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STATUS OF JUDGES AND PROSECUTORS

STATUSI I GJYQTARËVE DHE PROKURORËVE

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Unofficial translation of the consolidated version of the Law on the Status of Judges and Prosecutor in the Republic of Albania including

Initial Law no. 96/2016, dated 06.10.2016¹

Decision no. 34, dated 10.04.2017 of the Constitutional Court (CC)²

Amending Law no. 48/2019 dated 18.07.2019³

Amending Law no 15/2020 date 12.02.2020⁴

LAW

No 96/2016

ON THE STATUS OF JUDGES AND PROSECUTORS IN THE REPUBLIC OF ALBANIA

Based on Articles 81 and 83, paragraph 1, of the Constitution, on the proposal of a group of Members of the Assembly,

ASSEMBLY

OF THE REPUBLIC OF ALBANIA

¹ Law no. 96/2016 adopted on 06.10.2016 entered into force on 22.11.2016.

² Decision no. 34 dated 10.04.2017 of the Constitutional Court entered into force on 18.04.2017 and repealed as incompatible with the Constitution of the Republic of Albania provisions marked as follows: ~~repealed~~.

³ **Law no.48/2019 dated 18.07.2019 adopted on 18.07.2019, entered into force on 21.08.2019.**

⁴ **Law no 15/2020 dated 12.02.2020 adopted on 12.02.2020, entered into force on 27.02.2020.**

D E C I D E D:

PART I
GENERAL PROVISIONS

Article 1

Object of the law

1. The object of this Law is to determine the status of magistrates by providing rules regarding their:
 - a) Rights and obligations;
 - b) Recruitment and appointment;
 - c) Career development and the end of their mandate;
 - ç) Ethical and professional performance evaluation;
 - d) Disciplinary, criminal and civil liability.
2. Under the provisions of this Law, the status shall be legally enjoyed by any person being appointed to the office and expire upon the end of the status of magistrate.

Article 2

Definitions

The following terms in this Law shall have the following meanings:

- a) "Non-contentious cases" means, for the purpose of ethical and professional performance evaluation, any case registered with the court, lodged in the format of a request, the latter seeking the resolution of a case without prejudice. These cases include civil cases and administrative non-contentious cases, as well as administrative-criminal cases and security measures;
- b) "Legal documents" for the purpose of assessment of professional skills means any document prepared by the person in the course of assuming professional duty, like court decisions, indictments, reports, lawsuits, legal opinion and other acts, which prove the person's professional capacities;
- c) "Days" are calendar days, except time periods under 10 days, which are calculated in working days;
- ç) 'Has not assumed political functions in the public administration' means not having been a member of parliament, Prime Minister, Deputy Prime Minister, minister, deputy minister or officials, members of the cabinet of the President of the Republic, Speaker of the Assembly, Prime Minister, Deputy Prime Minister or minister, holding the position of the director of Cabinet, advisor, assistant, speaker or personal secretary to the head of the cabinet,
- d) A 'reporting judge' means a judge having been assigned by lot in the capacity of a panel's rapporteur for the trial of a judicial case;
- dh) "Graduate" means a person who is included in the graduates' ranking list of the School of Magistrates, but has not yet been appointed as a magistrate;

- e) “Appointee” means a person who has graduated from the School of Magistrates and has been appointed as a magistrate by the Council or is a former judge or prosecutor and has been re-appointed by the Council, but has not yet been assigned to a position;
- ë) “Councils” means—
- i) the High Judicial Council, being the body dealing with the cases relating to judges, appointees, graduates and candidate magistrates attending the School of Magistrates with the intention to become judges;
 - ii) the High Prosecutorial Council, being the body dealing with the cases relating to prosecutors, appointees, graduates and candidate magistrates attending the School of Magistrates with the intention to become prosecutors;
- f) “Average adjudication time” shall be the average indicator of time for the reasoning of all judicial decisions rendered by a judge within the evaluation period, being calculated since the date of rendering the decision until the date of depositing the decision with the secretarial office.
- g) “Chairperson” means a chairperson of a court or a prosecution office, including the chairperson of the High Court, the Prosecutor General and the Head of the Special Prosecution Office;
- gj) “Magistrate” means a judge, except for judges at the Constitutional Court, a prosecutor and the chairpersons in the sense of letter (g) of this Article;
- h) “Assistant magistrate” means a judge seconded to assist judges at the High Court or the Constitutional Court, as well as the prosecutor seconded to assist the Prosecutor General in processing cases. For this purpose, their activity includes, in particular, conducting legal research and preparing opinions in writing on substantive or procedural legal issues;
- i) “A change in the administrative structure or territorial powers of a court or prosecution office” means:
- A change of judicial districts and territorial competences as foreseen in the law “On the organization of the judicial power in the Republic of Albania”, upon a Decision of the Council of Ministers;
 - A change in the number of magistrates per court or prosecution office upon a decision of the Councils, building on a long-term assessment of the needs;
- j) “Initial gross salary” in the sense of this law shall represent the main reference salary and the group salary bonus;
- k) “Evaluation period” means the time period, during which the magistrates’ ethical and professional evaluation is made;
- l) “Clearance rate” for a magistrate is the ratio of number of judicial cases completed by him/her to the number of judicial cases assigned to him/her within a calendar year;

- ll) “Evaluation scheme” refers to the set of rules of the ethical and professional evaluation as set out by this Law and the respective bylaw acts issued based thereon and for its implementation;
- m) “Minimum time standards” is an orientation timeline, within which a case should be completed. The Councils shall adopt and review the minimum standards for time periods separately for different types of cases by taking into account the nature, the complexity and the number of cases registered with a court or prosecution office, as well as the court or prosecution office infrastructure.
- n) “Procedural decision” means a decision which does not resolve the case with prejudice, such as a decision dismissing an application or the decision on the completion or closure of proceedings on formal grounds.
- nj) “Extra-office activity” means a remunerated or non-remunerated activity, which is not included in the judges’ or prosecutors’ activity, in the administrative activity to be carried out by magistrates as provided by law or as mandated by a competent person or institution;
- o) ‘Evaluator’ is, for the purpose of ethical and professional evaluation procedures, any person involved in the preparation and decision-making;
- p) The wording “has not held leadership positions in a political party” means that he/she has not been member of the management bodies foreseen in the Articles of Association of a political party.

PART II

RIGHTS AND OBLIGATIONS OF MAGISTRATES

CHAPTER I

FUNDAMENTAL VALUES AND GENERAL RIGHTS AND OBLIGATIONS

Article 3

Fundamental Values

1. A magistrate shall exercise his function in accordance with the Constitution and the law.
2. A magistrate shall exercise the function independently, on the basis of assessment of facts and interpretation of the law, in accordance with his intrinsic conviction, free of any extraneous influences, direct or indirect, from any side or for any reason.
3. A magistrate shall not establish inappropriate connections and shall not be under the influence of the executive or legislative power. The magistrate shall take all the measures in order to be and appear to be free therefrom. The magistrate shall immediately notify the Council and the Chairperson upon identifying any attempt of interference or undue influence on him/her.

4. A magistrate shall perform his or her judicial function in an impartial manner, without bias and without prejudice.

5. The conduct of a magistrate shall, in the course of assuming his/her function and beyond its scope, guarantee the preservation and strengthening of the confidence of the public in the justice system, the legal profession and parties who are subject of proceedings. The magistrate shall exercise his/her functions in a fair, accurate, timely reasonable, conscious, cautious, dedicated and systematic manner, with objectivity, self-restraint and maturity.

Article 4

Standards of Ethics and Rules of Conduct

1. A magistrate shall take all reasonable measures to maintain the dignity of the office, including activities undertaken when the magistrate is not performing official functions.

2. A magistrate shall take all measures to protect and enhance:

- a) the dignity and standards of the profession,
- b) the reputation of justice institutions and the public confidence in the judicial system and that of prosecution office,
- c) the status of the function of the magistrate.

3. The Councils shall publish Standards of Ethics and Rules of Conduct in accordance with the provisions of this Article.

4. Each Council must appoint the magistrate as Ethics Advisor under the provisions of the Law “On the Governance Institutions of the Justice System”.

Article 5

Rights and Obligations pertaining to Continuous Training

1. A magistrate has a right and an obligation to participate in continuous training programs. A magistrate has a right to propose training topics and co-operate with the Council with a view of improving training programmes.

2. A magistrate must—

- a) Attend the continuous training in accordance with the legislation in force;
- b) Take all other reasonable steps to keep him/herself updated about relevant legislative and case law developments.

3. The continuous training period shall be:

- a) Not less than five full days per year and not less than 30 full days during five years;
- b) Not more than 40 full days per year and 200 full days during five years.

4. The magistrate shall meet his obligation to participate in the continuous training only in those instances where the training programs are:

- a) Relevant for his function;

b) Delivered and certified by the School of Magistrates or any other national or international training institution as acknowledged by the Council. A copy of the certificate is put into the personal file of the magistrate.

5. The expenses of travel and board for the participation at the continuous training programs provided by the School of Magistrate will be borne by the budgetary funds of the School of Magistrates provided for this purpose and other financial sources predetermined for those activities. The Council may cover the expenses of travel and board with its own budget for attending the training offered by other training institutions as acknowledged by the Council.

6. The Councils shall co-operate with the School of Magistrates for the training needs analysis and the development of training curricula and programmes. The Councils shall adopt more detailed rules on the relevance and content of continuous training programs and eligible training facilities and the procedure to be provided with the permit to participate in a training course.

CHAPTER II

INCOMPATIBILITIES, LIMITATIONS AND OTHER ACTIVITIES

Article 6

Incompatibilities with the Function of Magistrate

1. The magistrate's office is incompatible with:
 - a) The membership in a political party, or participation in a political event organized by a political party,
 - b) The undertaking of any political activity, regardless whether the activity is undertaken in association with a political party or not, which could compromise the magistrate's independence, give rise to a conflict of interest or otherwise lead to a perception of bias or partiality.
2. The chairperson shall notify the Council in cases when he/she has a reasonable basis to believe that a magistrate of the respective court or prosecution office does not comply with the requirements of this provision.

Article 7

Limitations of Office

1. While exercising the function, the magistrate shall not:
 - a) Disclose data or information to the public on cases assigned to the magistrate;
 - b) Disclose opinions given during an investigation or trial session, except where the opinion has been published in the form of a decision;
 - c) Make public declarations that might lead to a perception that the magistrate is biased or partial in a certain case.

2. The provisions of paragraph 1 of this Article do not prohibit a magistrate to assume the responsibility as press magistrate in regard to public relations at courts and prosecution offices.
3. A magistrate may not take part in a strike action.
4. A magistrate is prohibited from -
 - a) Administering, directing, or influencing on any commercial or any profit-making companies, personally or by representation;
 - b) Actively owning shares or parts of capital in commercial companies in accordance with the legislation in force on the prevention of conflicts of interest;
 - c) Passively owning shares or parts of capital in commercial companies, if the company is gaining profits or benefits from public contracts in accordance with the legislation in force on the prevention of conflicts of interest;
 - ç) Passively owning shares or parts of capital in commercial companies in which the magistrate's activity would be prohibited, because it could compromise the magistrate's independence, give rise to a conflict of interest or otherwise lead to a perception of bias or partiality;
 - d) Acting as expert before the domestic courts or arbiter in a commercial arbitration.
5. The chairperson shall notify the Council in cases when he/she has a reasonable basis to believe that a magistrate of the respective court or prosecution office does not comply with the requirements of this provision.

Article 8

Environmental Incompatibility

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 1)

- ~~1. The Councils shall take measures to avoid the environmental incompatibilities being created as a consequence of close family connections among magistrates, being respectively the spouse, partner or other persons who are in close kin or in-law relationships, in accordance with the provisions of the Civil Procedure Code.~~
- ~~2. To this effect, the following provisions shall apply to the courts and prosecution offices:
 - a) A magistrate shall not exercise the function at a court or prosecution office, if another magistrate, with whom he/she has close family relations, is exercising the function respectively at the same court or prosecution office;
 - b) A judge shall not exercise the function at a first instance Administrative Court as long as another judge, with whom he/she has close family connection, is exercising the function at the Administrative Court of Appeal and vice-versa;
 - c) A judge shall not exercise the function at the Civil section of a first instance court of general jurisdiction, if another judge with whom he/she has close family relations is exercising the function respectively at the Civil section of the appeal court, having under its jurisdiction the first instance court of general jurisdiction and vice-versa;~~

~~ç) A magistrate shall not exercise the function at the criminal section of the first instance court of general jurisdiction and at the prosecution office under the jurisdiction of this court, if another magistrate, with whom he/she has close family relations, is exercising the function respectively at the prosecution office attached to the appeal court or at the criminal section of the appeal court, having under its jurisdiction the first instance court and the prosecution office, and vice-versa.~~

~~2. A magistrate shall not exercise the function at the Anti-corruption and Organised Crime Specialised Courts or at the Special Prosecution Office, if another magistrate, with whom he/she has close family relations, is exercising the function respectively at these structures.~~

~~3. A magistrate shall presently notify the Council on any environmental incompatibilities before the first assignment to a position. The magistrate and the chairperson shall notify the Council without delay in case such situation arises during the exercise of his/her function.~~

~~4. In the event of establishing a situation of an environmental incompatibility during the exercise of function at a court, the magistrate shall be assigned to another section. If this is not possible, the respective Council shall transfer one of the magistrates to the closest possible court or prosecution office of the same level, if the magistrate fulfils the entire requirements for that position. The Council shall transfer the magistrate, who:~~

~~a) Consents to the transfer;~~

~~b) Caused the environmental incompatibility, if none of the concerned magistrates consents to the transfer;~~

~~c) Has less professional experience as magistrate at the court or prosecution office as against the other magistrate, if no settlement can be reached among them.~~

~~5. The transfer because of environmental incompatibility shall have precedence over lateral transfers.~~

1. Environmental incompatibility in the sense of this Article is created because of the close family ties between the magistrates, namely the spouse, co-habitant or close relatives up to the second degree.

2. The Councils, during the appointment, transfer, lateral transfer or promotion of a magistrate shall, as far as possible and without disproportionate prejudice to the right to a normal professional career development of the magistrate, take measures to avoid environmental incompatibility under paragraph 3 of this Article, in order to guarantee the public trust in the justice system, the independence and impartiality of the magistrate, the efficiency of the courts and prosecution offices in providing justice.

3. The following circumstances constitute environmental incompatibility:

a) when, respectively, in the same court or prosecution office where the magistrate requests to be appointed, another magistrate being under the conditions set out in paragraph 1 of this Article, exercises the function;

b) when the judge requesting to be assigned to an administrative court of first instance is under the conditions set out in paragraph 1 of this article, with another judge exercising the function at the Administrative Court of Appeal and vice versa;

c) when the judge requesting to be assigned to a civil law section of the court of first instance of general jurisdiction is under the conditions set out in paragraph 1 of this article, with another judge exercising his function in the civil section of the court of appeal, having jurisdiction over the court of the first instance, and vice versa;

ç) when the magistrate requesting to be assigned to the criminal law section of the court of first instance of general jurisdiction and to the prosecution office in the jurisdiction of this court is under the conditions set out in paragraph 1 of this article, with another magistrate exercising his function in the prosecution office at the court of appeal or in the criminal section of the court of appeal, having jurisdiction over the court and the prosecution office of the first instance, and vice versa.

4. The magistrate cannot be assigned to special courts for the adjudication of the criminal offences of corruption and organized crime or to the Special Prosecution Office if another magistrate who is under the conditions set out in paragraph 1 of this article, exercises his function in these structures.

5. For the purposes of implementing this provision, the magistrate at the time of filing a request for appointment, transfer, parallel movement or promotion shall submit a self-declaration to the Council, declaring whether or not he/she is in one of the cases of environmental incompatibility according to paragraph 3 of this Article.

6. When environmental incompatibility arises during the exercise of the function, or is created before the entry into force of this law, the rules provided in this Article shall not apply. In this case, with his/her consent, the magistrate may be assigned to another section.

7. The Councils shall adopt detailed rules on the criteria and procedures for the implementation of this Article."

Article 9

Extra-Office Activity

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 2)

1. A magistrate may undertake an extra-office activity only if these activities:

- a) Are consistent with the dignity of exercising the function;
- b) Do not lead to a perception of bias or partiality in the performance of the function;
- c) Do not conflict with essential office interests, thus not impacting the timing and efficient fulfilment of the functions. ~~In any case, the remunerated extra-office activity, including the preparatory work for carrying out this activity, shall not exceed 200 hours during and beyond the office hours per year;~~
- ç) Do not conflict with the purpose wherefore the workload has been reduced;
- d) If the remuneration for the extra- office activity includes any kind and form of payment, financial reward or compensation that does not exceed normal commercial terms;
- dh) Are not incompatible with the performance of magistrates' function or are not prohibited according to this Law.

2. The magistrate shall, except in the event of scientific publications or training, be prohibited to use the title of magistrate beyond his function, while taking the measures that also third parties do not use his title in these activities.

3. A magistrate may write, publish, lecture, teach on legal issues and participate in activities concerning legal issues, the legal system, the administration of justice or related matters, in accordance with the provisions of paragraph 1 of this Article.
4. The magistrate shall, before starting the accomplishment of a remunerated extra-office activity under the provisions of this Article, notify the Council and submit the necessary documentation:
 - a) Describing the nature and duration of the extra-office activity;
 - b) Establishing the remuneration rate for these activities;
 - c) Establishing the workload at the court or prosecution office, the overall workload at the court or prosecution office and the timely delivery of duties in the previous twelve months.
5. The magistrate must obtain the consent of the relevant Council, before accepting an assignment to undertake a remunerated extra-office activity.
6. The Council shall decide within three weeks upon receipt of the request and the complete documentation and grant the consent if the proposed activity and any remuneration for its performance satisfies the requirements of paragraph 1 of this Article. If the Council does not express itself by way of a decision within three weeks upon receiving the request and the complete documentation and neither notifies the interested person, or does not make a decision to extend the time period, the request shall be deemed approved, in accordance with the provisions of the Administrative Procedure Code.
- ~~7. A magistrate shall notify the chairperson on non-remunerated extra-office activities, which do not fall under the scope of powers of the Council, where the magistrate:~~
 - ~~a) Acts as representative of the judicial system or the prosecution service;~~
 - ~~b) Makes general public statements about matters that affect the judiciary or the prosecution service;~~
 - ~~c) Participates in discussions on questions of law.~~
- ~~8. The chairperson shall report at least annually to the respective Councils on the nature and number of hours on the non-remunerated extra-office activities of magistrates of the respective court or prosecution office.~~
- 7. A magistrate, without impinging the prescribed terms and efficient exercise of the functions, may participate in non-remunerated extra-office activities, without the approval of the Council only in cases when they:**
 - a) act as a representative of the judiciary or the prosecution service;**
 - b) takes part in activities relating to issues connected to the judiciary or the prosecution office and make general public statements in the context of participating in these activities;**
 - c) participate in discussions on matters of the law.**
- 8. The magistrate shall report, within the first 6 months of the following year to the Council on the non-remunerated extra-office activities, where they have been involved in the previous year”.**
9. The Councils shall, within January each year, publish on the official website and forward a grounded report in writing to the High Inspectorate for the Declaration and Audit of Assets and

Conflict of Interests and the tax administration authorities on the remunerated extra-office activities of magistrates, including the remuneration or reward benefited during the preceding calendar year and the respective market worth. The respective institutions shall co-operate with the Councils for determining the normal commercial rates.

10. The Council shall establish more detailed rules on the extra office activities, based on the principle of equity and proportionality.

Article 10

Freedom of Association and Opinion

1. Magistrates are entitled to create associations or organisations and to participate therein with a view to:

- a) Protect their rights and interests;
- b) Their professional promotion.

2. The associations and organisations of magistrates shall, in the assumption of their activities, not run against the powers of justice institutions.

CHAPTER III

SALARIES AND OTHER FINANCIAL AND SOCIAL BENEFITS

Article 11

Principles for Determining the Salary and Financial Benefits of a Magistrate

1. Magistrate salaries and other financial benefits shall be determined in accordance with the dignity of duty and to the extent appropriate to guarantee the independence and protection from external interference with the performance of their function.

2. The salary of a magistrate is determined based on the following criteria:

- a) The level of court or prosecution office where the magistrate is exercising the function;
- b) Seniority in profession;
- c) The special sphere of material competencies where the magistrate exercises the function;
- ç) Management position.

3. Further financial benefits include:

- a) The bonus for any temporary transfer, or the mobility scheme;
- b) Proficiency bonus;
- c) State supplementary pension according to the provisions of this law and the legislation on state supplementary pension;
- ç) Any other benefit based on specific conditions of work or personal and family situation of the magistrate, envisaged by the legislation in force.

Article 12

Determining Salaries for Magistrates

1. A magistrate's salary is determined by the magistrate's affiliation to a salary group and the salary scale.
2. A magistrate's salary is categorised into salary groups (G), based on the following indicators:
 - a) Magistrates assuming their functions in first instance courts of general and administrative jurisdiction or prosecution offices attached to first instance courts (G1);
 - b) Magistrates assuming their functions in appeal courts of general and administrative jurisdiction, prosecution offices attached to courts of appeal, magistrates assuming their function at the Anti-corruption and Organised Crime Specialised Court of first instance (G2);
 - c) Magistrates assuming their functions at the High Court and General Prosecution Office, as well as magistrates assuming their functions at the Anti-Corruption and Organized Crime Court of Appeal and at the Special Prosecution Office (G3).
3. The seniority bonus in exercising the function shall be calculated at the extent of 2% of the reference basic salary for each year of service in the function, but not more than 25 years of service.
4. In the case of High Court judges, appointed from among jurists who do not come from a judicial career, for the purpose of determining the seniority of service in exercising the function, the seniority bonus is calculated as equivalent to that of 15 years' of judicial career.
5. The monthly gross salary of a magistrate consists of the following elements:
 - a) The basic reference salary for judicial and prosecutorial functions, which is equivalent to the 'function-related salary' of civil servants of first category, the third scale in the position of Director of the General Directorate at Prime Minister's Office or any other equivalent position, as set out by the Council of Ministers decision. The reference of the monthly basic salary for judicial and prosecutorial positions to the "function-related salary" according to the above provisions, does not aim at defining the relative value of judicial and prosecutorial positions as against the civil service positions or to enable its classification into the respective category or class.
 - b) Supplements to group salary, which is the amount resulting from the multiplication of the reference basis salary with the coefficient in percentage of the respective function exercised by the magistrate, referring to paragraph 2 of this Article, namely:
 - i) G1: 90 %
 - ii) G2: 98 %
 - iii) G3: 106%
 - c) Seniority bonus being calculated on the basis of the reference basic salary as set out in paragraph 3 and 4 of this Article;
 - ç) The bonus for leading functions as defined according to Article 14 of this Law;

~~d) The bonus for difficulties at work, according to the provisions of the law “On the Organisation and Functioning of Institutions for Combating Corruption and Organised Crime”.~~

d) bonus for difficulties at work, in the amount of 60 percent of the initial gross salary, for magistrates exercising the function at the Special Prosecution Office against corruption and organized crime, First Instance Court against corruption and organized crime and the Court of Appeal against corruption and organized crime.

Article 13

Salaries of Seconded Magistrates and Assistant Magistrates

1. Unless otherwise provided by law, the seconded magistrates, who have previously been acting as magistrates, shall continue to receive the salary in accordance with the career and seniority criteria for the previously held functions.
2. Unless otherwise provided for by law, with regard to the seconded magistrates, who have not previously assumed the function of magistrate, the rules for determining the salary of a first instance magistrate shall be applied.
3. Where a special salary scheme is applicable for seconded positions, the magistrate shall, during the secondment, benefit the salary according to this special scheme. Upon the end of the secondment term, the magistrate shall be paid the position-related salary wherein the magistrate returns, is transferred, appointed or promoted.
4. The seconded magistrate shall receive the highest salary between the two salaries. Where a seconded position is not paid from the judicial or prosecutorial budget, the salary foreseen for the seconded positions in other institutions shall be covered by the budget of the institution, while the difference to the respective magistrate’s salary shall be borne by the judicial or prosecutorial budget.

Article 14

Salary of Magistrates in Leading Functions

1. For assuming the function of a chairperson of a court or a prosecution office, the magistrate receives 10% additional salary above his initial gross salary.
2. For assuming the function of a deputy chairperson, chairperson of a section, press magistrate, ethics advisor or of mentor magistrate, the magistrate receives 5% additional salary upon the initial gross salary.
3. The Councils shall establish detailed rules for the compensation of expenses of magistrates delegated to assume their functions at a court or prosecution branch.
4. The High Prosecutorial Council shall approve rules for the compensation of overtime work of prosecutors of the Special Prosecution Office, organised in exceptional cases.

5. For the remuneration of the members of the Justice Appointments Council or other functions for magistrates foreseen in the law, the rules set out by the Council of Ministers on the remuneration of members of collegial bodies shall be abided by.

Article 15

Compensation of Magistrates in a Mobility Scheme

1. A delegated magistrate receives a compensation of 60% of the reference basic salary for a position as magistrate in a mobility scheme. In case the magistrate in a mobility scheme is assigned to work in Tirana or courts or prosecution offices with a distance of not more than 45 km, the compensation shall be reduced per 1% for each working day within such central area. This compensation is the amount granted for accommodation and transport costs of a magistrate in the mobility scheme. The High Judicial Council and the High Prosecutorial Council shall, in consultation with the Ministry of Finance, establish more detailed rules.
2. A magistrate, who is temporarily transferred as provided in Article 46 of this Law, shall receive an additional compensation of not less than 2 % on the reference basic salary for everyday of assuming the function in the court or prosecution office transferred to.

Article 16

Proficiency Allowance

1. The magistrates, who during the previous calendar year, had an exceptionally high ethical and professional evaluation, shall each year benefit a reward equal to a basic reference salary.
2. The Councils shall adopt more detailed rules on the remuneration according to paragraph 1 of this Article by:
 - a) Restricting the entitlement to 5 % of magistrates annually, being evaluated during the previous calendar year;
 - b) Setting out the criteria and procedure on the selection of the magistrates benefiting this entitlement.

Article 17

Home Loan

1. A magistrate shall, during the exercise of function and after having exercised the function at least three years, be once entitled to benefit a state funded home loan, at the amount of an average value of an apartment of 50 m² in a central area of the town, where the magistrate exercises the function.
2. Per family member in the sense of paragraph 5 of this Article living in the household with the magistrate, the reference size of the apartment surface shall be increased per 10m² per person. In case two persons in a household are entitled to a state funded home loan, this shall be benefited only by one of them.
3. The apartment purchased through a loan shall be put up as bank collateral to secure the loan.

4. The magistrate shall be entitled to use the property for satisfying his/her own accommodation needs or the accommodation needs of his/her family. The magistrate shall be entitled to sell the property during the time of loan amortization and to purchase another apartment. In case the sale proceeds are higher than the increase of the commercial value of the property, the exceeding amount shall be repaid to the state. The magistrate shall not be entitled to rent out the apartment obtained by loan.

5. The magistrate shall be obligated to reimburse the state for the amount received and the interest rates of the loan, in case a disciplinary measure of dismissal from office has been imposed on him/her.

6. Where the magistrate or his/her spouse, partner or child under 18 years old, owns a property at freehold, accommodating the housing needs or where they have sufficient wealth to purchase such a property, they shall not be entitled to a home loan under this Article.

7. The Council of Ministers shall approve the constitutive legislation regarding the agreements with banks on the loan scheme, which shall contain the criteria and conditions for the loan contract, as well as the liability of the state regarding the loan interests. The Council of Ministers shall adopt more detailed rules on the procedure for granting a home loan and the terms and conditions the magistrate has to fulfil in accordance with the provisions of this Article.

