

## The current state of the justice reform in Romania

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### **Abstract**

*Justice, is a key element of a company, is a state power, under European monitoring. Cooperation and Verification Mechanism, established in 2007, when Romania joined the European Union, is a process of pressure and a process aimed at harmonizing the judiciary at all levels of the judicial system, reliable in Member States. So, below, we try to analyze the state of the judiciary reform, are the conclusions reached in the last published report.*

**Keywords:** *CMV, report, corruption, reform, E.U., public authorities.*

### **Introduction**

Ironically, we say, one of the most fluctuating confidence in public institutions, namely trust in justice, has gained special value, so we find that there is an inverse relation between public confidence in the justice system, on the one hand, and the call its courts, on the other hand. As trust in justice has decreased and decreases, the number of addressed and that addresses the courts increase the number of cases being assigned a magistrate was of the highest in Europe. The reform in the judicial system, primarily, has an impact on the social system, but also on society, influencing impact and the other subsystems. Also the choice of studying the reform process in Romania, we try to demonstrate the ability of this system to principle adaptability and European order, and justice essential purpose of fulfilling recommendations of the first report required by CVM, namely the ability to become a public service of Justice.

One of the topics that occupy the ends of the poster, the Romanian press, the mass political discussions, but also in the doctrine and legal studies, is the reform of the judiciary. With the change of political regime in 1989 began a broad transition of Romanian society at all levels. When the transition is not completed yet, it has started a new process of reforming all Romanian institutions in accordance with the principles laid down by the Treaties. So we can conclude that the transition continues with EU accession, Romania benefiting from monitoring the level of justice, considered a key element in the accession process to the European Union. Thus Cooperation and Verification Mechanism (CVM) was set up in Romania's accession to the European Union in 2007 [1]. After negotiations with representatives of the European Union

concluded that, in the justice, there key areas where further efforts were needed to resolve weaknesses in judicial reform and combating corruption.

Through CMV reports were reviewed progress made by Romania for the period 2007-2014, and were set precise through specific recommendations, which the Romanian authorities have had to take.

In the process of strengthening the rule of law in Romania, CVM has played a crucial role, being also an essential dimension of European integration. Through continuous monitoring of Romanian authorities and cooperating with them, they succeeded augmentation results and managed to accelerate the reform process. The monitoring work, the Commission and the methodology used in the CVM, consistently enjoyed strong support from the Council [2], but also intense collaboration with many of the Member States.

Analyzing CMV report for 2014 that Romania can barely visible progress in many areas. However the report highlights the positive marks obtained key institutions in the fight against corruption. Thus this progress, we can conclude that represents an important step towards ensuring the sustainability of reforms in the field. However, the report highlights the divergence between politics and justice, there was no consensus regarding the pursuit of the objectives CVM.

The report analyzes both trends to see what areas the reforms made are irreversible.

## **2. Situation of the reform process in Romania**

In our analysis, we will focus on several key points, such as:

- Independence of the justice
- Judicial reform
- integrity
- combating corruption

### *2.1. Independence of the justice*

When we refer to the justice independence, referring to the independence enjoyed by them in making decisions without political involvement. CVM's essential Fears have also included political interference in appointments to top posts of the system. The recommendations contained in previous reports and the importance of

transparent selection procedures based on merit.[3] During 2014, there were a need for new appointments to judges or prosecutors at the highest level, but recent challenge is constituted by appointing a new chief prosecutor of the Directorate for Investigating Organized Crime and Terrorism (DIICOT), following the resignation of the previous chief prosecutor in November, the challenge will occupy an important place in the analysis report on CVM for 2015. The procedure is conducted using the Commission's recommendations, but it also has a political dimension, given the role of Minister of Justice, whether or not they complied with the recommendations of the report CMV, we see the 2015 report of the Superior Council of Magistracy (SCM) attempted a draft amendment to the law to change this and to apply for the appointment of prosecutors procedures already used the judges in accordance with the recommendations of the Commission for Democracy through law of the Council of Europe (Venice Commission).[4] The Superior Council of Magistracy (SCM) attempted a draft amendment to the law to change this and to apply for the appointment of prosecutors procedures already used the judges in accordance with the recommendations of the Commission for Democracy through Law of the Council of Europe (Committee Venice). This Decision no. 113 per 2015 for the amendment of the Rules on the transfer and posting of judges and prosecutors, the delegation of judges, appointing judges and prosecutors in other leadership positions and the appointment of judges and prosecutors prosecutor as judge, approved by the Superior Council of Magistracy no. 193/2006, the Council carries out the recommendations made by the report. However, the next step would be for the Government to submit a proposal on this issue to Parliament, whereas in the year 2016 will start several processes for appointing the head of the judiciary. [5] The independence of the judiciary and respect envisages judges and the judicial process. This recommendation and the key point noted in the reports from 2013 and 2012, respect the institution, which represents judges, was tarnished by attacks on political, media. The report notes the phenomenon decrease compared to previous years, but noticed about these attacks in corruption cases involving influential public figures. At the same time these attacks were directed against magistrates and their families but also against some The institutions like the Constitutional Court.

