accordingly.
Art.46³.- (1) The effective promotion contest shall consist in supporting a test having as object the evaluation of the activity and conduct of the candidates in the last 3 years.
(2) The procedure for organizing and conducting the contest, including the competition commissions and their constitution, the matters subject to verification as part of the proof provided in paragraph (1) and the way of establishing and challenging the results, shall be established by the Regulation provided by art. 46 para. (4).
(3) The provisions of Article 21, paragraph (3) shall apply accordingly. "

This newly introduced amendment violates art.41 para. (1) and art.1 para.(5) of the Constitution.

The condition of obtaining the professional degree corresponding to the court or prosecutor's office to which he / she is requesting promotion represents a disproportionate interference with the right to work. Hierarchical grades in the magistrates' system in Romania are related to the hierarchy of independent courts. Therefore, obtaining an appropriate degree of the court or the prosecutor's office for the right to work at that court / prosecutor's office, without further formalities.

Also, the phrase "evaluation of the activity and conduct of candidates in the last 3 years" is not foreseeable, and it is not clear and precise what is the subject of the regulation. The only criterion that the text establishes is arbitrary, subjective judgment, which departs from the principle of meritocratic promotion in magistracy. In addition, their regulation by a normative act that is inferior to the law violates the constitutional norms that take into account the status of the profession and the judicial organization.

The formulation of the normative act with sufficient precision allows the persons concerned to reasonably foresee, in the circumstances of the case, the consequences which may result from a particular act. Of course, it is difficult to adopt laws drafted with absolute precision but also with some flexibility, but too general and sometimes even elliptical must not affect the foreseeability of the law (see, to that effect, the judgment of the European Court of Human Rights of 25 November 1996 in Wingrove v. the United Kingdom, paragraph 40, judgment of 4 May 2000 in Rotaru v. Romania, cited above, paragraph 55, or the judgment of 9 November 2006 in Leempoel & SA ED, Who Revue Against Belgium, par.59).

Regarding the evaluation procedures for judges, The Venice Commision stated the following:

”[...] This provision looks problematic as it defines the President of the Court as a central figure in the process of the evaluation of judges. This may not only lead to a conflict of interest, but also result in malpractice, limiting the independence of individual judges**.”**

CDL-AD (2013)015, Opinion on the draft law of the courts of Bosnia and Herzegovina, para.66[16]

”Periodical evaluation of judges performances are important instruments for the judge to enhance the activity and can, also, to serve as a criteria for promoting in office”

It is important that the assessment be first and foremost qualitative and focus on the professional, personal and social skills of the judge. There should be no assessment based on the content of the decisions and solutions, nor taking into account quantitative criteria such as the number of payments or write-offs, which should be avoided as a standard basis for evaluation. "

CDL-AD (2011) 012, Joint Commission Opinion from Venice and OSCE / Office for Democratic Institutions and Human Rights on the constitutional law on the judiciary and status of judges in Kazakhstan, par.551

"It is important that the evaluation system is neither used nor judged to be used as a mechanism for subordinating or influencing judges."

CDL-AD (2013) 015, Opinion on the draft law on the courts of Bosnia and Herzegovina, paragraph 682

64. In Article 48, paragraphs (1), (4) - (6) shall be amended and shall have the following content:
"(6) The date, the place, as well as the Regulations for organizing the competition or the exam elaborated by the National Institute of Magistracy shall be approved by the Judges Section within the Superior Council of Magistracy and shall be displayed on the website of the National Institute of Magistracy, Ministry of Justice, the Superior Council of Magistracy and at the courts, at least 30 days before the date of its execution. "

This newly introduced provision violates the provisions of Article 73 (3) (j) and (l) and Article 1 (5) of the Constitution.

The procedure for conducting the competition or examination for promotion in leading positions of judges and prosecutors established by law, taking into account the organization of the Superior Council of Magistracy, lato sensu, and the statute of magistrate can not be inferior to the civil servant status, even in the absence of a separate regulation.

By Decision no. 818 of 7 December 2017, the Constitutional Court upheld the challenge of constitutionality of the provisions of Article 69 para. (5) of Law no.188 / 1999. In order to substantiate the solution, the Court held that the legislative solution contained in Article 69 para. (5) of the Law no. 188/1999 regarding the approval by the Government of the methodology for evaluation of the individual professional

[16] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)015-e

performances of civil servants is unconstitutional because, in its essence, the evaluation of the activity and conduct of a civil servant relates to its status and must therefore be regulated, in accordance with Article 73 (3) (j) of the Constitution, by organic law. Moreover, by regulating the essential aspects of the evaluation, the provisions of Article 1 paragraph (4) of the Constitution on the principle of the separation and balance of powers in the state (by delegation of an exclusive competence to the legislator, towards Government) as well as Article 1 paragraph (5) of the Constitution, in its component on the predictability and accessibility of the law.

69. In Article 49, paragraphs 1 and 5 shall be amended and shall have the following content:
"Art. 49. - (1) The appointment in the positions of general prosecutor of the prosecutor's office attached to the court of appeal, first prosecutor of the prosecutor's office attached to the tribunal, first prosecutor of the prosecutor's office attached to the juvenile and family tribunal, or first prosecutor of the prosecutor's office attached to the court and their deputies shall be held only through organized competition or examination, whenever necessary, by the Prosecutor's Section of the Superior Council of Magistracy, through the National Institute of Magistracy.

70. In Article 49, after paragraph (5), a new paragraph (5^1) is inserted, with the following content:
"(5^1) The provisions of Article 48 paragraph (6^1) shall apply accordingly."

71. In Article 49, paragraphs 6, 7 and 9 shall be amended and shall have the following content:
”(9) The appointment in the other positions of management at the Prosecutor's Office is made for a period of 3 years, with the possibility of re-investing only one time, by the Prosecutor's Section of the Superior Council of Magistracy, at the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice. "

This newly introduced provision violates the provisions of Article 134 paragraph (1) of the Constitution.

The Superior Council of Magistracy proposes to the President of Romania the appointment of judges and prosecutors, except for the trainees, in accordance with the law. By Decision no.375 / 2005, the Constitutional Court has determined that the appointment of judges and prosecutors is to be made at the proposal of the Superior Council of Magistracy and the appointment in certain management positions is made between the persons previously appointed as prosecutors. If the President of Romania had no right to examine and appreciate the proposals made by the Superior Council of Magistracy for the appointment of judges and prosecutors or in certain senior positions, or if he could not refuse appointment without motivation and not even once, the

presidential powers, provided by art. 94, letter c), corroborated with Article 125 (1) of the Constitution, would be emptied of content and importance.

77. In Article 52, paragraph (3) shall be amended and shall have the following content:
"(3) The judges who have actually completed at least 3 years of office as judge at the Court of Appeal have obtained the" very good "rating in the last 3 evaluations, have not had any disciplinary sanction in for the past 3 years have an effective seniority of at least 18 years in the office of judge may participate in the promotion contest for the judge at the High Court of Cassation and Justice. The provisions of Article 44 paragraph (2) shall apply accordingly. "

This newly introduced provision infringes Article 16 (1) of the Constitution.

By Decision no. 866 of 28 November 2006 on the objection of unconstitutionality of the provisions of art. 52 para. (1) of the Law no.303 / 2004 on the status of judges and prosecutors (published in the Official Gazette no.5 of 04.01.2007) The Constitutional Court ruled that these provisions do not take into account the status of magistrate of prosecutors and violate the principle of equality of rights provided by Article 16 paragraph (1) of the Constitution, through the discriminatory treatment imposed on them to advance to the position of judge at High Court of Cassation and Justice. Thus, by establishing for the position of judge at the High Court of Cassation and Justice the condition of a 12 year seniority in the position of judge or prosecutor, the scrutinized text of law added the condition of exercising in the last 2 years the position of judge in tribunals or courts of appeal. The latter condition has the effect of only admitting the promotion of judges and excluding the possibility of prosecutors.

The discrimination is all the more obvious in the case of a prosecutor requesting to be promoted to the High Court of Cassation and Justice, taking into account the fact that, before being appointed to the post of prosecutor, he had served for more than 12 years as a judge in tribunals or at the courts of appeal; applying the provisions of art.52 para. (1) of the Law no.303 / 2004, the application will be dismissed as inadmissible, for the sole reason that at the date of the application the applicant is a prosecutor and that, therefore, he did not fulfill the position of judge in the last 2 years in courts or courts of appeal.

As has been consistently stated in the case law of the Constitutional Court, the constitutional principle of equality of rights translates into the regulation and application of legal treatment similar to legal subjects in similar legal situations. In this case, it is noted that judges and prosecutors are in the same legal situation by their similar constitutional status. Moreover, by the basic condition of the text analyzed for promotion to the position of judge at the High Court of Cassation and Justice - the condition of serving 12 years in the position of judge or prosecutor - prosecutors and judges are also placed in an identical legal situation. Regarding these prerequisites of equal treatment of legal persons, the requirement of exercising the position of judge over the last two years and, implicitly, also at the date of the request for promotion, constitutes an

unjustified breakdown of the balance within the two categories of magistrates or, as already stated, discrimination contrary to the Constitution.

Regarding the judges' evaluation procedures, the Venice Commission established the following:

"[...] This provision seems problematic as it defines the court president as a central figure in the judges' evaluation process. This not only can lead to a conflict of interests but also to abuse, limiting the individual independence of judges. "

CDL-AD (2013) 015, Opinion on the draft law on Bosnia and Herzegovina courts, para. 661

"Periodic evaluations of a judge's performance are important tools for the judge to improve his / her work and can also serve as a basis for promotion. It is important that the assessment should be primarily qualitative and focused on the professional, personal and social competences of the judge. There should be no assessment based on the content of the decisions and solutions nor taking into account quantitative criteria such as the number of acquittals or cassations, which should be avoided as a standard basis for evaluation. "

CDL-AD (2011) 012, Joint Commission Opinion from Venice and OSCE / Office for Democratic Institutions and Human Rights on the constitutional law on the judiciary and the status of judges in Kazakhstan, para.55

"It is important that the evaluation system is neither used nor judged to be used as a mechanism for subordinating or influencing judges."

