**ELECTION OF MEMBERS OF THE COUNCIL OF THE JUDICIARY**

**Check in State: ROMANIA**

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| 1. In your country, is the system of election of the members of the Council of the Judiciary (if it exists) by election of the judges themselves? If this is not the case, it is sufficient to indicate the election system and it is not necessary to answer the rest of the questions. | According to Law regarding the Superior Council of Magistracy, the Council consists of 19 members, of whom:   * **9 judges and 5 prosecutors,** **elected in the general assemblies of judges and prosecutors**; they form the two Council’s sections, one for judges and one for prosecutors; * 2 representatives of the civil society, specialists in the field of law, who are recognised for their high professional and moral reputation, elected by the Senate; * the president of the High Court of Cassation and Justice, as a representative of the Judiciary, the Minister of Justice and the General Prosecutor of the Prosecutors’ Office attached to the High Court of Cassation and Justice, who are *de jure* members of the Council.   The Section for judges of the Superior Council of Magistracy consists of:   * 2 judges from the High Court of Cassation and Justice; * 3 judges from the courts of appeal; * 2 judges from the tribunals; * 2 judges from the first instance courts.   The Section for prosecutors of the Superior Council of Magistracy consists of:   * 1 prosecutor from the Prosecutors’ Office attached to the High Court of Cassation and Justice, from the National Anti-corruption Directorate or from the Directorate for the Investigation of Organized Crime and Terrorism; * 1 prosecutor from the prosecutors' offices attached to the courts of appeal; * 2 prosecutors from the prosecutors’ offices attached to the tribunals; * 1 prosecutor from the prosecutors’ offices attached to the first instance courts.   As mentioned before, the judges and prosecutors who are members of the two Council’s sections are elected in the general assemblies of judges and prosecutors. |
| 1. How is the system of election of the members of the judiciary by the judges carried out? With a system of open lists or closed candidacies? | The elections are carried out with a system of open lists.  In accordance with the Law regarding the Superior Council of Magistracy the period for the submission of the applications is established by the Plenum of the Superior Council of Magistracy and published in the Official Gazette of Romania and on the website of the Superior Council of Magistracy.  The applications must be submitted to the Management Board of the High Court of Cassation and Justice, respectively to the Management Board of the Prosecutor's Office attached to the High Court of Cassation and Justice, including for prosecutors within the National Anti-corruption Directorate and within the Directorate for the Investigation of Organized Crime and Terrorism, as well as to the management bodies of the courts of appeal or of the prosecutors’ offices attached, accompanied by the following documents:  a) curriculum vitae;  b) a project regarding the main objectives that will be pursued by judges or prosecutors if they are elected to the Superior Council of Magistracy, as well as, if applicable, the documents supporting the candidacy;  c) for individuals who, on January the 1st, 1990, had reached the age of 16, an affidavit stating that they were not part of the intelligence services before 1990 and did not collaborate with them either;  d) a statement on own responsibility that they are not and have not been operative employees, including undercover employees, informers or collaborators of the intelligence services;  e) a statement on own responsibility that they do not have a personal interest that influences or could influence the fulfilment with objectivity and impartiality the duties provided by law.  The members of the Superior Council of Magistracy are elected from among the judges and prosecutors appointed by the President of Romania, with seniority of at least 7 years in office as judge or prosecutor and who have not been subject to disciplinary sanctions in the last 3 years, except for the situation in which the cancellation of the sanction intervened.  The Management Boards of the High Court of Cassation and Justice, the Prosecutors’ Office attached to the High Court of Cassation and Justice, the courts of appeal and the prosecutors’ offices attached to them verify the fulfilment of the above conditions by the judges and prosecutors who have submitted their applications, within 5 days from the expiration of the term for the submission of the applications/candidacies.  The decision of the Management Board is published immediately on the website of the respective court or prosecutors’ office.  The decisions of the Leading Boards may be objected, within 5 days of their publication, by the candidates or by the judges or prosecutors within the courts of prosecutor’s offices for which the application was submitted.  The objection is submitted to the Superior Council of Magistracy and it has to be settled within 7 days from its registration, by decision of the corresponding section of the Superior Council of Magistracy.  The decision of the corresponding section of the Superior Council of Magistracy can be challenged at the First Civil Section of the High Court of Cassation and Justice. The appeal is settled within 7 days after the registration, by summoning the parties. The statement of defence is not mandatory. The court decision is final.  The Leading Board of each court of appeal and of each prosecutors’ office attached to these courts centralize the applications submitted by the judges and the prosecutors in their jurisdictions.  The applications are centralized by categories of courts of appeal and prosecutors’ offices and sent to the courts and prosecutors’ offices in the jurisdiction of the court of appeal.    The Leading Boards of the courts of appeal, of the tribunals and of the first instance courts organize their own General Assembly.  The Leading Boards of the prosecutors’ offices attached to the courts of appeal, of the prosecutors’ offices attached to the tribunals and of the prosecutors’ offices attached to the first instance courts organize their own General Assembly. |
