

THE STATUS OF JUDGES AND PROSECUTORS IN ROMANIA, ACCORDING TO THE LAW NO.303/2022. THE ADMISSION TO MAGISTRACY

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ABSTRACT: *The issuance of Law no. 303/2022 on the status of judges and prosecutors in Romania aimed, on the one hand, at harmonizing the legislation on Romanian justice with the European recommendations formulated within its monitoring mechanisms, on the other hand, with the decisions of the Constitutional Court of Romania issued regarding the old regulation, which criticized it for legal uncertainty.*

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1. STATUS OF JUDGES AND PROSECUTORS IN ROMANIA

The old normative framework that regulated the status of magistrates in Romania, represented by Law no. 303/2002¹ on the status of judges and prosecutors, was modified and supplemented repeatedly. These successive changes have created dysfunctionalities in the judicial system, containing ambiguities regarding the status and career of magistrates.

Some changes made in 2018 and 2019, made either by emergency ordinances or by Law no. 242/2018², were criticized by both civil society and magistrates' associations because they violated transparency in the adoption of normative acts.

At the same time, through the Decisions of the Constitutional Court no. 121/2020³, no. 454/2020⁴, and no. 588/2017⁵, the Constitutional Court admitted the exception of unconstitutionality of different articles of Law no. 303/2004 on the status of judges and prosecutors, reasoning that the possibility of the Superior Council of the Magistracy to adopt through regulation, the organization and conduct of the magistracy admission

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¹ Published in the Official Gazette of Romania no. 826 of September 13, 2005, normative act out of force.

² Published in the Official Gazette of Romania no. 868 of October 15, 2018, normative act out of force.

³ Published in the Official Gazette of Romania no. 487 of June 9, 2020.

⁴ Published in the Official Gazette of Romania no. 655 of July 24, 2020.

⁵ Published in the Official Gazette of Romania no. 835 of October 20, 2017.

competition, causes a state of legal uncertainty, due to the lack of stability and predictability.

The magistracy is the judicial activity carried out by judges for the purpose of the administration of justice and by prosecutors for the purpose of defending the general interests and freedoms of citizens.

The judges appointed by the President of Romania are immovable, according to law no. 303/2022⁶. Immovable judges can be moved through transfer, delegation, posting or promotion, only with their consent, and they can be suspended or removed from the office under the conditions provided in the same law. Judges are independent, obey only to the law and they must be impartial (E.P., 1936).

Any person, organization, authority or institution must respect the independence of judges (I., 1993).

Prosecutors appointed by the President of Romania enjoy stability and they are independent under the law conditions. Prosecutors who enjoy stability can be moved by transfer, detachment or promotion, only with their consent (S.G., 2014).

Judges and prosecutors are obliged through their entire activity to ensure the supremacy of the law, to respect the rights and freedoms of individuals, as well as their equality before the law and to ensure non-discriminatory legal treatment for all participants in judicial proceedings. Regardless of their quality, to comply with the Code of Ethics of Judges and Prosecutors and to participate to the continuous professional training.

Judges may not refuse to judge on the grounds that the law does not provide, is unclear or incomplete.

2. INCOMPATIBILITIES AND PROHIBITIONS

The position of judge and prosecutor are incompatible with any other public or private functions, except for the teaching positions in higher education, as well as those of training within the National Institute of Magistracy and the National School of Clerks, under the law.

Judges and prosecutors are obliged to refrain from any activity related to the act of justice in cases involving the existence of a conflict between their interests and the public interest in the performance of justice or in the defense of the general interests of society. Unless the conflict of interest has been brought to the attention of the governing college of the court or the head of the public prosecutor's office in writing and the existence of a conflict of interest has been deemed not to affect its impartial performance of service duties.

Judges and prosecutors are obliged to give, annually, a declaration on their own responsibility stating whether the spouse, relatives or relatives up to the fourth degree including, exercise a function or carry out a legal activity or activities of investigation or criminal investigation, as well as their place of work. The declarations will be recorded and submitted to the professional file.

Judges and prosecutors are obliged to make an authentic statement, on their own responsibility under the criminal law, on their affiliation or non-partnership as an agent or collaborator of the security bodies.

Judges and prosecutors are prohibited from:

⁶ Published in the Official Gazette of Romania no. 1102 of November 16, 2022.

- a) to carry out commercial activities, directly or through interposed persons;
- b) to conduct arbitration activities in civil, commercial or other disputes;
- c) to be an associate or member of the management, administration or control bodies of civil companies, commercial companies, including banks or other credit institutions, insurance or financial companies, national companies;
- d) be a member of an economic group of interest.

Also, the judges and prosecutors may not be part of political parties or formations, nor they can engage in or participate in political activities and are obliged to refrain in the exercise of their duties from expressing or manifesting, in any way, their political beliefs.

They are not allowed to publicly express their opinion on ongoing trials or on cases before the public Prosecutor's Office and cannot give written or verbal legal advices in the case of disputes, even if those proceedings are pending before courts or public prosecutor's offices other than those in which they exercise the function and cannot perform any other activity that, according to the law, is performed by the lawyer (V.M., 1996).

