

## THE ORGANIZATION OF THE COURTS IN ROMANIA ACCORDING TO THE NEW LAW ON JUDICIAL ORGANIZATION NO.304/2022

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**ABSTRACT:** *At the initiative of the Romanian Ministry of Justice, in 2022, Romania proceeded to implement the commitment assumed in relation to the European control bodies in the field of justice, ensuring the harmonization of the legislation on the organization and functioning of justice with the principles of the international instruments ratified by the Republic of Romania, as well as taking into account all the recommendations made in the framework of the European control mechanisms and the decisions of the Constitutional Court, as it results from the explanatory memorandum of the draft for the new law on the organization of the judicial system, Law no. 304/2022.*

**KEY WORDS:** *justice; courts; judicial organization.*  
**JEL code:** *K00*

State justice conceives litigation as a violation of law and order of law, order to be restored, and infringement punished. In its broadest sense, justice is synonymous with justice, equity, justice. Some go so far as to define justice by a moral principle having as its essence conformity to truth<sup>1</sup>.

In accordance with the provisions of Law no. 304/2022 on judicial organization, justice is carried out through the following courts, *the first instance courts, the tribunals, the specialized tribunals, the military courts, the Courts of Appeal and the High Court of Cassation and Justice.*

The regulation didn't suffer many differences from the provisions of Law no.304/2004, the old provisions on the judicial organization

In Romania, like in many other European countries, the judicial organisation is old. To take into consideration demographic trends, new technical means of transport and communication of court users, and the increased specialisation of judges, the Romanian state should think of setting up a new division of jurisdictions that would improve the efficiency of justice while creating economies of scale<sup>2</sup>.

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<sup>1</sup> NODEX 2002 apud <http://dexonline.ro/definitie/justitie>

<sup>2</sup> European Judicial Systems Efficiency and Quali, CEPEJ STUDIES, no.23, p.166

Such reforms of the judicial system should be designed to lead to a better management of property assets by grouping jurisdictions together and transferring staff from different small courts into one single place. These reforms have not always generated the expected savings, nor been implemented in full consultation with court staff. They constitute a real challenge for the distribution of the courts on the territory and for the equal access to justice for court users, and even for the redefinition of powers and competences between various courts.

It is often said that at the foundation of a democratic society lies a solid justice. That without justice nothing is and that where justice does not work, the border between democracy and totalitarianism is very easily crossed (Oprina, nr.1/2023 ).

The management of the courts is also important, along with the judicial activity of the judge. The courts are headed by a president who exercises management duties for an efficient organization of the activity of the court.

The president of the courts of appeal and of the tribunals exercises also, the coordination and control tasks of the administration of the court where it works, as well as the courts in the district.

The Presidents of the first instance courts and specialized courts, exercise also administrative duties on the court administration.

Depending on the volume of activity and the complexity of the causes, at the courts of appeal, courts and specialized tribunals, the president can be assisted by 1-2 vice-presidents, and in the first instance courts, the president can be assisted by a vice-president.

The Presidents and Vice-Presidents of the courts shall take action for the organization and proper functioning of the courts they run and, where appropriate, the courts in their constituencies, ensure and verify compliance with statutory obligations and regulations by judges and specialized auxiliary staff.

Checks carried out personally by Presidents or Vice-Presidents or through specially appointed judges must respect the principles the independence of judges and their submission only to the law, as well as the authority of *res judicata*.

In the courts of law, several sections may be established, which it shall be established, on the proposal of each of the governing college of each court, by decision of the Superior Council of Magistracy. The specialized panels of the sections of the courts shall be set up by the President of the court, on the proposal of the governing college of each court.

The sections of the courts are headed by a section president.

In each court there is a governing college, which decides on the general management issues of the court.

We can talk about another representation of the management of the courts within the management colleges, the heads of the courts becoming majority in these colleges, compared to the provisions of the old law no. 304/2004. Thus, at the courts of appeal and tribunals: the president, vice-president or vice-presidents, as the case may be, section presidents and 2 judges, elected for a period of 3 years in the general assembly of judges.

At specialized courts and judges: the president, vice-president or vice-presidents, as the case may be, section presidents, as the case may be, and 2 judges, elected for a period of 3 years in the general meeting of judges.

Moreover, within 60 days from the date of entry into force of the new law, elections were held for the governing colleges of courts and prosecutors' offices.

