

JUSTICE LAWS AND ROMANIA'S NATIONAL RESILIENCE AND RECOVERY PLAN

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Abstract

As part of the plan to modernise Romania, the new laws are supposed to lay the foundations for a genuine modernisation of the system, bring justice into line with European principles and strengthen its independence, while ensuring respect for citizens' rights and freedoms. Although necessary, this legislative package targeted in the NRRP, should be the result of a broad consultation that the Ministry has undertaken with all the responsible institutions in the field. and when drafting them should have been implemented the recommendations of the Venice Commission, CVM and the judicial courts, in short to take into account all the needs of the system. Despite the controversy surrounding this legislative package, the European Commission seems to have agreed to these drastic reform measures already undertaken by the Romanian state.

Keywords: rule of law, CVM, reform, justice, justice system, NRRP, RRM.

1. Introduction

The current difficult context faced by EU countries has led to serious damage to the rule of law in some Member States. As far back as 2020, the EC Rule of Law Report for all 27 countries notes the strongest warnings for Hungary and Poland, with critical remarks also for Bulgaria, Croatia, Slovakia and Malta. Romania is also mentioned in the context. The changes to the legislative package in 2018-2019 have therefore brought massive criticism to the Romanian authorities.

In the following years, numerous amendments were introduced in the public debate, which did not resolve the main criticisms of this legislative package aimed at guaranteeing the rule of law in Romania. Since the establishment of the CVM in 2007, the Romanian authorities, through the numerous governments that have taken office, have taken on the task of reforming the Romanian judicial system and have put many forms of this legislative package up for discussion. In the last Government Programme, 2021-2024, the Romanian Government committed itself to ensure the harmonisation of the legislation on the organisation and functioning of the justice system taking into account the principles of the international instruments ratified by Romania, as well as all the recommendations formulated in the framework of the European mechanisms (CVM, GRECO, Venice Commission, EC Report on the rule of law) and the CCR decisions.

At the time of the European Semester in 2019 and 2020 Romania had to integrate all 9 country specific recommendations - RTD (5 for 2019 and 4 for 2020). Therefore, in the process of developing the National Recovery and Resilience Plan, the aim was to cover all country-specific recommendations.

As a general vision, NRRP represents a synthesis between the development priorities identified by the Romanian Government and the needs indicated in the country recommendations. Through the interventions proposed in the NRRP, the authorities have aimed to provide an adequate response to the economic and social situation in Romania so that the challenges mentioned in the country reports or in other relevant documents formally adopted by the Commission in the framework of the European Semester are resolved or significantly reduced over time. In this respect, in the case of Romania, the focus in the approach to the RTD has been on economic resilience, with emphasis on reforms related to improving the business environment, efficiency of revenue collection, long-term sustainability of public finances, strengthening the efficiency of public administration¹, strengthening the effectiveness of justice systems and the rule of law. The plan includes 9 major reforms aimed at responding to country-specific recommendations² including the long-awaited reform of the Romanian judiciary.

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¹ For more on public administration, see E.E. Ștefan, *Administrative Law Part I, University Course*, 3rd ed., revised, completed and updated, Universul Juridic Publishing House, Bucharest, 2019, pp. 16-27.

² NATIONAL RECOVERY AND RESILIENCE PLAN OF ROMANIA, p. 28, <https://mfe.gov.ro/wp-content/uploads/2021/10/facada6fd5c00de72eecd8ab49da550.pdf>.

2. Content

The biggest attempt to reform the Romanian judiciary took place in 2018 and 2019 with a series of controversial changes that drew criticism from both the Venice Commission and the European Commission noting the state of the rule of law in Romania and how these changes affected the progress made so far by the judiciary and the independence of justice.

With reference to Law no. 303/2004 on the status of judges and prosecutors, republished, with subsequent amendments and additions, both professionals in the field and the EC have witnessed significant changes. Since its adoption, the law has undergone numerous amendments and additions, some of which have led to some dysfunctions in the system, and have created some confusion regarding essential aspects of the judicial system, namely the status and career of magistrates. It should be noted that in 2018 and 2019, this law underwent numerous amendments (legislative interventions being made both by Law no. 242/2018 and by emergency ordinances of the Government), some of which have generated controversy both at the level of associations in the field but also at the level of civil society. Moreover, at the level of European bodies, these additions have been criticized on the grounds that they undermine the independence of the judiciary and that they were not made in compliance with the principles of transparency in the adoption of legislation. Moreover, the major problem that has not been met even in its current form is that they have not been debated at the level of the judiciary in a broad framework or for a sufficiently long period of time.