CDL-AD (2013) 015, Opinion on the draft law on the courts of Bosnia and Herzegovina, para. 68[17]

87. Article 53 shall be amended and shall have the following content:
"Art. 53. - (1) The President and Vice-Presidents of the High Court of Cassation and Justice shall be appointed by the President of Romania, upon proposal of the Superior Council of Magistracy - Section for judges, between the judges of the High Court of Cassation and Justice who functioned in this court at least 2 years old and who have not had any disciplinary sanction for the last 3 years.
(2) The President of Romania may not refuse the appointment in the managerial positions referred to in paragraph (1). "

88. In Article 54, paragraphs 1, 3 and 4 shall be amended and shall have the following content:
"Art. 54. - (1) The Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, the first deputy and his deputy, the chief prosecutor of the National Anticorruption Directorate, his deputies, the chief prosecutors of these prosecutor's offices, the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism and his deputies are appointed by the President of Romania, at the proposal of the Minister of Justice, with the opinion of the Prosecutors Section of the Superior Council of Magistracy, between the prosecutors who have a minimum of 10 years of service as judge or prosecutor, for a period of three years, with

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the possibility of re-investing only once.
(3) The President of Romania may, in justified cases, refuse once the appointment to the management positions provided for in paragraph (1), making the reasons for the refusal known to the public.
(4) The dismissal of the prosecutors from the management positions provided for in paragraph (1) shall be made by the President of Romania, at the proposal of the Minister of Justice, which may be heard ex officio at the request of the general meeting or, as the case may be, of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice or the General Prosecutor of the National Anticorruption Directorate or the Directorate for the Investigation of Organized Crime and Terrorism, with the opinion of the Section for Prosecutors of the Superior Council of Magistracy, for the reasons set out in Article 51 paragraph (2) which shall apply accordingly. "

90. In Article 55, paragraph 1 shall be amended and shall have the following content:
"Art. 55. - (1) Appointment in other positions of management than those provided by art. 54 within the Prosecutor's Office attached to the High Court of Cassation and Justice, the National Anticorruption Directorate and the Directorate for the Investigation of Organized Crime and Terrorism is done for a period of three years, with the possibility of reinvestment once by the Prosecutors Section of the Superior Council of Magistracy, at the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, the Chief Prosecutor of the National Anticorruption Directorate or the Chief Prosecutor of the Directorate for the Investigation of Organized Crime and Terrorism, as the case may be. "

This newly introduced provision violates the provisions of Article 1 (4) and Article 134 (1) of the Constitution.

By the Decision no.551 of April 9, 2009 regarding the exception of unconstitutionality of the provisions of art.31, art.33, art.41, art.53, art.54, art.61 and art.65 of the Law no.303 / 2004 on the status of judges and prosecutors, published in the Official Gazette no. 357 of 27.05.2009, the Constitutional Court established that Article 134 (1) of the Constitution provides for the attribution of the President of Romania to appoint judges and prosecutors, except for the trainees, at the proposal of the Superior Council of Magistracy.

The legislator has the freedom to regulate the competence of the President of Romania to appoint him / her in office, including in leading positions, and to revoke all the magistrates to whom the constitutional text refers.

The participation of the President of Romania in the formation in this way of the judicial authority equally accords with the principle of the equilibrium of powers in state, enshrined in Article 1 paragraph (4) of the Constitution, and is not such as to affect in any way the independence of judges, consacrated by the provisions of Article 124 paragraph (3) of the Constitution, nor the prossecutors

performing their duties, in compliance with the principles of legality and impartiality provided for in Article 132 (1) of the Fundamental Law.

97. In Article 58, paragraph 1 shall be amended and shall have the following content:
"Art.58.- (1) The appropriate section of the Superior Council of Magistracy may order the detachment of judges and prosecutors, with their written consent, to other courts or prosecutors' offices, the Superior Council of Magistracy, the National Institute of Magistracy, the National School of Clerks, The Ministry of Justice or its subordinate units or other public authorities in any office, including those of public dignity appointed at the request of such institutions, as well as in the institutions of the European Union or international organizations at the request of the Ministry of Justice. "

112. After Article 62^1, three new articles, Articles 62^2 - 62^4, shall be inserted, with the following wording:
"Art. 62^2. - (1) The judge or prosecutor may be appointed as a member of the Government.
(2) The Government shall inform the Superior Council of Magistracy of the act of appointment referred to in paragraph (1), to order their suspension.

143. In Article 82, paragraphs 1 and 2 shall be amended and shall have the following content:
"Art.82.- (1) Judges, prosecutors, magistrates-assistants of the High Court of Cassation and Justice, assistant magistrates from the Constitutional Court and legal specialists assimilated to judges and prosecutors, as well as former judges and financial prosecutors and account advisers from the judicial department who have performed these functions at the Court of Accounts, with at least 25 years in the position of judge or prosecutor, magistrate-assistant or legal professional staff assimilated to judges and prosecutors, as well as to the position of judge or financial prosecutor or account counsellor in the judicial department of the Court of Accounts may retire on request and benefit upon turning 60 years
old, of service pension in the amount of 80% of the gross monthly indemnity allowance or the gross monthly basic salary after case, and bonuses in the last month of activity before the date of retirement.
(2) Judges, prosecutors, assistant magistrates from the High Court of Justice Cassation and Justice and the Constitutional Court, legal specialists assimilated to judges and prosecutors, as well as former judges and financial prosecutors and account advisers from the judicial department who have exercised these functions at the Court of Accounts may retire on request before turning 60 years old and they benefit from the pension stipulated in paragraph (1), if they have at least a seniority of 25 years in the position of the judge, prosecutor, magistrate- assistant at the High Court of Cassation and Justice and the Constitutional Court or legal professional staff assimilated to judges, as well as in the position of judge at the Constitutional Court, judge or financial prosecutor or account counsellor at legal section of the Court of Accounts. When calculating this seniority, account shall also be taken of periods during which the judge,

the prosecutor, the assistant magistrate or the legal professional staff assimilated to judges and prosecutors, as well as the Constitutional Court judge, the judge, the financial prosecutor and the account counsellor at the jurisdiction of the Court of the Accounts served as Minister of Justice under the conditions laid down in Article 62², the profession of lawyer, legal specialists in former State Arbitrations, legal advisers or jurists."

134. In Article 73, after paragraph (1), a new paragraph (2) shall be inserted, with the following content:
"(2) Judges and prosecutors have the right to opt for self-suspension for up to 2 years. This option is taken into account by the corresponding section within the Superior Council of Magistracy. During the suspension, the regime of incompatibilities and prohibitions provided by law is not applicable. "

This newly introduced provision violates art.1 para. (4) și art. 125 para. (3) of the Constitution.

A magistrate position is incompatible with any other public or private function, except for higher education teaching functions. In addition, the separation of powers in the state establishes the duty of the magistrate to refrain from any public political attitudes. However, the function of a member of the Government, both by its appointment and by its activity, as a member of a political government, is eminamently political.

In this way, even the appearance of impartiality of that magistrate can be affected, in regard with the activity which will follow after the term of the position in the government is over. The essence of the profession of a judge and the nature of the profession of a prosecutor is impartiality, independence / autonomy, non-involvement in the political sphere, and these qualities can not exist in a period of the magistrate's career, and in another period to turn into the opposite. Impartiality, independence, backbone, disobedience to political influences is not an old coat that a magistrate discards when he wants a change in career and which he re-emerges when he was removed from office. Self-suspension for up to 2 years, for example, in order to work within a political party, has the same meaning.

The balance provided for in Article 1 (4) of the Constitution is broken to the detriment of the judiciary, since the judiciary functions for other powers in the state.

The Venice Commission stated the following:

”Judges cannot be members of a political party and can not participate in political acttivities .”

CDL-AD (2005)003, joint opinion of the Venice Commission and OSCE/ODIHR on the revised draft amendments on changes and amendments to the Constitution of Georgia*, par.104*[18]

"Judges should not put themselves into a position where their independence or impartiality may be questioned. This justifies national rules on the incompatibility of judicial office with other functions and is also a reason why many states restrict political activities of judges."

CDL-AD (2010)004, Report on the Independence of the Judicial System Part I: The Independence of Judges*, par.62*[19]

"[...] The Venice Commission recommends, however, that a judge should first resign before being able to contest political office, because if a judge is a candidate and fails to be elected, he or she is nonetheless identified with a political tendency to the detriment of judicial independence".

CDL-AD (2008)039, Opinion on the Draft Amendments to the Constitutional Law on the Status of Judges of Kyrgyzsta*, par.45*[20]

115. In Article 63, paragraph (3) shall be abolished.

This newly introduced provision violates art.23 para. (11) of the Constitution.

Until the final judgment is passed, the person is considered innocent. The repeal violates the presumption of innocence if the prosecution was dropped, it being clear that no court has established the existence of the act and the guilt.

124. In Article 65¹, paragraphs 2 and 3 shall be amended and shall have the following content:

"(2) If the judge or prosecutor exercises the remedy provided by law against the decision to dismiss from office or to the decision proposing dismissal, he shall be suspended from office until the final settlement of the case by the competent court.

(3) During the period of suspension, the judge or prosecutor shall not be subject to the provisions concerning the prohibitions and incompatibilities provided for in Articles 5 and 8 and shall not be paid his salary rights. During the same period, the judge or the prosecutor is paid the social health insurance contributions, as the case may be, according to the law. The provisions of Article 63 paragraph (1) shall apply accordingly. "

[18] See: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)003-e [last accesed on 3 January 2018].

[19] See: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)004-e [last accesed on 3 January 2018].

[20] See: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2008)039-e [last accesed on 3 January 2018].

This newly introduced provision violates art.53 of the Constitution regarding restricting the exercise of certain rights or freedoms, in this case the rights provided by art.41 para.(1) and art.21 of the Constitution regarding the right to work and access to justice.

Suspension from the function (sine die) puts the proportional character of the measure under condition, the measure being excessive in relation to the purpose. The ECHR ruled in Paluda v. Slovakia, application no. 33392/12, judgment of 23 May 2017, that the suspension, which could have taken up to two years under the relevant legislation, involved a 50% reduction in the indemnity and did not provide the institutional and procedural safeguards inherent in Article 6 § 1 of the Convention , with the applicant not having access to proceedings before a tribunal in order to challenge the suspension. Therefore, a clear distinction must be made between the compelling reasons for suspending a judge facing a disciplinary accusation and the reasons for not having access to a court in connection with the suspension.

156. Article 96 shall be amended and shall have the following content:

"Art. 96. - (1) The state is held patrimonial for damages caused by judicial errors.

(2) Judicial error implies the liability of judges and prosecutors only if they have exercised their office in bad faith or serious negligence.

(3) There is a judicial error when the misconduct of a judicial proceeding is determined in the course of the act of justice, and as a result an injury to the legitimate rights or interests of a person occurs.

(4) There is a bad faith when the judge or prosecutor in the exercise of his office knowingly violates the Convention for the Protection of Human Rights and Fundamental Freedoms, the fundamental rights and freedoms set forth in the Romanian Constitution or the rules of substantive or procedural law, causing a judicial error.

(5) There is serious negligence when the judge or prosecutor, in the exercise of his office, by fault, disregards the rules of substantive law or procedural law, causing a judicial error.

(6) The person who in the course of the trial has contributed in any way to the judicial error by the judge or prosecutor is not entitled to compensation.

(7) In order to compensate for the prejudice caused by a judicial error, the aggrieved party may bring an action only against the state, represented by the Ministry of Public Finance, according to the law, to the tribunal in whose district has its domicile or office, as the case may be. Payment by the State of sums due as compensation shall be made within a maximum of one year from the date of delivery of the final judgment.

(8) After the damage caused by a judicial error has been covered by the State, the Ministry of Public Finance shall be obliged to return, by judicial means, against the judge or prosecutor who caused the judicial error. The jurisdiction of the court of first instance lies with the Bucharest Court of Appeal, the provisions of the Civil Procedure Code being fully applicable.