The governing colleges establish the composition of the panels at the beginning of the year, aiming to ensure the continuity of the panel.

The change of the members of the panels is done in an exceptionally manner, on the basis of objective criteria established by the rules of procedure of the courts.

The distribution of cases in court panels is done in a manner randomly, in computerized system.

The causes assigned to a panel of judges may not be passed to another panel except under the conditions provided by law.

The cases given, according to the law, in the jurisdiction of the court of first instance, tribunal and court of appeal, are solved by a one judge panel, except in cases of labor conflicts and social security (1 judge and 2 judicial assistants).

The appeals are settled by a panel of 2 judges and the recourses in a panel of 3 judges, unless otherwise provided by law.

In the case of a panel of 2 judges, if they do not reach an agreement on the decision to be pronounced, the process is judged in a divergence panel, according to the law. The panel of divergence is constituted by including in the panel of the judge appearing on the permanent planning.

The organization of first instance courts, tribunals and courts of appeal, is set out in Chapter II of the Second Title of Law No 304/2022, almost all of the previous regulations being preserved (Leș, 2020).

*The first instance courts*, are courts without legal entity, organized in counties and in the sectors of Bucharest Municipality. The number and places of residence of the courts are set out in Annex no.1 to the Law on judicial organization no.304/2022. The localities, the settlements that are part of the constituencies of the courts of each county will be established by the Government, at the proposal of the Minister of Justice, with the endorsement of the Superior Council of Magistracy.

In relation to the nature and number of cases, in the courts can be appointed specialized sections or specialized panels. In the courts will be organized specialized sections or panels for minors and families.

The specialized panels and sections for minors and families are judging both crimes committed by minors and crimes committed against minors.

The first instance courts judge all the cases and proceedings, except those given by law in the competence of other courts, in a panel of 1 judge.

*The tribunals* (or the second instance courts) are courts with legal entity, organized in each county and in the municipality of Bucharest, the headquarters being, as a rule, in the county seat municipality.

In the constituency of each tribunal are included all the first instance courts in the county or, as the case may be, in the municipality of Bucharest.

Sections or, where appropriate, specialized panels can operate in the courts specialized in civil cases, criminal cases, commercial cases, cases with minors and family, cases of administrative litigation, trade register, insolvency, unfair competition or other fields, and, in relation to the nature and number of cases, specialized panels for maritime cases.

The Bucharest Tribunal also functions as a specialized court for the judgment of intellectual property cases.

In the trial activity, the Romanian courts appear in a threefold hypostasis:

- as a first instance court, they judge the lawsuits and requests given by law in their competence, in a panel of 1 judges;
- as courts of appeal, they judge declared appeals against the decisions given by the judges at first instance, in a panel of 2 judges;
- as courts of recourse, they judge appeals against decisions given by judges who, according to the law, are not subject to appeal, in a panel of 3 judges.

*The specialized courts* are courts without legal entity, which operate at the level of each county and of the municipality of Bucharest, having the headquarters, as a rule, in the county seat.

The law 304/2022 on judicial organization provides only for the possibility of setting up specialized courts in those areas where the creation of specialized sections or panels within the courts is allowed.

The specialized courts take over cases within the jurisdiction of the court in the areas in which it is established.

As regards the specialised courts, however, there is a new benchmark regarding their establishment. In this regard, we note that according to art. 41 para. (1) of Law no.304/2022: „In the areas provided by art. 40 para. (3), where the general interest of the company and the volume of activity in specialised cases so justify, specialised courts may be established.

This provision represents, in the opinion of some authors, an undeniable progress, as it proposes two important milestones for the establishment of specialized courts: „the general interest of the company” and „the volume of activity” for such cases. The previous regulation did not contain such milestones. The law therefore suggests the exceptional nature of appeal to specialised courts. In the opinion of Professor Les Ioan, the solution could be an even more trenchant one, namely that of renouncing the specialized courts, as long as we have a legal framework for the establishment of specialized sections within the current courts (Leş, 2020)

*The courts of appeal* are courts with legal personality, in the constituency of which several courts and tribunals operate according to the Law no.304/2022 regarding the judicial organization. The number of courts of appeal, their residences and the courts contained in the constituencies of each of these are also provided in the annex to the law on judicial organization.

There are currently 15 courts of appeal in the country. Court of Appeal Bucharest operates as a specialized court for trial intellectual property cases.