Article 18

Detailed Rules for Salaries and other Financial Benefits

The Council shall, in its draft-budget, substantiate in detail the criteria and conditions of salary increases and cuts.

Article 19

Fellowship Allowance for Candidate Magistrates

1. A candidate magistrate, who is admitted to attend the initial training course at the School of Magistrates, shall benefit a fellowship allowance according to the following indicators:

- a) In the first year - 30% of his/her initial gross salary;
- b) In the second year - 40% of his/her initial gross salary;
- c) In the third year - 50% of his/her initial gross salary;

2. Candidate magistrates attaining more than 90% of the scores during an academic year, as determined by the Steering Council of the School of Magistrates, shall, in the upcoming academic year, be granted a bonus of 10% of the fellowship allowance set out in the paragraph 1 of this Article.

3. Provisions of Article 22 shall be applied to the extent possible.

4. A candidate magistrate shall be obligated to repay the benefitted amount of the fellowship allowance within a year, if:

- a) The candidate is expelled or has abandoned the School;

b) The candidate magistrate does not apply for being assigned to a position within one year upon completion of the initial training at the School of Magistrates.

5. A candidate magistrate shall be obligated to reimburse 50% of the benefitted amount of the fellowship allowance within three years upon completion of the initial training at the School of Magistrates, if

a) The candidate magistrate did not meet the requirements for being appointed as magistrate according to Article 40 of this Law;

b) The magistrate's mandate has expired before having completed at least five years in assuming the function.

6. The Steering Council of the School of Magistrates shall, due to health-related reasons or other justified reasons, approve the exemption of the candidate magistrate from the obligation to repay the benefitted amount of the fellowship allowance, according to the provisions of paragraph 4 of this Article and also cases foreseen in paragraph 5, letter "b" of this Article.

Article 20

Special Protection of Magistrates during or because of the Exercise of the Function

1. The magistrate and his/her family shall, during or because of the exercise of the function, benefit specific state protection for life, health and property. The magistrate who is no longer in the office or has retired shall enjoy this special protection if he/she requests it, as well as in case of endangerment due to a previous exercise of the function as magistrate.

2. If the life, health or property of a magistrate or the magistrate's family is endangered, the state shall provide special protection, as well as physical protection, under the criteria and procedures set out by decision of the Council of Ministers, following a consultation with the Councils.

3. The damages affecting the life, health and property of a magistrate or of her/his family, shall be compensated by the state, as long as these damages are caused during or in connection with the exercise of the function.

Article 21

Supplementary Pension and other Benefits

1. In addition to the cases provided in paragraph 2 of this Article, a magistrate shall receive a supplementary state pension and other benefits foreseen by the Law "On the supplementary State pension for persons assuming constitutional functions and state employees", equivalent to the officials referred to in the second group, as set out in Article 1, paragraph 9, letter "a" of the Law "On the supplementary State pension for persons assuming constitutional functions and state employees".

2. Magistrates assuming a function at the High Court shall receive a supplementary state pension and other benefits foreseen by the law "On the supplementary State pension for persons assuming constitutional functions and state employees" equivalent to the officials referred to in the first

group, as set out in Article 1, paragraph 8, letter “b” of the Law “On the supplementary State pension for persons assuming constitutional functions and state employees”. The Chairperson of the High Court and the General Prosecutor shall receive a supplementary state pension and other benefits foreseen by the Law on supplementary pensions, equivalent to the officials referred to in the first group, as set out in Article 1, paragraph 8, letter “a” of the Law “On the supplementary State pension for persons assuming constitutional functions and state employees”.

3. Magistrates shall receive this supplementary pension and other supplementary benefits, according to the conditions and procedures foreseen by the legislation in force on supplementary state pensions of constitutional functions and state employees and the sublegal acts pursuant to this law.

Article 22

The Inviolability of the Salary and other Financial Benefits of a Magistrate

1. The salary and other benefits of a magistrate cannot be reduced, except the cases where:
 - a) There are major financial difficulties or other national emergencies, by taking into account the following factors: a clear discrepancy between the magistrates’ salary progression and the progression of standard salaries in public service, the payments index as well as the consumer price index. These factors need to be evaluated in order to strike a balance between the inviolability of the salary and the need to avoid getting new debts;
 - b) The magistrate exercises his right to return from a previous position, being more senior and more specialised or with a limited mandate and higher pay;
 - c) The magistrate is subject to a disciplinary measure;
 - d) Due to poor ethical and professional performance evaluation, as set out in this law.
2. The magistrate has to repay the amounts received as salary or financial benefit if he/she benefitted more than entitled under the law.

CHAPTER IV

LEAVE AND REDUCTION OF WORKING TIME

Article 23

Annual Leave

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 3)

1. A magistrate is entitled to annual paid leave at the amount of 25 working days.
2. A magistrate who serves at the Anti-Corruption and Organized Crime Specialised Courts or at the Special Prosecution Office shall be entitled to five additional working days of annual leave.
3. The annual leave of a magistrate who is authorized to work part time shall be reduced proportionally to his working time.

4. In the year in which a magistrate enters or leaves the service or in which the magistrate is on parental leave, the magistrate shall be entitled to paid partial annual leave, which is determined proportionally to the duration in function, as follows:

- a) Two working days leave per each full month of service,
- b) Two working days leave for an incomplete month, consisting of more than fifteen working days;
- c) One working day leave for an incomplete month up to fifteen working days.

5. Annual leave may be taken all at once or in several periods, as requested by the magistrate and according to the requirements of the function. The leave shall, however, include at least one period of three consecutive weeks in the month of August, unless the requirements of the service require the continuation of the court and prosecution activities.

6. A magistrate newly appointed to the position shall be granted annual leave only after having assumed the function for a period of three months. The leave may be approved earlier than this in exceptional and substantiated cases.

7. A magistrate, contracting a disease during the annual leave, which would have prevented him from assuming the function if he had not been on leave, shall benefit the extension of the annual leave by the period of duration of the disease, provided that the latter is established through a medical certificate.

8. Where a magistrate, for reasons other than the requirements of the service, has not used up all his annual leave before the end of the current calendar year, he may carry over the remainder of the leave to the following year, provided that the remainder does not exceed five days. The unused leave may be obtained until the end of March of the following year. Where a magistrate at the time of leaving the service has not used up all the annual leave, he shall be paid compensation equal to one-thirtieth of the monthly salary benefitted by him before leaving for each remaining leave day. The sum calculated according to this paragraph shall be deducted from the payment the magistrate would benefit, if at the time of leaving the service, the magistrate has benefitted annual leave in excess of the entitlement up to that date.

9. A magistrate, interrupting the annual leave or cancelling this leave for service reasons, shall be entitled to the reimbursement of the entire expenses being incurred, in particular travelling expenses, provided they are established by appropriate documentation.

~~10. Except in case of sickness or accident, a magistrate may not be absent from duty. If the magistrate effects absences from office while they have not been approved, they shall be deducted from the annual leave period. Regardless whether a disciplinary measure has been imposed or not, the magistrate shall not be paid for the days he has been absent.~~

10. A magistrate may not be absent from duty, except for justified cases provided in the legislation in force. The chairperson, by a reasoned written decision shall deduct the amount of the not justified absence from the annual leave period of the same year. The magistrate has the right to appeal the decision of the Chairperson to the relevant Council within 7 days

from the date of the notification of the decision. If the deduction is not possible, the chairperson shall notify the Council which takes measures that the magistrate is not paid for the days, he/she has been absent.

11. The annual leave shall be granted by the chairperson of the court or prosecution office. The request for annual leave for a period of more than three days shall be submitted to the chairperson at least one month before actually benefiting it.

Article 24

Other Leaves

1. Apart from annual leave, the magistrate shall, in accordance with the Labour Code, be entitled to take:

- a) Other leave;
- b) Parental leave.

2. The special leave shall be approved by the chairperson of the court or prosecution office. The Councils shall approve the parental leave after having consulted the opinion of the chairperson of the court of prosecution office.

3. A magistrate may request unpaid leave up to two years for the purpose of professional qualifications and specializations in a training institution or for family or health reasons. The unpaid leave may be taken all at once or in several periods as requested by the magistrate.

4. The Councils may grant the unpaid leave after having consulted the opinion of the chairperson of the court or prosecution office, if the leave does not conflict with essential office interests and does not in general jeopardize the timely and efficient fulfilment of the official duties in the court or prosecution office.

5. The period of unpaid leave shall not be considered for seniority or for the purposes of other benefits.

6. The Council shall establish more detailed rules on the criteria and procedures for granting unpaid leave.

Article 25

Safety and Health at Work

Unless this law provides otherwise, the Councils, courts and prosecution offices shall apply the provisions of the Law on Safety and Health at work.

CHAPTER V

OTHER RIGHTS



Article 26

Reducing Workload

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 4)

1. A magistrate is entitled, in cases of need, to a reduction of caseload due to one of the following reasons:

- a) temporary personal or family reasons for a limited period of maximum two years;**
- b) Studies beyond the continuous training at the School of Magistrates for a limited period of maximum 3 years.
- c) when engaged due to the function as magistrate also in other duties, when foreseen by the applicable legislation.**

2. The caseload may be reduced up to 75% of the caseload, depending on the circumstances.

3. The Councils may decide to reduce the magistrate's caseload, after having received the opinion of the chairperson, if the following conditions are met:

a) in the instance provided for in paragraph 1 letter a) of this Article, the magistrate requires a reduction of the workload, if it does not conflict with the essential office interests, timing and the efficient performance of the official duties in the respective courts and prosecution offices;

b) In the instance provided for in paragraph 1 letter "b" of this Article, when:

- i) The studies are apt to increase the magistrate's professional skills, and
- ii) The reduction of workload does not conflict with essential office interests, timing and assuming sufficiently the official duties in the court or prosecution office.

4. The Councils shall adopt more detailed rules, which set out:

a) The procedure to be followed on applications for reducing the caseload, in particular details for the evidence required to be adduced in support of an application;

~~b) In instances where the application is admitted, rules about the deduction of the salary and other benefits, based on reasons as set out in letter "a", paragraph 1 of this Article, following the principle of non-discrimination and proportionality by taking into account the need for reducing the workload, incurred by a circumstance outside the will of the magistrate;~~

b) Rules for the reduction of salary and other benefits, when the magistrate is in the conditions set out in paragraph 1 letter "a" following the principle of proportionality and non-discrimination;

c) Provisions about the deduction of the salary and other benefits in the case of successful applications based on reasons as set out in letter "b", paragraph 1 of this Article, following the principle of non-discrimination and proportionality;

ç) Provisions for determining the period during which a reduction of workload is to have effect;

d) Transitional provisions about the transfer of a part of a magistrate's caseload, in the case of a successful application.

5. The deduction of the salary and other benefits shall, under no circumstances, exceed 75%.

Article 27

Early Retirement

1. A magistrate shall be entitled to early retirement, if he:

- a) Has reached at least the age of 60 years;
- b) Has served at least 30 years as magistrate, including the secondment period;
- c) Is not able to continue to serve in office, due to illness as certified by the medical commission on determining the ability to work.

2. A magistrate who serves at the Anti-Corruption and Organized Crime Specialised Courts or at the Special Prosecution Office shall be entitled to three months earlier retirement for each full year of service in these structures.

3. The Councils shall be in charge of granting the early retirement to a magistrate, after having previously received the opinion of the chairperson of the court/prosecution office.

4. The Councils shall establish more detailed rules, which must set out:

- a) The procedure to be followed for applications for early pension and the associating documentation;
- b) Rules for calculating the early pension and other benefits, in cases of successful applications.

PART III

CAREER DEVELOPMENT OF MAGISTRATES

CHAPTER I

RECRUITMENT OF CANDIDATE MAGISTRATES

Article 28

Criteria for Admission to Initial Training

All persons are entitled to apply to the School of Magistrates for admission to the initial training as a magistrate, as long as they fulfil simultaneously the following criteria:

- a) Have full capacity to act;
- b) Be an Albanian citizen;
- c) Have graduated with the minimum scoring as determined by the School of Magistrates the second cycle of university studies in law, with a diploma of "Master of Science" and have passed the state exam for jurists in Albania, or have graduated in law with the minimum

points set out by the School of Magistrates in a European Union Member State and have been awarded an equivalent diploma, recognised under the rules for recognition of diplomas provided by law;

ç) Have at least three years of full time active professional experience in the judiciary or the prosecution office, public administration, free legal professions or teaching in law faculties, or in any other equivalent position in the private sector or international organizations;

d) Have never been criminally convicted by a final decision;

dh) Have never been dismissed from office for disciplinary reasons and are not subject to a current disciplinary sanction;

e) Not to be a member of political parties at the time of application;

ë) Have not been a member, collaborator or favoured by the State Security before 1990;

f) Have not been a collaborator, informant, or agent of any secret service.

Article 29

Call for Applications

1. During January of each calendar year, the Councils shall, following a needs analysis, determine and publish the maximum number of candidate magistrates for admission to the initial training for the next academic year.

2. The School of Magistrates shall publish a call for applications for the initial training course within one week, after the publication of the maximum number of magistrates, under paragraph 1 of this Article, through the announcement of the notification:

a) On the official website of the High Judicial Council, High Prosecutorial Council and the School of Magistrates;

b) At least in one of nationwide newspapers with the highest circulation in the country.

Article 30

Application and Preliminary Assessment of Candidates

1. The School of Magistrates shall receive applications for admission to the initial training by end of February of each year.

2. The applicants shall submit the necessary documents proving the fulfilment of the criteria determined in Article 28 of this Law. Where the submitted documentation does not fully prove the fulfilment of the criteria, or is not complete, accurate, or there are reasonable doubts regarding its authenticity, the School of Magistrates may request further information or documentation from state institutions or employers of an applicant.

3. By 15 March each year, the School of Magistrates shall carry out a preliminary assessment as to whether the applicant satisfies the application criteria as set out in Article 28 of this Law.

4. The School of Magistrates shall submit to the Councils the report of preliminary assessment outcome, together with the files of the application documents for each applicant. The Councils may

deliver comments or objections not later than by end of March each year. The School of Magistrates shall adopt the final assessment report by taking into account the comments and objections received and shall publish the final assessment report on its official website, including the list of applicants who fulfil the criteria determined in Article 28 of this Law.

5. Any applicant, who is not included in the list of applicants meeting the criteria, shall have the right to exercise the legal remedies of appeal foreseen by the Law “On Governance Institutions of the Justice System” and in the respective bylaw acts.

Article 31

Exam

1. The School of Magistrates shall administer an exam for admission to the initial training in accordance with the provisions contained in the Law “On the Governance Institutions of the Justice System in the Republic of Albania”. The admission exam shall take place by the end of April of each year and shall be opened to all applicants included in the list of applicants as determined by the assessment procedures provided for in Article 30 of this Law.

2. The School of Magistrates shall establish a ranking list of the applicants in accordance with the exam results and shall publish the adopted list by the 15th of May each year, by indicating in the list also the maximum number of candidates admitted to the initial training, in accordance with the decision of the Councils, made in accordance with the provisions of Article 29 of this Law.

3. Any applicant has the right to exercise the legal remedies of appeal foreseen by the Law “On the Governance Institutions of the Justice System in the Republic of Albania”.

Article 32

Assets and Background Checking

1. The candidates with the highest scoring on the published list, as set out in the provisions of Article 31 of this Law, who are likely to be admitted to the initial training of the School of Magistrates, shall be subject to a thorough asset and background checking.

2. Within one week after the publication of the final list, according to Article 31 of this Law, the Councils shall request for each applicant, as set out in paragraph 1 of this Article, information from competent institutions for the verification of assets and background check regarding any other disqualifying ground from the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests, Prosecution Office, financial, tax and customs authorities, National Bureau of Investigation, State Intelligence Services and any disciplinary authorities having supervised the discipline in labour relations of the candidate. If deemed necessary, the Councils may request additional information from the institutions referred to in this paragraph.

3. Any public institution or any natural or legal person shall comply with requests of the Councils for information, documents, or other materials related to an inquiry, except as otherwise restricted by law, within reasonable time limits set out by the Councils in their requests.
4. In any case, the applicant shall not be admitted to the School of Magistrates if:
 - a) The report of the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests shows that the legitimate financial sources of the candidate do not justify his/her assets and she/he has not declared property or assets or has provided a false or a non-accurate declaration of the assets;
 - b) The reports of the National Bureau of Investigation or the State Intelligence Service show that the candidate has connections to organized crime according to provisions of the law “On the organization and functioning of institutions for combating corruption and organized crime”;
 - c) There exists any other disqualifying ground, as provided by law.
5. At the latest by the 5th of September each year, the Councils shall decide on the eligibility of the applicants based on the information received on the results of the asset and background check.
6. Applicants shall have the right to inspect the file and lodge, within five days, an appeal to the competent court against the decision of the Council. The competent court shall decide on the appeal within two weeks of its submission.
7. Upon completion of the asset and background check, the Councils shall, by the end of September each year, approve and publish the final list of candidate magistrates admitted to the three years initial training of the School of Magistrates, in accordance with the number of candidates as determined in accordance with Article 29, and by strictly following the ranking of candidates according to the list as set out in Article 31, paragraph 2, of this Law.

Article 33

Professional Internship of Candidate Magistrates

1. The candidates for judges and candidates for prosecutors shall accomplish their professional internship respectively at the courts and prosecution offices during the third year of initial training. The professional internship shall have a duration of 12 months, starting in July and ending in June of the following year.
2. The Councils shall determine the courts and prosecution offices of first instance for accomplishing the internship for candidate magistrates, by taking into account the following indicators:
 - a) The availability of mentor judges and prosecutors,
 - b) The court and prosecution office infrastructure,
 - c) The availability of working space and facilities for candidate magistrates,
 - ç) The possibility to get acquainted with a wide range of laws and a variety of cases during the professional internship.

3. The Councils shall appoint a panel of mentor magistrates, with a duration of three years, with the right to reappointment. Each mentor magistrate must concurrently fulfil the following criteria:

- a) Have at least five years of experience as judge or prosecutor;
- b) Have been evaluated at least 'very good' in accordance with this law in the last ethical and professional performance evaluation;
- c) Have successfully completed a training for mentors in the last three years delivered by the School of Magistrates;
- ç) Have not been subject to disciplinary measures;
- d) Have met the legal deadlines for investigating or adjudicating cases, at least in the previous year before being appointed as mentor.

4. The Council shall assign a mentor magistrate to each candidate magistrate with the aim of ensuring that each candidate magistrate:

- a) Has a different mentor for each of the three consecutive periods of four months;
- b) Obtains professional experience in the fields of civil, criminal and administrative law;
- c) Be involved as much as possible in the aspects of everyday work of the mentor magistrate, regardless of the fact that she/he is not assuming the function of the magistrate yet, including:
 - i) Explanations and discussions on pending cases;
 - ii) Participation in hearings or interviews;
 - iii) Case management issues;
 - iv) File management experience;
 - v) Preparation and discussion of draft decisions,
 - vi) Experience in the court or prosecution office administration;
 - vii) Aspects on ethical standards and rules of conduct for magistrates.

5. A mentor magistrate, to whom a candidate magistrate has been assigned, shall not take part in every 10th case assignment by lot at the court or prosecution office where he/she is exercising the function.

6. A mentor magistrate must evaluate the ethical and professional performance of each candidate magistrate by reference to the evaluation criteria and grades, set out in this Law.

7. During the professional internship, the candidate magistrate shall be entitled to 25 working days of paid annual leave, 15 of them during the month of August, at the same time as the mentor magistrate. The chairperson of the court or prosecution office is in charge of granting the annual leave, following a consultation with the concerned mentor magistrate.

8. Following a proposal of the School of Magistrates, the Councils shall issue guidance for the quality assessment of the mentoring activities.

9. The Councils shall elaborate common rules for determining the courts, prosecution offices and for the appointment of mentoring magistrates for the professional internship program, for the ethical

and professional performance evaluation and the quality of candidate magistrates in order to ensure an optimized training of candidate magistrates.

Article 34

Ranking list of Graduating Candidate Magistrates

1. Each year, by the end of June, the School of Magistrates shall publish a list of candidate magistrates graduating from the initial training in that year.
2. The graduates shall be ranked in the list according to the results of the exams in the first and second year, in their final examination, and the evaluations during their professional internships.
3. The School of Magistrates shall draft and publish the criteria for weighting professional internship evaluations and any examination results.
4. The graduates shall be included in a graduates' list for candidate judges and in the graduates' list for candidate prosecutors. The candidate magistrates shall be ranked in the graduates' list, in accordance with paragraph 2 of this Article.

CHAPTER II

APPOINTMENT OF MAGISTRATES

Article 35

Appointment of Graduated Candidate Magistrates

1. The graduate shall be appointed magistrate, if she/he meets concurrently the following criteria:
 - a) Having graduated from the School of Magistrates in the initial training with a score of at least 70% of the maximum reachable scores;
 - b) Having achieved evaluation scores of at least "good" in each of the assignments during the professional internship in the third year of the initial training;
 - c) Having passed the asset declaration and background check, carried out by the Councils in accordance with the provisions in paragraphs 2 to 6 of Article 32 of this Law.
2. A graduate may apply for appointment as magistrate following an invitation in accordance with Article 39 paragraph 1 of this Law, within the period of two weeks beginning with the date of the publication of the graduates' list. For justified reasons a graduate may apply to be appointed also in the following year.
3. A candidate for judge may, by notice in writing to the Council, apply for appointment as a judge. The request shall contain, in a preferential list, three courts where the graduate seeks to be appointed. A candidate for prosecutor may, by notice in writing to the Council, apply for appointment as a prosecutor. The request shall contain, in a preferential list, three prosecution offices where the graduate seeks to be appointed.

4. Within the period of one month as of the date of the publication of the graduates' list the Councils shall:

- a) Appoint as magistrate, each person who appears in the graduates' list, who satisfies the criteria for appointment, as well as has applied under the provisions of paragraph 2 and 3 of this Article,
- b) Reject the appointment as magistrate to any person who appears in the graduates' list and having submitted the request under points 2 and 3 of this Articles, however, not satisfying the criteria for appointment.

5. The Council shall approve more detailed rules regarding the reasons justifying putting up the candidacy in the upcoming year, under the provisions of paragraph 2 of this Article.

Article 36

Appointment as magistrate of Former Judges and Former Prosecutors

1. Within the period of two weeks beginning with the date of the publication of the graduates' list, the former judges and prosecutors may apply for re-appointment following an invitation in accordance with the provisions of Article 39 paragraph 1 of this Law. The application for re-appointment as a magistrate must indicate, as a preferential ranking, three courts or prosecution offices.

2. The Councils shall, within the period of one month as of the date of the publication of the graduates' list, review the applications received for appointment and shall appoint as magistrates the applicants who:

- a) Fulfil the criteria of letter "a", "b", "d", "dh", "ë" and "f" of Article 28 of this Law;
- b) Have graduated from the School of Magistrates and worked as magistrates for at least 5 years in the past fifteen years;
- c) Have not held political office in the public administration or a leadership position in a political party in the past 10 years before the application for re-appointment as magistrate.

3. The Councils shall, within one month from the date of publication of the graduates' list, reject the re-appointment of any person who does not satisfy the criteria set out in letter "a", paragraph 2, of this Article.

Article 37

Oath

1. A magistrate shall, before assuming the function, take the following oath:

"I solemnly swear that during the performance of the function I will always remain faithful to the Constitution of the Republic of Albania, the legislation in force and I will observe the rules of professional ethics."

2. The oath of a magistrate must be administered in a public ceremony, [before the High Judicial Council or the High Prosecutorial Council](#). The Council shall hold the oath ceremony no later than 10 days after the appointment of the magistrates.

3. If the magistrate is not called to take the oath, after the expiry of the term provided in paragraph 2 of this article, he/she shall take an oath in writing according to the formula provided in paragraph 1 of this article and he/she shall personally send it to the Council. The date of the oath ceremony or the date of delivering the oath in writing to the Council shall be considered as the date of the oath and commencement of the exercise of the function of magistrate.

Article 38

Personal Files and the Register of Magistrates

1. The Councils shall establish and administer the personal files and the register of Magistrates. The magistrate's register is a unique data base of professional and personal information of a magistrate.

2. The personal file of a magistrate shall contain at least the following information:

a) Name and address;

b) Civil status, name and profession of spouse or partner and children;

c) History of education;

ç) Date of appointment;

[ç/1\) act of oath according to paragraph 3 of Article 37 of this law.](#)

d) Participation in training courses;

dh) Any disciplinary and criminal record and information received from the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests;

e) Performance evaluation results;

ë) Career development details;

f) Date of and reason for termination of appointment, if applicable.

3. The Councils shall approve detailed rules for:

a) The register format and the data that are administered therein;

b) Additional information that is to be included in the personal files;

c) The manner in which the personal files and the register are kept;

ç) The parts of the personal file and register, which are open for access to the public;

4. The Councils shall collect and process the data in accordance with the effective legislation on the personal data protection.

CHAPTER III

ASSIGNMENTS TO POSITIONS

Article 39



Assignment of an Appointed Magistrate to Position

1. By June of each year, after having completed the procedures on the lateral transfer and promotion, each Council shall announce the vacancies for the appointees.
2. By July of each year, each Council shall publish its decisions on the assignment of appointees to vacant positions as magistrates.
3. Assignment to position of an appointee having recently graduated from the School of Magistrates is a priority and it must be based on:
 - a) The ranking in the graduates' list in the sense of Article 34 of this Law;
 - b) The fulfilment of preferences expressed by graduates in the initial training by implementing it to the extent possible in compliance with letter "a" paragraph 3 of this Article.
4. Following the assignment of appointees, according to provisions of paragraph 3 of this Article, the assignment of re-appointed magistrates in the sense of Article 36 of this Law must be based:
 - a) Firstly, on the result of an assessment of professional skills as set out in Article 49 of this Law;
 - b) Secondly, in case of equal professional skills, the criteria of professional experience shall prevail, referring to the years of experience in the judicial or prosecutorial system;
 - c) Thirdly, by way of meeting preferences expressed by magistrates, abiding by the provisions contained in letters "a" and "b" of this paragraph, to the extent possible.
5. An appointee, being assigned to a position in administrative courts, must have at least one and a half year of work experience in the public administration or must have "very good" results in the administrative law subjects at the School of Magistrates.

Article 40

Temporary Assignment of Appointees to Secondment Positions

1. Within the time period set out in paragraph 1 and 2 of Article 39 of this Law, if the number of applications for assignment to a position is higher than the number of vacancies for magistrates, the Councils shall assign appointees to secondment positions in an institution.
2. In the case of appointees being assigned to a seconded position in an institution:
 - a) The Councils shall offer the concerned appointee the possibility of choosing at least two positions, according to the order of their ranking in the graduates' list;
 - b) An appointee, assigned to a seconded position in an institution, must participate in the upcoming lateral transfer procedure in the first instance, in order to be assigned as soon as possible to a vacant position as magistrate;
 - c) An appointee, assigned to a seconded position in an institution, shall receive a salary and other financial benefits equal to those provided for magistrates of first instance.

3. The Councils shall approve more detailed rules on the criteria, terms and procedure of assigning appointees to seconded positions, in order to ensure that the position for every appointee be suitable to the profile of the magistrate.