(9) The limitation period of the right of action of the state provided for in paragraph (8)

shall be one year from the date on which the damage was fully paid.
(10) The Superior Council of Magistracy may establish conditions, deadlines and procedures for compulsory professional assurance of judges and prosecutors. Compulsory insurance cannot delay, diminish or eliminate liability for a judicial error caused by bad faith or serious negligence. "

This newly introduced amendment violates the provisions of Art. 61, 71 para. 1 and Art. 75 of the Romanian Constitution.

The bicameralism principle was violated. Pursuant to Art. 75 para. 1 and para. 4 of the Constitution, regarding the organic laws at Art. 73 para. 3 letter l), the different provision adopted by the Senate should have returned to the Chamber of Deputies, which in turn would take a final decision under the urgency procedure. It should be noted that the article adopted by the Senate is **essentially new** in terms of its content, as compared to that adopted by the Chamber of Deputies: the liability mechanism has undergone changes, by removing the finding of professional negligence by the specialized body – the Judicial Inspection and subsequently by the competent court. The novelty also regards the content of the notion "miscarriage of justice", since the definition at para. 2 is entirely new. Furthermore, the mechanism of professional indemnity insurance is governed by new regulations as well.

This newly introduced amendment violates the provisions of Art. 134 para. 2 of the Romanian Constitution.

According to Art. 134 para. 2 of the Romanian Constitution, "(2) The Superior Council of Magistracy shall perform the role of a court of law, by means of its sections, as regards the disciplinary liability of judges and public prosecutors (...)".

Pursuant to Art. 99 letter t) of Law. No. 303/2004, as modified by the Draft Act amending the aforementioned law, adopted by the Romanian Parliament, the exercise of function in bad faith or with gross negligence constitutes a **professional misconduct**, unless the respective act is regarded as a criminal offence.

In light of Art. 134 para. 2 of the Romanian Constitution, it follows that, with the exception of acts which comprise the constituent elements of a criminal offence, **the bad faith or gross negligence of a magistrate may only be determined by the Superior Council of Magistracy.** By virtue of the constitutional provisions, it is within the exclusive jurisdiction of the Superior Council of Magistracy to examine the magistrate's acts in such circumstances.

Within the limits stated above, **no other entity could exercise the aforementioned jurisdiction**. In order to reach this conclusion, it has been taken into account that, in the view of the legislature – resulting from the Commission's Report on elaborating a Draft Act concerning the revision of the Constitution from 10.06.2003, regarding the amendments to the Draft Act that proposes to revise the Constitution (p.

28, http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=3883) - by exercising the role of disciplinary court in such circumstances, the Superior Council of Magistracy accomplishes its "**role of guarantor for the independence of justice**".

In light of Art. 133 para. 1 of the Romanian Constitution, which states that only the Superior Council of Magistracy shall guarantee the independence of justice, it follows that only this entity may examine the bad faith or gross negligence of the magistrate, within the limits specified above.

Under these conditions, the provisions of Art. 96 of the Draft Law amending Law No. 303/2004, adopted by the Parliament, are unconstitutional, considering that the mentioned article removes the roles of **sole guarantor for the independence of justice** and that of disciplinary court, with the jurisdiction of examining alleged acts performed in bad faith or by means of gross negligence by a magistrate, roles which were granted to the Superior Council of Magistracy by the Constitution. Therefore, these provisions **infringe Art. 133 para. 1 and Art. 134 para. 2 of the Romanian Constitution**.

This newly introduced amendment violates the provisions of Art. 1 para. 5, 52 para. 3 and Art. 124 para. 3 of the Romanian Constitution.

The term "miscarriage of justice" is entirely unpredictable, vague and the focus of the legislation is not clearly and precisely stated. Moreover, is it possible for the magistrate to be held liable on the basis of acts performed with mere negligence as well, since the definition of "miscarriage of justice" is "causing wrongful development of a judicial proceeding". Nonetheless, we consider this to be excessive. The concept is unknown to the system of law, with no reference or definition of "causing wrongful development of a judicial proceeding" in the internal laws, the doctrine or the jurisprudence; the structure is merely colloquial.

If a certain law is clear, persons with an interest in this respect have the possibility of reasonably predicting the consequences which may emerge from a specific action. While it is undoubtedly difficult for the adopted laws to be absolutely precise and flexible, at the same time, the general and even deficient character of a law should not affect its predictability (see in this respect the judgment from 25 November 1996, delivered by the ECtHR in the case of *Wingrove v. the United Kingdom*, par. 40, the judgment from 4 May 2000, delivered in the case of *Rotaru v. Romania*, par. 55 or the judgment from 9 November 2006, delivered in the case of *Leempoel & S.A. ED. Cine Revue v. Belgium*, par. 59).

The provisions imposing a mandatory character upon the action for damages filed by the state against the judge or prosecutor who have caused the miscarriage of justice constitute a form of pressure exerted on the magistrates, which will undermine their independence regarding their decisions. In order for a magistrate's liability to be triggered it is necessary that the infringement of the legal provision be assessed in consideration of certain criteria, such as the degree of clarity and precision of the legal provision, the excusable or inexcusable character of the error

in law which was committed or the failure of the respective court to fulfill its obligation of making a reference for a preliminary ruling.

In ***Spain***, grave and very grave misconducts include those consisting in the total and manifest failure to state adequate reasons in a decision and the use of unnecessary, extravagant and possibly offensive or disrespectful statements in judgments, in terms of judicial reasoning. In ***Italy***, the violation of a law due to ignorance or inexcusable negligence constitutes a disciplinary misconduct. In ***France***, by organic Law. No. 830 from 22 July 2010, it was provided that the grave and deliberate violation of a procedural rule which constitutes an essential guarantee for the parties' rights, if stated through a final judgment, entails disciplinary liability. The French jurisprudence regarding the civil liability of magistrates for miscarriages of justice has defined the notion of "serious infringement of the law" as a blatant error which would not be normally committed by a magistrate who is aware of his/her obligations. The aforementioned notion had also been defined as "grave and inexcusable lack of understanding of the essential obligations of a magistrate in the performance of his/her duties". In ***Germany***, a distinction is made in respect of the disciplinary liability between two concepts: on the one hand, the essence of judicial activity, consisting in the actual uncovering of judicial truth and the delivery of the judgment and on the other hand, the external order, which entails the proper exercise of the activity and the exterior form of fulfilling professional duties.

The common thread among the various laws presented earlier is the fact that the disciplinary liability of the magistrates regarding their judicial activity may only be triggered under the condition that their independence remains intact/is unaffected. The implementation of a disciplinary evaluation of the way in which a judge/a prosecutor assesses the legal provisions and the evidence carried out in a particular case is liable to impinge on their independence, since a judge or prosecutor in the exercise of their duties should decide freely, without any influence or pressure. Another common trait of the legislations analysed above is the fact that, with respect to the judicial activity, the disciplinary liability of the judge/prosecutor **may only be entailed providing that a deliberate mistake or an act of gross, inexcusable negligence has been committed**.

As for the procedural matters, the concept of "legitimate procedural interest" in non-existent and this type of interest is not protected by law. At para. 5, Art. 52 para. 3 of the Constitution is infringed, on the basis of the definition given to the term "gross negligence". According to the mentioned article, state liability does not exclude the liability of the magistrates having exercised their mandate in grave negligence. In light of this, by defining the term "grave negligence" at Art. 96 para. 5 as "any type of negligence", including negligence arising from the slightest fault, the constitutional provision is clearly violated.

Furthermore, the state establishes an excessive budgetary burden, which may give rise to unpredictable consequences as well, since it takes liability for any error in procedural or substantive law, errors which in any system of law are redressed by means of judicial remedies. The State takes on the obligation of awarding damages for harming a legitimate interest, including a procedural one (para. 3 in conjunction with para. 5). The case is heard by an inferior, unspecialised court, while the tribunal – civil

chamber assesses decisions rendered by superior, specialised courts, including the High Court of Cassation and Justice, in matters in which it is not specialised.

The limitation period is unpredictable; moreover, the judge is subjected to vulnerability on the part of public authorities, parties, since the first judgment becomes definitive as a result of not exercising judicial remedies.

In the case of ***Volkov. v. Ukraine***, the ECtHR has stated that "*limitation periods serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter and prevent any injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time. Limitation periods are a common feature of the domestic legal systems of the Contracting States as regards criminal, disciplinary and other offences.*"

With reference to the civil liability of magistrates, The Venice Commission has provided the following criteria:

"77. a) Judges' liability is indeed admissible, but only where there is a culpable mental state (intent or gross negligence) on the part of the judge.

b) Liability of judges brought about by a negative judgment by the ECtHR should therefore only be based on a national court's finding of either intent or gross negligence on the part of the judge. The judgment of the ECtHR should not be used as the sole basis for judges' liability.

c) Even more so, liability of judges brought about by a friendly settlement of a case before the ECtHR or a unilateral declaration acknowledging a violation of the ECHR must be based on a finding by a national court of either intent or gross negligence on the part of the judge.

d) In general, judges should not become liable for recourse action when they are exercising their judicial function according to professional standards defined by law (functional immunity).

e) A finding of a violation of the ECHR by the ECtHR does not necessarily mean that judges at the national level can be criticised for their interpretation and application of the law (i.e. violations may stem from systemic shortcomings in the member States, e.g. length of proceedings cases, in which personal liability cannot be raised).

f) Also, the operation of the living instrument doctrine of the ECtHR responding as it does to societal developments may make it difficult for national courts to predict how the ECtHR will rule.

78. For the above reasons, a recourse procedure against judges may lead to arbitrary results where the liability of national judges is nothing more than a corollary of a judgment (or friendly settlement or unilateral declaration) by the ECtHR finding a violation of the ECHR.

79. Furthermore, holding judges liable for the application of the ECHR without any assessment of individual guilt may have an impact on their independence, which includes giving them the professional freedom to interpret the law, assess facts and weigh evidence in each individual case. Erroneous decisions should be challenged through the appeals process and not by holding

judges individually liable, unless the error is due to malice or gross negligence by the judge.

80. The liability of judges may be compatible with the principle of judges' independence, but only pursuant to law. However, the relevant law must not conflict with the overriding principle of the independence of judges."

CDL-AD(2016)015-e, Republic of Moldova - Amicus curiae brief for the Constitutional Court on the right of recourse by the State against judges (Article 27 of the Law on Government Agent no.151 of 30 July 2015), Venice, 10-11 iunie 2016, par.77-80[21]

160. In Article 100 paragraph (1), a new point, point d¹) is inserted after point (d), with the following wording:
"d¹) Professional downgrading;"

This newly introduced amendment violates the provisions of Art. 1 para. 5, Art. 44 para. 3 and Art. 124 para. 3 of the Romanian Constitution and of Art. 8 of the Convention.