The report highlights once again the role SCM namely to guarantee judicial independence. This, since 2012, established a procedure conducted by the Judicial Inspection in order to defend the justice independence and professional reputation, independence and impartiality of the judiciary system. The procedure used intensively, which shows the growing confidence of people in the justice system.

Judicial authorities have improved media access to information on developments in the judicial system. But it is difficult to set limits beyond which it can be considered political actions interfere with the judiciary or judicial decisions and the less there is a system of sanctions in case of breach those limits. CMV report on 2014 contained the following recommendation: "to ensure that the code of conduct for parliamentarians included clear provisions regarding respect for the independence of the judiciary and in particular judgments by parliamentarians and parliamentary process".

The report distinguished role in ensuring the balance of powers and respect for fundamental rights in Romania and in terms of solving issues that they solved the judicial process that had the Constitutional Court (CCR). Constitutional Court decisions have also allowed the removal of obstacles arising from the entry into force of the new codes, Criminal Code and Criminal Procedure Code.

Judicial authorities increasingly recognize the need to take measures to implement court decisions. Society actors remarks failure judgments, even by public authorities, which should, in principle, to set an example in this respect. CMV, stresses the importance of the revision of the Constitution whereas some amendments concern the judicial system and functioning of the Superior Council of Magistracy. Revision of the Constitution had a difficult route not finalized until now was criticized for its lack of transparency, both in terms of timing of deployment, and the consultation process.

## *2.2. Judicial reform*

Judicial reform envisages new codes, human resources and budgetary efficiency of the judiciary and consistency of jurisprudence.

Key points in reforming the judiciary Romanian new legal codes, mentioned by previous CMV reports were successfully applied to the Romanian legal system, but encountered complications such year some cases, such as the principle of the law most

favorable, solutions were found. Some issues were regulated by the government, by adopting emergency ordinances, while others have been changed by legislative proposals, but those procedures are still pending parliamentary chambers. And we will require adaptations as a result of decisions of the Constitutional Court, some points are non-congruent with the Basic Law. As the review, the Ministry of Justice has acted to ensure continuity in the accepted term. Regarding Preliminary rooms, SCM and HCCJ and immediately began to look for practical solutions to allow the presence of defense lawyers.

Although a continuing problem, the Ministry of Justice budget, managed to grow by 4% in 2014, and the planned budget for 2015 is set to increase again. Thus managed financing of new posts in the courts and prosecutors, including 200 new posts of auxiliary officers. National School of Clerks, the National Institute of Magistracy Superior Council of Magistracy organized training sessions and competitions for filling new vacancies being filled rapidly. But we need to identify namely increasing the number of clerks, IT equipment modernization and renovation courts and supporting key institutions such as the Judicial Inspection and the National School of Clerks.

CMV report, refers to the workload of the court system, which has a negative impact on the quality of judgments and judicial system accessibility for citizens. Ministry of Justice and SCM have tried a number of legislative proposals to address the workload issue. A law (adopted swiftly by the Parliament in October 2014) covered the issues of duplication in the process of execution of judgments and estimates that this type were removed from the role of civil courts about 300 000 cases.

SCM has created a working group with the task of identifying ways to analyze and improve the operation of all courts. It provides tools that allow management to analyze the functioning of the judiciary, especially in the context of the global strategy for the judiciary. It would be useful to be included in this initiative instruments to measure the actions of the judiciary to ensure enforcement of judgments. Although polls underscores an increase in public confidence in the judiciary in Romania, especially in institutions that ensure the prosecution of perpetrators of acts of high level corruption. Beneficiaries of justice, various lawyers, businessmen and various NGOs continue to report difficulties in relations with the courts.