Article 41

Rights and Obligations of Appointees

(Amended by Law no. 48/2019 Article 5)

1. An appointee must accept the position offered in accordance with Articles 39 and 40 of this Law, including:
 - a) A position which is not stated in the appointee's preferences;
 - b) A secondment position.
2. An appointee has a right of appeal against a decision on assignment to a position **within 5 days from the notification of the decision of the Council**. The appeal does not suspend the implementation of the decision. The competent court shall decide within two weeks as of the appeal day. The decision of the competent court shall be final.
3. A Council's decisions, on an appointee's assignment to a position in accordance with this Article, shall become final if:
 - a) No appeal is lodged within the appeal period;
 - b) An appeal is lodged on time and the court has decided to dismiss the case or reject the appeal;
 - c) An appeal is lodged on time and, on its basis, a final court decision has been rendered.
4. In cases where the court allows the appeal and repeals the Councils' decision, the latter shall, within two weeks of the notification of the court decision, revise the decision on the assignment to position of the appointee, to the necessary extent for implementing the decision of the court.

CHAPTER IV

TRANSFER

Article 42

Transfer Principles

1. "Transfer" is:
 - a) A temporary or permanent move from a position at a court or prosecution office to a position at another court or prosecution office of the same level,
 - b) Assignment from a seconded position to a position at a court or prosecution office, which is at the same level as the previous position;
 - c) Assignment from a seconded position to a position at a court or prosecution office of first instance, if the magistrate has never been assigned to previous positions.

2. A transfer shall occur to a permanent or temporary vacant position. A position is permanently vacant only if there is no magistrate with the right to return to that position. A position is temporary vacant where the magistrate who holds that position permanently, is temporarily unable to assume the function in that position for at least 3 months.
3. A permanent position shall be filled in in the following order:
 - a) By a magistrate who has the right to be assigned to a position at the appeal level;
 - b) By a magistrate being transferred due to environmental incompatibility or due to changes in the administrative structure or territorial powers of courts or prosecution offices;
 - c) By a magistrate being transferred due to a lateral move;
 - ç) By a magistrate being entitled to promotion.
4. A temporarily free position shall be filled in by a magistrate who is entitled to be reinstated. During the period under the provisions of paragraph 2 of this Article, the position, which is temporarily vacant, shall be temporarily filled as follows:
 - a) By a magistrate who is entitled to be appointed to a position at the appeal level;
 - b) By a magistrate who is transferred due to environmental incompatibility or due to changes in the administrative structure or territorial powers of courts or prosecution offices;
 - c) By a magistrate being transferred due to a lateral move;
 - ç) By a magistrate who is entitled to promotion.
5. A magistrate shall not be transferred without his/her consent, unless otherwise provided in this law.
6. A magistrate shall not be demoted to a lower position against his/her consent, unless otherwise provided in the law.
7. In case of a temporary transfer, the magistrate shall return to the previous position at the end of the transfer period.
8. No judge shall be allowed to be transferred temporarily or permanently to Anti-corruption and Organised Crime Specialised Courts.
9. In case of a vacant position at the administrative court of appeal, the lateral transfer procedure shall be open only to judges who have worked at least for five years as judge in administrative matters during the last 9 years.

Article 43

Lateral Transfer Procedure

(Amended by Law no. 48/2019 Article 6)

1. Pursuant to Article 42, paragraph 3 and 4, of this Law, the Councils shall organize at least every 3 months a lateral transfer procedure for any position that:
 - a) Is vacant;
 - b) Is expected to become vacant within three months.

2. The Councils shall announce the lateral transfer procedure and invite magistrates meeting the following criteria to put up their candidacy:

- a) A magistrate exercising the function in a court or prosecution office of the same level as the vacancy;
- b) A magistrate exercising the function at a lower level court or prosecution office and having been rated at least two times no lower than “very good” in the previous two evaluations;
- c) A seconded magistrate who has previously worked at a court or prosecution office of the same level as the vacant position;
- ç) In regard to vacancies at the appeal level,
a magistrate in the mobility scheme, having professional experience in the sense of Article 47 of this Law, who has served at least four years in the mobility scheme and during this period has been assigned at least for 1 year to a position in the appeal level.

3. A candidate having assumed the function as member of the Council shall be excluded from the lateral transfer proceedings during the period exercising the function as member as well as three years following the end of the term.

4. Pursuant to paragraph 2 of this Article, the announcement shall be published at least on the Council’s official website and it shall contain the necessary information on the vacancy, and it must specify:

- a) The deadline for application, which must be not less than 2 weeks following the date of the call for applications;
- b) The information and documents to be attached to an application;
- c) The procedure for applications and the venue where the application has to be submitted.

5. Following the announcement of the vacancy, a magistrate can apply for not more than three vacant positions or positions expected to become vacant. If a magistrate is applying for more than one position, he/she must rank them to his/her preference.

6. A magistrate, who has not had in the past 5 years at least 1 year of professional experience in the area of law relevant for the vacant position or who has a disciplinary sanction in force, shall not be eligible to run as candidate.

7. The Councils shall review the applications and shall rank magistrates meeting the requirements according to the following records:

- a) Firstly, the two previous performance evaluations, including those as seconded magistrate, whereby taking account of:
 - i) The experience in a seconded position and as magistrate in a mobility scheme shall be considered an added value;
 - ii) In case of more magistrates with the same performance evaluation grades, the magistrates within the group of magistrates with the highest performance

evaluation grade shall be ranked according to a scoring scheme, established by the **Councils**.

b) Secondly, where, following the evaluation referred to in letter “a” paragraph 7 of this Article, more than one magistrate appears to have the highest scores, the Council shall rank these magistrates by reference to the specific professional experience relevant for the open position;

c) Thirdly, where, following the evaluation referred to in letter “b” paragraph 7 of this Article, more than one magistrate appears to have the highest scores, the Council shall rank these magistrates by reference to seniority as magistrate.

8. In cases of lateral transfers at a first instance court or prosecution office, where there were no applications under paragraph 7 of this Article, the lateral transfer procedure shall be opened for magistrates who have not yet been evaluated two times. They shall be ranked based concurrently on:

a) The respective ethical and professional performance evaluation, under paragraph 6 of this Article;

b) The ranking in the graduates’ list of the School of Magistrates or in the professional performance evaluation in the case of a re-appointed magistrate under Article 36 of this Law.

9. In cases of lateral transfers at a first instance court or prosecution office, where no applications are filed under paragraph 8 of this Article, the lateral transfer procedure shall be opened for magistrates who have never been evaluated. They shall be ranked in accordance with paragraph 8, letter “b” of this Article.

10. The Councils shall announce vacant positions for magistrates in the order of ranking under paragraphs 7, 8 and 9 of this Law and in compliance with the rules established under paragraph 12 of this Article.

11. The rules of Article 41 paragraphs 2 to 4 shall apply *mutatis mutandis to this Article*.

12. The Councils shall adopt more detailed rules, which set out:

a) The criteria for the ethical and professional performance evaluations among magistrates with the same evaluation scores;

b) The criteria for weighting the professional experience relevant for a vacant position;

c) The procedure to be followed in cases of equality of scores;

ç) The application and modification of this Article for temporary vacancies.

Article 44

Transfer without Consent

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 7)

1. Magistrates shall be transferred without their consent only in the following cases:

a) Implementing a disciplinary measure;



- b) Where a magistrate's position is abolished as the result of changes in the administrative structure or territorial powers of courts or prosecution offices, following an assessment based on objective and transparent criteria;
 - ~~e) As a consequence of establishing a family relationship amounting to an environmental incompatibility in the sense of Article 8 of this Law;~~
 - c) In case of temporary shortage of magistrates in a court or prosecution office, which cannot be covered by magistrates in the mobility scheme in accordance with the provisions contained in Article 46 of this Law.
2. The magistrate, whose position is abolished in accordance with letter "b" paragraph 1 of this Article, shall:
- a) Be transferred to a position at the same level in the new structure having under its territorial powers the court or prosecution office, where the magistrate has previously exercised the function, or where this is not possible;
 - b) Have the right to choose to be transferred to any position at the same level that is vacant or expected to become vacant within six months upon the abolition of the position, in a court or prosecution office of the same level, of the same material competence.
3. In case of a temporary shortage of magistrates under letter 'ç' paragraph 1 of this Article, the Council shall assign a magistrate from the mobility scheme or shall temporarily transfer a magistrate in accordance with Article 46 of this Law.
4. A magistrate shall have the right to appeal before the court against a decision on a transfer without consent **within 5 days from the notification of the decision of the Council**. The examination of the appeal by the court shall not suspend the transfer decision.

Article 45

Magistrates in a Mobility Scheme

1. Magistrates from all levels with at least one-year experience in the function may apply for secondments to a position in a mobility scheme established at the Council.
2. A magistrate may serve in a mobility scheme for a period not exceeding 5 years.
3. A magistrate applying for a position in a mobility scheme must sign a consent form for being assigned to any court or prosecution office.
4. Based on the needs of a court or prosecution office, the Council shall assign a magistrate in the mobility scheme:
 - a) To any position of the same level or any other level, for which the magistrate meets the requirements;
 - b) To a position at Anti-Corruption and Organised Crime Specialised Courts or Special Prosecution Office, if the magistrate fulfils the criteria according to Article 47 of this Law and gives the consent according to paragraph 3 Article 47 of this Law.

5. Pending assignment to a court or prosecution office, under the provisions of this Article, a magistrate in the mobility scheme shall serve in the administrative structures of the Councils.
6. The chairperson of a court or a prosecution office is entitled to request the Council to assign a magistrate for a certain period from the mobility scheme to the respective court or prosecution office, by providing also the reasons for the need for assigning the magistrate and the required time period.
7. The Council shall evaluate the application within 3 days upon its receipt. In case the Council acknowledges the need at the respective court or prosecution office, it shall assign the magistrate from the mobility scheme by taking into account:
 - a) The fulfilment of requirements for the respective position;
 - b) Availability;
 - c) Special professional experience of magistrates;
 - ç) Equal share of assignments of magistrates from the mobility scheme to distant courts and prosecution offices.
8. Each Council shall establish detailed rules for the criteria and procedure for the selection of magistrates as well as the period of service under the mobility scheme.

Article 46

Temporary Transfer

1. In case where no magistrate in a mobility scheme is available, the Council may request a magistrate in one of the courts or prosecution offices with the lowest caseload, who fulfils the criteria for being transferred or promoted to the respective structure, to give the consent to be temporarily transferred to that position for a determined period of time. In this case, the Council shall in advance consult the opinion of the chairperson of the court or the prosecution office where the magistrate is exercising the function.
2. In case where no magistrate consents to be temporarily transferred, the Council shall request a magistrate from one of the courts or prosecution offices with the lowest caseload to be transferred temporarily. This magistrate must have the lowest seniority as magistrate in that court or prosecution office and must fulfil the criteria for the position to which he or she is required to be temporarily transferred. The Council shall in advance have the opinion of the chairperson of the court or prosecution office where the magistrate is exercising the function.
3. In very voluminous or complex cases, the chairperson of the Special Prosecution Office may ask chairpersons of prosecution offices of first instance to consent on the transfer of prosecutors with special qualification to work on a particular case or for a specific period of time in the Special Prosecution Office.
4. Before taking the decision on the transfer according to paragraph 3 of this Article, the chairperson of the Special Prosecution Office shall request an opinion of the High Prosecutorial Council on the

transfer and the qualification of the respective prosecutor. The High Prosecutorial Council may deliver a non-binding opinion at least within three days after receiving the request.

5. The respective prosecutor requested to be transferred shall have not less than five years work experience as prosecutor and shall give the consent for the transfer and the compliance with the security requirements on trust and confidentiality in the Special Prosecution Office as set out in Article 47 paragraph 3 of this Law. After having the consent of the chairperson of the respective prosecution office, the chairperson of the Special Prosecution Office shall transfer the prosecutor for the agreed time period. The prosecutor shall be entitled to obtain the higher salary only during the transfer period.

6. A magistrate shall be transferred temporarily for a determined time period, but in any case, the transfer shall not last more than one year.

CHAPTER V PROMOTION

Article 47

Minimum Criteria of Professional Experience for Promotion

1. "Promotion" means a move from:
 - a) A position in the judicial or prosecutorial system to another position at a higher instance level;
 - b) A position of general civil, criminal or administrative jurisdiction to a position at one of the Anti-Corruption and Organised Crime Specialised Courts or the Special Prosecution Office;
 - c) A position as magistrate to the position of a chairperson of a court or prosecution office;
 - ç) A seconded position or a position in the mobility scheme to a position of a higher level than the position held prior to the secondment.
2. A magistrate shall be promoted when meeting the following minimum criteria for professional experience:
 - a) For a position as judge in the Anti-Corruption and Organised Crime Specialised Court of First Instance, the magistrate must have assumed the function not less than seven years as judge, out of which at least 5 years as judge in the area of criminal justice or as inspector at the Office of the High Justice Inspector, including even the experience as seconded magistrate;
 - b) For a position as judge in the Anti-Corruption and Organised Crime Specialised Court of Appeal, the magistrate must have assumed the function not less than ten years as judge, out of which at least five years as judge in criminal matters or as inspector at the Office of the High Justice Inspector;

- c) For a position as prosecutor in the Special Prosecution Office, the magistrate must have assumed the function not less than ten years as prosecutor, including the experience as a seconded prosecutor.
3. For all positions as set out in paragraph 1 of this Article, the magistrate must also comply with the other criteria and security conditions, provided for in the law “On the Organization and Functioning of Institutions for Combating Corruption and Organized Crime.
4. A magistrate can be promoted to a position at second level courts or prosecution offices, if he/she has assumed the function not less than seven years in the first instance, out of which at least five years in the area of law relevant for the vacant position, including the experience as a seconded magistrate.
5. A magistrate can be promoted to a position in the High Court or General Prosecution Office, if he/she has assumed the function not less than 13 years in a lower instance, out of which at least five years in the area of law relevant for the vacant position, including the experience as seconded magistrate.
6. A magistrate can be promoted to the position of a chairperson of a court or prosecution office of first instance or appeal, if she/he:
- a) Has assumed the function not less than seven years as magistrate, during which at least four years at the same level, including the experience as a seconded magistrate,
 - b) Embodies the indicators required for organizational and management skills, like:
 - i. Experience as deputy chairperson, chairperson of a section or press magistrate;
 - ii. Experience in leading positions in the public or justice administration, or experience as member of a Council, which has expired at least three years ago;
 - iii. Insight in different organizational set ups and management styles, as a magistrate in a mobility scheme or inspector at the Office of the High Justice Inspector;
 - c) Has not been a member of a Council in the previous three years.

Article 48

Promotion to Higher or Specialized Levels

(Amended by Law no. 48/2019 Article 8)

1. Positions at the High Court, the General Prosecution Office, **Special Prosecution Office** and Anti-Corruption and Organised Crime Specialised Courts shall be filled through a promotion procedure. Positions at other courts of appeal shall be filled through lateral transfer procedures in accordance with Articles 42 and 43 of this Law.
2. In the case where there are more vacancies, which cannot be filled by lateral transfers, each Council shall organize a promotion procedure for any vacant position at least once in three months. Positions shall be filled no later than three months from the date of opening the procedure.
3. The Councils shall open the promotion procedure by calling for applications from:

- a) Magistrates who meet the criteria for promotion, in compliance with the requirements of the respective vacant position;
 - b) Seconded magistrates or magistrates in a mobility scheme, who meet the criteria for promotion, in compliance with the requirements of the respective vacant position announced;
 - c) Prominent jurists, in accordance with the provisions of Article 49 of this Law.
4. A candidate having served as a member of a Council shall be excluded from promotion procedures during the time of exercising the function as member, as well as three years following the end of the mandate.
5. In accordance with paragraph 3 of this Article, the call shall be published on the official website of the Council and it shall contain the necessary information for the vacancy and shall set out:
- a) The deadline for applications, which must be not less than two weeks following the date of announcing the procedure;
 - b) The information and documents to be attached to the application;
 - c) The application procedure and the venue where the application has to be submitted.
6. Following the announcement of the promotion procedure, the candidate may apply for no more than three vacant positions or positions expected to become vacant. If a magistrate is applying for more than one position, he or she must list them according to preference.
7. The Council shall assess the candidates in accordance with paragraphs 2 to 7, Article 32 of this Law.
8. Only applicants who passed the asset assessment and background check and have no disciplinary sanction in force shall be allowed to participate further in the promotion procedure.
9. The Councils shall review the applications and shall rank eligible candidates by reference to the following indicators:
- a) Firstly, two previous evaluations, taking into consideration that:
 - i) The experience in seconded positions, as magistrate in a mobility scheme or as member of the Council, whose mandate has ended three years before the application, will be an advantage;
 - ii) In cases of more candidates with the same grades, the magistrates within the group of candidates with the highest evaluation grades shall be ranked according to a scoring scheme established by the **Councils**;
 - b) Secondly, if after the evaluation made under letter “a” paragraph 9 of this Article, there is more than one candidate with the highest scores, the Council shall rank these candidates referring to their specific professional experience required for the vacant position;
 - c) Thirdly, if after the evaluation made under letter “b” paragraph 9 of this Article, there is more than one candidate with the highest scores, the Council shall rank these candidates referring to their seniority as magistrate or jurist.

10. The Councils shall decide to promote the candidates ranking highest with the grades attained by a procedure and rules contained in paragraph 9 and 14 of this Article. Article 41 paragraphs 2 to 4 shall apply mutatis mutandis.

11. In a promotion procedure aiming at filling a vacant position at the High Court, the High Judicial Council shall propose in writing the appointment of candidates meeting the legal requirements, by substantiating the meeting of criteria and by ranking the candidates, according to the procedure and rules provided for in paragraphs 9 and 14 of this Article.

12. The proposal for appointment is appealable. The rules contained in Article 41 paragraphs 2 to 4 shall apply mutatis mutandis. The Council shall publish the final decision on the proposal for appointment on its official website. The decision of the Councils for non-assignment to office with the Anti-Corruption and Organised Crime Specialised Courts and the Special Prosecution Office shall be final.

13. The promotion of the judge ranking highest shall be decreed by the President of the Republic, in accordance with paragraph 2, Article 136 of the Constitution.

14. The Councils shall establish more detailed rules which set out:

- a) The criteria for ethics and professional activity among the candidates with the equal scores of evaluation;
- b) The criteria for the evaluation of professional experience relevant for the vacant position;
- c) The procedure to be followed in cases of equality of scores;
- ç) The application and adjustment of the provisions in this Article to temporary vacancies.

Article 49

Appointment of Non-Judge Candidates to the High Court

1. One fifth of the judges at the High Court may be renowned jurists, having a scientific degree in law, with not less than 15 years' experience as advocates, law professors or lecturers, senior jurists in the public administration or other fields of law.

2. The non-judge candidates for positions at the High Court must:

- a) Fulfil the criteria as set out in letter "a", "b", "d", "dh", "ë" and "f" of Article 28 of this Law;
- b) Not have held political functions at the public administration or leadership positions in political parties during the last ten years before the candidacy;

3. The candidate who speaks the language of a Member State of the European Union shall have priority in evaluation.

4. The High Judicial Council shall publish the call for submission of applications, in accordance with the provisions of Article 48 paragraphs 4 and 5 of this Law.

5. The Council shall assess the fulfilment of the criteria as set out in paragraph 2 of this Article and shall verify the candidates under the provisions of paragraphs 2 to 7 of Article 32 of this Law.

Applicants, who do not fulfil the criteria or do not pass the assets assessment and background check, shall be exempted from the procedure.

6. The High Judicial Council shall assess the professional skills of the candidates fulfilling the legal criteria, based on the following indicators:

- a) Special expertise of the candidate in a specific field of law, required according to the vacant position announcement;
- b) Performance evaluation of the candidate through at least 5 legal documents produced by the candidate during the professional work of the past 5 years, as well as every scientific publications and academic articles in the field of law;
- c) Results of higher education in law, of the initial training program, experience in the profession or any other training;

ç) Language skills as demonstrated by certificates and during the interview.

7. Based on professional skills assessment, the Council shall establish a shortlist of the best ranked eligible candidates, who shall be invited for an oral interview in order to get further information on the criteria set out in paragraph 8 of this Article.

8. The Councils shall rank the applicants based on the assessment of professional skills and the interview by reference to:

- a) Firstly, to the results of professional skills assessment, as set out in paragraph 6 of this Article;
- b) Secondly, in cases of equal results of professional skills assessment, by reference to the years of professional experience relevant for the vacant position.

9. The High Judicial Council shall establish a written proposal on the appointment of candidates. The proposal shall be reasoned in relation to the fulfilment of legal requirements and shall rank the candidates in accordance with the criteria provided in paragraph 8 of this Article.

10. The decision on proposal for appointment is appealable. The rules contained in Article 41 paragraphs 2 to 4 shall apply mutatis mutandis. The Council shall make public the final decision on proposal for appointment on its official website.

11. The President of the Republic shall appoint the highest ranking judge in accordance with Article 136 paragraph 2 of the Constitution.

12. The Council shall establish more detailed rules, which set out:

- a) The criteria for the evaluation of experience in specific fields;
- b) The criteria and procedure for professional skills assessment;
- c) The procedure to be followed in cases of equality of scores.

Article 50

Appointment of the Prosecutor General

The rules for the procedure and criteria for the appointment of the Prosecutor General are set out in the Law “On the Organization and Functioning of the Prosecution Office in the Republic of Albania”.

Article 51

Election of the Chairperson of the High Court

1. The chairperson of the High Court is elected by the general meeting of the court, for a three-year period without the right to re-election.
2. A candidate, to be elected as chairperson of the court, must:
 - a) Have at least three years of experience at the respective court;
 - b) Not have disciplinary sanction in force;
 - c) Have been evaluated at least 'very good' in the two previous ethical and professional performance evaluations;
 - ç) Judges appointed according to Article 49 of this Law shall have been evaluated at least 'very good' in the previous ethical and professional performance evaluation.
3. The general meeting of all magistrates of the court shall be chaired by the chairperson of the court, in the case foreseen by paragraph 4 letter "a" of this Article and by the deputy chairperson in the case foreseen by paragraph 4 letter "b" of this Article.
4. The chairperson of the general meeting shall invite all candidates, who fulfil the legal criteria, to run as candidates within ten days, for being elected as chairperson:
 - a) At least two months before the end of the mandate of the incumbent chairperson;
 - b) At least within ten days from the early termination of the mandate of the chairperson.
5. The chairperson of the court shall notify the members of the general meeting of the High Court about the general meeting and shall deliver the list of candidates having expressed their interest in becoming a chairperson, at least one month prior to the end of the mandate. The general meeting shall be held at least two weeks prior to the end of the mandate of the chairperson.
6. The deputy chairperson of the court shall notify the members of the general meeting of the High Court about the general meeting and shall deliver the list of candidates having expressed their interest in becoming a chairperson, at least two weeks after the expiry of the deadline of early termination of the mandate of the chairperson. The general meeting shall be held at least one month after the early termination of the mandate of the chairperson.
7. The decision on the election of the chairperson shall be taken by an absolute majority of votes of all members of the general meeting.
8. If in the first voting, none of the candidates receives the required number of votes, a second voting is immediately held between the two candidates who have received the highest number of votes. If even in the second voting, no candidate receives the required number of votes, the magistrate with most votes shall be considered elected. In case of equality of votes, the magistrate with the longer professional experience as magistrate shall have priority.
9. The Council shall establish detailed rules on procedures of the general meeting, voting, the way of counting the results of the voting.

Article 52

Appointment of other Chairpersons

1. The mandate of chairpersons of other courts and prosecution offices, except for the Prosecutor General, shall be three years, with the right to re-election only once. The mandate of the chairperson of the Special Prosecution Office shall be three years, without the right to re-election.
2. No later than six months before the end of the first term, the chairperson of a court or a prosecution office with the right to re-election may apply for a second term. When a chairperson does not apply for a second term within the time specified, the chairperson shall be treated as having resigned as chairperson at the end of the mandate.
3. Where an incumbent chairperson applies for re-appointment, she/he shall be subject to assets assessment and background check by the relevant Council, no later than three months before the end of the first term, in accordance with the rules provided for in paragraphs 2 to 7 of Article 32 of this Law.
4. A chairperson shall be re-appointed for a second term only if she/he passes successfully the assessment under paragraphs 2 to 7 of Article 32 of this Law, and if the performance evaluation as chairperson and as magistrate is at least "very good".
5. The Council shall take a decision not later than three months from the end of the mandate of the chairperson.
6. Where a chairperson resigns or an application for re-appointment is rejected, the Council shall publish the announcement of the vacancy for the position of chairperson for the candidates meeting the promotion criteria, no later than three months from the end of the mandate of the incumbent chairperson.
7. The call for application shall be addressed to the magistrates at the respective court or prosecution office. Where in the respective court or prosecution office a position becomes permanently vacant in the period of two months before the end of mandate of the chairperson to three months after the end of the mandate of the chairperson, the call for application shall be addressed to any magistrate fulfilling the criteria as a chairperson. In the event of the Special Prosecution Office, the call for application for the position of chairperson shall be addressed only to the prosecutors of that prosecution office.
8. In compliance with paragraph 7 of this Article, the call for applications shall be published at least on the official website of the Council and it shall contain the necessary information for the vacancy, and it shall determine:
 - a) The deadline for applications, which must be not less than two weeks from the date of publication;
 - b) The information and documents to be attached to an application;
 - c) The procedure for applications and the venue where the application has to be submitted.
9. The relevant Council shall assess whether the applicants fulfil the criteria as set out in Article 47 paragraph 6. It shall carry out the assessment under the provisions of paragraphs 2 to 7 of Article 32

of this Law. Applicants, who do not fulfil the criteria set out by Law or do not successfully pass the assets assessment and the background check, shall be exempted from the procedure.

10. The Council shall review the applications and shall rank the candidates who fulfil the criteria, referring to the following indicators:

- a) Firstly, two previous evaluations. In cases of more candidates with the same evaluation grades, the magistrates within the group of candidates with the highest evaluation grades shall be ranked referring to the scoring scheme set out by the High Judicial Council;
- b) Secondly, if after the evaluation made under letter “a” paragraph 10 of this Article, there is more than one candidate with the highest scores, the Council shall rank these candidates referring to the specific professional experience required for the vacant position;
- c) Thirdly, if after the evaluation made under letter “b” paragraph 10 of this Article, there is more than one candidate with the highest scores, the Council shall rank these candidates referring to the seniority as magistrates.

11. The Council shall appoint the best ranked candidate to the function of the chairperson. The provisions contained in Article 41, paragraphs 2 to 4, on the assignment of new appointees to positions, shall apply *mutatis mutandis*.

12. The Council shall establish more detailed rules which set out:

- a) The criteria for the ethical and professional performance evaluation among the magistrates with equal evaluation scores;
- b) The criteria for assessing the organizational and management skills;
- c) The procedure to be followed in cases of equality of scores.

CHAPTER VI SECONDMENT

Article 53

Principles for Secondment of Magistrates

1. “Secondment” means the move of a magistrate to a non-magistrate position in an institution within the justice system, a position which is compatible with maintaining the independence and status.
2. “The institution to which the magistrate shall be seconded” for the position of an assistant magistrate is the High Court, Constitutional Court or General Prosecution Office; for positions as inspector is the Office of the High Justice Inspector; and for other positions are the Councils, Ministry of Justice, State Advocacy, School of Magistrates, or any other institution within the justice system and approximation of legislation.
3. Except for the cases of assignment of new appointees to positions, magistrates can be seconded only with their consent.