Professional downgrading, a measure which has been incorrectly "copied" from the military ranking and periodic advancements system (with no similarity or equivalency between this system and the professional degrees of the magistrates), is unlimited in time (for instance, 6 months or 1 year) and disregards the theory of gained rights, including the right to professional reputation, due to its disproportionate character.

Arguments which concern the unconstitutionality of specific provisions of the Law for amending and supplementing Law No. 304/2004

1. Article 1 (1) shall be amended and shall read as follows:
"(1) Justice shall be made through the High Court of Cassation and Justice and through the other courts of law as defined by law."

This newly introduced stipulation infringes the provisions of Art. 79 para. 1 of the Romanian Constitution.

[21] See web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)015-e [last accessed at 3 January 2018].

The systematisation, unification and coordination of legislation are performed in accordance with Law No. 24/2000, which constitutes the legal instrument by means of which the Legislative Council fulfills its constitutional role. Art.1 para. 1 of the amending law consists of an exact replication of Art.126 para.1 of the Constitution of Romania, which states that „justice shall be meted out by the High Court of Cassation and Justice, and by the other courts set up under the law". Therefore, it envelops a legislative paralleli which is prohibited by Art.16 of the Law on the legislative technique no. 24/2004. The observations and proposals of the Legislative Council regarding the compliance with the legislative technique rules shall be considered in order to finalize the law project. The nonacceptance of these observations and proposals shall be justified within the introductory document of the legal proposal or in an accompanying memorandum.

2. Article 2 shall be amended and shall read as follows:
"Art.2.- (1) Justice shall be made by judges in the name of law, and it is unique, impartial and equal for all.
(2) Justice shall be made equally for all, without difference based on race, nationality, ethnic origins, language, religion, sex, sexual orientation, opinions, political beliefs, wealth, social origins or status or any other discriminatory criteria, in compliance with the equality of arms principle, court and judge independence, the principle of separation of powers and the mandatory enforcement of final decisions reached by courts of law, as well as reasonable duration of proceedings and respect for the rights of defence."

This new provision breaches the provisions of Chapter V of the Romanian Constitution – The Judicial Authority, Article 1 paragraph 5 and Article 79 paragraph 1 of the Constitution.

Although the Constitution regulates exclusively the institutions by which justice is meted out, Art. 1 of the proposal artificially restrains the content of the notion "Justice" to the activities carried out by the judge. Through the elimination of the contribution of the criminal pursuit organs, the criminal pursuit stage is excluded from the content of the notion of "Justice", therefore the parties will lack the guarantees provided by Art.21 and Art.124 of the Constitution.

Also, this regulation is drafted without regard to Art. 134 para. 2 of the Constitution, which provides that "the Superior Council of Magistracy is competent, through its sections, to sit in the judgment on disciplinary proceedings against judges and public prosecutors, subject to its own organic law". It could not be affirmed that, by exerting this function, the prosecutors convert into judges, because this approach would infringe Art. 133 para. 2 letter a) of the Constitution, which provides: "(2) The Superior Council of Magistracy consists of 19 members, of whom: a) 14 are elected in magistrates' general meetings, and validated by the Senate; they shall belong to two sections, one for judges, another one for public prosecutors; the former comprises 9 judges, and the latter, 5 public prosecutors".

The revision of Art. 2 para. 2 infringes Art. 1 para. 5 of the Constitution. Neither the law on the judicial organisation, nor other primary legislative act does contain an enumeration of all the juicial courts. The elimination of the enumeration of the judicial courts by which justice shall be meted out affects the clarity and the predictability of the entire legislative act. Also, Article 2 para. 2, as modified, infringes Article 1 para. 5 of the Constitution due to the unclarity of the regulation. It comprises the principle of the equality of arms, which is not defined in any legislative act and it is not acknowledged, as such, by the doctrine and jurisprudence, due to the unclarity of the notion. The equality of arms is a component part of the right to a due process, which is regulated by Article 6 of the European Convention on Human Rights and Article 21 para. 3 of the Constitution.

The Romanian Constitutional Court decided by decision no. 1 of 11 January 2012 (published in the Official Gazette no. 53 of 23 January 2012) and decision no. 494 of 10 May 2012 (published in the Official Gazette no. 407 of 19 June 2012) that ”any normative act shall comlply to several qualitative requirements, including predictability, which implies that the law shall be susufficiently precise and clear in order to be applied”, and concludes, in the first above mentioned decision, that the law ”is unclear and lacking precision, therefore the Court ascertains that, evidently, the law is lacking predictability, which is contrary to Art.1 para. 5 of the Constitution”, and in the second decision above mentioned, that the legal provisions subject to scrutiny ”do not meet the exigencies of clarity, precision and predictability and, therefore, are incompatible with the fundamental principle of the compliance with the Constitution, its supremacy and the laws, provided for in Art. 1 para. 5 of the Constitution”.

The same reasoning is found in the decision no. 588 of 21 September 2017 (published in the Official Gazette no. 835 of 20 October 2017), wherein the Constitutional Court ruled that ”24. Regarding the alleged lack of predictability of the legal provision, the Court helds that, according to its jurisprudence regarding Art. 1 para. 5 of the Constitution, one of the requirements of the principle of the abidance by the law regards the quality of the legislative acts (decision no. 1 of 1 January 2014, published in the Official Gazette of Romania, Part I, no. 123 of 19 February 2014, para. 225).

Hence, the Court has held that, in principle, any legislative act must fulfil several qualitative requirements, including predictability, which implies that the act shall be sufficiently clear and precise in order to be applied. Therefore, drafting the legislative act in a sufficiently precise manner allows the interested persons – who can request a specialized advice – to foresee, in a resonable manner, under the circumstances of the case, the consequences that could emanate from a concrete act. It could be difficult to ellaborate legal provisions embodying an absolute precision and a certain flexibility could be demanded, but this flexibility shall be as such as not to affect the predictability of the law (in this regard, the Constitutional Court decision no. 903 of 6 July 2010, published in the Official Gazette of Romania, Part I, no. 584 of 17 August 2010, the Constitutional Court decision no. 743 of 2 June 2011, published in the Official Gazette of Romania, Part I, no. 579 of 16 August 2011, Constitutional Court decision no. 1 of 11 January 2012, published in the Official Gazette of Romania, Part I, no. 53 of 23 January 2012, Constitutional Court decision no. 447 of 29 October 2013, published in the Official Gazette of Romania, Part I, no. 674 of 1 November 2013)”.

The organisation, unification and coordination of the legislation is realised based on the provisions of the Law no. 24 of 2000, which represents the juridical instrument by which the Legislative Council fulfils its constitutional function. The provisions of Art. 1 para. 1, as modified, are an ad litteram replica of Art.126 para. 1 of the Constitution, which provides that justice shall be meted out bu the High Court of Cassation and Justice, and by the other courts set up under the law. This is a legislative paralelli, forbidden by Art. 16 of the Law no. 24 of 2000. The observations and proposals of the Legislative Council regarding the compliance with the legislative technique rules shall be considered in order to finalize the law project. The nonacceptance of these observations and proposals shall be justified within the introductory document of the legal proposal or in an accompanying memorandum.

The provisions of Art.2 para. 2, as modified, are an ad litteram replica of Art. 7 para. 2 of the Law no. 304 of 2004, which provides that justice shall be done for all equally, without any discrimination on account of race, nationality, ethnic origin, language, religion, gender, sexual orientation, opinion, political affiliation, wealth, origin or social condition or other discriminatory criteria. This is a legislative paralelli, forbidden by Art. 16 of the Law no. 24 of 2000.

3. A new paragraph, paragraph (3) shall be introduced under Article 7, after paragraph (2), and shall read as follows:
"(3) The layout of the courtroom shall reflect the principle of equality of arms with regard to the seats of the judge, prosecutors and lawyers."

This newly introduced provision contarvenes to Art.1 para. 5 of the Constitution.

The notion of equality of arms is a component part of the right to due process, which is regulated by Art. 6 of the European Convention of Human Rights and Art. 21 para. 3 of the Constitution. The notion of equality of arms does not encomprises a simbolistic component. A general explanation of the equality of arms has been offered by the ECHR in the decision Dombo Beheer B.V versus Holland.

The Court has stated that the equality of arms implies "the obligation to offer to each party the reasonable opportunity to present its case – including the evidence – in such circumstances that shall not place him or her in a position which is disadvantageous as regards the other party", being an equitable procedural equilibrum between the parties. In the same decision, the Court has held that the principle of equality of arms, as an inherent element of the due process, applies to the civil cases, as well as to the criminal cases.

In substance, the Court has held in the decision given in Trailescu versus Romania, that the place of the prosecutor in the courtroom does not infringes Art.6 para.1 of the European Convention of Human Rights (right to a due process). The Court has stated that a privileged "physical" position of the Public Prosecutor in the courtroom does not place the "accused" in a disadvantageous situation as regards the protection of his rights. As well, lacking any indication regarding the arbitrary assessment of the

evidence by the national courts, the Court has held that it is the national courts' competency to assess the evidence presesnted during the judicial proceedings.

The Court stated that the fact that the situation regarding the place of the prosecutor in the courtroom is not sufficient, by itself, to put to the issue the principle of equality of arms or the lack of impartiality or independence of the judge, even if the Public Prosecutor would hold a privileged "physical" position in the courtroom, this does not place the "accused" in a concrete disadvantageous situation as regards the defence of his legal interests (Chalmont v. France, decision of 9 December 2003, no. 72531/01; Morillon v. France, decision of 2 December 2003, no. 71991/01; Carballo and Pinero v. Portugal, decision of 21 June 2011, no. 31237/09; Dirioz v. Turkey, decision of 31 May 2012, no. 38560/04).

Therefore, the provision that the configuration of the courtroom must reflect the principle of equality of arms is lacking clarity and precision, being unclear in which manner the placement in a courtroom can influence the possibility of each party to have the reasonable opportunity to present its case, including evidence. Also, the Court jurisprudence regards the parties and not the lawyers. A normative provision which gives additional rights to the persons assisted by lawyers, compared to those that do not have such assistance, infringes the provisions of Art.16 para. 1 of the Constitution.

4. Article 9 shall be amended and shall read as follows:
"Art. 9.- The decisions of the sections may be appealed against with the administrative section of the court of appeal, according to ordinary law."

This new provision infringes Art. 1 para. 5, Art. 126 para. 6, hypothesis 1st, Art. 133 para. 1 and Art. 134 para. 4 of the Constitution.

The Constitutional Court has specified, in the decision no. 331 of 3 April 2007 regarding the unconstitutional challenge of Art. 29 para. 7, Art. 35, Art. 27 para. 3 and Art. 35 letter f) of the Lw no. 317 of 2004 regarding the Supreme Council of Magistracy and Art. 52 para. 1 of the Law no. 303 of 2004 on the statute of judges and prosecutors, that the provisions of Art. 35 and 27 para. 3 of the Law no. 317 of 2004 express the attributions of the Superior Council of Magistracy, as they are reglemented by Art. 134 of the Constitution. The Constitution provides expressly only as regards the attribution regarding the judgment on disciplinary proceedings against judges and public prosecutors that it willl be carried out by the Council, through its sections (Art. 134 para. 2). Such a provision it is not included in Art. 134 para. 1 and 4 of the Constitution. These provisions define the role of the Superior Councl of Magistracy, as a unique body, in its Plenary, regarding the adoption of the decisions, in general (for the proposal made to the President of Romania in order to appoint the judges and the prosecutors, except the stagiaires magistrates and also as regards other attributions established by its organic law, in fulfiling its function of the guarantor of the independence of the judiciary.