| 1. Do the votes take place in person or telematically? | The right to vote must be exercised secretly, directly and personally. The law does not regulate any exceptional situation. Therefore, the law does not provide for the possibility of exercising the right to vote in another way.  This was the conclusion expressed by the Standing Electoral Committee within the Superior Council of Magistracy on the occasion of the elections held in 2022. |
| 1. Are the voting criteria purely democratic, with each judge electing all possible candidates, or are the possible candidates to be elected by each judge limited (for example, according to professional categories, or to guarantee the election of associations or groups of judges with minority representation...)? | **Judges** from **each court of appeal**, judges from **all the tribunals and specialized tribunals within the jurisdiction of each court of appeal** and judges from **each first instance court within the jurisdiction of each court of appeal** **appoint** by secret, direct and personal vote, **one candidate** for the position of member of the Superior Council of Magistracy from among the judges who have submitted their applications/candidacies.  Prosecutors from each prosecutors’ office attached to the courts of appeal, prosecutors from each of the prosecutors’ offices attached to the tribunals and specialized tribunals within the jurisdiction of each court of appeal and prosecutors from each prosecutors’ offices attached to the first instance court within the jurisdiction of each court of appeal appoint, by secret, direct and personal vote, one candidate for the position of member of the Superior Council of Magistracy from among the prosecutors who have submitted their applications.  The judges and prosecutors who have obtained the highest number of votes in the general assemblies are **appointed to run** for the position of member of the Superior Council of Magistracy.  The lists of judges and prosecutors who are appointed to run are sent by the Superior Council of Magistracy to the courts or, as applicable, to the prosecutors’ offices, at least 20 days before the date set for the general assemblies, as follows:   * the list of the candidates from the courts of appeal is sent to all the courts of appeal; * the list of candidates from the prosecutors’ offices attached to the courts of appeal is sent to all the prosecutors’ offices attached to the courts of appeal; * the list of candidates from the tribunals and specialized tribunals is sent to all the tribunals and specialized tribunals; * the list of the candidates from the prosecutors’ offices attached to the tribunals and specialized tribunals is sent to all the prosecutors’ offices attached to the tribunals and specialized tribunals; * the list of the candidates from the first instance courts is sent to all the tribunals; * the list of the candidates from the prosecutors’ offices attached to the first instance courts is sent to all the prosecutors’ offices attached to the first instance courts.   In order to elect the members of the Superior Council of Magistracy, within each court and within each prosecutors’ office the General Assembly of judges or of prosecutors is called to take place.  **Judges of the courts of appeal** and prosecutors of the prosecutors’ offices attached to them elect in their general assemblies, by secret, direct and personal vote, **3 judges** from the courts of appeal and one prosecutor from the prosecutors’ offices attached to as members of the Superior Council of Magistracy.  **Judges from the tribunals and specialized tribunals** and prosecutors from the prosecutors’ offices attached to, elect in their general assemblies, by secret, direct and personal vote, **2 judges** from the tribunals and specialized tribunals and 2 prosecutors from the prosecutors’ offices attached to, as members of the Superior Council of Magistracy.  **Judges from the first instance courts** and prosecutors from the prosecutors’ offices attached to them elect, in their general assemblies, by secret, direct and personal vote, **2 judges** from the first instance courts and one prosecutor from the prosecutors’ offices attached to, as members of the Superior Council of Magistracy.  **If fewer persons than those referred to above have been voted for, the vote is null.**  The Superior Council of Magistracy draws up the final list comprising the elected magistrates sends it to the Standing Bureau of the Senate.  Before sending the list to the Standing Bureau of the Senate:   * The National Council for the Study of the Securitate Archives verifies and communicates within 15 days from the request of the Superior Council of Magistracy, whether the elected judges and prosecutors have been part of the intelligence services before 1990 or have collaborated with them; * The Supreme Council of National Defence verifies and communicates to the Superior Council of Magistracy within 15 days from the request of the Superior Council of Magistracy, the outcome of the verifications on the status of undercover officer, collaborator or informant of the intelligence services of the elected judges and prosecutors.   The Standing Bureau of the Senate forwards the list to the Committee on Legal Affairs,Appointments, Discipline, Immunities and Validations, in order to draw up a report.  The Senate, in the presence of the majority of its members, based on the report of the Committee on Legal Affairs, Appointments, Discipline, Immunities and Validations, validates the list comprising the elected magistrates as members of the Superior Council of Magistracy.  