4. A seconded magistrate shall enjoy all the rights and obligations as any other magistrate, unless otherwise provided by this Law.
5. A magistrate shall not be eligible for secondment in those cases when he/she:
 - a) Is in a position with a limited mandate;
 - b) Has gone on secondment.
6. The secondment period of a magistrate shall not be more than five years, unless otherwise provided in this Law.
7. A magistrate shall serve at least five years as magistrate, upon the end of a secondment period.
8. A magistrate cannot be seconded for more than ten years during the all period of exercising his/her function.
9. The experience of the magistrate seconded from a court or prosecution office of first instance in the institution to which the magistrate is seconded, shall be calculated as professional experience in the first instance, unless otherwise provided in the law. The experience of the magistrate seconded from the court or prosecution office of second instance in the institution to which the magistrate is seconded, shall be calculated as professional experience in the second instance, unless otherwise provided in the law. The assumption of a leading function in the institution to which the magistrate is seconded, shall be estimated as managerial experience.
10. The ethical and professional performance evaluation of a seconded magistrate shall be made by the institution to which the magistrate is seconded, according to the criteria and procedure applicable to other members of that institution, unless otherwise provided in this Law. The evaluation grades shall be recognized as evaluation grades in the sense of this Law.
11. Magistrates, who have not been subject to ethical and professional performance evaluation by the institution to which the magistrate is seconded, she/he has the right to an assessment of professional skills like a non-judge candidate to the High Court, under the provisions of Article 49 of this Law to the extent possible, in order to compete on equal terms with other magistrates for vacancies.
12. The magistrate shall, during the secondment, be disciplinary liable according the provisions applicable for members of the institution to which the magistrate is seconded. In case the institution to which the magistrate is seconded proposes the dismissal of the magistrate as a disciplinary measure, the seconded magistrate may request a referral of the case to the Council. In such a case, the Council shall examine the case and apply the disciplinary procedure in accordance with the provisions of this Law. The institution to which the magistrate is seconded shall take part in the disciplinary procedure with the rights and obligations of the High Justice Inspector.
11. Where no referral to the Council is made, the institution to which the magistrate is seconded shall inform the Council on any decision taken by it against the seconded magistrate. An appeal to a court against the disciplinary decision of the institution to which the magistrate is seconded shall suspend enforcement of the decision.

Article 54

Secondment Procedure

1. Any institution, in the sense of Article 53 paragraph 2 of this Law, to which a magistrate is seconded, may request from any Council the secondment of magistrates for a specific time period, however, not exceeding five years.
2. The Council shall, after assessing its needs, within two weeks after the submission of the request for applications from the institutions in the sense of Article 53 paragraph 2 for filling secondment positions, announce the demand for candidacies to fill these positions.
3. The Councils shall admit the applications from magistrates, who fulfil the criteria for the secondment position, through a call, which shall be published at least on the Council's official website, and it shall contain information on the vacancy and shall specify:
 - a) The deadline for applications, which must be not less than two weeks from the date of publication;
 - b) The information and documents to be attached to an application,
 - c) The procedure for applications and the venue where the application has to be submitted.
4. The Council shall, within two weeks after the deadline for applications, establish an opinion for every candidate and shall provide an assessment if the secondment is not in compliance with essential interests of the court or prosecution office, where the candidate exercises the functions. The opinion for every candidate shall be published on the official website of the Council. The candidate, whose secondment is not in compliance with the essential interests of the court or prosecution office, shall be excluded from secondment. The Council shall, within two weeks after the end of the application deadline, send the names of candidates who meet the criteria for the relevant position to the institution to which the secondment will be made.
5. The institution, to which magistrates will be seconded, shall assess the applications and request the secondment of the selected magistrate, for a certain period of time.
6. The Council shall issue a decision on the secondment of the magistrate within two weeks upon receiving the request according to paragraph 5 of this Article. The decision shall determine the terms of the secondment.
7. Where the request is submitted by institutions other than those provided in Article 53 paragraph 2 of this Law, the Council may second the magistrate to these institutions, where appropriate, if the secondment is in the public interest and does not prejudice the time limits and the efficient exercise of functions.

Article 55

Secondment of Magistrates to the Office of the High Justice Inspector

1. Magistrates meeting the criteria to be appointed as magistrates in the High Court or General Prosecution Office may be seconded to the Office of the High Justice Inspector.

2. The Council shall, for secondment procedures in filling a position as inspector, prior to preparing the opinion under the provisions of paragraph 4 of Article 54 of this Law, assess the candidates in accordance with the provisions of paragraphs 2 to 7 of Article 32 of this Law.
3. A magistrate, who is seconded as inspector, shall be considered as magistrate promoted to the High Court.
4. A magistrate may be seconded to the Office of the High Justice Inspector for a five-year term. Following the expiry of the five-year term, the inspector shall have the right to renew the term of secondment in case of having been awarded an evaluation grade of at least “very good” in the ethical and professional performance evaluation as inspector.
5. The High Justice Inspector may, three months before the expiry of the first secondment term of an inspector, submit a request in writing to the Council, including the necessary documents, for the inspector to be confirmed as seconded in the Office of High Justice Inspector. The Council shall confirm the inspector if he/she has been evaluated with at least ‘very good’ in the ethical and professional performance evaluation, and if the inspector has given the consent for the confirmation. Where no request is submitted in time, the secondment term of the inspector shall be considered as ended.
6. An inspector shall have the right to be assigned to a position at appeal level at the end of the secondment term, in case of having been awarded an evaluation grade of ‘very good’ in all ethical and professional performance evaluations as inspector.

Article 56

Secondment to a Position as Assistant Magistrates

1. Magistrates may be seconded to the High Court, Constitutional Court and General Prosecution Office for a five-year term with the right to renew the term, upon the request of the institution where the magistrate is seconded to.
2. The Chairperson of the Constitutional Court or the Chairperson of the High Court, three months before the expiry of the first secondment term of an assistant magistrate, may submit a request in writing to the Council for the assistant magistrate to be confirmed as seconded to the Constitutional Court or High Court. The Council shall confirm the assistant magistrate if he/she has been evaluated at least “very good” in the ethical and professional performance evaluation, and if the assistant magistrate has given the consent for the confirmation.
3. The provisions of paragraph 2 of this Article shall apply mutatis mutandis to the respective request of the General Prosecution Office addressed to the High Prosecutorial Council.
4. Where the request is not submitted in time, in the sense of paragraph 2 and 3 of this Article, the secondment term of the assistant magistrate shall be considered as ended.
5. The assistant magistrates serving at the High Court and General Prosecution Office shall be disciplinary liable and subject to the evaluation according to the provisions of this law, which shall apply mutatis mutandis.

Article 57

Termination of Secondment

1. The secondment term shall end upon the completion of the mandate or renewed mandate as determined in the decision of the Council on the seconded position.
2. Upon a request of the seconded magistrate, the Council may terminate the secondment term prematurely due to justified reasons, after having the opinion of the institution to which the magistrate is seconded.
3. Only where the magistrate has completed the entire secondment period, the Council shall consider him in lateral transfers or promotion procedures with priority.
4. The magistrate shall have the right to return to the previous position at the end of the secondment period, unless otherwise provided by law.

Article 58

Detailed Rules on Secondment

The Councils shall establish more detailed rules on secondment, after having the opinion of the institutions where the magistrates are seconded to, with the aim of ensuring that the professional experience of the magistrates be useful to the institutions they are seconded to. These rules set out:

- a) A maximum duration for any secondment up to five years and different provisions may be made for different cases;
- b) A maximum number of periods during which a magistrate may be seconded and different provisions may be made for different cases;
- c) The recognition of evaluation results in accordance with the provisions in this chapter and the rules for adapting the provisions on ethical and professional performance evaluation for positions as assistant magistrate.

CHAPTER VII

LIMITED MANDATE

Article 59

Temporary Assignment

1. A position of a magistrate may be filled temporarily, if the magistrate with a permanent position is not able to exercise the function for a period of not more than three months, due to:
 - a) Assignment to another positions;
 - b) Other reasons provided in the law.
2. Temporary positions shall be created in the following cases:
 - a) Secondment of magistrates;

- b) Transfer or promotion of magistrates to positions with a limited mandate or where a position is temporarily vacant;
- c) Parental leave or unpaid leave;
- ç) Other reasons provided in the law.

3. Temporary transfers, in the sense of Article 46 of this Law, are not considered temporary positions in the sense of this Article.

4. The Council shall take a decision in the cases provided for in paragraph 2 of this Article and shall determine the starting and ending date of the time period in which the position may be filled temporarily.

5. In cases where the status of the magistrate, who holds a permanent position and whose position is temporarily vacant, has expired, or he/she is assigned, transferred or promoted to another permanent position, the position temporarily filled shall be considered as permanent. The magistrate temporarily assigned to this position shall be notified about the transformation of the position from a temporarily position into a permanent position.

6. In the event where a permanent position becomes vacant in a court or prosecution office, any magistrate holding a temporary position in that court or prosecution office may apply for having his/her position transformed into a permanent position.

7. The Council shall decide on the transformation of a temporary position before calling for applications for lateral transfer or promotion. In case where more magistrates are in place in temporary positions applying for the transformation of the position, the criteria for transfer shall apply *mutatis mutandis*. The temporary position remaining vacant shall be filled by a lateral transfer, as well as by a promotion procedure.

8. Where a position is temporarily vacant, it may be filled only with a temporary assignment of a magistrate. Where a magistrate is assigned to a position being temporarily vacant, he or she shall be entitled to return to the previous position, under the condition that the assignment to the previous position was permanent. If the magistrate was appointed to the previous position temporarily, he or she shall be entitled to return to that position up to the end of the assignment period.

9. The Councils shall approve more detailed rules about notifications and methods of filling temporary vacancies.

Article 60

Right to Return

1. Magistrates with a permanent position, who are temporarily not able to assume the function as set out in Article 59 of this Law, shall have the right to return to the previous permanent position at the end of the temporary period.

2. Where the magistrate has the right to return, the magistrate shall return to his or her previous position, unless the magistrate has been laterally transferred or has been promoted to a permanent position.

3. Where the reinstatement in the previous position is not possible due to a premature end of the reasons on which the magistrate has been assigned to the temporary position, the magistrate must be temporarily assigned to the first position corresponding to the level of the previous position that falls vacant provided that he/she satisfies the requirements for that position. Where the magistrate had not yet been assigned to a permanent position, the magistrate must be assigned to a position at the first level.
4. If the magistrate declines the position offered to him/her, the magistrate shall retain the right to be assigned to the next vacant position, corresponding to the level of the previous position, if he or she satisfies the respective requirements for this position.
5. If the magistrate declines a second time returning to the position he or she is offered, the magistrate shall be assigned to a position without his/her consent.
6. The Council shall make arrangements to ensure that the magistrate is reinstated in time, immediately upon the end of the temporary assignment.
7. Notwithstanding the paragraphs of this Article, a magistrate, who serves as a member of the Council, shall be excluded from competition in lateral transfer and promotion procedures during the time of assuming the function as a Council member and three years following the end of the term.

Article 61

Limitation of Mandates by Law

1. The mandate of the High Court judges shall be nine years without the right to re-appointment. The mandate of the Prosecutor General shall be seven years without the right to re-appointment. The mandate of prosecutors at the Special Prosecution Office shall be nine years without the right to re-appointment.

~~2. The mandate shall start at the day of the oath ceremony before the President of the Republic. The oath date shall be notified to the Council and included in the personal file.~~

2. The mandate of a member of the High Court elected among prominent jurists begins on the day of the oath. The High Judicial Council shall hold the oath ceremony not later than 10 days from the date of appointment or the announcement of the appointment. If a member of the High Court is not called to take an oath, after the expiration of this term, he/she shall take the oath in writing and send it personally signed to the High Judicial Council. The date of the oath ceremony or the date of delivery of the oath in writing to the High Judicial Council shall be deemed to be the day of the oath and the commencement of the duty of judge at the High Court. The act of oath is included into the personal file of the judge of the High Court.

2/1. The mandate of the General Prosecutor begins on the day of the oath. The oath ceremony is organized by the Assembly not later than 10 days from the date of appointment or announcement of the appointment. If the General Prosecutor is not called to take the oath, after the expiration of this term, he/she shall take the oath in writing and send it to the Assembly and the High Prosecutorial Council. The date of the oath ceremony or the date

of delivery of the oath in writing to the Assembly shall be considered as the day of oath and commencement of the duty of the General Prosecutor. The act of oath is included into the personal file of the General Prosecutor.

2/2. The mandate of the members of the High Court promoted from the ranks of the judges shall commence on the date of the appointment or announcement of the appointment.

2/3. The mandate of prosecutors in the Special Prosecution Office begins on the date of their promotion by the High Prosecutorial Council.

3. The High Court judge, whose mandate has expired, shall continue to hold office until the appointment of the successor magistrate, except in cases provided for in Article 136 paragraph 5 of the Constitution.

4. The persons listed in paragraph 1 of this Article shall be entitled to be assigned to a position at appeal level, at the end of their mandate.

5. The chairperson of the High Court, the Prosecutor General and the chairperson of the Special Prosecution Office, not later than three months before the end of the respective mandate, according to paragraph 1 of this Article, and immediately in case of termination of the mandate prior to the legal term, shall notify the respective Council for this vacancy. The procedure followed by the Council for the promotion of the successor shall end not later than the date of the end of the mandate and, in case of termination of the mandate prior to the legal term, not later than two months upon receiving the notification.

Article 62

Right to Assignment at Appeal Level

1. At the end of the mandate as a High Court judge, as Prosecutor General or in other cases where the law foresees the right to be assigned to a position at appeal level, the magistrate shall be entitled to be assigned to the first position that falls vacant at the appeal level, respectively in courts or prosecution offices, provided that he/she satisfies the requirements for that position. Provisions of Article 60 paragraphs 3 to 7 of this Law shall apply mutatis mutandis.

2. In the event where more magistrates have the right to a position at appeal level under paragraph 1 of this Article, the magistrate having the best ethical and professional performance evaluation results shall be the first one entitled to the position and shall be entitled to make up to three choices.

3. Upon termination of the term of assuming the function in the previous position, the magistrate shall be entitled to receive the salary for the position he or she is assigned to.

Article 63

End of Mandate of a Chairperson

1. The mandate of a chairperson shall be three years with the right to re-election only once, unless otherwise provided by law.

2. The mandate of a chairperson shall end immediately upon the expiry of the period for which he/she has been appointed.
3. Additionally, the mandate of the chairperson ends:
 - a) Upon the ending of his status as magistrate, based on the reasons listed in Article 64 of this Law;
 - b) Upon applying for the position of a Council member.
4. The end of the mandate is declared by decision of the respective Council.
5. At the end of the mandate as chairperson, he or she shall be entitled to continue to assume the function as magistrate at the respective court or prosecution office.

CHAPTER VIII END OF STATUS OF A MAGISTRATE

Article 64

Tenure of Magistrates

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 9)

1. The status of a magistrate shall end upon:
 - a) His or her resignation;
 - b) Establishment of circumstances of his/her inelectability and incompatibility in exercising the function;
 - c) Reaching the ~~retirement~~ age;
 - ç) Dismissal as a result of a disciplinary liability, in accordance with this Law;
 - d) Establishment of circumstances of inability to exercise the function.
2. Judges of the High Court shall retire at the age of 70. The mandate of a High Court judge shall end upon reaching the age of 70, regardless of the years of assuming the function in this position.
3. The Prosecutor General shall retire at the age of 70. The mandate of the Prosecutor General shall end upon reaching the age of 70, regardless of the years of assuming the function in this position.
- 4. The mandate of the Prosecutor of the Special Prosecution Office terminates at the end of the month in which he/she reaches 67 years old, regardless of the years that he/she had been on duty in this position.**
- ~~5. Where a magistrate reaches the retirement age as set out by law, the status of the magistrate ends automatically at the end of month in which the magistrate reaches the pension age. The Council shall declare by decision the end of the mandate of the magistrate no later than two weeks before the end of the respective month.~~
- 5. The status of the magistrate terminates at the end of the month in which the magistrate reaches the age of 67 years old. The Council shall declare through a decision the termination of the status of the magistrate no later than two weeks before the end of the respective month.**

6. The end of the mandate of a High Court judge shall be declared by a decision of the High Court no later than two weeks before the end of the respective month. The end of the mandate of the Prosecutor General and the prosecutors of the Special Prosecution Office shall be declared by a decision of the High Prosecutorial Council no later than two weeks before the end of the respective month.

Article 65

Resignation

1. A magistrate may request the termination of the status by submitting the resignation to the respective Council.
2. The resignation has to be in writing and it does not need to be motivated. The resignation produces its effects at the end of the following month, from the date where the Council receives the written declaration of resignation. The termination of the status of the magistrate shall be declared by a decision of the Council no later than two weeks before the termination of the status.
3. In justified cases, upon motivated request and approval of the Council, the resignation could produce its effects before the period set out in paragraph 2 of this Article.

Article 66

Inelectedness and Incompatibility

1. The status of a magistrate shall end on the day where the competent authority establishes the causes of inelectedness as follows:
 - a) The magistrate does not fulfil the criteria set out in Article 28 of this Law;
 - b) The appointment decision is invalid and does not bring about any legal consequences and is declared null and void.
2. The status of a magistrate shall end when the Council decides that he/she does not comply with compatibility rules as set out in the provisions of Article 6 of this Law.
3. The concerned authority, the chairperson and the magistrate shall independently inform the Council on the grounds of inelectedness or incompatibility that cause the termination of the status of the magistrate. In such instances, the magistrate shall refrain from exercising the function as magistrate.
4. The Council shall declare by decision the termination of the magistrate status not later than two weeks upon getting notice of grounds of inelectedness or incompatibility.
5. The decision shall state the date of the end of the magistrate status, as set out in paragraph 1 or 2 of this Article.
6. Any action accomplished by the magistrate following this date shall be invalid and it shall be deemed to have brought no legal consequences and considered null and void.

Article 67

Physical and Mental Incapacity of a Magistrate

1. Upon notification, the Council shall investigate into the cases of physical or mental incapacity of a magistrate, which lead to dismissal from office or temporary suspension of a magistrate.
2. The Councils shall authorize an expert's commission to deliver a specialised opinion about the magistrate's incapacity.
3. The magistrate has the right to access the file, to be represented by a lawyer and to be heard.
4. The Council shall decide on suspending temporarily or terminating the magistrate's status, if it comes to the conclusion that the physical and mental conditions of the magistrate make the magistrate temporarily or permanently inappropriate for the office.
5. The Council shall decide on the reinstatement of the magistrate dismissed from office, if it is proved that his incapacity no longer exists.
6. The magistrate shall enjoy pension rights and other benefits for his dismissal from office, under this Article.
7. The magistrate has the right to appeal the decision of the Council given in accordance with the provisions of this Article.

PART IV

EVALUATION OF MAGISTRATES

CHAPTER I

GENERAL PRINCIPLES

Article 68

The Aim of Evaluation of Magistrates

The aim of the ethical and professional performance evaluation of magistrates is to:

- a) Continuously improve the ethical and professional skills of magistrates;
- b) Establish consistent standards for the quality and quantity of the work of magistrates;
- c) Announce the Councils' decisions in relation to decisions on the status of magistrates in connection with the development of their career based on their merits;
- ç) Provide information to the Councils and the School of Magistrate with regard to training needs of magistrates and to facilitate the planning of the training;
- d) Identify the magistrates who may have particular professional skills relevant for the justice system;
- dh) Contribute to the improvement of the organizational structure of courts and prosecution offices as well as the working conditions for magistrates.

Article 69

Evaluation Principles



The evaluation system is based on and applied through the following principles:

- a) The principle of independence, according to which the evaluation process shall not interfere with the independence of magistrates.
- b) The principle of meritocracy and career development, under which the magistrate's evaluation is performed by giving utmost importance to professional values and to the quality of work in order to develop the professional career.
- c) The principle of efficiency, according to which the evaluation of the performance is conducted through a rapid process, through simple procedures and reasonable timeframes to provide timely information for the magistrates' career.
- ç) The principle of due legal process, under which the evaluation procedure respects the standards of a due legal process for the magistrate, including the right to be notified for the acts, the right of access to the evaluation file, the right to participate in the process, the right of adversarial proceedings, the right to be heard, the right to be defended, the right to have a reasoned decision on the evaluation and the right to appeal the decision on the evaluation.
- d) The principle of confidentiality, according to which entities assigned with the task of evaluation are obliged to maintain the confidentiality of the data of the magistrate under evaluation and his or her personal data, according to the current legislation. These entities are exempt from this obligation only when the information is given to the magistrate under evaluation or to bodies legally entitled to request such information due to official duties.

Article 70

Subjects of Evaluation

(Amended by Law no. 48/2019 Article 10)

1. All magistrates, including the chairpersons of courts and prosecution offices are subjects to an ethical and professional performance evaluation, in accordance with the rules provided for in this law.
2. Chairpersons shall be additionally evaluated with regard to their performance as chairpersons of a court or prosecution office.
3. The magistrates, who are in a mobility scheme or who are seconded to the Councils, the High Court or the General Prosecution Office, shall be evaluated according to the provision of this law.
The Councils shall adopt detailed rules for the evaluation of the magistrates in the delegation or secondment scheme.
4. The magistrates, who are seconded to other structures and maintain the magistrate status, shall be evaluated according to the evaluation scheme of the structure where they are seconded.

CHAPTER II

CRITERIA, SOURCES AND GRADES OF EVALUATION



SECTION I
EVALUATION OF THE MAGISTRATE

Article 71
Evaluation Criteria

The evaluation is performed according to the following criteria:

- a) Judicial or prosecutorial professional capacity;
- b) Organizational skills;
- c) Ethics and commitment to judicial and prosecutorial professional values;
- ç) Personal qualities and professional commitment.

Article 72
Professional skills of the judge

1. By the criterion of the professional skills of the judge are evaluated the professional skills of the judge in terms of legal knowledge and legal reasoning.
2. The aspect of the legal knowledge will be assessed with regard to the judges' ability to render judicial decisions, against indicators like the overall capacity to interpret the law, detect conflicts of law, use general principles of the legal theory and the capacity to analyse the case law.
3. The aspect of legal reasoning the judges in rendering judicial decisions will be assessed against indicators like the clearness and comprehensiveness of the decision, a consistent and developed structure of the decision, the quality of analysis and the logical argumentation.
4. The evaluator will assess the judicial capacity without judging over the correctness of the decision or merits of the case while not substituting the interpretation or the logic of the evaluated judge.

Article 73
Prosecutorial Capacity

1. The evaluation of the professional skills of the prosecutor shall encompass the legal knowledge and legal reasoning.
2. The aspect of the legal knowledge will be assessed with regard to the prosecutors' ability to investigate, to render orders and decisions, based on such indicators like the overall capacity to logically build up the investigation, according to the legal requirements, to collect the legally required evidence, to interpret the law and to analyse the case law.
3. The aspect of legal reasoning of the prosecutors in rendering investigatory decisions and actions will be assessed against indicators like the clearness, comprehensiveness of the prosecutorial acts, a consistent and developed structure of the prosecutorial acts, the ability to interrogate and the quality of the analysis and the logical argumentation of the prosecutor.

4. The evaluator will assess the professional skills of the prosecutor without judging over the correctness and the merits of the case or substituting the interpretation or the logic of the evaluated prosecutor.

Article 74

Organizational Skills

1. By the criterion of organisational skills the magistrates' ability to handle the workload and to handle judicial or investigatory procedures and skills to administer the judicial files are evaluated by avoiding that circumstances which do not depend on the magistrate and have negative effect on the results of the evaluation.
2. The skills to handle the workload are measured based on the indicators to meet legal deadlines, to meet the minimum time standards, the average time spent on each case, the clearance rate of judicial cases and the average time to make a final judicial decision or a final prosecutorial decision in a case.
3. In the case of a judge, the skill of a judge to handle judicial procedures is measured by the indicators of the average number of hearings per case, conducting the necessary procedural actions for the organization of the judicial process, avoidance of unproductive court hearings, as well as including the monitoring of sending without delay the necessary acts of notification.
4. In case of a prosecutor, the skill of a prosecutor to handle efficiently investigation procedures and other procedures of the prosecutorial system is measured by the indicators of conducting necessary investigative and procedural actions within the set time frame, collection of necessary evidence, as well as including the monitoring of sending without delay the necessary acts of notification.
5. The skill to administer the judicial or prosecutorial files is measured by the indicators of the order, completeness and accuracy of documentation of the file.

Article 75

Ethics and commitment to professional values

1. By the criterion of ethics and commitments to professional values, the skills of the magistrate for work ethics, integrity and impartiality are measured;
2. The work ethics of the magistrate in the sense of commitment and accountability in duty is measured by indicators extracted from the sources of evaluation like the results of complaints and their verification, opinion of the chairpersons and final decisions regarding the disciplinary measures within the evaluation period in this regard.
3. The integrity of the magistrate in the sense of the magistrate's immunity against any external influence or pressure is measured against indicators like the results of the complaints and their verification, opinions of chairpersons, final decisions regarding the disciplinary measures within the evaluation period in this regard and/or reports of High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest.

4. The impartiality of the magistrate in the sense of the carefulness towards conflicts of interest and in respecting issues of vulnerable groups, including gender equality and minority issues is measured by the indicators like the use of discriminatory language or of an extraordinarily high number of admitted requests of parties for recusing the magistrate and involving other indicators as emerging out of other sources of evaluation.

Article 76

Personal skills and professional commitment

1. By the criterion of the personal skills and professional commitment, the communication skills, the skill to cooperate with colleagues and the readiness to be engaged in other activities are evaluated.
2. The communication skill of the magistrate is measured by indicators on clear and transparent communication with the parties, with the public, other entities and the third parties by respecting confidentiality and personal data protection principles. The evaluation of the leadership skills as chairperson of at least “very good” shall have priority in the evaluation as magistrate following next to the evaluation as chairperson.
3. The skill to cooperate with colleagues is measured by indicators on communication and interaction with colleagues, or with the judicial administration, as well as sharing professional knowledge or experience with them.
4. The readiness to be engaged in other activities is measured by indicators like the magistrate’s participation at the continuous professional training at the School of Magistrate, participation in other professional trainings, magistrate’s availability for mentoring prospective magistrates during their professional internship and/or for training young magistrates, participation of magistrates in inter-institutional activities for the improvement of the justice system, in public relation activities of the courts and academic legal publications.
5. The participation of the magistrate at the continuous training of the School of Magistrates is measured based on the information sent by the School of Magistrates, referring to the evaluation “very good” in the case of fulfilling the legal obligation to participate in no more than 40 days a year and no more than 200 days during five years. Other grades of the evaluation are determined by descending order of this standard.

Article 77

Sources of evaluation

The evaluation of magistrates shall be based on the following sources:

- a) Personal file of the magistrate;
- b) Statistical data, according to the provisions contained in Article 90 of this Law;

- c) Files selected by lot for evaluation in accordance with Article 91 of this Law, including the audio or video recording of the hearing with regard to judicial files, which shall always guarantee a full representation of all the types of tried and investigated cases;
- ç) Self-evaluation of the magistrate and the judicial decisions or prosecutorial acts drafted by the prosecutor and selected by him/her. In any case the number of the decisions/acts prepared and selected by the prosecutor should not exceed two per year;
- d) The opinion of the chairperson;
- dh) Data regarding the verification of complaints filed against the magistrate during the evaluation period;
- e) Written information transmitted from the School of Magistrate or other institutions which certify the attendance and involvement of the magistrate in training activities;
- ë) Final decisions for disciplinary measures against the magistrate delivered within the evaluation period, independent from whether the disciplinary measure is already expunged or not;
- f) Reports requested from High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest or other auditing or controlling institutions;
- g) Objections of the magistrate or any minutes or documentation of hearings during the evaluation process;
- gj) Any other information that shows the professional development of the magistrate.