3. THE CAREER OF JUDGES AND PROSECUTORS

3.1. Admission to magistracy and initial professional training of judges and prosecutors

The judge is required to have a set of professional knowledge, human skills and capacities for a deep understanding of the realities of social life. For the judge cannot be isolated from society, he does not come down from an ivory tower to do justice and then climb back up, but lives with other people and takes part in the life of the city (E., 1/2023).

According to the Law no. 303/2022, the admission of judges and prosecutors in the magistracy is made by competition, based on professional competence, skills and good reputation. Admission to the magistracy and initial professional training for the position of judge and prosecutor is carried out through the Romanian National Institute of Magistracy⁷.

Admission to the Romanian National Institute of Magistracy is done in compliance with the principles of transparency and equality, exclusively on the basis of competition. Can be admitted to the Romanian National Institute of Magistracy the person which cumulatively fulfills the following conditions:

- a) has Romanian citizenship, domicile in Romania and full capacity of exercise⁸;
- b) is licensed in law;
- c) has no criminal record and enjoys a good reputation;
- d) knows the Romanian language;
- e) is medically and psychologically able for the exercise of the function;

The admission contest is organized annually on the date and place established by the Superior Council of Magistracy. The date, place, manner of conducting the admission contest and the number of places taken to the contest will be published on the official website of the Superior Council of Magistracy and also on the official website of the

⁷ It is the public institution under the coordination of the Superior Council of Magistracy, which carries out the recruitment of judges and prosecutors, the initial training and continuous training of judges and prosecutors already in office. It is organized and operates under Law no. 304/2022 on judicial organization, Law no. 303/2022 on the status of judges and prosecutors and Law no. 305/2022 on the Superior Council of Magistracy.

⁸ The justification for this requirement is given by the fact that a person who is incapable of handling his/her own affairs could not be capable of settling a litigation between other people. See (Roba, 2012).

Romanian National Institute of Magistracy, within at least 60 days before the day of the contest.

To enter the competition, the candidate pays a fee whose amount is determined by decision of the Superior Council of Magistracy, according to the expenses necessary for the contest organization. The Superior Council of Magistracy determines each year the number of students, depending on vacant positions for judges and prosecutors, as well as depending on those to be established.

The admissions Commission, the drafting committee and the board of appeal will be appointed by the Superior Council of Magistracy in Romania. The examination of the candidates' files and the fulfillment of the conditions provided by law by them will be done by the admission commission and every stage of the contest can be appealed by the interested one.

The students of the Romanian National Institute of Magistracy have the quality of auditors of justice (I., 2020).

Initial professional training at the National Institute of The Magistracy consists of the theoretical and practical training of the judicial auditors to become judges or prosecutors.

The duration of the training courses of judicial auditors it is 3 years. At the end of the stage, the auditors will choose, according to the provisions of the Law no.303/2022, for being a judge or a prosecutor.

During the course, the judicial auditors perform traineeships practice in the courts and prosecutor's offices, assist at the trial and prosecution, for example they will experience directly the activities of the judges, prosecutors and specialized auxiliary staff.

The auditors of justice benefit from an allowance, monthly, corresponding to the function of trainee judge and a trainee prosecutor. The stipulated judicial auditors' allowance has the nature and legal regime of a salary, at which the deductions for obtaining the net allowance will be calculated. The judicial auditors benefit this allowance during the holidays too.

The period during which a person has been a judicial auditor, if he has passed the graduation exam of the National Institute of Magistracy in Romania, constitutes seniority in the position of judge or prosecutor.

After graduating the courses at the National Institute of Magistracy in Romania, the auditors of justice take a graduation exam, consisting of theoretical and practical tests, which verifies the acquisition of the knowledge necessary to perform the position of judge or prosecutor.

The judicial auditors who passed the exam will be appointed, according to the law, as a rule, to the positions they chose, depending on the option expressed, based on the general average obtained.

The justice auditors who do not pass the graduation exam, they can present themselves once again for sustaining it again at the next session organized by the Romanian National Institute of Magistracy. Unjustified absence or failure to pass the exam at the second session results in the loss of the right to be appointed judge or prosecutor. The person in this situation is obliged to return the auditor allowances received and the training expenses.

Graduates of the Romanian National Institute of Magistracy are required to serve for 10 years the position of judge or prosecutor. If a graduate of the National Institute of Magistracy is removed from office before the expiry of the 10-year period, on his own initiative or for reasons attributable to him, he is obliged to return the all the allowances

and the tuition costs incurred with his training, in proportion to the time remaining until the deadline provided for by law.

3.2. Trainee judges and trainee prosecutors

Trainee judges and trainee prosecutors are appointed by the Romanian Superior Council of Magistracy, based on the general average, obtained from the graduation exam of the Romanian National Institute of Magistracy.

Trainee judges and prosecutors may be appointed to office only to the first instance courts or, where appropriate, the prosecutor's offices next to them. Trainee judges enjoy stability. The duration of the internship is 1 year.