The separation of the decisional competencies regarding the career of the magistrates shoud not affect the role of the Superior Council of Magistracy which, in its plenary competency, represent the guarantor of the independence of the judiciary,

according to Art. 133 para. 1 of the Romanian Constitution. Therefore, all the attributions of the Superior Council of the Magistracy regarding the general and common aspects of the career of the magistrates and the organnisation of the courts and the Public Prosecutors' offices belong exclusively to the Plenary of the Superior Council of Magistracy. The fact that there are separate sections regarding the judges and the prosecutors does not imply also the definitive character of these decisions, neither the rule that the complaints against these decisions are to be resolved by the mere section that issued the decision. The constitutional architecture of the Superior Council of Magistracy, collective organ, implies the possibility of challenging the decision of each section at the Plenary (except the decisions taken in the disciplinary proceeding, hypothesis which has a different regime, based on the Constitutional provisions).

The only manner in which the separation of the career of the judges and the prosecutorscould be drafted in a constitutional frame, should be a revision of the Constitution.

In France and in Belgium, which are traditional constitutional models for Romania, the presidents of the supreme courts expressed strong opinions favouring the unity of the magistracy within the same council[22]

Also, Art. 9 infringes Art. 126 para. 6 hypothesis 1st of the Constitution, which provides that "judicial review of public authorities' administrative action shall be guaranteed via courts for administrative disputes". Therefore, providing that the decisions issued by the Council's sections are to be challenged according to the common rules and regulations, all the guarantees which are instituted by the Constitution as regards this administrative act.

The reference made to the common rules and regulations compells the court to apply the civil law provisions, which are the common rules and regulations, being infringed the specific guarantees provided by the law as regards the administrative law judicial proceedings. Also, such a referral determines the appliance of the mandatory decisions of the High Court of Cassation and Justice (issued in the proceedings of the appeals in the interest of the laws and the preliminary rulings on legal aspects), which will abolish the legal norms, terms and principles of the administrative law. The referral to one of the sections of a court does not sustain the constitutionality of the provision, as far as these sections apply the substantial law indicated by the legislative in each case.

Also, the provision lacks the mandatory clarity of a legal norm, infringing Art. 1 para. 5 of the Constitution. The common rules and regulations includes a totally different set of principles and guarantees that those required by Art. 126 para. 6 of the Constitution.

5. A new paragraph, paragraph (3) shall be introduced under Article 16, after paragraph (2), and shall read as follows:

"(3) Court decisions shall be drafted within 30 days at the most from the date of ruling. In thoroughly justified cases, the deadline may be extended by 30 days, two times at

[22] See, for details, http://www.forumuljudecatorilor.ro/index.php/archives/2706 and https://www.courdecassation.fr/venements_23/derniers_evenem

most.”

This newly introduced provision is contrary to the provisions of Art.1 (5), Art.79 (1) and Art.124 (2) and (3) from the Constitution.

There is a parallel egulation to the special texts from the Code of Civil and Criminal Procedure, in any event applicable as special law. The present text is a general law and is inapplicable.

The Legislative Council is a competent consultative body of the Parliament, which endorses draft legislation towards systemizing, unifying and coordinating of all relevant legislation. It keeps the official record of Romania’s legislation. At Article 16, the law provides that: *(1) In lawmaking it is prohibited the creation of the same regulations in several articles or paragraphs from the same legislation or in two or several legal acts. In order to underline legislative links the reference rule shall be used. (2) In case of duplication, they shall be handled either by repeal, or by concentration of matter in single legislation. (3) There are subject to the single legislation concentration process the relevant regulations dispersed under the laws in force. (4) In a legal act issued on the basis and during the enforcement of another higher level / superior legal act, does not use the reproduction of disposals from the superior legal act, being advisable only the indication of the reference texts. In such cases the transfer of standards in the inferior act can only be made for the development and detailing of the solutions from the basic legislative act.*

The Legislative Council hasn’t been able to comment regarding the compliance to the rules of legislative technique towards the modification of the present article.

The text is neither predictable, nor is clearly and precisely written the hypothesis of the disciplinary irregularity foreseen by art. 99 letter r from the Law no. 303/2004 in the modification proposed by the other project, due to the absence of application of a compulsory time limit. In addition, the overcrowded courts are unable to carry out independently their activity under the auspices of triggering disciplinary actions at any time for any exceedance of the (statement of reasons) motivation grounds/time, even in the case of a singular judgment / court decision. Having determined artificially a period of maximum 60 days, without having regard of objective criteria, i.e. the complexity of the case and the volume of activity / work of the court, etc. it will make unfeasible to dispense justice uniquely in terms of quality to state reasons for judgments. Furthermore, the independence of judges is infringed. “The obedience” of the judge towards the law also requires the corresponding obligation of the legislator to enact for the purpose of application of justice and not blocking it.

The formulation with a sufficient degree of accuracy of the legal act enables the interest parties to reasonably provide, in the circumstances of the case, the consequences which may result from a determined act. It is of course very difficult to adopt legislation precisely and flexibly worded, however, the far too general character and sometimes, even elliptic must not affect in any way the predictability of the law (see, the ruling of the European Court of Human Rights from November 25th 1996 in case

Wingrove against the United Kingdom, par.40, judgment of May 4th 2000, case Rotaru v. Romania, par.55, or the ruling from November 9th 2006, the case Leempoel & S.A. ED. Cine Revue against Belgium, para.59).

8. Two new paragraphs, paragraphs (2) and (3) shall be introduced under Article 21, after paragraph (1), and shall read as follows:
"(2) The decision to reject the request to submit the unconstitutionality exception, ruled by the highest court, may be appealed against by means of second appeal.
(3) Section I Civil cases, Section II Civil cases and the Administrative and Fiscal Section of the High Court of Cassation and Justice shall judge by a different panel the second appeal lodged against decisions ruled by these sections, rejecting the request to seize the Constitutional Court."

This newly introduced provision is contrary to the provisions of Art.1 (5) from the Constitution.

The heading *"Court of Last Instance"* is not predictable and the object of the regulation is not clear and precise. In addition, the heading "the request to submit a challenge is overruled" cannot be used in relation to the terms recognized by the Law no. 47/1992 republished.

The formulation with a sufficient degree of accuracy of the legal act enables the interest parties to reasonably provide, in the circumstances of the case, the consequences which may result from a determined act. It is of course very difficult to adopt legislation precisely and flexibly worded, however, the far too general character and sometimes, even eliptic must not affect in any way the predictability of the law (see, the ruling of the European Court of Human Rights from November 25th 1996 in case Wingrove against the United Kingdom, par.40, judgment of May 4th 2000, case Rotaru v. Romania, par.55, or the ruling from November 9th 2006, the case Leempoel & S.A. ED. Cine Revue against Belgium, para.59).

26. A new paragraph, paragraph (3) shall be introduced under Article 53, after paragraph (2), and shall read as follows:
"(3) The system used for the random distribution of cases by panels shall undergo external audit every 2 years, led by the Ministry of Justice, with the involvement of civil society and professional organisations of magistrates. The conclusion of the audit shall be public."

This newly introduced provision is contrary to the provisions of Art.1 (4) and Art.133 (1) from the Constitution.

The fact that the random allocation system of courts will be audited under the supervision of the Ministry of Justice, with the participation of the civil society and the professional organization representing magistrates, every two years, infringes the

independences of justice, the constitutional role of the Superior Council of the Magistracy together with the principle of the separation of powers. The principle of the separation of powers in the state is infringed. . The President of Romania, the judicial power or the Government do not audit the way in which the Chambers of the Parliament establish their agenda and program internally how to conduct specific activities, the same principle applies to the organization of activities of all the powers of the state. Such interference is foreign to the rule of law, the independence and separation of powers, allowing a political body to, the Minister of Justice, to substitute itself from the elected officials or from the appointed bodies, within the judicial power, to pursue the prerogatives.

The random assignment of cases is carried out constantly by the Superior Council of the Magistracy, as well as by judges within the Judicial Inspection, subject to the principles of the professional secrecy and other safeguards regarding the rights of the people involved in the judicial procedure. The application of justice independently implies independence as to the internal organization of its activity. To allow the executive authority the control of the organization of handling court cases equals to allow an unconstitutional control on the application of justice.

36. A new paragraph, paragraph (31) shall be introduced under Article 661, after paragraph (3), and shall read as follows:
"(31) Employees, informants or collaborators of the intelligence services, even undercover, may not hold the position of officer or agent of the Judicial Police. Prior to their appointment, they shall sign a handwritten declaration on own responsibility that they are not ad have not been members of the intelligence services, that they are not and have not been collaborators of informers of the intelligence services."

This newly introduced provision is contrary to the provisions of Art.1 (5) from the Constitution.

The text doesn't meet the requirements of clarity and predictability regarding the notion of intelligence services, which is not defined in any law. The Law no. 51/1991 uses the concepts of intelligence activity and information structure: "Article 8 -(1) The information activity for the accomplishment of national security is performed by the Romanian Intelligence Service, the state body specialized in information within the country, the Foreign Intelligence Service, the state body specialized in obtaining data on national security, and the Protection and Guard service, the body specialized in the protection of Romanian and foreign dignitaries during their presence in Romania, as well as in guarding the workplaces and residence. *(2) The state bodies referred to in paragraph (1) shall be organized and operate according to the law and shall be financed from the state central administration budget. (3) The activity of the state bodies provided in para. (1) is controlled by the Parliament. Article 9 – (1) The Ministry of National Defense, The Ministry of Internal Affairs and the Ministry of Justice shall organize information bodies with attributions specific to their fields of activity. (2) The information*

activity of these bodies shall be carried out in accordance with the provisions of the law and shall be controlled by the Parliament."

35. Article 64 (2), (3) and (5) shall be amended and shall read as follows:
"(2) In the solutions reached, the prosecutor shall be independent, pursuant to law. The prosecutor may appeal against the intervention in the prosecution or decision-making processes of the hierarchically superior prosecutor, regardless its nature, with the section for prosecutors of the Superior Council of Magistracy, under the procedure for the verification of judges' and prosecutors' conduct.
(3) The solutions adopted by the prosecutor may be invalidated by the hierarchically superior prosecutor, when they are appreciated as unlawful or ungrounded.
……...
(5) The prosecutor may appeal against the measure ordered pursuant to paragraph (4) by the hierarchically superior prosecutor with the section for prosecutors of the Superior Council of Magistracy, under the procedure for the verification of prosecutors' conduct."