Article 78

Evaluation Grades

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 11)

1. The evaluation of the magistrate shall be made referring to the following levels:
 - a) 'Excellent': in case of an ethical and professional performance of very high qualities;
 - b) 'Very good': in case of an above average ethical and professional performance
 - c) 'Good': in case of an average ethical and professional performance;
 - ç) 'Acceptable': in case of a below average ethical and professional performance;
 - d) 'Incapable': in case of a poor ethical and/or professional performance.
2. The general evaluation "excellent" is made only if the magistrate is assessed "excellent" for all four criteria.
3. **The general evaluation "very good" is made only in those cases where the magistrate is evaluated "very good" for three criteria, and "good" for one of them. In any case the criterion 'professional skills of the judge and prosecutor' and 'ethics and commitment to judicial or prosecutorial values' has to be evaluated 'very good'.**
4. The general evaluation 'good' is awarded if the skills of the magistrates are evaluated 'good' for two criteria and 'acceptable' with regard to the remaining ones. The same rule applies even for the equalization of the evaluation of criteria between the grades 'acceptable' and 'incapable' unless paragraph 3 of this Article provides otherwise. In any case the criterion of 'judicial' or 'prosecutorial

capacity' and 'ethics and commitment to judicial or prosecutorial values' has to be evaluated as at least 'very good'.

5. The general evaluation "incapable" is made in the following cases:

- a) If the magistrate is assessed "incapable" in at least three criteria;
- b) If the magistrate is assessed "incapable" in regard to the criteria of 'judicial' or 'prosecutorial professional skills' and 'ethics and commitment to judicial or prosecutorial values' and not more than "good" with regard to the other two criteria.

~~In any case the evaluation 'inacceptable' shall not be awarded to the magistrate if the chairperson has evaluated the magistrate as 'very good'.~~

SECTION II

EVALUATION OF THE PERFORMANCE OF CHAIRPERSON

Article 79

Criteria for the Evaluation of the Performance of Chairpersons

The evaluation of the activity of the chairperson of a court or prosecution office shall be conducted according to the following criteria:

- a) Leadership and organizational skills;
- b) Communication skills.

Article 80

Leadership and Organizational skills

1. By means of the criteria of leadership and organizational skills there is evaluated the capacity of the chairperson with regard to the clear organization of the administrative activities, as judge or prosecutor, through rendering decisions and orders to ensure abidance by the deadlines and to utilize best the available resources, as well as access and transparency at court.

2. In the case of chairpersons of courts, the criteria of leadership and organizational skills is measured against the indicators pertaining to:

- a) Appropriate organization of the court into chambers or sections;
- b) Nomination to adjudication panels;
- c) Scheduling judges for urgent cases;
- ç) Assignment of cases by lots;
- d) Replacement in due time of judges being inhibited during the proceedings;
- dh) Convening thematic meetings;
- e) Efficient scheduling and utilization of the public funds according to the court needs;
- ë) Supervision to the effect of improving the information in the official website of the court;

- f) Supervision to set up suitable environments in the court to the needs of the parties and the public, including the indicative signs in the court;
 - g) Organisation of trainings for judges and for court employees.
3. In the case of chairpersons of prosecution offices the criteria of leadership and organizational skills is measured against the indicators pertaining to:
- a) Appropriate organization of the prosecution office into sections;
 - b) Scheduling prosecutors for urgent cases;
 - c) Replacement in due time of prosecutors being inhibited during the proceedings;
 - ç) Convening thematic meetings for the prosecutors;
 - d) Efficient scheduling and utilization of the public funds according to the prosecution office needs;
 - dh) Supervision to the effect of improving the information on the official website of the prosecution office;
 - e) Supervision to set up suitable environments in the prosecution office to the needs of the parties and the public;
 - ë) Organisation of trainings for prosecutors and for prosecution office employees;
4. The involvement of the chairperson in inter-institutional activities with regard to improving the justice system or at professional trainings with regard to the steering and management of the courts or prosecution offices shall be evaluated with priority in measuring this criterion.

Article 81

Communication skills

By means of communication skills criterion, the capacities of the chairperson for clear, timely and transparent communication are measured. This capacity shall be measured against the indicators on:

- a) Effective and timely co-operation with the Council, High Justice Inspector, Ministry of Justice, High States' Control or any other control or auditing institution;
- b) Communication with the public and third parties, by strictly setting out the timetable for the reception of citizens, documentation of meetings or replying in writing to various institutions.

Article 82

Sources of Evaluation for the Performance of Chairpersons

The evaluation of the chairperson's performance is based on the following sources:

- a) The chairperson's personal file;
- b) evaluation accomplished by the chairperson, meeting, constantly, the criteria of evaluation of the magistrate;
- c) Annual reports of the chairperson, including financial performance data, minutes of the annual analysis meetings of the court or prosecution office and the respective report of the

participating representative of the Council in these meetings, including the audio registrations.

- ç) Any order or decision of the chairperson issued in the course of assuming his powers for the organization of judges or prosecutors or administration at court or prosecution office;
- d) Statistical data on the functioning of the court or prosecution office of the five previous years;
- dh) Inspection reports regarding the court or prosecution office by the state institutions;
- e) Any document indicating the communication skills of the chairperson with the public and third parties;
- ë) Opinion of the local chamber of advocates and of the chairperson of the prosecution office where the chairperson of the court performs the function or the opinion of the local chamber of advocates and of the chairperson of the court where the head of the prosecution office performs the function.
- f) Information in writing from the School of Magistrates or other institutions establishing the participation and involvement of the chairperson at training activities on the leadership and management of the court or prosecution office;
- g) Data regarding the verification of complaints against the chairperson in the capacity of chairperson, during the evaluation period;
- gj) Final decisions regarding disciplinary measures related to the function as chairperson, data delivered within the evaluation period, independent from whether the disciplinary measure is already expunged or not;
- h) Objections of the chairperson and the eventual minutes or documents of hearings in the course of evaluation;
- i) Any other source that shows the professional activity of the chairperson.

Article 83

Evaluation Grades

1. The evaluation of the performance of the chairperson shall consist of these grades:
 - a) “Very good” in case of performing the leading activities above average;
 - b) “Good” in case of an average performance of the leading activities;
 - c) “Acceptable” in case of performing the leading activities below the average.
2. The general evaluation “very good” is awarded if the leading performance of the chairperson is evaluated “very good” in both criteria. The general evaluation ‘acceptable’ is awarded if the performance of the chairperson is evaluated ‘acceptable’ in at least one of the criteria. In other cases, the leading activity of the chairperson shall be evaluated ‘good’.

CHAPTER III



EVALUATION PROCEDURE

SECTION I

GENERAL PROVISIONS

Article 84

Evaluation Period

1. In the first 15 years of professional experience, including the professional experience as assistant magistrate or seconded magistrate, each magistrate shall be evaluated once every three years.
2. After the first 15 years of professional experience as magistrate, each magistrate shall be evaluated once every five years.
3. The chairperson shall be evaluated at least once during the duration of his/her mandate as chairperson. The activity of the chairman shall always be evaluated by the Council at least six months prior to the end of this mandate.
4. A magistrate serving as member of a Council shall not be evaluated in the sense of this Law. The Council shall establish further rules for the assessment of the performance during the function at the Council. In case of submission of applications for transfer and promotion three years after their function, the Council shall take into account the performance of the magistrate during their function as Council member.

SECTION II

INITIATION OF THE EVALUATION PROCEDURE

Article 85

Evaluation Program and Notification

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 12)

1. The Council at the latest by November of each year approves the program containing the list of magistrates and chairpersons whose evaluation will be conducted during the following year and the period of evaluation. The program shall include at least those magistrates whose evaluation period has ended or is ending in the **respective** year in order to ensure a timely ethical and professional performance evaluation of the magistrate. The decision is published on the official website of the Council.
2. The Council notifies in due time the chairpersons and the magistrates who will be evaluated according to approved program, under paragraph 1 of this Article.
3. Within three weeks upon notification pursuant to paragraph 2 of this Article, a magistrate conducts the ethical and professional evaluation of his own performance according to the Article 77 letter c) of this Law.

4. The magistrate shall submit the evaluation concerning his own ethics and professional performance according to paragraph 3 of this Article to the chairperson of the court or prosecution office where he or she performs the function, within three weeks upon receipt of the notification under this Article.

Article 86

Self-evaluation by the Magistrate

1. The magistrate shall conduct the ethical and professional self-evaluation according to the Article 85 of this Law based on the standard form issued by the Council, through which the magistrate:

- a) Evaluates the activity against the evaluation criteria;
- b) Provides an analysis of the statistical data referring the magistrate's activities;
- c) Describes the steps taken for meeting the objectives set out in the previous evaluation;
- ç) Describes the extent to which these objectives have been met providing the respective explanation;
- d) Defines the objectives for his/her professional development in the upcoming evaluation period;
- dh) Describes the needs for training and the circumstances which constitute a hindrance for the professional improvement and proposes concrete solutions for the upcoming evaluation period.

2. In any case, the self-evaluation of the magistrate shall be accompanied by two judicial decisions or two acts prepared by the prosecutor, selected by him/her, evidence establishing the commitment in inter-institutional professional activities during the evaluation period, training outside the School of Magistrates and any other documentation that shows the professional performance. The documents on the training outside the School of Magistrates shall indicate the content and duration of the training and the information on the institution having organised the activity.

Article 87

Opinion of the Chairperson

1. The chairperson of the court or prosecution office, where the magistrate under evaluation exercises the activity, shall provide an opinion on the activity of the magistrate, in accordance with the standards established by the Council.

2. The opinion of the chairperson describes the activity of the magistrate and provides an assessment of the performance with regard to the criteria of evaluation by referring to the grades set forth in this law, particularly in regard to those criteria where the opinion of the chairperson differs from the self-evaluation of the magistrate. Additionally, the opinion of the chairperson shall encompass an analysis of the statistical data on the activity of the magistrate.

3. The opinion of the chairperson is notified to the magistrate within four weeks from the day of notification pursuant to Article 85 of this Law.

4. Within three days after the notification, the magistrate has the right to be heard and to submit a request for a meeting with the chairperson.
5. The chairperson holds the meeting with the magistrate within two weeks upon submission of the request and arranges for the minutes of the meeting, which are attached to the opinion of the chairperson.
6. No later than two months from the day of notification pursuant to Article 85 of this Law, the chairperson shall provide the final opinion on the performance of the magistrate, reflecting also the eventual objections by the magistrate.

Article 88

Submission of Acts of Evaluation by the Chairperson

1. The chairperson submits the acts of evaluation of the magistrate to the Council within two months from the day of notification pursuant to Article 85 of this Law.
2. Acts of evaluation include:
 - a) Self-evaluation of the magistrate, two judicial decisions or two acts prepared by the prosecutor per year selected by him/her and any other evidence provided by the magistrate;
 - b) Opinion of the chairperson;
 - c) Potential objections of the magistrate against the opinion of the chairperson and the minutes of the hearing.

SECTION III

COURSE OF THE EVALUATION PROCEDURE

Article 89

Preparation of Documentation

1. The Council shall approve the criteria for assigning the rapporteur for each evaluation, being selected from the ranks of the Council.
2. The Council shall be supported by its administration in preparing the necessary documentation related to evaluation period. The Council administration shall be responsible for meeting the obligations to the reporting member and shall carry out the activities required for the evaluation under the direction of the reporting member.
3. The magistrate will be notified about the reporting member and the respective employee assigned for his evaluation in writing.

Article 90

Creation of the Evaluation File

1. Within two weeks upon receiving the evaluation acts, the evaluation file shall be created containing the following:

- a) Evaluation acts submitted by the chairperson;
- b) Summary of the statistical data in the case of evaluation of judges on:
 - i) The number of cases adjudicated by the judge as reporting judge, the number of cases adjudicated as member of the adjudication panel, number of cases in which the judge has been temporarily transferred and has assumed the function at another court. Such data should be categorized according to the nature of the cases;
 - ii) time spent on trials of cases, compared to the minimum time standards and the number of cases adjudicated beyond the minimal standard time; number of judicial hearings for every case and the clearance rate of the judge in settling the cases and time of reasoning of each decision;
 - iii) Other statistical data as determined by the Council;
- c) Summary of the statistical data in the case of evaluation of prosecutors on:
 - i) The number of completed, suspended cases or sent for trial, number of security measures and execution orders. Such data should be categorized according to the nature of the cases;
 - ii) Data linked to the time spent on handling preliminary investigations and final investigation compared to the minimum standard timing and the number of cases completed beyond the minimal time standard; number of extension of time periods for investigations, time spent on executing judicial decisions and observation of time periods set in judicial decisions;
 - iii) Other statistical data as determined by the Council;
- ç) Data on the verification of the complaints referring to the magistrate during the evaluation period, on the inspection of the activity of the magistrate or the court or prosecution office, as well as on final decisions regarding disciplinary measures against the magistrate, which entered into force within the evaluation period or reports of High Inspectorate for the Declaration and Audit of Assets;
- d) Number of cases where the magistrate has been recused on grounds of conflict of interest upon request of the parties;
- dh) Cases selected by lot for the evaluation;
- e) Documentation provided by the School of Magistrates.

2. Any acts gathered under the evaluation procedure pursuant to this Law shall be incorporated into the file and listed into a report, which analyses in detail and structuring the data.

3. The magistrate shall have the right to have access to the evaluation file and to receive copies of acts or their extracts at any time.

Article 91



Selection of the Cases for Evaluation

(Amended by Law no. 48/2019 Article 13)

1. For the purpose of the ethical and professional performance evaluation of the magistrate not more than 21 cases that have been finalized by the magistrate during the evaluation period are selected in total by lot. 15 files are selected for overall assessment, out of which five files for each calendar year of the evaluation period in case of an evaluation period of three years and three files for each calendar year of the evaluation period in case of an evaluation period of five years. The remainder of the files shall be selected referring to the criterion of exceeding deadlines, out of which 5% but not more than six cases in total out of the total number of the cases decided beyond the standard time limits. Where a magistrate was absent from duty for a period exceeding six months, the number of selected files shall be reduced accordingly.
2. The reporting member shall identify the chamber and section where the magistrate has performed the duties during the evaluation period, and, depending on the number of the cases for each category, he shall designate the number of the cases to be selected for each of them proportionally.
3. The lot involves all cases of the magistrate in which the magistrate has been reporting judge in the adjudication panel or acting prosecutor, including the cases in which the magistrate has been temporarily transferred to another court or prosecution office or exercised the duty in another position. In case of a prosecutor at least half of the selected cases shall refer to cases which involve pre-trial detention and one appeal.
4. The number of the cases selected by lot and concluded by a **non-final** decision should not exceed 10% of the total number of the selected cases. In case of prosecutors the selected cases shall represent equally decisions on the termination of proceedings and decisions on the release after a pre-trial detention. The selected cases selected in excess of this limit shall not be taken into consideration and the lot shall continue to select the cases of other types.
5. The number of the non-contentious judicial cases adjudicated by the judge selected by lot should not exceed 20% of the total number of the selected cases. The judicial cases selected in excess of this limit, shall not be taken into consideration and the lot will continue to select the cases of other categories.
6. The selection of cases by lot shall be carried out after the commencement of the evaluation procedure of the magistrate and, apart from the other actions, it shall be an integral part of this procedure.
7. The lot shall be conducted upon the order and supervised by a representative of the Council in compliance with the provisions of this Article. The lot, which takes place in the court or prosecution office where the magistrate performs his/her duties, shall be carried out electronically by the judicial administration.
8. The chairperson and chancellor shall make arrangements to provide the necessary facilities to the responsible official in performing the tasks.

Article 92

Information from other Institutions

1. The reporting member shall gather and include into the evaluation file the information regarding:
 - a) Participation at the continuous training of the magistrate requested from the School of Magistrates;
 - b) Results of complaints requested from the High Justice Inspector;
 - c) Accuracy and diligence in regard to the declaration of assets requested from the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests.
2. The School of Magistrates, as responsible body for the continuous training of the magistrate, shall document the participation of the magistrate in the professional training activities. The School of Magistrates shall make sure that the information with regard to the participation of the magistrate in the continuous training be provided within two weeks from the day of lodging the request. The information shall contain the number of the trainings to which the magistrate has been invited, the topic, the duration of the training sessions, the extent of the participation of the magistrate and, where applicable, the level of his engagement.
3. The High Justice Inspector shall provide a documentation of the complaints against the magistrates registered with this institution during the evaluation period, showing at least the information regarding the complainant, date of complaint, brief description of the investigation actions and way of processing the complaint.
4. The High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests shall provide a report.

Article 93

Draft Evaluation Report

1. The reporting member shall, within one month from the receipt of the evaluation acts from the chairperson, draft an evaluation report.
2. All statistical data shall be analysed in the context; in order to avoid conclusions for issues which are not attributable to the magistrate. The analysis of the statistical data on the clearance rate, duration of proceedings and average time to substantiate the judgment or to finalizing a case shall be based on the complexity of cases, volume of cases and abrupt rise in the case numbers and other issues related to the work conditions.
3. The self-evaluation of the magistrate and the chairperson's opinion shall be verified against the other information gathered from other sources of evaluation.
4. In any case and in particular with regard the assessment of judicial or prosecutorial capacities set out in Articles 72 and 73 of this Law, the interference with the independence of the magistrate shall always be avoided.
5. The draft evaluation report contains:

- a) Personal data of the magistrate, education, seniority, previous evaluation grades and general information related to the evaluation period, like, chamber or section where the magistrate has carried out the activity and disciplinary measures taken against the magistrate in the evaluation period;
 - b) Data resulting from the evaluation sources and their analyses for the evaluation of the activity of the magistrate under the evaluation criteria;
 - c) Proposal of the evaluation grades in regard to each evaluation criterion and of the overall evaluation grade;
 - ç) Proposals for training or recommendations for steps to be taken in order to improve the performance of the magistrate.
6. The draft evaluation report is accompanied by the report describing and analysing in detail the data collected.
7. The draft evaluation report will be integral part of the evaluation file.

Article 94

Right of the Magistrate to object the Draft Evaluation Report

1. The draft evaluation report shall be notified to the magistrate, informing the magistrate also on his right of access to the evaluation file.
2. The magistrate has the right to object the draft evaluation report in written within two weeks upon receipt of the notification. The magistrate may submit new evidence, except further judicial decisions and prosecutorial acts prepared by the prosecutor.
3. The magistrate may request to be heard during the hearing of the Council. The content of written statements shall not be repeated during the hearing.

Article 95

Decision on the Evaluation

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 14)

1. The Council shall invite the concerned magistrate and eventually other persons to a hearing, if this was requested by the magistrate or if this is needed in order to clarify facts.
2. If during the deliberation on the evaluation, it is established that procedural or material errors have occurred or further evidence is needed, which may influence the evaluation grade and the correction cannot be done instantly due to the need to collect other documents, the Council shall order the adjournment of the hearing for not longer than 30 days.
3. The Council shall, after examining the draft evaluation report by taking into account the findings during the hearing, decide to approve it or approve it with changes or to request the elaboration of a new draft evaluation report by a reporting member.

4. In case the Council determines a different evaluation grade or a different reasoning than the one proposed in the draft evaluation report, it shall reflect the respective reasons in the decision accordingly. The evaluation report as approved by the Council is an integral part of the decision.
5. In case the magistrate is evaluated as 'incapable', the magistrate shall receive a salary reduction of 2 % during the two calendar years following that evaluation.
6. In case the magistrate or the chairperson is evaluated as 'incapable', the Council forwards the evaluation report to the High Justice Inspector.
7. **The magistrate shall have the right to appeal the evaluation decision of the Council, at the competent court within 15 days from the notification date of the decision, only regarding serious procedural violations.**
8. The draft-evaluation report, any decision of the Council and the eventual judicial decisions shall be included as parts into the individual file of the magistrate.
9. The Council shall publish extracts of the evaluation report and the decision, which reflect the statistical data, the analysis of the data, the evaluation grade and the justification for determining that grade. The publication of the extract shall respect the right to confidentiality and data protection. In any case, any information which could disclose the identity of the magistrate shall be removed from the extract.

Article 96

Evaluation Procedure for the Chairpersons

1. The evaluation of the activity of the chairpersons shall occur under the procedure set out in this Law.
2. The chairperson shall submit the self-evaluation and any source of evaluation as appropriate to the Council within three weeks after the notification according to Article 85 of this Law.
3. Not applicable to the procedure of evaluation of the performance of the chairperson shall be Article 86, paragraph 2, Article 87, Article 88 paragraph 2, Article 90 paragraph 1, and Article 91 of this Law.

Article 97

Evaluation upon Request

(Amended by Law no. 48/2019 Article 15)

1. In the case of a request for transfer or promotion and where the last evaluation dates back to a period of more than two years, an accelerated evaluation procedure shall be carried out upon a request of the magistrate. The accelerated evaluation procedure shall be conducted in accordance with the rules set out in this Law, to the extent possible.
2. The period of the accelerated evaluation procedure shall be for the period spanning through the last full calendar year. The Council shall approve the program determining the magistrates being

evaluated in accordance with this procedure, prior to making the decision on the promotion or transfer of the magistrate.

3. In the evaluation under this procedure, six cases of the magistrate for the general evaluation shall be selected by lots, two judicial decisions or acts drafted by the prosecutor shall be submitted, while not more than three cases shall be evaluated, which the magistrate has completed beyond the standard timing.

4. The period of time to complete the evaluation draft report shall be two months since the submission of the evaluation acts by the chairperson.

5. The Council shall decide on the evaluation of the magistrate in the next meeting upon notification of the draft evaluation report to the magistrate.

6. The magistrate shall have the right to appeal the evaluation decision of the Council, at the competent court, within 15 days from the receipt of the notification of the decision only regarding serious procedural violations.

SECTION IV REPORTING AND TRANSPARENCY

Article 98 Evaluation Report

1. The Councils shall establish each calendar year an evaluation report on the evaluation activity of the magistrates that they have carried out during the previous year.
2. This evaluation report shall be published at the end of March of the following year.

Article 99 Periodic Report on the Evaluation System

1. The Councils shall establish every three years a periodic report on the evaluation system, which is to contain the following information:
 - a) A general description of the evaluations made during the reporting period;
 - b) An analysis of the evaluation results to the effect of identifying the weaknesses and strengths of the body of magistrates and judicial or prosecutorial system;
 - c) An analysis of the efficiency of the approved recommendations for the previous reporting period;
 - ç) Recommendations of measures to be taken to the effect of surpassing the identified weaknesses.
3. The periodic report shall be published not later than by the end of March of the year following the reporting period.

PART V
DISCIPLINARY, CRIMINAL AND CIVIL LIABILITY

CHAPTER I
GENERAL PROVISIONS

Article 100

Principles of Disciplinary Proceedings

1. In exercising functions under this Part, the High Justice Inspector and the Councils must have regard to and aim at the appropriate balanced application of the following principles:

- a) The principle of a fair trial, including taking a decision within reasonable time;
- b) The principle of legality, both in the sense that the competent authority has the obligation to investigate where there are sufficient grounds to believe that a disciplinary misconduct has occurred, and in terms of the principle of “no punishment without law”;
- c) The principle of accusation in the sense that any state institution or any official must act ex officio and lodge a complaint if there is sufficient evidence to believe that a disciplinary misconduct has occurred;
- ç) The principle of equality before the law;
- d) The presumption of innocence;
- dh) The principle of doubt in favour of the magistrate subject to disciplinary proceedings;
- e) The principle of proportionality;
- ë) The principle of independence and impartiality of disciplinary authorities and of respect for the independence of magistrates;
- f) The principle of open justice;
- g) The principle of confidentiality and the right to privacy and protection of personal data.

2. In balancing the principle of open justice, the principle of confidentiality, the right to privacy, and protection of personal data, the High Justice Inspector and the Councils must have regard, in particular, to:

- a) The fact of guaranteeing that the integrity and reputation of magistrates is protected against unfounded allegations;
- b) The importance of informing the public on proven allegations in respect of the administration of justice.

Article 101

Disciplinary Misconducts and Performance Issue

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 16)

1. A disciplinary misconduct occurs when a magistrate:

- a) Acts negligently in the performance of a professional duty stemming from the function, as determined in paragraph 2 of this Article,
- b) Disregards the law or facts manifestly caused by inexcusable gross negligence, as determined based on the indicators of paragraph 2 of this Article, or malice or is blatantly professionally incompetent,
- c) In any other instance, where he inexcusably commits inappropriate acts or behaviour during the exercise of duty or outside duty, which discredit the position and image of the magistrate, or harms seriously the public's trust in the judicial or prosecution system.

2. A magistrate's negligence in the performance of a professional duty is to be considered as disciplinary misconduct only, if the errors are clearly beyond what can normally be expected from an average magistrate. For the delimitation between performance issues and disciplinary misconduct of the magistrate, the following factors shall be in particular taken into consideration:

- a) Degree of negligence,
- b) Frequency of error,
- c) Position of the magistrate within the system,
- ç) Whether the law area in which he/she is operating is considered to be highly complex, new or not yet determined properly by judicial or prosecutorial case law,
- d) The probability of the emergence of damage and the intensity of consequences resulting possibly from the conduct, as well as
- dh) Any situation that is outside of the magistrate's control and which may be reasonably explained by the malfunctioning of the judicial or prosecutorial system as a whole.

3. For the purposes of implementing this Article, misconducts may occur through action or omission. A magistrate who commits disciplinary misconducts in particular in the cases provided for in Articles 102 to 104 of this Law shall be disciplinarily liable under this law.

1. A magistrate commits a disciplinary misconduct, intentionally or due to negligence when, he/she:

- a) commits actions or omissions which constitute a failure to fulfil the duty, behaves unprofessionally or unethically during or outside of the exercise of the function, which discredit the position and the figure of the magistrate or damage the public trust in the judicial or prosecution system;**
- b) while exercising the function disregards the law or facts manifestly caused intentionally or due to serious negligence or is blatantly professionally incompetent.**

2. When determining if the action, omission or behaviour of the magistrate shall be considered as a disciplinary misconduct or is only related with the professional activity, the following shall be taken into consideration:

- a) the degree of negligence;**
- b) the frequency of the act or omission or behaviour;**
- c) the experience and position of the magistrate in the system;**

ç) the damage or the possibility of causing damage or the degree of the consequences or damage that have come or may come from the action or omission; as well as

d) any situation which is beyond the magistrate's control and which may be related with the non-functioning of the judicial or prosecutorial system.