In order to elect the 2 representatives of the civil society in the Superior Council of Magistracy, the professional organizations of lawyers, the professional councils of the Accredited Law Faculties, the associations and the foundations which have as objective the protection of human rights may each propose one candidate to the Standing Bureau of the Senate.  Representatives of the civil society who fulfil the following conditions may be elected as members of the Superior Council of Magistracy:   * to be specialists in the field of law, with at least 10 years of experience in a legal profession or in higher legal education; * to have a recognized high professional and moral reputation; * not to have been part of the intelligence services before or after 1990, not to have collaborated with these structures in any manner and not have a personal interest that influences or could influence the fulfilment with objectivity and impartiality the duties provided by law. They shall submit a legalised statement that they have not been operational employees and have not collaborated, in any form, with any intelligence service before or after 1990; * not to be members of any political party and not to have held offices of public dignity within the previous 6 years.   The nominations for appointment is submitted to the Standing Bureau of the Senate, between the 90th and the 60th day before the expiry of the term of office of the members of the Superior Council of Magistracy, together with the court decisionor, as applicable, the normative act of establishment, the memorandum of association and the statute of the legal entities referred to above (professional organizations of lawyers, professional councils of the Accredited Law Faculties, associations and the foundations which have as objective the protection of human rights), as well as with their fiscal record.  The time period for the submission of the nominations is published in the Official Gazette of Romania and on the website of the Superior Council of Magistracy, 30 days prior the time frame starts to run.  The proposed candidates submit to the Senate the following documents:  a) curriculum vitae;  b) a project regarding the main objectives that will be pursued by judges or prosecutors if they are elected to the Superior Council of Magistracy, as well as, if applicable, the documents supporting the candidacy;  c) for individuals who, on January the 1st, 1990, had reached the age of 16, an affidavit stating that they were not part of the intelligence services before 1990 and did not collaborate with them either;  d) a statement on own responsibility that they are not and have not been operative employees, including undercover employees, informers or collaborators of the intelligence services;  e) a statement on own responsibility that they do not have a personal interest that influences or could influence the fulfilment with objectivity and impartiality the duties provided by law.  f) the criminal record.  The list of candidates and the documents above are posted on the web pages of the Senate and of the Superior Council of Magistracy, within 5 days from the expiry of their submission period.  The Senate shall elect the 2 representatives of the civil society from among the candidates, according to the procedure provided for in the regulation of this Chamber. |
| 1. If candidates belonging to judicial associations and non-members are competing, is a minimum number of endorsements required for each of them to be able to present a candidacy? If so, how many endorsements are necessary? | No, endorsements are not required.  According to the Law regarding the Superior council of Magistracy, judges and prosecutors may endorse their applications submitted for election as members of the Superior Council of Magistracy before the collective bodies of judges and prosecutors, up to two days before the date of the elections.  The applications of judges and prosecutors may be endorsed by the collective bodies of judges and prosecutors, as well as by their professional associations. |
| 1. Are candidates required to meet any additional requirements, apart from belonging to the judicial career (for example, a certain length of service, previous experience in governmental bodies, etc.) or are all judges eligible to vote and stand for election? | As mentioned previously, the members of the Superior Council of Magistracy are elected from among the judges and prosecutors appointed by the President of Romania, with seniority of at least 7 years in office as judge or prosecutor and who have not been subject to disciplinary sanctions in the last 3 years, except for the situation in which the cancellation of the sanction intervened.  Also, the judges and prosecutors who have been operative employees, including undercover employees, informers or collaborators of the intelligence services as well as the judges and prosecutors who have a personal interest that influences or could influence the fulfilment with objectivity and impartiality the duties provided by law (as members of the Council) cannot be elected members of the Superior Council of Magistracy. |
| 1. Is there a specific body that supervises and controls the electoral process? | Yes, the Standing Electoral Committee within the Superior Council of Magistracy.  The attributions and competence of the Committee are provided by the Regulation on the procedure for electing the members of the Superior Council of the Magistracy.  The Standing Electoral Committee supervises and coordinates the election procedure and reports to the Plenum of the Superior Council of the Magistracy all irregularities found.  The Committee undertakes all the necessary measures at the level of the Superior Council of the Magistracy regarding the electoral procedures, which are not given by law or by the regulation in the competence of the Plenum of the Superior Council of the Magistracy. |

**Romanian Magistrates' Association (AMR)**