Another important judicial reform is to ensure consistency in the law. In order to unify jurisprudence, HCCJ has perfected the practice of using requests for preliminary ruling as a second appeal on points of law, were also taken measures to ensure better dissemination of judgments. To ensure consistency of practice, contribute similar measures that have been taken within the prosecutor and, in general, in the management of the judicial authorities and thematic inspections carried out by the Judicial Inspection. A number of obstacles persist path of consistency thus identify the lack of a clear delineation of responsibility magistrates in case of a deviation from established practice or in case law: SCM had to clarify that judicial independence is not an excuse for practice uneven. Decisions on matters repetitive, can become jurisprudence for public administration, resulting in the reduction in the number of cases brought to court and strengthening legal certainty by avoiding delivery of diverging decisions on identical issues.

### *2.3. Integrity*

The agenda of the National Integrity Agency (NAI), there were a significant number of cases in 2014. 70% of ANI decisions concerning the incompatibilities and conflicts of interests are challenged in court, but majoritaea cases confirmed by the courts. Both the RAC and the HCCJ [6], confirmed the interpretations of law made by the NIA. Therefore, it can be considered that the Commission acts on a solid legal basis. In 2014, HCCJ identified ways to accelerate the investigation of cases of incompatibility, supporting ANI. This has helped to ensure legal certainty and improve the deterrent effect of laws on integrity. During 2014 there were several examples of the different courts reach conflicting judgments (even courts of appeal), which offered different interpretations there, including court interpretations that have been at odds with the interpretation HCCJ.

ANI decisions (ie those that were confirmed in court) are not applied in accordance with the requirements of CVM report, the Parliament, despite the fact that reforms should enhance the automatic application of them. For example, in an emblematic case, the solution was not found until after the senator in question has resigned.

#### *2.4. Combating corruption*

The fight against high level corruption registered as CMV reports, consisted, in the year 2014 progresses. It did therefore effective fight against high level corruption cases, so this confirms both the activities of the DNA and in trial phase by the HCCJ. However, corruption remains a major problem for Romania, the DNA in 2014 covered a wide range of high-level corruption, at all levels involving civil and public figures from different political parties. Were indicted, were investigations, various dignitaries, senior officials, current and former ministers, parliamentarians, mayors, judges and prosecutors with important management positions.

Among the complaints HCCJ are notable final convictions of a former prime minister of former ministers, MPs, mayors and magistrates, also other important cases, in which involved leading figures from the business world, on which the Court of Appeal ruled . The penalty for corruption is suspended (although this is less flagrant within the HCCJ) in most cases. DNA tests to convince Parliament to lift the immunity of lawmakers to allow the initiation of investigations and pretrial measures have failed, defending their caste politics. However in late 2014 Parliament lifted the immunity of several MPs questioned the DNA in a major corruption case. Even if Parliament requests DNA hesitated, his position seems arbitrary and devoid of objective criteria, however, Romanian President responded positively in respect of requests for waiver of immunity of ministers.

In the last year, cases of corruption among magistrates, increased significantly compared to previous years, the CVM report defined as "a highly corrosive form of corruption." on this case, DNA stresses that this high figure does not reflect an increase in corruption in the judiciary, but rather, an increasing number of complaints from the population. Such cases are complex and a new unit was established in the DNA, which was responsible for investigating these cases .[7]

In regard to corruption in general, European observers, it was very difficult to observe the situation in general, in the whole society. However, we can identify some signs of this development. To improve results prosecution in this context, the Public Ministry has taken a number of concrete measures. Such collaboration between the General Anticorruption Directorate (DGA), which operates in support of the prosecution

(DNA and Attorney General) and the national anti-corruption body under the Ministry of Internal Affairs continued to play an important role in combating corruption in general. However, the number of judgments in corruption cases decreased in 2014, and the percentage of persons convicted with sentences suspended (80%) remains high.

Public Administration, found also in full reform program, and important framework is the National Anticorruption Strategy 2012-2015.[8] In 2014, the local government level held a second round of evaluation, based on a peer review and GRECO and OECD practices. Anti-corruption strategy involves public institutions' commitment to respect a set of thirteen preventive measures legally binding and agree to be subject to peer review. Although initiatives in this area remain fragmented and are not yet strong enough to become common practice in government, faced with limited resources, there are few successful examples.

Risk assessment and internal controls are key areas of action, such cases have come to light bribes for granting substantial amounts, which could have been identified earlier by carefully examining the files, but that could not be investigated in the absence of complaints from the population. But problme there in terms of debt recovery, especially recovery of damages, the Romanian authorities having a substantial problem at this level, the system needing improvement, recovery rate is extremely low.