Article 102

Disciplinary Misconducts in Connection with the Exercise of the Function

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 17)

~~1. Subject to provisions of letter "a" or "b" paragraph 1 of Article 101 of this Law, a disciplinary misconduct during the exercise of the judicial function are in particular the behaviours and acts of the magistrate, as follows:~~

~~a) Failure in filing the request for recusal from the proceedings or from the trial of the case, when it is obligatory by the procedural law, if the magistrate is or becomes aware of such circumstances;~~

~~b) Request of the magistrate for recusal and its approval, if applicable, by the chairperson, if these actions are:~~

~~i) Not based on reasons provided by the law;~~

~~ii) Done deliberately aiming at creating unfair profit for the parties or third parties, or aiming at shirking the legal responsibility by the magistrate to review the case or aiming at creating the possibility of assigning the case to another magistrate;~~

~~iii) Significantly delayed.~~

~~c) Behaviour, acts and other conducts of magistrates, which create unfair benefits or damages to the parties in a trial or investigation/adjudication or the pursuit of objectives, which are extraneous to the obligations of magistrates;~~

~~ç) Interference or any other undue influence on the exercise of the duty of another magistrate;~~

~~d) Irregular use of the work of others to meet the legal obligations pertaining to the exercise of the function of the magistrate or the delegation of activities assigned to the magistrate to other persons;~~

~~dh) Intentional or repeated and unjustified omission of fulfilling the investigative or judicial functions, as well as other duties that are assigned to a magistrate because of the function;~~

~~e) Repeated and unjustified delays of procedural actions and in issuing of acts during the exercise of the duty of the magistrate;~~

~~ë) Repeated or serious infringement of the rules of solemnity and rules of conduct in relations to the participants in the process, prosecutors, lawyers, witnesses, experts, other subjects involved in the process, as well as with the chairpersons, colleagues and court administration personnel;~~

~~f) Repeated and unjustified delay of the start of the judicial hearing.~~

~~2. Subject to provisions of letter "a" or "c", paragraph 1 of Article 101 of this Law, disciplinary misconducts during or in connection with the exercise of the function, in or outside office, are in particular the behaviours and acts of the magistrate, as follows:~~

~~a) Unjustified failure of fulfilling obligations to be available and to be present at the duty station for the purposes of performing the function in the courts or prosecution office, if this obligation is determined by law or by a decision of the competent authority;~~

~~b) Serious or repeated infringement of regulatory legal and sublegal provisions that govern the organization and functioning of the courts or prosecution office with regard to the magistrate's functions in the trial or investigation;~~

~~c) Unjustified failure to implement decisions issued by the Council or refusal to implement disciplinary measures imposed against the magistrate;~~

~~ç) Obstructing the Councils, High Justice Inspector or any other public organ in carrying out its functions provided by the law;~~

~~d) Failure of the chairperson to fulfil obligations provided by the law, in particular failure to ensure the use and way of utilising the case management system;~~

~~dh) Breach of the duty of confidentiality and non-dissemination of information resulting from ongoing or completed investigation or trial, including the facilitation of such actions also due to negligence, or making public or dissemination of confidential information;~~

~~e) Disclosure of opinions that were given or provided by other magistrates during the process, which has not yet taken the form of an act made public;~~

~~ë) Making public statements in the media on cases, except communications of press magistrates within the limits of their office;~~

~~f) Failure to comply with additional conditions for appointment of magistrates who perform their functions at the special courts of adjudication of the criminal offences of corruption and organised crime or at the Special Prosecution Office;~~

~~g) Not complying with the obligation to participate at least to the minimum quantity of continuous training activities legislation without justification, under the conditions and criteria set by the.~~

~~3. Subject to provisions of letter "a" or "c" of paragraph 1 of Article 101 of this Law, disciplinary misconducts are in particular the omissions of notifications by the magistrate or chairperson, as follows:~~

~~a) Failure of the magistrate to notify the Council on the existence of an environmental incompatibility of the magistrate to exercise the function, particularly in the cases provided for in Article 8 of this Law or of reasons for the termination of appointment;~~

~~b) Failure of the magistrate to notify the chairperson of the court or prosecution office and the Council on interference or any other forms of undue influence by other magistrates;~~

- ~~c) Failure of the magistrate to notify the chairperson of the court and prosecution office and the Council, as well as competent authorities under the law, on interference or other forms of undue influence by lawyers, political officials, public officials and other subjects;~~
- ~~ç) Failure of the chairperson to notify the High Justice Inspector regarding their knowledge of facts that may constitute a disciplinary misconduct of a magistrate;~~
- ~~d) Failure of the chairperson to notify the Council, in regard to a reasonable suspicion of cases of incompatibility, limitations of office or environmental incompatibility of the magistrate in the exercise of his/her function and in regard to issues for which the law provides the termination of the mandate of the magistrate;~~

~~4. Subject to provisions of letter “b”, paragraph 1 of Article 101 of this Law, disciplinary misconducts during the exercise of function regarding the main activities surrounding the adjudication or implementation of the law are in particular the behaviours and acts of the magistrate, as follows:~~

- ~~a) Serious violations in applying or erroneous implementation of material and procedural law and in conducting procedural actions;~~
- ~~b) Presenting significantly distorted facts in the issued acts;~~
- ~~c) Issuance of unreasoned acts or acts that contain in the reasoning only conclusions on the applicable law without providing circumstances of the fact which provide the basis for subsuming the case under the law, in all those cases where the law requires the issuance of the act in the reasoned form;~~
- ~~ç) Issuance of acts whereby the descriptive and reasoning part provides reasons that are openly contrary to the ordering part of the act or have no connection to it;~~
- ~~d) Issuance of acts which are not allowed by law;~~
- ~~dh) Issuance of acts unforeseen by procedural provisions;~~
- ~~e) Issuance of acts for imposing the personal security measures, beyond the cases provided by law.~~

~~5. Except as provided in paragraph 4 of this Article, the magistrate’s implementation and interpretation of the law, as well as the assessment of the facts and evidence in cases examined by him/her are not subject to disciplinary liability.~~

1. Disciplinary misconducts during the exercise of the function are, in particular, but not limited to the acts, omissions or behaviours of the magistrate, as follows:

- a) Failure to submit a request for recusal from the proceedings or from the trial of the case, when it is mandatory under the law, if the magistrate is aware or should have been aware of such circumstances;**
- b) Filing a request for recusal from proceeding or trial of the case, if this action is:**
 - (i) not based on reasons provided by law;**
 - (ii) done aiming at creating unfair benefit for the parties and third parties or aiming at shirking the legal responsibility to review the case or aiming at creating the possibility of assigning the case to another magistrate;**
 - (iii) Non-submission of the request immediately after getting aware about the cause;**

- c) **Interference or unfair influence on the exercise of the function of another magistrate;**
- ç) **unjustified or repetitive non- fulfilment of the investigative or judicial functions;**
- d) **repeated delays or delays which cause serious consequences or unjustified procrastinations of the actions and/or procedural acts;**
- dh) **the action, omission or behaviour of the magistrate, which create unfair benefits or damages to the parties of a trial or investigation procedure, in violation of the law;**
- e) **Engagement of other persons in performing the duties assigned by law to the magistrate or delegation of the duties or activities related to the exercise of the function of the magistrate;**
- ë) **Repeated and unjustified delay of the start of the hearing or procrastination of the investigations.**
- f) **Unjustified absence in duty in accordance with the provisions of this law, for more than 3 working days per year;**
- g) **Serious or repeated infringement of legal and sublegal provisions that govern the organization and functioning of the courts or prosecution office;**
- gj) **Unjustified failure to implement decisions issued by the Council or refusal to implement the disciplinary measure imposed against the magistrate;**
- h) **Unjustified failure to comply with the obligation to participate in continuous training without justification, under the conditions and criteria set by the Law;**
- i) **Failure of the magistrate to notify the chairperson and the Council, as well as the competent authorities under the law, on interferences or other forms of influence by other magistrates, lawyers, political officials, public officials or other subjects;**
- j) **Breaching the rules of confidentiality and non-disclosure of information provided for by the legislation into force, for which they are informed due to the function of the magistrate or resulting from an investigation or trial, being in process or completed;**
- k) **obstruction of the Council, the High Justice Inspector, or any other public body in the performance of their functions, according to law;**
- l) **failure of the chairperson to fulfil the obligations set forth in the law, in particular, the tasks connected to the case management system;**
- ll) **disclosure of opinions that are given by the magistrate himself or other magistrates during the process, which have not yet taken the form of an act available for the public;**
- m) **making public statements in the media on cases, except communications of the press, of the magistrate within the limits of his office;**
- n) **failure to notify the Council for the existence of reasons that constitute a case of termination of the mandate;**
- nj) **failure of the chairperson to notify the High Justice Inspector regarding facts in their knowledge that may constitute a disciplinary misconduct of the magistrate;**
- o) **failure of the chairperson to notify the Council, regarding the existence of reasonable doubt of cases of incompatibility, restrictions of the function, and in relation to issues for which the law provides the termination of the mandate of the magistrate.**
- p) **Violation of the rules on incompatibility or on prevention the conflict of interest, according to the provisions of the legislation in force.**

2. Subject to provisions of letter “b”, paragraph 1 of Article 101 of this Law, the disciplinary misconducts during the exercise of function as a magistrate are, in particular, but not limited to the action, omission or behaviour of the magistrate, as follows:

- a) serious or repeated disregard of material and procedural legislation or erroneous implementation of the material and procedural legislation, when established by a higher court;
- b) apparent, distorted presentation of facts and circumstances in the issued acts;
- c) issuance of unreasoned acts or acts containing in the reasoning only conclusions on the applicable law without presenting the circumstances of the fact, in all those cases where the law requires the issuance of the act in the reasoned form.
- ç) Issuance of acts whereby the descriptive and reasoning part provides circumstances that are openly contrary to the ordering part of the act or have no connection to it;
- d) taking deliberately unreasoned decisions, as a result of a personal interest or malice.
- dh) Repeated or serious infringement of the rules of solemnity and rules of conduct in relations with the parties, other subjects involved in the process, as well as with the chairperson, other magistrates and court administration staff.

Article 103

Disciplinary misconduct outside of the exercise of the function

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 18)

~~Subject to provisions of letter "c", paragraph 1, Article 101 of this Law, disciplinary misconduct outside of the exercise of the function are in particular the behaviours and acts of the magistrate as follows:~~

- ~~a) Membership in entities or exercise of activities, even legitimate, that are not compatible with the duties and principles of the regular exercise of the function of the magistrate as stipulated in Articles 6 to 8 of this Law;~~
- ~~b) Use of the status as magistrate with the aim of achieving unjustified benefits or advantages for him/herself or for others;~~
- ~~c) Accepting and exercising duties and extra-office activities in the absence of a lawful permit granted for this purpose by the Council;~~
- ~~ç) Associating with persons who are under criminal investigation or subject to criminal proceedings or with convicted persons, except in cases of rehabilitation of convicted persons or persons who are in close relationship with the magistrate by blood or by law, and having inappropriate business relations with such persons;~~
- ~~d) Benefiting directly or indirectly gifts, favours, promises or preferential treatment of any kind, which are, even though through legal actions, given because of the exercised function or due to the use of his/her position as a magistrate;~~
- ~~dh) Nonfulfillment of obligations of the law, in particular with regard to declaration of assets and conflict of interest according to the law;~~
- ~~e) Inappropriate behaviour in the performance of obligations, in relations and communication with the state institutions and their officials and other inexcusable cases of improper behaviour.~~

Disciplinary misconducts outside of the exercise of the function are in particular but not limited the actions, omissions and behaviours of the magistrate, as follows:

- a) violation of the rules on incompatibility with the function of the magistrate, or due to function constraints, as provided in Articles 6 to 7 of this Law;**
- b) use of the status as magistrate with the aim of achieving benefits for him/herself or for others;**
- c) exercise of remunerated extra office activities, without the Council's preliminary approval;**
- ç) associating with persons who are under criminal investigation or subject to criminal proceedings or with convicted and not rehabilitated persons, when they are not in close relationship with the magistrate by blood or by law, or the establishment of improper business relations with such persons;**
- d) benefiting unfairly, directly or indirectly gifts, favours, promises or preferential treatment of any kind, which are given because of the exercised function or due to the use of his/her position as a magistrate, even in the case when they are formalized through a legal act;**
- dh) other cases of behaviour that discredits the position and the figure of the magistrate and damage the public trust in the judicial or prosecution system, carried out outside of the exercise of duty.**

Article 104

Disciplinary misconduct due to committing a Criminal Offence

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 19)

Disciplinary misconducts due to commission of a criminal offence, are:

- ~~a) Facts established by a court for which the magistrate has been convicted by a final decision for the commission of a criminal offence committed intentionally, for which the law provides for imprisonment or a fine;~~
- ~~b) Facts established by a court for which the magistrate has been convicted by a final decision and sentenced to imprisonment for commission of a criminal offence due to negligence;~~
- ~~c) Facts established by a court for which the magistrate has been convicted by a court by a final decision for committing a criminal offence other than those provided in letters a) and b) of this Article, if the very nature of the criminal fact seriously discredits the image, authority, dignity or erodes seriously the public confidence with the magistrate and the justice bodies;~~
- ~~ç) Facts established by a competent body by final decision, which by their nature, seriously discredits the image, authority, dignity or erodes seriously public confidence with the magistrate and the justice bodies, which constitute a criminal offence despite the fact that the criminal offence is expunged, criminal prosecution cannot be instituted or cannot continue, or the magistrate is rehabilitated or has benefited from the pardon and amnesty.~~

- 1. Disciplinary misconducts due to committing a criminal offence, are actions, omissions or behaviours for which the magistrate has been convicted by a final decision for the commission of a criminal contravention, which by their nature discredit the position and image of the magistrate or seriously damage the public trust in the judicial or prosecution system, based on the facts and the circumstances established by the court.**
- 2. Disciplinary misconducts due to the commission of a criminal contravention are also actions, omissions or behaviours, according to paragraph 1 of this Article, when despite the fact that the criminal offence is expunged, the criminal prosecution cannot be initiated or cannot continue, or the magistrate is rehabilitated or has benefited from the pardon and amnesty.**
- 3. The disciplinary measure of dismissal from office shall be imposed only when the sentence by final decision is rendered for the commission of a crime. In this case, during the disciplinary procedure, the provisions of this law shall be applied for as much as it is necessary.**

Article 105

Disciplinary Measures

1. The Councils may impose one or more of the following disciplinary measures:
 - a) Confidential warning;
 - b) Public reprimand;
 - c) Temporary reduction of salary
 - i) Up to 40% for a period not exceeding one year;
 - ii) A fine equivalent to such temporary reduction in salary for magistrates having resigned;
 - ç) demotion from a position of a higher level to a lower level or from a position in the special court for the adjudication of the criminal offences of corruption and organised crime or at the Special Prosecution Office to a court of general jurisdiction or another prosecution office;
 - d) Suspension from office while benefitting the minimum salary as set out in a Council of Ministers' decision, for a specified period between 3 months to 2 years;
 - dh) Dismissal from office.
2. When determining the disciplinary measure, the Council may take into account any previous suspension according to Section V of this part, imposed in the course of the respective disciplinary proceedings, and may impose appropriately a less severe disciplinary measure or determine that the suspension is a sufficient measure regarding the committed misconduct.

Article 106

Private Written Warning

1. A confidential warning is a non-public disciplinary measure disclosed only to the concerned magistrate, which establishes the commission of the inappropriate conduct of the magistrate.

2. The confidential warning is included in the personal file of the magistrate and is taken into account in case of repetitive disciplinary misconducts or for the purpose of the ethical and professional performance evaluation.
3. A confidential warning shall be imposed in the least serious cases where the public has not been involved or not been made aware of the misconduct.

Article 107

Public reprimand

1. A public reprimand means a form of public disciplinary measure that declares publicly the conduct of a magistrate improper.
2. The public reprimand is included in the personal file of the magistrate.
3. A public reprimand shall be imposed in the least serious cases which have already become public.

Article 108

Temporary Reduction of Salary

The Council, upon deciding to temporarily reduce the salary up to 40 %, based on criteria defined in Article 115 of this Law, for a period not exceeding one year or a fine being imposed at the extent of the temporary reduction in salary, shall evaluate the severity of the case having regard to all the circumstances. The temporary reduction of the salary shall be imposed in the following cases:

- a) The magistrate was given a private warning or a public reprimand in respect of a previous disciplinary misconduct;
- b) More lenient disciplinary measures are inappropriate regarding the circumstances of the disciplinary misconduct;
- c) The circumstances of the misconduct do not constitute a very serious disciplinary misconduct and a more serious disciplinary measure would therefore not be justified.

Article 109

Demotion

1. The magistrate's demotion in duty from a higher level to a lower level court or from a position in the special court for the adjudication of the criminal offences of corruption and organised crime or Special Prosecution Office to a court of general jurisdiction or another prosecution office shall be imposed where:
 - a) The misconduct is serious;
 - b) The magistrate shows a conduct that makes his/her proficiency appear unfit for the higher or specialized position, but the misconduct does not render the magistrate unfit to act as a magistrate.
2. In case of a demotion in the sense of paragraph 1 of this Article, the magistrate receives the salary of the position to which he/she was demoted.

Article 110

Suspension as Disciplinary Measure

The measure of suspension from office of the magistrate, being entitled to receive the minimum salary for a period between three months to two years shall be imposed only where:

- a) The misconduct is very serious,
- b) The Council is satisfied that though the nature and circumstances of the misconduct render the magistrate still fit or worthy to continue to hold his or her office, the severity of the misconduct and the damage to the image of the magistrate require a suspension for a limited period.

Article 111

Dismissal

1. The magistrate's dismissal from duty shall be imposed as a disciplinary action only in the following cases:

- a) The misconduct is very serious,
- b) The Council is satisfied that the nature and circumstances of the misconduct render the magistrate unfit or unworthy to continue to hold his or her office, due to a conviction for commission of a crime, due to gross and blatant incompetence, or due to the conduct committed at least gross negligence according to article 101 letter "b" of this Law, and that manifestly violates the core judicial and prosecutorial values.

2. In case where a magistrate of a special court for the adjudication of the criminal offences of corruption and organised crime or of the Special Prosecution Office releases sensitive information, whether through gross negligence according to article 101 letter "b" of this law or intentionally, or commits any other serious misconduct, he/she shall be imposed the disciplinary measure of dismissal.

Article 112

Supplementary Disciplinary Measures

(Amended by Decision no. 34/2017 of the CC)

~~1. If the magistrate has been sentenced by a final court decision for any criminal offence of corruption, the Council shall impose in addition to the dismissal of the magistrate also the reimbursement of the amount equal to the gross salary received during the last year in office.~~

2. The Council, in addition to the measures provided for in paragraph 1, letter "b", "c" sub-point (i), "ç", "d" of Article 105 of this Law, may impose one of the following supplementary disciplinary measures:

- a) The mandatory participation at specific professional training in accordance with Article 113 of this law;
- b) Demotion from the position of a chairperson.

Article 113

Training as Supplementary Measure

Pursuant to the Article 112, paragraph 2 letter "a" of this Law, the Council may impose the supplementary disciplinary measure of compulsory attendance of specific professional training, where the magistrate's misconduct may be remedied by attending compulsory training courses. In such a case, the decision shall specify the content and length of the program of the mandatory training.

Article 114

Demotion from the position of a Chairperson

Pursuant to Article 112 paragraph 2 letter "a" of this Law, the Council may impose the supplementary disciplinary measure of demotion from the position of a chairperson to a position as magistrate in case of a chairperson's misconducts, which does not justify his or her continuation in the leading function.

Article 115

Criteria for Determining Disciplinary Measures

1. In determining the seriousness of the disciplinary misconduct and the type of disciplinary measure, the Councils shall consider the following factors:
 - a) Nature and circumstances of the conduct;
 - b) Degree of culpability and the motive;
 - c) Effects of a misconduct;
 - ç) Professional data, disciplinary cases and criminal record of the magistrate;
 - d) Extent of any dangers posed by the misconduct;
 - dh) All the relevant circumstances of the misconduct;
 - e) Circumstances related to the health status of the magistrate;
 - ë) The magistrate's behaviour following the misconduct and after initiation of investigation;
 - f) The magistrate's attitude during and in relation to the disciplinary proceedings; and
 - g) Any other matter that the Council considers relevant.
2. In imposing disciplinary measures, a Council must:
 - a) Substantiate the principle of proportionality, and
 - b) Take into account any mitigating or aggravating factors.
3. Mitigating circumstances in accordance with paragraph 2 of this Article are:

- a) The misconduct is a first incident for the magistrate;
 - b) The magistrate acted under the influence of a third person guided by loyalty or fear;
 - c) The magistrate's misconduct played a minor part taking account of the overall circumstances;
 - ç) The magistrate cooperated in the investigation and disciplinary proceedings, including where relevant by providing admissions and helpful information for the investigation and disciplinary proceedings;
 - d) The magistrate has repaired damage caused by the misconduct or has actively assisted in obliterating or alleviating the consequences;
 - dh) The time elapsed since the misconduct occurred;
 - e) Any other circumstance existing, that in the opinion of the Council deserving leniency.
4. Aggravating circumstances in accordance with paragraph 2 of this Article are:
- a) Misconduct being committed more than once, or the misconduct is committed after a disciplinary measure was imposed for a previous misconduct;
 - b) Misconduct has been continuous;
 - c) The misconduct was committed due to discriminatory motives;
 - ç) The misconduct was committed due to other weak motives;
 - d) Instigating others to a misconduct or unlawful behaviour;
 - dh) The misconduct was committed by way of exploiting weaknesses or vulnerabilities of others;
 - e) Upon the existence of any other circumstance, wherefore the Council deems aggravating the committed misconduct.

Article 116

Measures for Avoiding Delays

1. In case of declaration in absentia, as well as disciplinary proceedings in absentia of the magistrate, there will for the magistrate or his/her representative be applying, to the extent possible, the rules of procedure provided for by the Criminal Procedure Code.
2. If the magistrate, his/her representative, the witness, the expert or the interpreter offend the dignity of the High Justice Inspector or the Council, or act in a way that obviously aims at delaying the proceedings, the competent authority shall warn the magistrate and instruct on the consequences of such a conduct. If the behaviour continues, the competent authority shall sanction the concerned person with a fine up to 100.000 ALL. The repetition of the behaviour is ground for the repetition of the fine and, when appropriate, for opening a disciplinary or criminal investigation.
3. The order for imposing a fine constitutes an executive title. The bailiff's office is in charge of executing the respective decision.

4. The order can be appealed within 24 hours upon notification of the decision. The appeal is examined by the Council, in case of a fine imposed by the High Justice Inspector, and by the competent court, in case of a fine imposed by the Council.
5. The High Justice Inspector or the Council shall notify the National Chamber of Advocates, or the respective institutions for the experts and interpreters on the decision imposing the fine.

CHAPTER II

INVESTIGATION PROCEEDINGS

Article 117

Statute of Limitation

1. The statute of limitation for disciplinary misconducts is five years. If a complaint, under Article 119 of this Law, is submitted 5 years after the time when the alleged misconduct has occurred, the High Justice Inspector shall not verify the complaint due to the statute of limitation. If the High Justice Inspector receives information under Article 124 of this Law, 5 years after the time when the alleged misconduct has occurred, he or she shall not start investigations, due to the statute of limitation.
2. The limitation period shall start at the time the alleged misconduct has occurred.
3. The limitation period is extended up to one year, if the magistrate commits another misconduct of the same nature within the limitation period.
4. Notwithstanding provisions of paragraph 1 and 3 of this Article, the statute of limitation for disciplinary misconducts, which simultaneously constitute criminal offences, shall be calculated according to the provisions of the Criminal Code, provided that the statute of limitation in that Code is longer than 5 years.

Article 118

Limitations for the Proceedings before the High Justice Inspector

1. The High Justice Inspector shall decide on the archiving of a complaint or opening of an investigation on an alleged misconduct within three months upon the receipt of the complaint.
2. The High Justice Inspector, within six months following the day of making the decision on the opening of an investigation, shall initiate the disciplinary proceeding by submitting the investigation report to the competent Council or shall issue a decision on the closure of the investigation.
3. The High Justice Inspector may extend the investigation period as set out in paragraph 2 of this Article for another three months in complex cases, or reasons of widening or changing the scope of the investigation or in case of illness or non-availability of the magistrate.
4. In case new evidence becomes available after the lapse of time set out in paragraph 2 or 3 of this Article, which provide new evidence, based thereon there is reasonable ground to believe that a

misconduct may have occurred, the High Justice Inspector shall reopen the investigation, provided that the time limit as set out in paragraph 1 and 4 of Article 117 of this Law has not lapsed.

5. If the High Justice Inspector does not comply with the time limits set out in paragraph 1 to 4 of this Article, the magistrate shall be entitled to appeal the administrative omission to the relevant Council.

Article 119

Complaints

1. The High Justice Inspector shall process complaints filed by any natural or legal person.
2. Subjects that must submit complaints to the High Justice Inspector, if they have reliable information that the magistrate might have committed a disciplinary misconduct, are the following:
 - a) Minister of Justice;
 - b) A single member of the Council;
 - c) The chairperson of the respective court or prosecution office.
3. The High Justice Inspector has the obligation to verify complaints, except anonymous ones. Complainants may request to keep their identity confidential.
4. The High Justice Inspector shall confirm the receipt of the complaint within five days upon receipt of such complaint. The High Justice Inspector shall notify the complainant within five days after taking the decision on the archiving the complaint, opening of investigation, widening or changing the scope of investigation or on closing the investigation. The complainant shall be entitled to appeal decisions on archiving and closing an investigation.
5. A complaint shall be submitted in person, by regular mail, electronic mail or fax.
6. Withdrawal of the complaint by the complainant is not a reason for archiving the complaint, if the High Justice Inspector establishes that the allegation provides sufficient grounds to carry out an ex officio investigation and does not lead to the closure of an already initiated investigation.
7. The complaint may enclose evidence and sources of information for the alleged facts and circumstances.
8. The High Justice Inspector shall publish a complaint template on the official website in order to facilitate the submission of complaints.

Article 120

Criteria for Admissibility of Complaints

1. Complaints shall be admissible, if the following criteria are fulfilled:
 - a) Is submitted in the form of a complaint as set out in paragraph 2 of this Article.
 - b) Refers to facts occurred within the applicable statute of limitation for disciplinary investigation.
 - c) Does not contain abusive elements, is not obviously ungrounded, or repeated complaints from the same complainant.

- ç) Relates to a conduct of magistrates serving in office at the time where the alleged misconduct occurred.
 - d) Relates to a conduct of magistrate qualified as a disciplinary misconduct by the applicable law at the time the alleged misconduct occurred.
 - dh) Relates to a conduct of the magistrate, which, if proved to have occurred, would constitute a disciplinary misconduct provided in the law.
2. The complaint shall be submitted in written form and must contain the following information:
- a) The personal data and the address of the complainant and whether the complainant is requesting keeping the identity confidential;
 - b) Presentation of facts and circumstances having allegedly occurred;
 - c) Name and surname of the magistrate, the court or prosecution office, in which the magistrate served at the time when the alleged misconduct occurred.

Article 121

Initial Review and Assessment of the Complaint

1. The High Justice Inspector shall initially review the complaint whether the complaint is admissible or not.
2. After the initial review of the complaint, the High Justice Inspector shall decide to:
 - a) Archive the complaint, as not meeting one or more of the criteria as set out by Article 120, paragraph 1 of this Law;
 - b) Verify the complaint;
 - c) Open an investigation.
3. In case of a decision on archiving the complaint, the decision on archiving shall be notified to the complainant and the magistrate within the period provided in paragraph 4 of Article 119 of this Law. The complainant shall be entitled to make an appeal against this decision to the Council within a week upon receipt of the reasoned decision.

Article 122

Verification of the Complaint

1. In case no clear information exists for the complaint, the High Justice Inspector carries out a verification whether there are sufficient facts to justify the opening of the investigation.
2. The High Justice Inspector may request the complainant to provide additional documents or explanation, on the way and circumstances under which the alleged misconduct has occurred.
3. The High Justice Inspector may gather any further information from the Councils or the respective court or prosecution office.
4. In case there are not sufficient facts to justify the opening of the investigation, the complaint shall be archived.

5. The reasoned decision on the archiving of the complaint shall be notified to the complainant and the magistrate against whom the complaint has been filed. The complainant shall be entitled to appeal against this decision to the Council, within one week upon receipt of the reasoned decision.