In the courts of appeal there are sections or, as the case may be, specialized panels for civil cases, regardless of their object or the quality of the parties, criminal cases, cases with minors and family, commercial cases, administrative and fiscal cases, and so on.

In the trial activity the courts of appeal appear in a threefold hypostasis:

- as a first instance court, they judge the cases which are given to them by law in a panel of 1 judge;
- as second instance courts, they hear appeals against decisions given at first instance by the tribunals, in a panel of 2 judges;
- as a third instance court (recourse), they hear appeals against decisions made by tribunals on appeal or against decisions made by tribunals as first instance courts, which, according to the law, are not subject to appeal, as well as in other cases provided by law, in a panel of 3 judges.

It should be noted that despite the criticism expressed both in doctrine but also in the social and political life regarding the need to maintain military courts and military prosecutor's offices, they continue to function following the new law on judicial organization. These courts have the following structure:

- Military tribunals (București, Iași, Cluj and Timișoara), and Military Court of Appeal Bucharest;

There is only one supreme court in Romania, named *The High Court of Cassation and Justice*.

As I said, it is the supreme court, with legal entity and it is based in the capital of the country.

*According to its jurisdiction, its role is to ensure the unitary interpretation and application of the law by other romanian courts.*

The President of the High Court of Cassation and Justice has the capacity of principal authorizing officer. The costs necessary for the operation of the High Court are financed from the state budget.

The High Court of Cassation and Justice consists of the President, 2 Vice-Presidents, 4 Section Presidents and judges.

According to the law of judicial organization, the High Court of Cassation and Justice is organized into four sections: *Section I for Civil and Intellectual Property; The second Civil Section; The Criminal Section and Administrative and Tax Section.*

The Supreme Court's work is carried out in sections, in panels of 3 judges, panels of 5 judges (there are four panels of 5 judges, two at the criminal section and two at the other sections) and within the enlarged panel of 25 judges who have the competence to judge appeals in the interest of the law.

At the beginning of each year, the High Court Governing Board, on the proposal of the President or its Vice-President, it may approve the establishment of specialized panels within the sections of the High Court of Cassation and Justice, depending on the number and nature of the cases, the volume of activity of each section, as well as the specialization of judges and the need to capitalize on their professional experience.

The appointment of judges in the composition of panels competent to judge the appeal in the interest of the law, as well as in the panels for the delivery of a preliminary decision for the resolution of some legal issues, will be made depending on the specialization of the court panels to which they are part of.

Within the High Court of Cassation and Justice, *assistant magistrates*, perform their activity. They are established through the State of functions and participating in the hearings of the sections. Those who attend court hearings shall take note of the statements made, draw up the conclusions, participate with an advisory vote in the deliberations and draw up the decisions according to the distribution made by the president for all the members of the panel.

The assistant magistrates are led by a *first assistant magistrate*, he is the one who coordinates the work of the assistant magistrates in the sections and of the officials from the Chancellery of the High Court of Cassation and Justice, also take part in the meetings of the United sections of the Court and the disciplinary panel and coordinate the work of the Office of external relations.

The Chief Assistant Magistrates also participate in the hearings of the sections of the High Court, they assign the assistant magistrates who participate in the court hearings, they

take care of keeping the records of the sections in good condition and of carrying out all the works in time.

The High Court of Cassation and Justice also includes in its structure the Chancellery, directorates, services and offices, with the related staff established by the State of functions.

As regards the jurisdiction of the High Court of Cassation and Justice, it is competent to judge:

- as a first instance court, the cases and proceedings given by law within its competence;
- recourses against decisions of the courts of appeal, as well as other decisions, in cases provided by law;
- any other requests made by law within its competence.

The panels of 5 judges deal with recourses and requests in Cases judged as a first instance court by the Criminal Section of the High Court of Cassation and Justice and also judges other cases given by law, as well as a disciplinary court for judges and prosecutors.

The High Court of Cassation and Justice Sections, in relation to the competence of each one, will judge:

- the requests for displacement, for the reasons provided in the codes of procedure;
- conflicts of jurisdiction, in cases provided by law;
- any other requests provided by law;

The High Court of Cassation and Justice will be constituted in United sections for:

- judging the recourses in the interest of the law;
- settlement, in the conditions of the law on judicial organization, of the complaints regarding the change of the case-law (jurisprudence) of the High Court of Cassation and Justice;
- the Constitutional Court notification for the review of the constitutionality of laws before promulgation.