During the internship, judges and prosecutors are required to continue training, under the coordination of a specific judge or prosecutor appointed by the president of the court or, as the case may be, the first prosecutor of the public prosecutor's office attached to that court.

Trainee judges can judge requests regarding the approval of forced execution, non-contentious requests, as well as:

- a) requests regarding maintenance pensions;
- b) requests to issue the payment order and the European payment summons;
- c) low value claims, provided for in art. 1.026-1.033 of Law no. 134/2010 regarding the Civil Procedure Code, republished, with subsequent amendments and additions, and European small claims;
- d) requests with the object of replacing the contravention fine with the sanction of performing an activity for the benefit of the community;
- e) rehabilitation;
- f) ascertaining the intervention of the amnesty or reprieving;
- g) the crimes provided for by Law no. 286/2009 on the Criminal Code, with subsequent amendments and additions, and by special laws, for which the criminal action is initiated upon the prior complaint of the injured person, with the exception of the crimes provided for in art. 218 para. (1) and (2), art. 219 para. (1), art. 223, art. 226 and 227, as well as art. 239-241 of Law no. 286/2009, with subsequent amendments and additions.

Trainee prosecutors have the right to draw conclusions in court, perform and sign procedural acts, under the coordination of a stable prosecutor.

The solutions of the trainee prosecutors are ratified by the prosecutors who coordinate them, whom are also responsible for the coordination of the trainee judges or, where applicable, trainee prosecutors will draw up a quarterly individual assessment report on the acquisition of practical knowledge specific to the activity of a judge or prosecutor.

For the purpose of presenting for the examination of capability, the last individual assessment report will include the advisory opinion of the President of the Court of Appeal or of the General Prosecutor of the Public Prosecutor's Office attached to it.

After the end of the traineeship period, trainee judges and prosecutors are required to appear for the examination of capability. If the trainee judge or the trainee prosecutor is rejected on the examination, he is obliged to appear at the next session.

3.3. Appointment of judges and prosecutors

The judges and prosecutors who passed the examination of capability are appointed by the President of Romania, at the proposal of the Romanian Superior Council of Magistracy.

The proposals for appointment will be made no later than 30 days from the validation date of the capacity exam.

The Romanian President cannot refuse the appointment of judges and prosecutors. During the period between the validation date of the examination of capability and the date of the appointment by the President of Romania, the judges and prosecutors who passed the capacity exam receive the salary corresponding to the position immediately superior to that of a trainee judge or prosecutor.

Can be appointed to the magistracy, based on the same contest previously described, the former judges and prosecutors who have ceased their activity for unattributable reasons, legal specialist personnel assimilated to judges and prosecutors, lawyers, public notaries, legal assistants, legal advisors, bailiffs, probation staff with higher legal education degrees, judicial police officers with higher legal education degrees, clerks with higher legal education degrees, persons who have performed specialized legal functions in the apparatus of the Parliament, the Presidential Administration, the Government, ministries, the Constitutional Court, the Ombudsman, the Court of Accounts or the Legislative Council, in the Legal Research Institute of the Romanian Academy and the Romanian Institute for Human Rights, teaching staff from accredited higher legal education, as well as assistant magistrates, with at least 5 years of experience in the specialty. The persons appointed under these terms cannot be delegated, seconded, transferred and cannot be promoted to other courts or prosecutor's offices for at least 3 years after being appointed.

The contest for this type of candidates is held by the Romanian Superior Council of Magistracy, with the support of the National Institute of Magistracy, for filling vacancies from the judges and prosecutor's offices attached to them.

After the appointment as judge or prosecutor, the persons appointed to this position, they are obliged to follow, for a period of 6 months, a training course within the Romanian National Institute of Magistracy, which will necessarily include elements of Community law.

Before starting to exercise their function, judges and prosecutors, take the following oath:

"I swear to respect the Constitution and the laws of the country, to defend the fundamental rights and freedoms of the person, to perform my duties with honor, conscience and without bias. May God help me." The reference to divinity in the oath formula changes according to the religious faith of judges and prosecutors and is optional.

The refusal to take the oath entails, by law, the nullity of the appointment in function.

The oath will be taken in solemn session before the judges of the court or, as the case may be, the prosecutors of the prosecutor's office to which the judge or prosecutor was appointed, after reading the appointment document.

The oath is recorded in a report, signed by the head of the court or, as the case may be, the prosecutor's office and 2 of the judges or prosecutors present, as well as the one who took the oath.

Taking the oath is not necessary in case of transfer or promoting of the judge or prosecutor to another position.

4. CONCLUSIONS

The provisions of the new law on the status of judges and prosecutors no. 303/2022, fulfill the shortcomings of the original legal provisions, which attracted the conviction of the Romanian State at the ECHR for the lack of effective remedies for judges who were

dismissed from office or against whom measures were applied which could not be contested, now include in their content legal provisions regarding the organization of the competition for admission to the magistracy, specific to the field of organic regulation and which were originally established by regulation by the Superior Council of the Magistracy, issues which without any doubt, led to stability and predictability necessary for such significant regulations.

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