Article 123

Decision to Open the Investigation based on a Complaint

1. The High Justice Inspector shall open the investigation if there are reasonable doubts that the misconduct might have occurred based on the facts and evidence collected which justify the opening of the investigation.
2. The High Justice Inspector shall issue a decision on the opening of investigations, regardless a pending judicial or administrative proceeding relating to the same facts.
3. The reasoned decision to open the investigation shall be notified to the complainant, the magistrate and the Council. The decision shall state at least:
 - a) Names of inspectors tasked with the investigation,
 - b) Scope of the investigation by referring to the alleged misconduct,
 - c) Presentation of alleged facts and circumstances,
 - ç) Collected evidence,
 - d) Relevant time periods for the investigation; and
 - dh) Presentation of the magistrate's rights during the disciplinary investigation, as well as the right of the magistrate and the complainant to submit statements and supporting documents within three weeks upon the receipt of the decision.
4. Where a misconduct consists of a behaviour or repetitive acts, the scope of the investigation in the sense of paragraph 3 letter b) of this Article shall encompass the magistrate's conduct in other cases in regard to the same issue within a limited time as determined in the decision to open the investigation, in order to verify whether such behaviour or repetition have been found out.

Article 124

Opening of the ex officio Investigation by the High Justice Inspector

1. The High Justice Inspector shall open an ex officio investigation, based on substantial information on facts resulting from reliable sources which lead to the reasonable suspicion that a misconduct may have occurred. The information received from media or anonymous complaints may be as indicative elements for opening an ex officio investigation if it complies with the criteria listed in Article 120 paragraph 1, letter b), ç), d) and dh).
2. The High Justice Inspector shall decide to open an ex officio investigation by a reasoned decision indicating the verifiable circumstances and facts.
3. The rules provided for in paragraph 2 and 4 of Article 123 of this Law shall apply also in cases where the investigation is opened ex officio by the High Justice Inspector.

Article 124/1

Mandatory control of assets and background

1. The High Justice Inspector within one week of the decision to initiate an investigation, according to Articles 123 and 124 of this Law, requires reporting by the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interest, the Prosecution Office, the State Police, tax and customs administration bodies, National Bureau of Investigation, State Intelligence Services, any disciplinary body that has supervised the discipline in the employment relationship of the magistrate and any other institution responsible for verifying assets and background in relation with any other disciplinary offense.
2. The High Justice Inspector may request additional information from the institutions referred to in paragraph 1 of this Article, and from any other public institution or private entity.
3. Any public institution or private entity shall meet the requirements of the High Justice Inspector for information, documentation, or other materials related to an investigation, within the reasonable legal time limit set by the High Justice Inspector in his request, except in cases limited by law.
4. If the High Justice Inspector finds that there are reasonable doubts on the commission of any other disciplinary offense, as a result of the mandatory control of assets and background, he decides to add or change the scope of investigation as provided in Article 125 of this Law.”

Article 125

Widening or changing the scope of investigation

1. If in the course of the investigation a reasonable doubt arises that another misconduct may have occurred, the High Justice Inspector shall issue a decision to widen or change the scope of investigation in compliance with Article 124 of this Law.
2. The rules provided for in paragraph 2 and 4 of Article 123 of this Law shall apply to the extent possible.

Article 126

Suspension of Investigations

(Amended by Law no. 48/2019 Article 20)

1. The High Justice Inspector shall decide on suspending the disciplinary investigation if a criminal investigation or criminal, administrative or civil judicial proceedings is pending.
 - a) In which, one of the parties is the magistrate;
 - b) The alleged misconduct relates to the same facts which shall be established by the decision.
2. The investigation will be suspended until the competent body issues the final decision.
3. The complainant, the magistrate, the court, the prosecution office and the Council shall be notified in writing on the decision of suspension. The concerned court, prosecution office or other

bodies shall submit the High Justice Inspector, without delay, any decision taken during the investigation and the respective proceeding.

4. The High Justice Inspector shall refer only to the facts established by the final decision of the court. A final decision of the court in favour of the magistrate does not impede the investigation by the High Justice Inspector in order to determine the disciplinary liability of the magistrate.

5. The suspension of the investigation interrupts the ~~time limit of the proceeding~~ statute of limitations for the High Justice Inspector which is set out in Article 117 of this Law.

6. The decision on the suspension of investigation shall not be appealable.

Article 127

Requesting the Suspension of the Magistrate

At any stage of investigation procedure, the High Justice Inspector shall inform the Council on facts establishing the mandatory suspension of the magistrate in accordance with the provisions of Article 151 of this Law or may request the suspension of the magistrates due to the reasons provided for in Article 152 of this Law.

Article 128

Consolidating Investigation Proceedings

The High Justice Inspector shall consolidate proceedings in cases where he/she finds out that complaints or opened investigation proceedings refer to the same facts or the same magistrate.

Article 129

Rights and Obligations of the Magistrate during the Investigation

1. The magistrate shall be a party in the proceedings upon the opening of the investigation in accordance with Article 123 or 124 of this Law and shall be provided access to the file to the extent that is consistent with this scope of the investigation.

2. The High Justice Inspector may request the magistrate to submit information, documents or any evidence necessary for the investigation.

3. The High Justice Inspector shall notify the concerned magistrate or his/her representative within five days after taking the decision on archiving the complaint, on opening of investigation, on the widening or changing of the scope of investigation and or on closing the investigation.

Article 130

Course of the Investigation

1. The scope of the investigation shall clearly determine the elements of the alleged misconduct in accordance with the decision on opening the investigation under provisions of Article 123 of this Law.

2. The High Justice Inspector shall summon witnesses and collect data, documents and evidence from the court, prosecution office, ~~other state bodies, organizations, public institution or private entity~~, witnesses and/or the magistrate and shall undertake other actions as necessary to investigate and determine whether the alleged misconduct has occurred.

3. Where the alleged misconduct relates to a matter pending at a court or prosecution office, the investigation must be such as not to affect the independence of the magistrate in the adjudication and investigation of this matter, and not be perceived as interference. In such a case, the High Justice Inspector shall:

- a) Suspend the investigation in accordance with the cases provided for in Article 126 of this Law;
- b) Proceed with the investigation if the alleged misconduct refers to facts which are not subject to facts that shall be established by the criminal investigation or criminal, administrative or civil proceeding.

Article 131

Requirements relating to conducting interviews

1. In case where the High Justice Inspector deems that interviewing the magistrate, witnesses or other persons is necessary for the investigation, he/she shall notify them on the time and location of the interview.

2. The High Justice Inspector has a duty to ensure that the interview hearing is audio-recorded in accordance with the following procedure:

- a) The person interviewed shall be informed, that the interview is to be audio-recorded;
- b) The recording must include the personal data of the persons who shall be interviewed;
- c) In the event of an interruption in the course of the interview, the fact and the time of the interruption shall be recorded before the audio-recording ends as well as the time of resumption of the interview;
- ç) At the conclusion of the hearing, the interviewed person may clarify anything he/she has said and add anything he/she may wish. At the request of the interviewed person, the recording shall be played back and corrections and explanations relating to previous statements of that person shall be recorded. The time of completion of the interview shall be recorded at the end of the interview process.

3. The audio-recording of the interview process shall be summarized in the minutes and may be transcribed. The magistrate shall sign the minutes of the interview process and the transcript of the audio-recording, if it has been made possible.

4. The audio-recording, its transcript, if available, as well as the minutes of the interview process shall be part of the file.

Article 132

Requirements relating to Collection of Evidence from other Institutions

1. Any public body, natural or legal persons shall comply with requests of the High Justice Inspector to obtain information, documents, or other evidence relating to an investigation within reasonable time limits set out by the inspector in his request, except making them available is restricted by law.
2. If there is a substantial and specific need, during the disciplinary investigation of the magistrate, to obtain documents, information, phone records or other evidence, protected by a safeguard of confidentiality or personal data protection, the High Justice Inspector may request the special court for the adjudication of criminal offences of corruption and organised crime, to issue an order to disclose the requested information on the magistrate.
3. The request shall contain the existence of reasonable grounds to believe that the magistrate had committed the misconduct and that the requested information is essential for determining whether the misconduct occurred.
4. The High Justice Inspector shall repeat the request, if the person or the entity to whom the request is addressed, fail to comply with it within the set time limit by informing, in case of a legal entity, the head of the entity, too. In cases where the person or the entity to whom the request is addressed fails to fulfil the repeated request within the set time limit, the High Justice Inspector may impose a fine up to ALL 100,000 and notify the responsible disciplinary body.
5. The order for imposing a fine constitutes an executive title. The bailiff's office shall be tasked to execute the respective order.
6. An appeal may be filed against the decision with the respective Council within 24 hours upon being notified.

Article 133

Documentation of the Investigation

1. The High Justice Inspector shall document each investigation action in the minutes.
2. The minutes shall contain:
 - a) Name and surname of the inspector carrying out the action;
 - b) Date of performance of any action;
 - c) The subject and scope of any action;
 - ç) Participants;
 - d) Detailed description of any action undertaken;
 - dh) The inspector's signature at the bottom of each page and that of the persons participating in the actions.
3. Upon conclusion of the investigation, the High Justice Inspector shall establish an investigation report, which shall contain at least:
 - a) Name and surname of the competent inspector;
 - b) Grounds for opening the investigation, the subject and the scope of the investigation as determined by the decision on opening, changing or widening the scope of the investigation;

- c) Actions undertaken in the course of investigation;
- ç) A summary of the statements of the concerned magistrate and other persons or institutions;
- d) Presentation of the contested and uncontested facts and of the evidence, as well as the evaluation of their veracity and the probative strength;
- dh) The legal analysis of the established facts, supporting the conclusion that the alleged disciplinary misconduct has occurred or the investigation must be closed;
- e) The proposal for closing the investigation or initiating the disciplinary proceedings and the proposal for determining the disciplinary measure.

Article 134

Closure of the Investigation

1. The High Justice Inspector shall close the investigation if it is established that the allegations are unfounded or the collected evidence and the overall result of the investigation lead to the conclusion that:

- a) The evidence is insufficient to prove that the disciplinary misconduct has occurred;
- b) The case has already been subject to a previous investigation that has been closed or adjudicated by a final decision in a disciplinary proceeding;
- c) The case has been barred already at the time of opening the investigation, due to the lapse of limited period;
- ç) The magistrate's appointment was terminated based on the criteria set out in letters "b" to "ç", paragraph 1, Article 64 of this Law or he/she does not assume his/her function on permanent basis, under the provisions of Article 67 of this Law;
- d) The magistrate has died.

2. The High Justice Inspector shall notify the decision to the concerned magistrate or his/her representative, to the complainant and the Council. The decision shall state the reasons for closing the investigation as set out in paragraph 1 of this Article. The decision shall state the rights of the complainant to appeal this decision to the respective Council. The complainant has the right to appeal the decision to the Council within one week upon receipt of the reasoned decision.

3. In cases where the magistrate has retired, the High Justice Inspector shall issue a final report consisting of a summary of allegations on the disciplinary misconduct, the evidence collected and the conclusions. The report shall close the investigation procedure and shall be notified to the parties and the respective Council.

4. Facts revealed during the investigation, which do not justify the initiation of a disciplinary proceeding but may be relevant for the ethical and professional performance evaluation, must be submitted to the Council for further consideration.

Article 135

Joint Consent Agreement

1. The High Justice Inspector and a magistrate may at any time agree upon a Joint Consent Agreement related to the disciplinary misconduct attributed to the magistrate.
2. The parties may agree as to which disciplinary misconduct the magistrate will admit, and on an appropriate disciplinary measure.
3. The parties shall establish in writing and sign the Agreement which shall be submitted to the respective Council.
4. The Agreement shall contain:
 - a) A summary of the facts and the misconduct admitted by the magistrate;
 - b) The disciplinary measure the parties have agreed on;
 - c) A statement that the magistrate is aware that the Agreement is subject to the approval of the Council.
5. The respective Council shall accept the Agreement by a reasoned decision if:
 - a) The agreement is signed by all parties and contains the elements provided for in paragraph 4 of this Article;
 - b) If it turns out that the magistrate has understood the agreement and its content and if he/she has given the consent in writing by his/her own free will;
 - c) The major and supplementary disciplinary measures on which the High Justice Inspector and the magistrate have agreed on are in compliance with this Law.
6. The respective Council shall reject the agreement by a reasoned decision if:
 - a) The agreement is not signed by all parties or does not contain the elements provided for in paragraph 4 of this article;
 - b) The duly summoned magistrate does not attend the hearing and fails to justify his absence;
 - c) The evidence collected obviously contradict the magistrate's confession of having committed the disciplinary misconduct;
 - ç) The main and supplementary disciplinary measures on which the High Justice Inspector and the magistrate have agreed on are not in compliance with this Law;
 - d) The magistrate has been coerced to admit the Agreement; or
 - dh) The magistrate withdraws the consent for the Agreement.
7. If the Council accepts the Agreement, it shall be considered as final decision in the disciplinary proceeding, which is not subject to an appeal.
8. If the Council rejects the Agreement, any statement made by the parties concerning the disciplinary misconduct in the framework of drafting the Agreement and before the Council in the hearing to admit or reject the Agreement, cannot be used in favour and against any of the parties.

9. In case the Agreement is rejected, the High Justice Inspector may initiate or continue with the disciplinary investigations against the magistrate, within one month of the date of rejection of such Agreement.

10. In case the High Justice Inspector fails to comply with the deadlines set out in paragraph 9, of this Article, the magistrate shall be entitled to appeal the administrative omission of the Inspector to the relevant Council.

Article 136

Submission of the Case to the High Justice Inspector

1. If in the course of the disciplinary proceeding, the High Justice Inspector realises that there are reasonable doubts that another misconduct has occurred, he/she shall:

- a) Request to interrupt the disciplinary proceeding, decide on widening or changing the scope of investigation, carry out the needed investigation and submits a further investigation report within one month upon the interruption of the proceeding; or
- b) Request the Council to widen or change the scope of investigation, after having received the opinion of the parties, if no further investigation is needed.

2. The Council may submit the case to the High Justice Inspector in the cases provided for in Article 144 of this Law.

Article 137

Case Management System

1. The High Justice Inspector shall establish and administer a case management system on investigation proceedings.

2. The system should contain at least the following information:

- a) Names and surnames, addresses of the magistrates under investigation;
- b) Names and addresses of the complainant, if applicable;
- c) Scope of investigation;
- ç) Relevant data on the course of investigation;
- d) Information on the archiving of complaints, closure of investigation or initiation of disciplinary proceedings;
- dh) Information on the final decision, on the disciplinary measures;
- e) Other information, as appropriate.

3. The High Justice Inspector shall draft detailed provisions on:

- a) The form and the data administered in the register;
- b) Additional information to be included in the system;
- c) The manner of system maintenance;

- ç) The information of the system open for access to the public and the information accessed only by the magistrate being under investigation;
4. The High Justice Inspector shall collect and process the data in accordance with the Law on Personal Data Protection.

CHAPTER III INITIATION OF DISCIPLINARY PROCEEDINGS

Article 138

Initiation of the Disciplinary Procedure

~~1. Where there are reasonable grounds to believe that a magistrate has committed a misconduct, High Justice Inspector shall initiate the disciplinary proceeding by submitting the investigation report together with the investigation file.~~

1. Independent of the provisions of Article 152 of this Law, if there is reasonable doubt that the magistrate has committed a disciplinary misconduct, the High Justice Inspector shall initiate the disciplinary proceeding by submitting the investigation report together with the investigative file

2. The Council:

- a) Shall determine a date for a hearing, which must be not later than one month after the date of receipt of the file from the High Justice Inspector,
- b) Give all parties at least 15 days' notice of the hearing.

3. The Council may extend the period in paragraph 2 letter a) of this Article up to 2 months, due to important reasons, which it must make public.

4. The Council must:

- a) Consider all factors relevant to the case,
- b) Obtain additional evidence, including summoning witnesses,
- c) Where it considers it appropriate, engage experts or request the High Justice Inspector to engage experts.

5. The Council may request the High Justice Inspector to carry out further investigation by specifying the missing elements and the time limit. The High Justice Inspector shall carry out the investigations as requested by the Council.

Article 139

Closure of a Disciplinary Proceeding without Hearing

1. The Council shall decide to close the disciplinary proceeding without a hearing if:

- a) The disciplinary misconduct has already lapsed at the time of initiating the investigation, as provided for in Article 117 of this Law;

- b) The case was already subject of a disciplinary proceeding finalized by a final decision;
 - c) There are grounds for closing the investigation in accordance with Article 134 paragraph 1 letter ç) and d);
 - ç) The investigation report was submitted without any reasoning.
2. The resignation of the magistrate does not prevent the initiation or continuation of the disciplinary proceeding.
 3. The Council shall close the disciplinary proceeding under paragraph 1 of this Article by a reasoned and written decision. It shall notify the parties on the reasons of the closure.

Article 140

Consolidating Disciplinary Proceedings

1. Whenever the Council ascertains that disciplinary proceedings refer to the same facts or the same magistrate the proceedings may be joined.
2. In case where a judge and a prosecutor are involved in the same misconduct, the Councils shall decide joining proceedings. The Councils shall establish joint rules for joining proceedings.

Article 141

Rights and Obligations of Parties during the Disciplinary Proceeding

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 21)

1. During the disciplinary proceeding, the magistrate or his representative has the right to know the documents of the file and to obtain copies thereof. Within five days of the submission of the request, the Council shall provide the magistrate with the conditions for obtaining access to the file, and make available copies of the documents.

1/1. The right of access to the file may be restricted only if it is indispensable, proportionate and when the disclosure of information causes an irreparable and serious damage to the following interests:

- a) fundamental rights of another person, or
- b) national security, as defined by the legislation on classified information, or
- c) prevention, investigation and prosecution of criminal offences;
- ç) equality of parties in a judicial process and progress of the judicial process

The right of access shall be limited as long as the above causes exist. In any case, the magistrate or his representative has access to the file before the Council takes the decision.

2. A magistrate who is informed that a disciplinary proceeding has been instituted against him, he/she must at the same time be informed of the rights:

- a) To submit a written defence within a specified time;
- b) To attend the hearing;
- c) To call witnesses who may provide information of significance to the case;
- ç) To present documents;

- d) To take other measures for the purpose of providing evidence in support of his or her defence;
 - dh) To be represented under the provisions of the Code of Administrative Procedures,
 - e) Recover his/her legal costs reasonably incurred in cases where no disciplinary measure is imposed.
3. The Council may request the magistrate to submit information, documents or any evidence and to attend hearings.
4. The parties have the right to be notified on any decision of the Council within 5 days upon being made.

Article 142

Disciplinary Hearing

1. The disciplinary proceedings hearings shall be held in public.
2. The Council may decide, at the request of the parties or ex officio, to exclude the public from the hearing:
 - a) When the publicity of the hearing may damage the social morals or may divulge data which are to be kept secret for the interest of the state, if this is requested by the competent authority;
 - b) As appropriate, to protect the right to privacy or to protect personal data of the magistrate or any other person,
 - c) if the public demonstrates behaviour impairing the normal conduct of the hearing.
3. At a hearing before a Council:
 - a) The High Justice Inspector shall present arguments that the disciplinary misconduct has occurred and shall propose the disciplinary measures that should be imposed;
 - b) The magistrate or the magistrate's representatives present the defence.
4. The content of written statements shall not be repeated during the hearing.

Article 143

Adjournment of Hearings

The Council may adjourn the hearing for a period not exceeding one month if it considers additional evidence necessary.

Article 144

Changing or Widening the Scope of the Disciplinary Proceeding

1. If the Council deems that the case cannot be fairly or conveniently settled without also considering one or more other allegations of misconduct against the same magistrate, the Council shall be entitled to:

- a) Order the High Justice Inspector to change or widen the scope of disciplinary investigation in accordance with this Law and to investigate into these further allegations within at least one month,
 - b) Decide on the changed or added allegations, if no further investigation is needed, after having heard the parties of the proceeding.
2. The High Justice Inspector proceeds as set out in paragraph 1 of Article 136 of this Law.

Article 145

Suspension of the Disciplinary Proceeding

Legal provisions during the disciplinary proceedings of Article 126 of this Law shall apply to the extent possible.

Article 146

Determinations by Council in disciplinary matters

1. The Council shall make any decisions, about:
 - a) Engaging the experts and the determination of their tasks;
 - b) Adjournment of hearings;
 - c) The admissibility of evidence;
 - ç) The settlement of the case;
 - d) Any other matters that appear to the Council to be necessary or appropriate for handling the case.
2. After having considered all facts and evidence the Council shall either:
 - a) Reject the request for disciplinary proceeding, on the grounds that the facts alleged did not occur or that they do not constitute a disciplinary misconduct;
 - b) Uphold the allegations and impose one or more disciplinary measures.
3. The Council shall not be bound to the disciplinary measures proposed by the High Justice Inspector and deliver the reasoned and written decision at least within two weeks upon closure of the hearing.

Article 147

Right to Appeal Disciplinary Decisions

1. The magistrate shall have the right to appeal a decision imposing a disciplinary measure before the competent court.
2. The High Justice Inspector shall have the right to appeal any decision of the Council in disciplinary matters before the competent court.

CHAPTER IV
EXECUTION AND REGISTRATION OF DISCIPLINARY MEASURES

Article 148

Execution of the Final Decision

1. The Councils shall take any measure needed for the execution of the disciplinary measure and shall be responsible for monitoring the implementation of all measures imposed in disciplinary proceedings.
2. The Councils shall ensure that the disciplinary measures are implemented:
 - a) Within one month in the case of private warning, public reprimand or temporary reduction of salary;
 - b) Within two weeks in the case of a demotion;
 - c) Within one week in the case of suspension or dismissal.

Article 149

Publication of the Disciplinary Decisions

1. The Councils shall publish within two weeks the final decisions on the dismissal of magistrates on the official website.
2. The Council shall publish extracts of any other final decision in disciplinary matters, which reflect the circumstances of facts, the administered evidence, their proving value and the type of disciplinary misconduct committed referring to these facts. The publication of the extract shall protect personal data and ensure protection of confidentiality. In any case the extract shall not contain any information which could disclose the identity of the magistrate.

Article 150

Disciplinary Register

1. The Councils shall keep a register of disciplinary proceedings initiated against magistrates and the final decisions taken in these proceedings.
2. The Council shall keep a record of all disciplinary measures in force, which includes all disciplinary measures except for a 'private warning'. The other disciplinary measures shall be expunged and deleted from the record after the lapse of the following time periods from the date of the entry into force of the disciplinary measure:
 - a) Two years for a 'public reprimand' and training as supplementary disciplinary measure;
 - b) Three years for a temporary reduction of salary, where the salary is reduced up to the amount of a monthly salary;
 - c) Four years for temporary reductions of the salary being higher than the amount of the monthly salary and for demotions;
 - ç) Five years for suspension as a disciplinary measure.

3. The disciplinary measure of dismissal shall not be expunged and shall not be deleted from the register.

CHAPTER V SUSPENSION

Article 151

Mandatory Suspension

1. A magistrate shall be suspended from office upon the decision of the Council, if:
 - a) The personal security measure of ‘arrest in prison’ or ‘home arrest’ is imposed in connection with the commission of a criminal offence;
 - b) He or she assumes the capacity of the defendant in cases of serious crimes committed with intention.
2. The suspension under paragraph 1 of this Article shall last:
 - a) During the period of pre-trial detention or home arrest, in case of paragraph 1 letter a) of this Article;
 - b) Until the termination of criminal proceedings or rendering a final judicial decision, in cases of paragraph 1 letter b) of this Article.
3. The chairpersons of the courts and prosecution offices who issue the respective decisions are obligated to notify the Council on facts as referred to in paragraph 1 of this Article. The Councils shall immediately after taking the information from a prosecution office or a court decide, by operation of law, on the suspension of the magistrate.

Article 152

Suspension in case of the disciplinary proceeding

(Amended by Decision no. 34/2017 of the CC and Law no. 48/2019 Article 22)

1. ~~Where the Council is satisfied that the continuation of the charged magistrate in office may be prejudicial to the criminal or disciplinary investigation, or it prevents the fair and regular conclusion of the criminal or disciplinary investigation, or seriously discredits the figure of the magistrate, the Council may suspend a magistrate from duty if:~~
 - a) ~~A criminal investigation is initiated against the magistrate;~~
 - b) ~~He/she is qualified as a defendant, for a crime committed by negligence;~~
 - c) ~~Disciplinary investigations or proceedings for disciplinary misconduct have been initiated.~~
2. ~~Where the Council is satisfied, based on sufficient evidence, in accordance with the provisions of Article 67 of this Law, that the magistrate cannot temporarily hold office due to the mental or physical health reasons, it may suspend the magistrate from office.~~
3. ~~Where the mandatory suspension ends, the Council may decide the suspension of the magistrate in accordance with this law.~~

~~1. Where the Council is satisfied that the continuation in office of the magistrate, for whom a request for initiation of disciplinary proceeding has been filed under Article 138 of this Law, is prejudicial to the outcome of the disciplinary proceeding, obstructs its fair or regular conclusion, or severely discredits the position and figure of the magistrate, the Council may suspend the magistrate from office.~~

~~2. The suspension under this Article shall last until a final decision has been taken by the Council on the request for the disciplinary proceeding, unless the Council decides to revoke the suspension according to Article 156 of this law.~~

1. When there is a reasonable doubt that the continuation of the magistrate in office damages the outcome of the disciplinary proceeding, hinders his fair or regular conclusion, or severely discredits the figure and position of the magistrate, the High Justice Inspector immediately conducts a preliminary investigation to verify credibility of the source of information, according to article 124, of this law, or the complaint submitted by the subjects defined in article 119 of this law. When the High Inspector of Justice establishes the conviction that the source of the information or complaint is credible, within 3 days from the receipt of the complaint or from the moment he became aware of the alleged violation, submits to the relevant Council a reasoned report, based on facts and evidence collected up to that moment for the initiation of a disciplinary proceeding and the request for suspension of the magistrate from duty.

2. The Council, for the cases provided for in paragraph 1, of this Article, or in Article 138 of this law, suspends the magistrate from office, if the continuation of the magistrate in office damages the outcome of the disciplinary proceeding, impedes its just or regular conclusion, or seriously discredits the figure and the position of magistrate. The Council may request information on any alleged breach by any public institution or private entity. In the case of disciplinary proceedings, according to paragraph 1 of this article, the Council decides immediately, but not later than three days from the date of submission of the request, giving the magistrate the opportunity to present his arguments at the meeting of the Council.

3. Suspension, under this Article, shall last until a final decision is taken by the Council on the request for disciplinary action, unless the Council decides to revoke the suspension pursuant to Article 156 of this Law.

4. Notwithstanding the provisions of Article 138, paragraph 5, of this law, the Council, when it deems that there is a need for further investigations into the disciplinary violation, requests the High Justice Inspector to conduct these investigations, without the need to specify the missing elements and deadline. The High Inspector of Justice prioritizes further investigations into these violations and submits the report and investigation file to the Council.

Article 153

Initiation of Suspension Proceedings

(Amended by Law no. 48/2019 Article 23)

Suspension of the magistrate from office in the sense of Article 152, may be imposed by a Council:

- a) On its own initiative;
- b) At the request of the High Justice Inspector;

- ~~e) At the request of a judge or prosecutor having undertaken actions or issued decisions in cases as referred to Article 152, letter a) and b), paragraph 1 of this Law;~~
~~ç) Upon the request of the chairperson of the court or prosecution office related to cases as referred to in Article 152 paragraph 2 of this Law.~~

Article 154

Notifications to the Council

1. The relevant Chairperson shall immediately, upon becoming aware of any of the facts listed in Article 151 and 152 of this Law, inform the Council.
2. The relevant authorities shall immediately notify the Council of:
 - a) The magistrate being in pre-trial detention or in home arrest;
 - b) The initiation of criminal investigations against the magistrate;
 - c) The magistrate obtaining the capacity of the defendant regarding a criminal act;
 - ç) The initiation of disciplinary investigations.