#### *2.5. CMV report's findings and recommendations:*

In areas previously suggested by the CVM report, the Committee could be highlighted, progress, progress that can be interpreted with the effect of durability, these persisting and in the current report. This trend continued over the past year. The main judicial institutions and officials in integrity have developed actions to combat high-level corruption. These advances have maintained a remarkable dynamism and were reflected in increased confidence in the Romanian judicial system in general and in the prosecution of corruption in particular. The good results of reform developments were made possible by increasing the professionalism of the entire judicial body as a whole. The body demonstrates the willingness shown by its members, the ability to defend more consistently independence of the judiciary and to apply a more proactive approach in ensuring the consistency of jurisprudence. Appointments to management positions could become problematic, to developments in the justice reform.

The Commission notes that progress must be consolidated and built on proven and reliable basis. If the implementation of the codes demonstrated ability to cooperate in a pragmatic and productive state institutions, one can notice the many outstanding legislative issues that raise problems of system operation. At the same time capacity Parliament to decide on the approval prosecution of parliamentarians, and retention to apply the final judgments or decisions of the Constitutional Court is the vision report impediments to solving and simplifying the administration of justice.

One of the positive findings of the report is the consensus on the need for reforms and believes that progress must be grounded.

The main recommendations of the Commission for the next period aims:

1. The independence of Justice:

- procedure for appointing the new chief prosecutor of DIICOT through a transparent and merit-based;
- delimitation of new procedures clear for appointment to senior positions in the Judiciary
- respecting the independence of the judiciary MPs by introducing a code of conduct year of clear.
- ensuring the independence of the judiciary and its role in the context of the balance of powers, through the provision in the Basic Law.

2. Judicial reform

- establish the necessary changes to be made to the criminal codes in consultation with the SCM, HCCJ and the DPP.
- Creating an operational action plan for the implementation of the judicial reform strategy,
- pragmatic solutions to maintain access to justice by changing current chart courts.
- enforcement of judgments at all levels.

3. Integrity:

- ensuring that judgments relating to the suspension of parliament are implemented automatically by Parliament;

- the ex ante by ANI conflicts of interest in public procurement procedures; ensure closer links between the prosecution and ANI, so any crimes related to ANI cases to be properly investigated;
- exploring ways to improve public acceptance and effective implementation of the rules of incompatibility and measures to prevent incompatibilities.

#### 4. The Fight against corruption

- collecting statistical data on the effective recovery of assets and to ensure that the new agency could ensure better management of the assets frozen and cooperate with ANAF to improve recovery rates effective. Other parts of government should be clearly responsible if they prove unable to resolve these issues;
- intensify preventive and repressive actions directed against conflicts of interest, favoritism, fraud and corruption in public procurement and to pay particular attention to key areas such as the judiciary;
- identification of areas at risk of corruption and educative and preventive measures with the support of NGOs and taking advantage of opportunities provided by EU funds.
- Improved measures to combat petty corruption, both through prevention and deterrent sanctions.

### 3. Conclusion

After analyzing the CVM report for 2014, one can see the positive trend is the judiciary reform and the Romanian judiciary. But the panel highlights key points that Romania will have to make further efforts in order to achieve congruence with other European countries. However, that progress will be made in some areas on the agenda of the Commission and the list of the monitoring mechanism to be stabilized and balanced.

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[2] [http://ec.europa.eu/cvm/key\\_documents\\_en.htm](http://ec.europa.eu/cvm/key_documents_en.htm)

[3] COM (2014) 37 final; COM (2013) 47 final; COM (2012) 410 final.

[4] According to European standards imposed by the Venice Commission regarding the independence of the judiciary, it is extremely important that politicians do not have a very important role in terms of appointments in the prosecuting authorities.

[5] Attorney General and chief prosecutor DNA: in May 2016, President of the High Court of Cassation and Justice: in September 2016, the Superior Council of Magistracy: elections in 2016. President and Vice President of the National Integrity Agency (ANI) shall also be appointed in April 2016.

[6] Technical Report, Section 3.1. Between 1 January and 31 December 2014, the Criminal Chamber resolved in the first instance, 12 cases of high level corruption and the panel of five judges ruled that the final court in 13 cases of high level corruption.

[7] Raport tehnic, secțiunea 4.1

[8] <http://www.just.ro/LinkClick.aspx?fileticket=T3mlRnW1IsY%3D&tabid=2102>