38. Article 69 (1) and (3) shall be amended and shall read as follows
"Art.69.- (1) The Ministry of Justice, whenever they deem it necessary, upon its initiative or upon request of the Section for prosecutors of the Superior Council of Magistracy, shall exercise control over prosecutors, through prosecutors specifically appointed by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, as appropriate, by the Chief Prosecutor of the National Anti-Corruption Directorate, by the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism or by the Minister of Justice.
……...
(3) The Minister of Justice may request the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice or, as appropriate, by the Chief Prosecutor of the National Anti-Corruption Directorate, by the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism information on the activity of prosecutor's offices and may provide written guidance on the actions to be taken for efficient crime prevention and combating."

These newly introduced provisions are contrary to the provisions of Art.11 (1), Art.131 (1), and Art. 132 (2) from the Constitution.

The Romanian state undertakes to fully and in good faith meet its obligations under the treaties to which it is a party. Thus, by ratifying or adhering to the international conventions mentioned above, the Romanian State has undertaken to observe and transpose the international provisions in its internal law.

According to art. 20 of the Criminal Convention on Corruption adopted by the Council of Europe on January 27th 1999 in Strasbourg, ratified by Romania through Law no.27 / 2002, published in the Official Gazette of Romania, Part I, No.65 of January 30th 2002, "Each Party shall adopt such measures as may be necessary to enable persons or entities to specialize in the fight against corruption. They will have the necessary

independence within the fundamental principles of the legal system of the Party in order to be able to exercise their functions effectively and free of all undue pressure.

At the same time, according to art. 6 point 2 of the United Nations Convention Against Corruption, adopted in New York on October 31st 2003, ratified by Romania through Law No.365 / 2004, published in the Official Gazette of Romania, Part I, no.903 of October 5th 2004, defines the meaning of "public official" under art. 2 letter a) "Every State shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, in order to enable the effective exercise of its functions sheltered from any unwanted influence. "

It is noted that by granting the possibility to the Ministry of Justice, who is a member of the Government, appointed and supported by a political party, to give written instructions on the measures to be taken "for the effective prevention and combating of crime" (art. 69 paragraph 3 final sentence), but in particular by placing the prosecutors under the control of the Ministry of Justice (69 paragraph 1), without defining in any way these attributions, creates the possibility of intervening in the judicial activity of the prosecutors in a manner that brings the attainment at least the objectives assumed by the Romanian State under the above-mentioned international treaties.

Thus, in particular, it is created the possibility that the Ministry of Justice, who is either a member of a political party, or is supported and implements the governing program supported by the Parliament by one or more political parties, "to exercise control over prosecutors " and to provide written guidance on the measures to be taken "to prevent and combat crime effectively".

Thus, in cases where the prosecution of alleged corruption offenses (and, if necessary, the adjudication of cases) concerns members of the party supporting or being part of the government of which the Ministry of Justice is also a member, the prosecutors can be controlled by a person whose position depends directly on the persons investigated by the prosecutor. It is obvious that such a report is likely to remove the independence that prosecutors would need to solve such causes.

In addition, the reports generated by art.69 (1) and (3) from the draft Law no. 304/2004, eliminates the possibility of the Prosecutor to be impartial, as long as, in such situations, should either of the Parties indirectly enable the control of the Prosecutor whom investigates the case. Thus, there is also infringed art.132 (2) from the Constitution.

The provisions of art.64 from the draft law no. 304/2004 referring to the "in the given solutions, the prosecutor in independent" do not constitute a guarantee against "full independence, in accordance with the fundamental principles of its legal system, in order to allow the effective exercise of their authority sheltered from any unwanted influence" as long as this independence must comply with the "condition foreseen by the law" i.e. the rights established in favor of the Justice Minister by art.69 (1) and (3) from the draft law no. 304/2004.

The principle of authority of the Minister of Justice over prosecutors needs to and can be regulated in a manner that does not affect the necessary independence for prosecutors to exercise their prerogatives in an efficient manner, free from any illicit

pressure, through the detailed regulation of the exercise of this authority, that should exclude any intervention in the judicial activity of the prosecutor.

Also, article 69 para. 1 and para. 3 from the Draft of Modification of the Law no. 304/2004 violates article 131 para. 1 and article 132 para. 2 of the Constitution by using imprecise terms.

Thus, article 69 para. 1 and para. 3 of the Law no. 304/2004 provides that the Minister of Justice "exercises control over prosecutors" and that he/she can give written guidance regarding measures that need to be taken to "prevent and efficiently fight criminality". The Draft of Law does not detail in any way what orders can the Minister give or what measure he/she can take regarding prosecutors.

In the absence of a precise regulation of limits to the powers of the Minister of Justice, the above mentioned text can be interpreted by the minister very widely regarding the orders he can give in exercising his authority. Still, strictly subjective considerations should be eliminated from the analysed context, given the importance of the constitutional function exercised by the Public Ministry, in accordance with article 131 para. 1 from the Constitution of Romania (see, *mutatis mutandis the Decision of the Constitutional Court no. 553/2015*).

The same imprecision is bound to cause a strong impression that the impartiality of prosecutors, stipulated in article 132 para. 2 of the Constitution, can be affected by the exercise of the "control over prosecutors".

45. A new section, Section 21 – Investigation of Offences in the judiciary, including articles 881-889, shall be introduced after Article 88, and shall read as follows:
„Section 21
Section for the Investigation of Offences in the Judiciary

This newly introduced section violates article 16 of the Constitution and article 6 of the Convention.

There were no explanations for the necessity of creating such a unit. A special unit is justified only if there is a special problem. Therefore, the texts create the impression that there is a law-breaking problem among magistrates that requires special attention.

Moreover, at a first glance, such a measure can be also analysed from a constitutional perspective, given the fact that such a special criminal investigation will be conducted solely for magistrates. The Decision no. 104/2009 of the Constitutional stands as support for this argument, even though it was rendered on an unrelated topic, that of work conflicts; this decision confirmed the principle according to which there is no reason that justifies a different legal and procedural treatment for magistrates.

There is no such measure for members of the Parliament, or members of the Government, or public servants, or for any other professional category. There is no reason why magistrates should receive a special treatment. If the reason would be that

of ***protecting*** magistrates, then such an explanation is at least implausible and bound to give rise to the suspicion that, in reality, it bears ulterior motives.

Additionally, such a change is not necessary, as – for an efficient criminal investigation – it is indispensable for a magistrate to be held responsible criminally just like any other citizen, depending – first of all – on the nature of the alleged crime. Thus, if the magistrate commits a crime of corruption, the investigation will be carried out by the DNA; if the crime is related to drug trafficking, he/she will be investigated by the DIICOT, and if it is an ordinary crime, the investigation must be carried out by the other prosecutor's offices. In conclusion, it is required that this investigation prerogative belong to different units and not for all these prerogatives to be concentrated in one single one.

The magistrate has the right to be criminally investigated by a specialised prosecutor, according to the category of crimes that constitute the charge, a right that belongs to every citizen. Even more as the magistrate is vulnerable, his/her decisions leaving at least one party displeased, often determining the filing of criminal complaints as chicanery, it is necessary that – similarly to every other Romanian citizen – the magistrate is investigated by prosecutors specialised in that particular field, whether it is corruption, murder, assault etc. Still, this right, to be equal in the eyes of public authorities, is violated by the investigation of the magistrate by a unit comprising a maximum of 15 prosecutors, who could never specialise in all crimes. The idea of becoming a specialist in a field involves professional experience, alongside detailed theoretical knowledge of the domain, and this status is acquired after long periods of actual practice in the field.

Then, concentrating the activity of these 15 prosecutors in Bucharest, with the violation of the accessibility of the judiciary, involves forcing the magistrate, unlike other citizens, to travel to other cities for hearings and other investigative activities, during working hours, to large distances and with excessive costs. Also, the magistrate would argue his/her case with difficulty and would undergo disproportionate costs or he/she would be forced not to be present at the investigation proceedings and submit to an unfair trial.

The Venice Commission established that **"The use of special prosecutors in such cases [corruption, money laundry, traffic in influence[23] etc.] has been successfully employed in many countries. The offences in question are specialised and can better be investigated and prosecuted by specialised staff. In addition, the investigation of such offences very often requires persons with special expertise in very particular areas. Provided that the special prosecutor is subject to appropriate judicial control, there are many benefits to and no general objections to such a system."** *CDL-AD(2014)041, Interim Opinion on the Draft Law on Special State Prosecutor's Office of Montenegro, par.17, 18 și 23*[24]

[24] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)041-e [last accessed the 3rd of January 2018].

Consequently, the creation of this special unit undermines even the use of special prosecutors [corruption, money laundry, traffic of influence etc.], a disproportionate measure with regard to any possible purpose.

61. A new article, article 1342 shall be introduced after Article 134, and shall read as follows:
"Art.1342.- (1) The President of the court of appeal may provide that the courts with high workload within the jurisdiction of the court of appeal may employ former judges who ceased their activity reasons not attributable to them, to develop draft judgments.
(2) The decision provided by paragraph (1) may be made using the procedure defined by the Superior Council of Magistracy, which shall include the criteria used to identify those situations where cooperation with former judges is necessary."

This newly introduced provision violates article 124 para. 3 and article 126 para. 1 of the Constitution and article 6 of the Convention.

The independence of the judiciary does not concern the public procedure exclusively, but also the activities before and after public debates – deliberation and reasoning of the decisions.

The statement of the reasons not only makes the decision easier for the litigants to understand and be accepted, but is above all a safeguard against arbitrariness. Firstly, it obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful; secondly, it enables society to understand the functioning of the judicial system. The reasons must be consistent, clear, unambiguous and not contradictory. They must allow the reader to follow the chain of reasoning which led the judge to the decision.

(Opinion no.11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions, points 35-40)

Consequently, the reasoning of the decision is an essential act of the judge, expressing his/her independence, and cannot be handed to a third party, even a former judge, third party even to the court. Not even a judge colleague can write a decision draft for a case in whose debates he/she did not participate.

63. Article 139 (2) shall be amended and shall read as follows:
"(2) The internal Rules of Procedure of the courts of law shall be approved by the Section for judges of the Superior Council of Magistracy, by decision published in the Official Journal of Romania, Part I."
64. Article 140 (2) shall be amended and shall read as follows:
"(2) The internal Rules of Procedure provided by paragraph (1) shall be approved by the Section for prosecutors of the Superior Council of Magistracy, upon proposal of the General Prosecutor of the prosecutor's Office attached to the High Court of Cassation and Justice or, as appropriate, of the Chief Prosecutor of the National Anti-Corruption Directorate or of the Chief Prosecutor of the Directorate for Investigating Organised

Crime and Terrorism, with the endorsement of the Minister of Justice."

This newly introduced provision violates article 133 para. 1 and article 134 para. 4 of the Constitution.