Article 155

Suspension Decision and Appeal

1. A decision on the suspension from duty based on provisions of Articles 151 and 152 of this Law shall be taken by the Councils within three days upon receiving the request or the information.
2. The magistrate shall be entitled to file an appeal against a suspension from duty decision before the competent court.
3. The submission of the appeal shall not suspend the decision of suspension of the magistrate from duty.

Article 156

Limits on Length of Suspension

(Amended by Law no. 48/2019 Article 24)

- 1. A suspension of a magistrate provided for in Article 151 and Article 152 of this Law shall be ordered for a specified period but may not continue where the reasons for the suspension provided for in these Articles cease to exist.**
- 2. The Council ex officio, upon the request of the High Justice Inspector or of the magistrate, may review the suspension, provided for in Articles 151 and Article 152 of this Law and decide accordingly to:**
 - a) change the duration of the suspension;**
 - b) revoke the suspension; or**
 - c) uphold the suspension.**

Article 157

Suspension of Salary and Other Benefits

1. The magistrate shall benefit full salary during the suspension, unless otherwise provided in the following provisions and paragraphs of this Article.
2. Where a magistrate is convicted of a criminal offence by a first instance court or a disciplinary measure is imposed in connection with a misconduct by the competent Council, the Council may suspend the payment of salary up to 50 % and other benefits to the magistrate, pending the determination of any appeal to a higher instance court.
3. If the decision rendered by a higher court is in favour of the magistrate, any sums withheld under paragraph 2 of this Article shall be paid to the magistrate without delay.
4. If the decision rendered by a higher court is in not favour of the magistrate, the sums withheld under paragraph 2 of this Article may be withheld until the criminal or disciplinary case, which was the cause for determining the suspension of the benefit is settled by a final decision.

CHAPTER VI

CRIMINAL AND CIVIL LIABILITY

Article 158

Criminal Responsibility of Magistrates

1. The magistrate shall be criminally prosecuted according to the provisions in the Criminal Code and Code of Criminal Procedure.
2. The prosecution office shall immediately notify the respective Council if it initiates criminal investigations of a magistrate.

Article 159

Limitation of Civil Responsibility

The magistrate has no civil liability for causes connected to the performance of professional duties, except in cases of demonstrating at least gross negligence.

PART VI

FINAL AND TRANSITORY PROVISIONS

CHAPTER I

Article 160

Competent bodies in transition period

1. Until the establishment of the High Judicial Council and the High Justice Inspector, the High Council of Justice and the existing inspectorates shall continue exercising the following competences according to the rules foreseen in this Law:

- a) Appoint the candidate magistrates graduated in 2016 in line with Part III Chapter II of this law, at least 2 months after the entry into force of this Law;
- b) Take decisions to assign to positions the candidate magistrates graduated in 2016 according to the Part III Chapter III of this law within three months from the entry into force of this Law;
- c) Take disciplinary measures upon proposal of the Minister of Justice based on the procedure and criteria foreseen in Part V, Chapter I of this Law;
- ç) Suspend judges according to the procedure and criteria foreseen in this Law;
- d) Monitor the training of judges according to this law and the law “On the governance institutions of the justice system”;
- dh) Conduct the performance evaluation as foreseen in the transitional provision of this law, including assistance in the transitional re-evaluation of judges, based on the law “On transitional re-evaluation of judges and prosecutors in the Republic of Albania”;
- e) Impose disciplinary measures on inspectors, based on the sublegal acts in force;
- ë) Certify the termination of appointment in case of resignation and reaching of the retirement age;
- f) Transfer judges provisionally in order to complete the judicial panels in courts.

2. Until the establishment of the High Prosecutorial Council, the General Prosecutor shall continue exercising the following competences according to the rules foreseen in this Law:

- a) Appoint the candidate magistrates graduated in 2016 in accordance with Part III Chapter II of this law at least two months after the entry into force of this law;
- b) Take decisions to assign to positions the candidate magistrates graduated in 2016 in accordance with Part III, Chapter III of this law within three months from the entry into force of this law;
- c) Suspend prosecutors according to the procedure and criteria foreseen in the law;
- ç) Supervise the training of prosecutors according to this law and the law “On governance institutions of the justice system”;
- d) Conduct the performance evaluation as foreseen in the transitory provisions of this law, including the assistance to the transitional re-evaluation of prosecutors based on the law “On transitional re-evaluation of judges and prosecutors in the Republic of Albania”;
- dh) Certify the end of appointment in case of resignation and reaching the retirement age.

3. The assignment of magistrates to permanent positions, according to the provisions of this Law, shall be done upon establishment of the High Judicial Council and the High Prosecutorial Council.

4. The High Council of Justice and the General Prosecutor may decide to temporary assign magistrates to positions in order to perform the tasks and functioning in the justice institutions.

5. Until the establishment of the High Justice Inspector, the High Council of Justice and the Prosecutor General shall investigate disciplinary misconduct through inspectors of the High Council of Justice and the General Prosecution Office, based on the procedure and criteria of Part V and the transitory provisions of this law.

Article 161

Transitory Provisions for Magistrates at the High Court

(Amended by Decision no. 34/2017 of the CC)

1. The incumbent judges of the High Court shall be considered as magistrates under this Law.
2. The members of the High Court continue to exercise their function according to the previous mandate, unless there are reasons for the termination of the status of the magistrate ~~in compliance with Part III, Chapter VIII of this Law~~, or as a result of the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.
3. ~~The incumbent chairperson shall stay in office as chairman for an extended term of two years after the entry into force of this Law, except for other cases where there are other legal reasons for ending his or her mandate or as a result of the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.~~
4. The judges of the High Court who were elected by the Assembly to the High Court from the ranks of judges shall be considered as promoted judges according to this law. The judges elected by the Assembly from the ranks of jurists shall be considered as non-judge candidates according to this Law. The provision of article 136 paragraph 3 of the Constitution shall be applied to fill in the vacancies concerning the ratio of judge and non-judge members.

Article 162

Transitory Provisions for the Serious Crime Courts

(Amended by Decision no. 34/2017 of the CC)

1. The incumbent judges of the Serious Crimes Court of first instance or Serious Crimes Court of Appeal shall stay in office until the establishment of the special courts for the adjudication of the criminal offences of corruption and organised crime, unless there are reasons for the termination of the status of the magistrate ~~in accordance with Part III Chapter VIII of this Law~~ or as a result of the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.
2. The High Judicial Council shall assign incumbent judges permanently to the special courts for the adjudication of the criminal offences of corruption and organised crime upon their request, if:
 - a) The judge passed successfully the re-evaluation procedure as established by the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”;
 - b) Meets the criteria for promotion according to the definitions of Article 47 of this Law; and

- c) The judge and his or her close family members give the consent to periodic reviews of their financial accounts and personal telecommunications in accordance with the Law “On the Organization and Functioning of Institutions for Combating Corruption and Organized Crime”.
3. Where the re-evaluation process of an incumbent judge of the Serious Crimes Court has started in first instance by the Independent Qualification Committee, two weeks after the establishment of the High Judicial Council, upon a final decision, the High Judicial Council shall assign the judge temporarily to the respective level at the special courts for the adjudication of the criminal offences of corruption and organised crime, under the condition that he/she and the close family members give the consent to periodic reviews of their financial accounts and personal telecommunications in accordance with the Law “On the Organization and Functioning of Institutions for Combating Corruption and Organized Crime.
4. Where against the temporarily assigned judge, by decision of the Independent Qualification Committee, a disciplinary measure is ordered in the sense of the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”, the temporary assignment ends, independent from whether an appeal is lodged or not.
5. The incumbent judges attached to the serious crimes courts shall be transferred to other courts, if they or their close family members do not give the consent for the regular review of their financial accounts and personal telecommunications. The judge shall have the right to choose among three positions that are vacant according to the rules foreseen in Article 60 of this law.
6. The incumbent chairperson of the Serious Crimes Court of the first instance and appeal shall stay in office until the election of the new chairperson of this special court unless there are reasons to terminate the appointment of the magistrate in accordance with Part III, Chapter VIII of this law or as a result of the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania.
7. The High Judicial Council shall promote without delay judges, who have passed successfully the re-evaluation process to vacant positions at the special courts for the adjudication of the criminal offences of corruption and organised crime, aiming at ensuring the minimum number of judges as set out for these courts in the Law “On the Organisation of the Judicial Power in the Republic of Albania”.

Article 163

Transitory Provisions for the Prosecutors of the Serious Crimes Prosecution Office

1. An incumbent prosecutor of the Serious Crimes Prosecution Office of first instance or appeal shall stay in office until the establishment of the Special Prosecution Office unless there are reasons for the termination of appointment of the magistrate in accordance with Part III, Chapter VIII, of this Law or as a result of the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.

2. The High Prosecutorial Council shall assign prosecutors permanently to the Special Prosecution Office to adjudicate criminal offences of corruption and organized crime, in accordance with the provisions of the Law “On Organization and Functioning of Institutions to Fight Corruption and Organized Crime”.

Article 164

Transitory Provisions for Magistrates of other Courts and Prosecution Offices

(Amended by Decision no. 34/2017 of the CC)

1. The incumbent judges and prosecutors shall enjoy the status of the magistrate foreseen in this law unless:

- a) ~~There are reasons to terminate the appointment of the magistrate or their mandate in accordance with Part III, Chapter VIII of this law,~~
- b) They do not pass successfully the process of re-evaluation in compliance with the Law “On Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.

~~2. The chairpersons of courts and prosecutor’s offices shall continue to remain in office for a period of up to 9 months after the establishment of the High Judicial Council and High Prosecutorial Council.~~

Article 165

Transitory Provisions for Non-magistrate Legal Advisors, Legal Assistants and Inspectors

1. The advisor of the judge of the Constitutional Court and the High Court, the legal assistants of the General Prosecution Office and administrative courts as well as inspectors at the High Council of Justice without the status of the judge or prosecutor are subject to the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.

2. The persons listed in paragraph 1 of this Article shall continue transitionally to stay in office in accordance with the legal provisions applicable before the entry into force of this law, unless their employment relationship ends for legal reasons or as a result of the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.

3. Former advisors of the Constitutional Court and of the High Court with at least five years full time professional experience in the area of law, including at least three years of experience as advisor of the judge or legal assistant in these courts, may request to undergo the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.

4. Persons listed in paragraph 1 and 3 of this Article, who reach at least 60% of the scores of the proficiency test at the School of Magistrate as set out in the Law “On the Transitional Re-evaluation of Judges and Prosecutors “ shall have the right to:

- a) Attend a one-year theoretical training program at the School of Magistrates,
- b) Be assigned within 1 month after the end of the training program for one year to a professional internship in different courts or prosecution offices, by applying where appropriate Article 33 of this Law to the possible extent;
- c) Receive during this training period of two years in the sense of letter a) and b) of this paragraph the payment equivalent to the salary of the legal assistant, inspector or advisor of the judge.

5. The legal assistants, inspectors and advisor to the judge in the sense of paragraph 4 of this Article shall take part in the final examination at the end of their first year at the School of Magistrates. They shall be assigned to the professional internship and evaluated during the professional internship in accordance with Article 33 of this Law.

6. At the end of their two years' training, the legal assistants and inspectors and advisors to judges in the sense of paragraph 4 of this Article shall be ranked according to the results in the final examination at the end of their first year, and the ethical and professional performance evaluation during their professional internship. They shall be included in the ranking list and they shall be appointed as magistrates according to the provisions of this law, if they obtain at least 70% of the maximum scores at the final exam at the end of the first year, and have been evaluated at least 'good' in each of the assignments during the professional internship.

7. The School of Magistrates shall adopt rules on the procedure and the conditions for the participation in the final exam, the curricula and the participation in the training courses.

8. Where the legal assistant, inspector and advisor to the judge in the sense of this Article do not pass successfully the re-evaluation process, the employment relationship shall end at the day of the beginning of the training at the School of Magistrates in the sense of Law "On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania". The same rule applies even to those whose re-evaluation is not yet completed, who have successfully passed the testing of professional skills at the School of Magistrates in the sense of the Law "On the Transitional Re-evaluation of Judges and Prosecutors". Where re-evaluation institution issues a decision imposing the measure of dismissal, the training programme attendance shall be interrupted and the subject shall be dismissed from the training programme.

9. Where the incumbent legal assistant, inspector or advisor to the judge passes successfully the re-evaluation process, but is not following the career path of a magistrate he or she shall be entitled to a position as civil servant in the prosecution system or as judicial civil servant in the judicial system that fits best to his current profile and for which he or she fulfils the criteria. The request for assignment to a position shall be submitted respectively to the High Judicial Council or the High Prosecutorial Council within one month after the publishing of the results of the exam at the School of Magistrates. In such a case the employment relationship of the incumbent legal assistant, inspector and advisor to the incumbent judge ends on the date of the submission of the application. This rule shall not apply to legal advisors to the Constitutional Court and the High Court who

continue to remain in office if they pass successfully the re-evaluation process according to the legal provisions.

Article 166

Transitory Provisions for Former Judges and Former Prosecutors

1. Persons, who have graduated at the School of Magistrates and have acted at least three years as magistrates; or persons who have acted at least nine years as magistrate within the last 20 years, including as judge at an international court, High Court and Constitutional Court shall be entitled to participate in the re-evaluation process.
2. Persons listed in paragraph 1 of this Article shall meet the following criteria:
 - a) Have not been dismissed on grounds of disciplinary misconduct or criminal offences;
 - b) Have not held a political position in the public administration or a leadership position in a political party in the last past ten years before the entry into force of this law;
 - c) Have not been a member, collaborator or favoured by the State Security before 1990;
 - ç) Have not been collaborators, informants, or agent of any secret service.
3. Within two years after successful completion of the re-evaluation procedure, the persons listed in paragraph 1 of this Article shall be re-appointed as magistrates. They have the right to be assigned to a position for which they fulfil the requirements as set out in Article 47 of this Law and apply in the promotion procedures to positions of magistrates or to any secondment position or a position reserved to magistrates.
4. The professional experience in the justice institutions, whereto the magistrates may be seconded as set out by this law, shall be considered as professional experience as magistrate.
5. Where the subjects foreseen in paragraph 1 of this Article were not subject to ethical and professional performance evaluation, they shall be subject to a professional assessment in the sense of Article 49 of this Law.
6. A member of the appeal chamber shall be appointed judge at appeal level upon the end of the mandate, unless a disciplinary measure is imposed against him during the performance of the function.

Article 167

Transitory Provisions for Magistrates Seconded to other Institutions

(Amended by Decision no. 34/2017 of the CC)

1. Magistrates being seconded at the date of the entry into force of this law shall be subject to the terms of this law to the possible extent.
2. The magistrate seconded by decision of other institutions, according to the provisions of the previous law, whose secondment term ends before the establishment of the Council, shall be reinstated to the previous position.

3. The secondment term shall end according to the time limits defined in the secondment decision, unless:

- a) The magistrate requests within one month after the establishment of the Councils, to terminate the secondment before the end of the mandate;
- b) There are grounds to terminate the appointment of the magistrate ~~in accordance with Part III Chapter VIII of this Law~~ or as a result of the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania.

4. If the magistrate requests a renewal of the secondment term, the High Judicial Council and the High Prosecutorial Council shall decide according to the provisions of this Law.

5. The seconded magistrate shall be subject to the re-evaluation process in accordance with the law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.

Article 168

Transitory Provisions for Inspectors with the Status of Judges of the High Council of Justice

(Amended by Decision no. 34/2017 of the CC)

1. Incumbent inspectors and the Chief Inspector, who have the status of judges and exercise the functions at the High Council of Justice on the date of the entry into force of this Law shall be considered magistrates and the provisions of this Law shall apply in relation to them. They shall be subject to the process of re-evaluation in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”.

2. The inspector shall continue to perform the function according to the previous mandate, unless there are grounds for the termination of appointment as the magistrate ~~in accordance with Part III, Chapter VII of this Law~~ or as a result of the re-evaluation process in accordance with the Law “On the Transitional Re-evaluation of Judges and Prosecutors in the Republic of Albania”. The incumbent inspector according to this Article, whose mandate ends before the establishment of the Councils has the right to return to the previous position or continue to remain in office even 6 months after the establishment of the Councils. He or she has the right to apply in the procedure for the lateral transfer and promotion in the sense of this law.

3. Incumbent inspectors in the sense of this Article who are assigned mainly for conducting disciplinary investigations shall continue exercising the function of the inspector in the High Council of Justice and they shall be considered seconded to the Office of the High Justice Inspector at the time of the establishment of the High Justice Inspector. The incumbent inspectors who are assigned mainly to carry out the ethical and professional performance evaluation shall be considered seconded to the High Council of Justice and respectively to the High Judicial Council, in order to assist the Council in the function of ethical and professional performance evaluations.

Article 169

Transitory Provisions for the Rights and Obligations of Magistrates

(Amended by Decision no. 34/2017 of the CC)

1. Unless otherwise provided in this Article, the Part on the Rights and Obligations of Magistrates shall be applicable upon entry into force of this Law.
2. The magistrate is obliged, within 3 months after the establishment of the High Judicial Court and High Prosecutorial Court, to take the measures to fulfil the requirements in regard to the incompatibility and limitations of office in accordance with Article 6 and 7 of this Law.
3. A magistrate shall notify any situation of environmental incompatibility within one month from the establishment of the respective Councils.
4. A magistrate shall notify of extra office activity which is subject to a permit in accordance with this law within one week from the entry into force of this law if he continues performing this task and applies for a permit for upcoming extra office activities without delay.
5. Part II Chapter III of this Law on the salary and other benefits shall be applicable only for magistrates who passed successfully the re-evaluation procedure as set out by Law "On the Re-evaluation of Judges and Prosecutors in the Republic of Albania", however in no case earlier than starting from 1 January 2019. Exemption from this rule applies to magistrates in institutions fighting corruption and organised crimes which receive salaries and other benefits according to this law with the permanent assignment to this position. ~~During the re-evaluation procedure with regard to salaries and other benefits, a magistrate who was not yet re-evaluated shall be subject to the legal provisions applicable before the entry into force of this Law.~~
6. ~~A magistrate who has passed the re-evaluation process after 1 January 2019 shall be entitled to receive within 3 months after the final decision on the re-evaluation procedure the difference between the salary and other benefits provided by provisions applicable before the entry into force of this law and the salary and other benefits as set out in this law.~~

Article 170

Transitory Provisions relating to the recruitment phase of candidate magistrates

1. Provisions of Part III Chapter I, of this Law shall be applicable for the recruitment process for the academic year starting not earlier than eight months after the entry into force of this law.
2. The criterion of having passed the state exam shall be applicable only to the candidate magistrates, who apply to be admitted with the School of Magistrates, after the entry into force of the law governing the criteria and procedures of the state exam.

Article 171

Transitory Provision for the Ethical and Professional Evaluation of Magistrates

1. The High Council of Justice shall complete the evaluation of first instance and appeal court judges for the period 2007 – 2009 and 2010-2012 based on the existing rules prior to the entry into effect

of this Law. Upon the completion of the evaluation process regarding these periods, the High Council of Justice shall publish the report in accordance with Article 98 of this Law within three months.

2. Upon establishment of the Independent Qualification Committee and the Appeal College, the Councils shall support these bodies in carrying out the assessment of professional skills in accordance with the Law “On the Re-evaluation of Judges and Prosecutors in the Republic of Albania” by following the instructions and requests of these bodies. The assistance of these bodies shall have precedence.

3. In parallel to the ethical and professional performance evaluation of the period 2007 – 2009 and 2010-2012, the Councils shall evaluate the magistrates for the period defined in the process of transitional re-evaluation of judges and prosecutors in the Republic of Albania.

4. The Council shall select randomly the cases in accordance with the provisions of Article 91 of this law and analyse the documents selected by the subjects to be re-evaluated in the sense of law “On transitional re-evaluation of Judges and Prosecutors in the Republic of Albania”. The Council shall select randomly also 5 files of the subject of re-evaluation in the presence of one Independent Qualification Committee. The Council shall submit to the Independent Qualification Committee all the documents and an analysis report of documents selected by the re-evaluated subject, and 5 files selected randomly based on the requests of Independent Qualification Committee. The Council upon request of the Independent Qualification Committee shall submit further documentation. The Council shall follow the list by the order required by the Independent Qualification Committee.

5. Following the assessment of professional skills accomplished by the Independent Qualification Committee in the frame of the re-evaluation process, the Independent Qualification Committee or the Appeal College, if the right to appeal is exercised, shall send the file with the self-evaluation of the magistrate, any other documents used in the proficiency assessment as well as the final decision of the re-evaluation process back to the Council. In case where the magistrate passes successfully the re-evaluation process, the Councils shall continue to do the ethical and professional performance evaluation of the magistrates by applying the provisions of this Law, to the extent possible, in order to determine the evaluation grades accordingly.

6. The ethical and professional performance evaluation of a chairperson, in the quality of this function, shall be performed independently from the re-evaluation process and shall be carried out in parallel. The High Judicial Council and the High Prosecutorial Council shall, within three months after their establishment, approve the program listing the magistrates being evaluated in the capacity of the chairperson in accordance with this Law. In the preparation of this programme, the reports on the work of the chairpersons reviewed by the High Council of Justice pursuant to Article 30/1 paragraph 4 of the Law no. 8811, dated 17.05.2001 “On the organisation and functioning of the High Council of Justice”, amended, shall be taken into consideration.

7. The evaluation period following the ethical and professional performance evaluation in the frame of the re-evaluation process shall be the period set out in Article 84 of this Law. The Council shall start the procedure for the ethical and professional performance evaluation for the respective

period not later than in the calendar year following the last year which is covered by the previous evaluation period.

8. The statistical data are processed by the courts or prosecution offices where the magistrate under evaluation exercises the duty and are submitted by the chairperson to the Councils until the Councils have direct access to accurate and secured statistical data in the electronic system of the case management in the courts and prosecution offices. The statistical data for the magistrate who is being re-evaluated, shall be send to the respective Council by the chairperson of the court or prosecution office, where the magistrate has served during the period regarding which the re-evaluation shall be accomplished. The Council shall decide by decision the time and procedures to obtain statistical data directly from the system.

9. The indicator of the number of hearings per case shall be part of professional performance and ethical evaluation when statistics are provided electronically. If this is not possible, this indicator shall be identified and evaluated only with regard to the cases selected by lots for evaluation and delay.

10. Until the electronic lottery is available, the lot according to Article 91 of this Law will be filed in the minutes to be signed by all the attendees and incorporated in the evaluation file.

Article 172

Transitory Provisions for Disciplinary Proceedings

1. The Ministry of Justice, the Inspectorate of High Council of Justice and the inspectors at the General Prosecution Office shall complete pending disciplinary investigations within three months from the date of entry into force of this Law under the provisions in force before the entry into force of this Law.

2. Pending disciplinary proceedings in the High Council of Justice or the General Prosecution Office at the moment of entry into force of this law shall be carried out within six months after the entry into force of this law. The competent bodies according to Article 160 of this law shall apply procedural rules foreseen in this law.

3. Disciplinary misconducts, foreseen according to this law that occurred before the entry into force of this Law, and that were already disciplinary misconducts at the time of their commission shall be subject to the provisions of this Law unless otherwise provided in paragraph 1 and 2 of this Article.

4. The bodies competent for disciplinary proceedings shall apply the principle of application of the most favourable law in relation to the magistrate who has committed the disciplinary misconduct.

CHAPTER II

FINAL PROVISIONS

Article 173

Repeals

1. Law no. 8811 dated 17.5.2001 “On the Organisation and Functioning of the High Council of Justice” shall be repealed upon the entry into force of this law, except for the following articles:
 - a) Article 2, letters “b”, “ç”, “d”, “dh”;
 - b) Articles 3, 4, 5, Article 6 paragraph 3, Article 7 paragraph 1, Article 8 paragraph 1 and 2, Articles 9, 10, 11, 12, 13, 17, 18 19, 20, 22, 23, 24, 25, 26 and 27 of law no. 8811, dated 17.5.2001 “On the Organisation and Functioning of the High Council of Justice”
2. Law no. 8811 dated 17.5.2001 “On the Organisation and Functioning of the High Council of Justice” shall be repealed entirely immediately after the establishment of the High Judicial Council and High Prosecutorial Council.
3. Until the application of the new system of salaries and other benefits of magistrates according to the provisions of the Law “On Status of Judges and Prosecutors in the Republic of Albania” which will be applicable from 1 January 2019, the following provisions shall remain in force:
 - a) Provisions foreseen in Articles 26 and 27 on salaries of judges in the Law no. 9877 dated 18.02.2008 “On Organisation of the Judicial Power in the Republic of Albania”, as amended;
 - b) Provisions foreseen in Article 22 of the Law no 8588 dated 15.03.2000 “On Organisation and Functioning of the High Court”;
 - c) Provisions foreseen in Article 9 of Law no. 9110, dated 24.07.2003 “On Organisation and Functioning of Serious Crimes Courts”
 - d) Provisions foreseen in Article 52 of Law no.8737, dated 12.02.20013 “On Organisation and Functioning of the Prosecutor’s Office in the Republic of Albania”.

Article 174

Bylaws

1. The High Judicial Council and the High Prosecutorial Council are in charge of approving detailed rules according to the provisions and time limits of this law:
 - a) Within 3 months after establishment of the Councils all acts relating to extra office activities, the establishment of personal files, temporary assignments of new appointees to secondment positions, magistrates in a mobility scheme, promotions to higher and specialized levels, appointment of non-judges to the High Court, appointment of the General Prosecutor, and temporary assignments to positions;
 - b) Within one year after the establishment of the Councils all other acts.
2. The Council of Ministers shall be in charge of approving bylaws based on Article 17 paragraph 7 and Article 20 paragraph 2 of this Law within three months upon the entry into force of this Law.
3. The High Justice Inspector shall be in charge of approving bylaws within three months from its establishment, in implementing Article 137 paragraph 3 of this law.
4. The School of Magistrates shall be in charge of approving bylaws within three months from the entry into force of this law.

5. Until adoption of the sublegal acts, the provisions of this law shall apply as appropriate.
6. Any sublegal act adopted before the entry into force of this law shall apply to the extent it does not conflict with this law.

Transitory Provision

(Added by Law no. 48/2019 Article 25)

- 1. Until the moment when the Councils approve the sublegal acts on the ethical and professional evaluation of the magistrates and conducting the evaluation according to this law, but not later than the time line set out for the completion of the process of the transitory re-evaluation of magistrates, the appointment of the candidate magistrates graduated in the School of Magistrates, that according to the law is a priority, shall not depend on the completion of the procedures of the lateral transfer and/or promotion of the magistrates.**
- 2. Regarding the announcement of the vacancies for the candidate magistrates graduated in the School of Magistrates, in any case, the Councils shall evaluate the progress of the justice system and, particularly the urgent needs of the courts and prosecution offices regarding their functionality.**
- 3. Regarding the procedures of the lateral transfer and/or promotion of the magistrates who run the candidacy during this transitory period, the Councils shall approve and implement special rules for their professional and ethical evaluation; for the criteria of ranking the magistrates with equal evaluation scores; the criteria for evaluating the professional experience required for the vacancy and the procedure followed in case of equal scores which comply with the objectivity, transparency and efficiency of this process.**

Article 175

Entry into force

This Law enters into force 15 days after it is published in the Official Gazette.

SPEAKER

ILIR META

Approved on 06.10.2016