At the end of each year, the High Court of Cassation and Justice, in the United sections, determine the cases where improvement of law is needed and communicate it to the minister of justice.

The President of the High Court of Cassation and Justice may consent for judges to inform themselves at the courts seats on the issues regarding the correct and unitary application of the law, making known the case law of the High Court of Cassation and Justice, and to find situations justifying proposals for improving the legislation.

The leadership of the High Court of Cassation and Justice shall be exercised by president, vice-president and the governing college. The President represents the High Court of Cassation and Justice in internal and international relations.

The new law includes some new solutions regarding the structure of the Governing College of the High Court of Cassation and Justice. Thus, it is provided for inclusion in college of heads of sections (4) and two other judges (total 4) from sections. It is a vision that could be reputed as positive, as it leads to a more positive good representation by co-opting the 4 heads of sections within the Governing College. However, the solution was criticized by some professional associations for the reason that it does not maintain a rational relationship between the appointed members and those elected in the management

colleges, so the latter "do not have a decision-making power real"<sup>3</sup>. The criticism concerns all the governing colleges of the courts and is pertinent from the point of view mentioned (Leș, 2020).

The governing college of the High Court of Cassation and Justice will have the following duties:

approves the regulation on the organization and administrative functioning, as well as the positions and staff states of the Romanian High Court of Cassation and Justice, proposes to the Superior Council of Magistracy the judges who will be part of the competition committees for promotion to the position of judge at the High Court of Cassation and Justice;

- organizes and supervises the resolution of petitions, under the law conditions;
- proposes to the Romanian Superior Council of Magistracy the appointment, promotion, transfer and suspension and the dismissal of the assistant judges from the office;
- proposes the draft budget of the High Court of Cassation and Justice.

The Governing College of the High Court of Cassation and Justice meetings are chaired by its president, and in his absence, by the vice-president and meets quarterly or whenever is necessary, and it is convened by the president or by the request of at least 3 of its members.

The decisions of the governing college of the High Court of Cassation and Justice shall be adopted by a majority vote of its members.

The High Court panels consist of 3 judges of the same section. If the number of judges required to form a panel of judgment cannot be assured, it is constituted with judges from the other sections, appointed by the President or Vice-President of the High Court of Cassation and Justice.

At the beginning of each year, two panels of 5 judges are established in criminal matters made up of judges only from the Criminal Section of the High Court of Cassation and Justice.

In matters other than criminal, two panels of 5 judges are established at the beginning of each year.

The composition of the above-mentioned panels usually includes specialized judges, depending on the nature of the case.

The governing college of the High Court of Cassation and Justice approves the composition of the 5 judges panels. The judges who are part of these panels will be appointed by the President or, in his absence, by the Vice-President of the High Court of Cassation and Justice.

The change of the members of the panels is done exceptionally, on the basis of objective criteria established by the Regulation on the organization and administrative functioning of the High Court of Cassation and Justice.

The cases falling within the competence of the above-mentioned panels will be randomly assigned to the computerized system.

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<sup>3</sup> A se vedea: Proiectele de modificare a Legii privind organizarea judiciară și a Legii privind CSM conțin propuneri ce constituie un regres inacceptabil în materia independenței justiției, apud <https://www.juridice.ro/699620/proiectele-de-modificare-a-legii-privind>. Criticile au fost formulate de către Asociația Magistraților din România (AMR), Uniunea Națională a Judecătorilor din România (UNJR) și Asociația Judecătorilor pentru Apărarea Drepturilor Omului (AJADO).

The President of the High Court of Cassation and Justice or, in his absence, one of the Vice-Presidents chairs the United Sections, the panel for the resolution of the appeal in the interest of the law, as well as the panel for rulling the legal matters, the 5 judges panel and any other panel within the sections, when participates to the meeting. In the absence of the president, the meetings in which he is to take part will be chaired by the vice-president of the court or the president of the section.

Section presidents may chair any panel of judges within the section, and the other judges will chair by rotation.

### CONCLUSIONS

In essence, the law no. 304/2022 almost literally resumes most of the texts from the Law no. 304/2004. Therefore, the new law on judicial organization is not an exceptional one that contains solutions for streamlining the act of justice, but rather contains some new normative solutions, some of which are, undoubtedly, welcome, but that could have been achieved through amendments brought to the old law through a normative project to modify it.

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