The Constitutional Court stated, through the **Decision no. 331 of 3 April 2007** *concerning the constitutional challenge of article 29 para. 7, article 35 referring to article 27 para. 3 and article 35 letter f from the Law no. 317/2004 regarding the Superior Council of Magistracy, and article 52 para. 1 of the Law no. 303/2004 regarding the status of judges and prosecutors*, that article 35 referring to article 27 para. 3 of the Law no. 317/2004 embody the prerogatives of the Superior Council of Magistracy, the way they were regulated through article 134 of the Constitution.

The Constitution specifically provides just for the prerogative of acting as a court ***in the field of disciplinary responsibility*** of magistrates that the Superior Council of Magistracy exercises this prerogative through ***its sections*** (article 134 para. 2). Such a provision does not exist in article 134 para. 1 and para. 4 of the Constitution. These paragraphs regulate the role of the Superior Council of Magistracy as a whole, in Plenary, regarding the rendering of decisions in general (for the proposition to the President of judges and prosecutors to be appointed, with the exception of junior magistrates, as well as for other prerogatives established by organic law, in accomplishing its role as a guardian of the independence of justice).

Separating decisional prerogatives concerning the career of magistrates should not affect the role of the Superior Council of Magistracy that, in its full configuration, represents the guardian of the independence of justice, according to article 133 para. 1 of the Constitution. **Therefore, all the Council's prerogatives that concern general and common aspects regarding the career of magistrates and the organising of courts and prosecutors offices fall under the competencies of the Plenary of the Council.**

The fact that there are separate sections for judges and prosecutors does not imply that the decisions of these sections should be final or that complaints against them should be solved only be each corresponding section. **The constitutional architecture of the Superior Council of Magistracy, collegial[25] institution, implies challenging the decisions of each section in the Plenary (except the decisions of the disciplinary section, as a result to a constitutional exception).**

The only way the strict separation between the careers of judges and prosecutors can be created, without the risk of unconstitutionality, is a constitutional revision. In France or Belgium, traditional constitutional references for Romania, the presidents of the supreme courts have recently spoken in favour of the unity of the magistracy within the same council.

Arguments that concern the unconstitutionality of certain provisions of the Law for the revision of the Law no. 317/2004

25. Article 30 shall be amended and shall read as follows:
"Art.30.- (1) The appropriate sections of the Superior Council of Magistracy have the right, and the correlative obligation, respectively, to take action *ex officio* to defend judges and prosecutors against any interference with their professional activity or in relation to it, which might affect the independence and impartiality of judges, and the independence and impartiality of prosecutors, respectively, in ruling solutions, pursuant to Law no. 304/2004 on the organisation of the judiciary, republished, as further amended and supplemented, and against any action which might give rise to suspicion with regard to these. Also, the sections of the Superior Council of Magistracy shall safeguard the professional reputation of judges and prosecutors. Notifications on safeguarding the independence of the authority of the judiciary shall be solved upon request or *ex officio* by the Plenum of the Superior Council of Magistracy.
(2) The Plenum of the Superior Council of Magistracy, the sections, the president and the vice-president of the Superior Council of Magistracy, either *ex officio* or upon notification by the judge or prosecutor, shall call upon the Judicial Inspection to perform verifications, in order to safeguard the independence, impartiality ad professional reputation of judges and prosecutors.
(3) In circumstances where the independence, impartiality or professional reputation of a judge or of a prosecutor are affected, the appropriate section of the Superior Council of Magistracy shall take the necessary actions and shall publish them on the website of the Superior Council of Magistracy, may notify the competent bodies to decide on the necessary measures or may order any other appropriate action, pursuant to law.

34. Article 40 shall be amended and shall read as follows:
"Art.40.- (1) The Section for Judges of the Superior Council of Magistracy shall have the following duties concerning the career of judges:
a) Shall decide on the delegation and posting of judges, pursuant to law;
b) Shall propose the President of Romania the appointment and removal from office of the president and vice-president of the High Court of Cassation and Justice;
c) Shall appoint and dismiss the presidents of sections of the High Court of Cassation and Justice;
d) Shall propose the President of Romania the appointment and removal from office of judges;
e) Shall appoint debutant judges based on their results in the graduation examination from the National Institute of Magistracy;
f) Shall remove from office debutant judges;
g) Shall analyse compliance with legal requirements by debutant judges who passed the capacity exam, by other legal professionals who passed the exam for admission in magistracy, by judges who applied for a promotion exam and by judges proposed for appointment in management positions;

h) Shall solve complaints against the appraisals granted by the committees for the annual assessment of professional activity of judges, set up pursuant to law;
i) Shall decide on the promotion of judges;
j) Shall appoint judges in management positions, pursuant to law and regulations;
k) Shall approve the transfer of judges;
l) Shall decide on the suspension from office of judges;
m) Shall convoke the general meetings of judges, pursuant to law;
n) Shall approve measures to supplement or decrease the number of positions for courts of law;
o) Shall take actions to solve the complaints received from court users or from other persons on the inappropriate conduct of judges;
p) Shall adopt the internal Rules of Procedure of courts of law;
q) Shall fulfil any other duties set forth by laws or regulations.
(2) The Section for Prosecutors of the Superior Council of Magistracy shall have the following duties concerning the career of prosecutors:
a) Upon proposal of Minister of Justice, shall submit to the President of Romania the proposal on the appointment of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, of his/her first deputy and deputy, of the Chief Prosecutor of the National Anti-Corruption Directorate, of his/her deputies, of the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism and of their deputies;
b) Shall endorse the proposal of the Minister of Justice on the appointment and dismissal of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, of the Chief Prosecutor of the National Anti-Corruption Directorate, of their deputies, of the Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism and of his/her deputies;
c) Shall appoint and dismiss the chief prosecutors of the sections of the Prosecutor's Office attached to the High Court of Cassation and Justice, of the National Anti-Corruption Directorate and of the Directorate for Investigating Organised Crime and Terrorism;
d) Shall propose the President of Romania the appointment and removal from office of prosecutors;
e) Shall appoint debutant prosecutors based on their results in the graduation examination from the National Institute of Magistracy;
f) Shall remove from office debutant prosecutors;
g) Shall analyse compliance with legal requirements by debutant prosecutors who passed the capacity exam, by other legal professionals who passed the admission exam, by prosecutors who applied for a promotion exam and by prosecutors proposed for appointment in management positions;
h) Shall solve complaints against the appraisals granted by the committees for the annual assessment of professional activity of prosecutors, set up pursuant to law;
i) Shall decide on the promotion of prosecutors;
j) Shall appoint prosecutors in management positions, pursuant to law and regulations;
k) Shall approve the transfer of prosecutors;
l) Shall decide on the suspension from office of prosecutors;

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

35. Article 41 is hereby amended and shall read:
"Article 41.- (1) The division for judges of the Superior Council of Magistracy shall have the following responsibilities regarding the organisation and operation of the courts of justice:
a) approve the establishment and dissolution of divisions in the courts of appeal, other courts of justice in the jurisdiction of the courts of appeal, as well as the setting up of secondary premises of courts of justice and their jurisdictions, according to the law;
b) approves the measures for supplementing or reducing the number of posts for courts of justice and prosecutor's offices;
c) establishes the categories of trials or applications to be judged / settled in the City of Bucharest only by certain courts of justice, while observing the substantive jurisdiction provided for by the law;
d) at the proposal of the presidents of courts of appeal, establishes the number of vice-presidents for the courts of appeal, tribunals and specialised tribunals, as well as the first instance courts of justice where one vice-president works;
e) fulfils any other duties set forth by laws or regulations;
f) adopts the Internal Regulations of courts of justice.
(2) The division for prosecutors of the Superior Council of Magistracy shall have the following responsibilities regarding the organisation and operation of courts of justice:
a) approves the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice or of the Chief Prosecutor of the National Anti-Corruption Department or of the Chief Prosecutor of the Department for Investigation of Organised Crime and Terrorism;
b) upon the proposal of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, approves the number of deputies of the general prosecutors within prosecutor's offices attached to courts of appeal and of prime-prosecutors within prosecutor's offices attached to tribunals, as well as prosecutor's offices attached to first instance courts, where prime-prosecutors are assisted by deputies;
c) fulfils any other duties set forth by laws or regulations;
d) adopts the Internal Regulations of prosecutors' offices."

This newly introduced provision violates art.133 para. (1) and art.134 para.(4) of the Constitution.

The Constitutional Court stated, in the Decision no.331 of 3 April 2007 on the objection of unconstitutionality of the provisions of art. 29 para. (7), art.35 referring to art.27 paragraph (3) and art.35 lit.f) of the Law no. 317/2004 on the Superior Council of Magistracy and Article 52 paragraph (1) of the Law no.303 / 2004 on the statute of judges and prosecutors, that the provisions of art.35 referring to the provisions of art.27 par.) of the Law no.317 / 2004 give expression to the attributions of the Superior Council of Magistracy, as they were regulated by art.134 of the Basic Law.

The Constitution expressly provides only for the attribution regarding the fulfillment of the role of a court in the field of disciplinary liability of judges and prosecutors that the Council performs it through its sections (Article 134, paragraph 2). Such an explanation is missing from the article art. 134 par. (1) and (4) of the Constitution. These provisions state the role of the Superior Council of Magistracy as a whole, respectively in its Plenum, regarding the adoption of judgments in general (both for the proposal to the President of Romania for the appointment of judges and prosecutors in office, except for the trainees, according to the law, as well as for other attributions established by its organic law, in fulfilling its role as guarantor of the independence of justice).

The separation of decision-making powers regarding magistrates' career should not affect the role of the Superior Council of Magistracy, which, in its plenary composition, is the guarantor of the independence of justice according to art. 133 par. (1) of the Romanian Constitution. Therefore, all the tasks of the SCM that concern the general and common aspects of the magistrates 'career and the organization of the courts and prosecutors' offices rest exclusively on the competence of the SCM Plenary.

The fact that there are separate sections with regard to judges or prosecutors does not imply that the judgments given by these sections are final or that the complaints against them are solved by each of the sections concerned. The constitutional architecture of the Superior Council of Magistracy, a collegial body, involves the attack on the Plenum of the decisions of each section (except for the decisions of the disciplinary sections, also following the exception enshrined in a constitutional text).

The only way to perform the strict separation of judges and prosecutors' careers without the risk of unconstitutional declaration of such a change is a constitutional review. In France or Belgium, traditional constitutional models for Romania, the presidents of the supreme courts have recently pronounced themselves for the unity of magistrates within the same council.

Also, the proposed new paragraph (3) grossly violates the SCM's role as guarantor of the independence of the judiciary, if it is not obliged to take action in favor of the magistrates concerned. As the MCV Reports consistently maintain, the Superior Council of Magistracy should determine whether further action can be taken to provide adequate support to criticized magistrates who undermine the independence of the judiciary.

10. Article 10 (1)-(3) shall be amended and shall read as follows:
“Art.10.- (1) The judges from each courts of appeal, the judges from all tribunals and specialist tribunals within the jurisdiction of each court of appeal and the judges from

each court of first instance within the jurisdiction of each court of appeal shall appoint, by secret, direct and personal vote, one candidate each for the position of member of the Superior Council of Magistracy from the judges who submitted their applications.
(2) The prosecutors from each prosecutor's office attached to the courts of appeal, the prosecutors from each prosecutor's office attached to the tribunals and specialist tribunals within the jurisdiction of each court of appeal and the prosecutors from the prosecutor's offices attached to courts of first instance within the jurisdiction of each court of appeal shall appoint, by secret, direct and personal vote, one candidate each for the position of member of the Superior Council of Magistracy from the prosecutors who submitted their applications.
(3) Judges and prosecutors who obtained a majority of votes in the general meetings provided by Art. 9 (3) and (4) shall be appointed to apply for the position of member of the Superior Council of Magistracy. The decisions of the general meetings shall be submitted to the management board of the court of appeal, and to the prosecutor's office attached to it, respectively, and they shall decide on the results of the vote."

This newly inserted provision infringes on the provisions of art. 133 para. (2) point a) of the Constitution

The members of the Superior Council of Magistracy – judges and prosecutors respectively, - are to be elected by the ballot of all the general assemblies of judges and prosecutors respectively, notwithstanding the court´s/ prosecutor office´s degree on behalf of which they run for.

A judge is allowed to vote all of the 9 judges elected as members of the SCM, and not being restricted to just two or three candidates, depending on the degree of the court within which he/she activates. Such an interpretation is sensible and prone to be of interest to all judges/ prosecutors in the context of the proper functioning of the judiciary in its entirety and not only in relation to the different levels of jurisdiction, as the case may be with the censorship vote. In addition, the current election system contains significant differences between the degree of representativeness enjoyed by judges / prosecutors from lower courts / prosecutor office´s and those from higher courts / prosecutors' offices. For example, under the current system in France or Belgium, each judge is to elect all members of the SCM. Even in the Republic of Moldova, six judges, including two alternates, are elected to the Superior Council of Magistracy in a secret ballot by the General Assembly of Judges, representing all levels of court jurisdiction within the country.

19. Article 24 (1) and (2) shall be amended and shall read as follows:
"Art.24.- (1) The Superior Council of Magistracy shall be managed by a president - judge, assisted by a vice-president - prosecutor, elected from the judges and prosecutors provided by Art.3 (a), who are part of different sections, for a non-renewable one-year mandate.
(2) 1. The President of the Section for Judges is the President of the Superior Council of Magistracy by right and is elected from the members provided by Art.4 for a non-

renewable one-year mandate, by the elective meeting of members provided by Art. 3 letters a) - c), as follows:
a) Judges elected within the Superior Council of Magistracy, namely 2 judges from the High Court of Cassation and Justice, 3 judges from the courts of appeal, 2 judges from tribunals and 2 judges from courts of first instance;
b) Members by right, the President of the High Court of Cassation and Justice and the Minister of Justice;
c) Appointed members, the 2 representatives of the civil society.
2. The President of the Section for Prosecutors is the Vice-President of the Superior Council of Magistracy by right and is elected from the members provided by Art.5
for a non-renewable one-year mandate, by the elective meeting of members provided by Art. 3 letters a) - c), as follows:
a) Prosecutors elected within the Superior Council of Magistracy, namely a prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice, from the National Anti-Corruption Directorate or from the Directorate for Investigating Organised Crime and Terrorism, a prosecutor from the prosecutor's offices attached to the courts of appeal, 2 prosecutors from the prosecutor's offices attached to the tribunals, a prosecutor from the prosecutor's offices attached to the courts of first instance;
b) Members by right, the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice and the Minister of Justice;
c) Appointed members, the 2 representatives of the civil society."
20. Three new paragraphs, paragraphs (21)-(23), shall be introduced under Article 24, after paragraph (2), and shall read as follows:
"(21) In the last year of mandate, by way of exception from paragraph (1), any of the members of the section for prosecutors may be elected in the position of vice-president, without having two successive mandates.
(22) Elective meetings decide with the vote of the majority of their members.
(23) The election of the president and of the vice-president shall be validated in terms of compliance with the formal procedure in Plenum meeting, in the presence of at least 15 members of the Superior Council of Magistracy, with the vote of the majority of its members."

This newly inserted provision infringes on the provisions of art. 133 para. (3) of the Constitution.

The President of the Superior Council of Magistracy is elected for a one year term, which cannot be renewed, among the magistrates referred to at para. 2 point (a) (14 members are elected by the General Assemblies of Magistrates and validated by the Senate, and then broken down into two sections, one for judges and one for prosecutors; the former consisting of 9 judges while the latter of 5 prosecutors;

From a different standpoint, the automatic appointment of the judges' section president as president of the entire SCM seriously violates the rationale of existence and election for this position.

Regarding the election of the SCM (Romania´s case), the Venice Commission established the following:

"190. Up until now any of the 14 elected magistrates was eligible to be elected as president of the Council. According to the proposed amendment in article 133 (3), the president must be elected from among the nine judges [...]. In the opinion of the Venice Commission, this amounts to a step backward. Should there be one single council, designed to represent the two branches of the judiciary, it is unfair that the President can only be elected from one branch. In any event, it is difficult to identify the reasons for this choice since a prosecutor cannot be elected without substantial support from the ranks of judges. Another option could be to set up two separate councils.

196. [...] The Venice Commission finds it difficult to understand why the other members of the Superior Council of Magistracy (nn, the representatives of the civil society) should no participate in both sections to discuss the question of appointments."

CDL-AD (2014)010, Opinion no. 731/2013 on the draft law on the review of the Constitution of Romania, 24 March 2014, par.190-191, 196[26]*.*

58. At Article 54, after Paragraph (5), a new Paragraph (6) is hereby introduced, reading:
"(6) The representatives of the civil society elected as members of the Superior Council of Magistracy shall not participate in the meetings of the Divisions for Judges and/or Prosecutors and have the following specific duties:
a) constantly inform the civil society organisations on the work of the Superior Council of Magistracy;
b) consult civil society organisations on their proposals and suggestions of actions that CSM should take to improve the operation of the judicial bodies, as a public service to the society, preparing a quarterly review and digest report of such proposals. The report shall be submitted to the Plenum or Divisions, as applicable, for analysis and decision;

This newly inserted provision infringes on the provisions of art. 133 para. (2) point b) and art.134 of the Constitution.

The layout of the Superior Council of Magistracy provides for the involvement, with the exception of disciplinary proceedings, of all its members in the decision-making process, and not just of certain branches of its members. Thus, members representing

[26] See the web page http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)010-e [last visited on January 3rd 2018].

the civil society are excluded from the vast majority of decisions, especially given the new divisional task assignment, notwithstanding that the Superior Council of Magistracy is a collective body where the participation of all its members should be a rule and not an exception.

59. Article 55 (1)-(5) are hereby amended and shall read:
"Article 55.- (1) The revocation from office of an elected member of the Superior Council of Magistracy maybe ordered at any time during the term of office, in the following cases:
a) the person in question no longer meets the legal requirements for being an elected member of the Superior Council of Magistracy;
b) the person in question has been subject to one of the disciplinary sanctions provided by law for judges and prosecutors, and the sanction decision is final;
c) the majority of judges or prosecutors, as applicable, that effectively work in the courts that the person in question represents withdraw confidence in the same person.
(3) In the case provided for at (1) c) above, the procedure for dismissing a member of the Council from office shall be thus:
a) the withdrawal of confidence maybe initiated by any General Meeting of courts or prosecutors' offices represented by the member of the Superior Council of Magistracy whose dismissal is requested. The professional associations of judges and prosecutors may petition the general meetings of judges and prosecutors to start the proceedings for withdrawal of confidence;
b) the Council initiates the proceedings to withdraw confidence on request from at least General meetings, in the case of judges or prosecutors from first instance courts; three general meetings, in the case of judges or prosecutors from tribunals; one general meeting, in the case of judges or prosecutors from courts of appeal; and the general meeting of judges and prosecutors from the High Court of Cassation and Justice;

This newly inserted provision infringes on the provisions of art. 1 para. (5), as well as on art. 133 and 134 in conjuction with art. 124 and 125 of the Constitution.

Of all scenarios dealing with the dismissal of the elected members of the Superior Council of Magistracy, the event of *"withdrawal of confidence"* disregards the reasoning contemplated by the Constitutional Court, in its Decision no. 196/2013, where it is indicated that the provisions of Art. 55 par. (4) and (9) of Act no. 317/2004 on the Superior Council of Magistracy are unconstitutional.

Among its principles, the Constitutional Court held as follows:

Failure to fulfill or improper fulfilment of duties triggers the sanction of dismissal under the provisions of art. 55 para. (4) of the Act no. 317/2004, yet **the duties entrusted upon election as member of the Council are not expressly defined nor do they implicitly result from the provisions of Act no. 317/2004**. Under such circumstances, it remains unclear how a member of the Superior Council of

Magistracy might be charged of failure to fulfill or improper fulfilment of such duties that have never been entrusted by the general assemblies that have elected him/her in the Council and that could not have been entrusted in the first place. Therefore, **the wording of the law may, in the absence of a precise legal definition, be interpreted and applied in different ways**.

Thus, with the open vote and the obligation to motivate its judgments, the transparency of the Council's activity is ensured, guaranteeing the observance of the constitutional rights against abuses and arbitrariness. Moreover, by virtue of its role as guarantee of the judicial independence, the Superior Council of Magistracy must abide by the constitutional requirements regarding its decision-making process, namely the judgements apt to raise suspicions for their lack of arguments in support of the resolution. **However, in their individual activity, the members of the Council must enjoy a real freedom of thought, expression and action, so that they can exercise their mandates effectively.**

From this perspective, the wording "non-fulfillment or inadequate fulfilment of the duties entrusted upon election as member of the Council" is unclear and apt to expose the members of the Council to potential pressures, affecting their independence, freedom and security when exercising the rights and obligations afforded by the Constitution and the law.

However, on the basis of the representative mandate, the members of the Superior Council of Magistracy are the elected candidates and representatives of the entire professional category whose interests are expressed by the panel they belong to, and can not be revoked unless for non-observance of their legal duties, and not for non-observance of the mandate entrusted by their voters.

As for the possibility of dismissal, the Constitutional Court found that the elected members of the Superior Council of Magistracy exercise their constitutional duties on the basis of a representative authority and not of a mandatory authority, the latter being incompatible with the role and duties conferred by par. 133 and 134 in conjunction with par. 124 and 125 of the Constitution, as well as in the context of the fashion in which decisions are taken by the Plenum and by the different divisions of the Superior Council of Magistracy.

Thus, in this case, **voters do not set the tasks of the Council´s members beforehand**, but on the contrary they entrust the members to represent them. Moreover, in order to exercise the right to vote in the Plenum or the divisions, the elected members of the Superior Council of Magistracy **are not held by an express mandate, but act on their own convictions within the law**.

Yours sincerely,

judge Dragoș Călin, Bucharest Court of Apeals, co-president
judge Ionuț Militaru, Bucharest Court of Apeals, co-president