Also in the same period, namely 2018 and 2019, through Law no. 207/2018, as well as through several emergency ordinances, Law no. 304/2004 was also subject to substantial amendments and additions, some of which are under the critical eye of both magistrates' associations and civil society, as well as European bodies, which seriously affect the efficiency of the work of the Romanian judicial system institutions.

Law no. 317/2004 on the Superior Council of Magistracy, republished, with subsequent amendments and additions is also part of the triad of the justice package. Like the others, it has also received amendments in 2018-2019 that have changed and modified the Romanian judicial system.

The 2018 amendments and subsequent primary regulatory acts made a number of important changes to the organisation and functioning of the Judicial Inspectorate and provided a framework for this new institution.

In the coordination and verification reports of the Romanian judicial system, it is precisely this type of sudden changes that have led to criticism and to the regression of the reform process that the Romanian state embarked on with the accession to the European Union. Moreover, the institutional credibility of the Romanian state has been affected in relation to European mechanisms.

Although since the controversial changes several draft laws have been in consultation with the establishment of the Recovery and Resilience Mechanism at European level, European authorities have been pushing Member States for reforms and measures to close the gap between Member States at all levels from eliminating corruption to digitisation, from reducing pollution to administrative modernisation.

Perhaps the inclusion of the modernisation of the Romanian judicial system in the reform plan undertaken at the level of the Recovery and Resilience Mechanism will only lead to the completion of the long process Romania started in 2007.

2.1. Justice in the NRRP

The emergence of a major event, the outbreak of the pandemic in early 2020, has changed the global economic, social and budgetary outlook. In order to address the economic and social consequences and their asymmetric effects on EU Member States, and to ensure a rapid and sustainable economic recovery process, an urgent coordinated response at both EU and national level was required³.

In response to the EU initiative, the Romanian authorities have drafted a strategic document that sets out the reform priorities and investment areas for the implementation of the Recovery and Resilience Mechanism in Romania, namely the National Resilience Recovery Plan (NRRP).

NRRP is Romania's strategic document that underpins the reform priorities and investment areas for the implementation of the Recovery and Resilience Mechanism - RRM at national level.

³ Memorandum on the Agreement in principle on the contracting of repayable financial assistance from the European Investment Bank to cover part of the national public financing needed to implement reforms and/or investments included in the National Recovery and Resilience Plan.

Following the positive assessment of the plan, on 03.11.2021, the Council of the European Union adopted the Council Implementing Decision approving the assessment of Romania's recovery and resilience plan.

The budget allocation is €29.18 billion⁴, of which €14 billion are grants and €15 billion are loans. The NSRF is structured in 15 components, corresponding to the 6 pillars set out in Article 3 of EU Regulation 2021/241.

According to the provisions of GEO no. 124/2021 on the establishment of the institutional and financial framework for the management of European funds allocated to Romania through the Recovery and Resilience Mechanism, as well as for the modification and completion of GEO no. 155/2020, with subsequent amendments and additions, the Ministry of European Investment and Projects is the national coordinator for the preparation, negotiation, approval, implementation, monitoring and control of funds granted under the Recovery and Resilience Mechanism, and the reform and/or investment coordinators, set out in the annex to GEO no. 124/2021, have the main tasks in the implementation of reforms and investments.

The NRRP envisages a series of reforms and investments foreseen under several components, and the coordination of their implementation and monitoring is the responsibility of the public institutions designated at national level (reform and/or investment coordinators).

Therefore, reforms and investments are associated with certain milestones and targets, the achievement of which has a double function: on the one hand, it attests the achievement of reforms and investments, and on the other hand, it conditions the granting of European funding to the Romanian state.

A series of investments and a series of reforms are planned for the justice system, aimed at reforming and transforming the Romanian judicial system. Thus justice is nominated under components: Component 14 „Good Governance” and Component 7 „Digital Transformation”.⁵

Thus, as regards justice in the NRRP, in addition to the reforms undertaken by the Romanian state at the level of the CVM⁶, a series of measures are foreseen, for example:

- adoption of the new National Anti-Corruption Strategy and its implementation;
- adoption of the strategy on the development of the judiciary for the period 2022-2025;
- adoption of the law modifying the powers of ANABI;
- adoption of the „Justice Laws” (status of Romanian magistrates, judicial organization, Superior Council of Magistracy);
- an increase of about 50% in the value of the assets seized and administered by ANABI;
- reforming the national procurement system by streamlining the procurement process – a new electronic standard form will be available⁷.

2.2. Reforms under Component 14 „Good Governance”

At the level of Reform 5 „Ensuring the independence, quality and efficiency of the judiciary”⁸. In its capacity as reform coordinator, the Ministry of Justice must ensure the achievement of Milestone 421, *the main point of which is the approval and entry into force of the Government Decision approving the Strategy for the Development of the Judiciary 2022-2025*⁹.

The provisions of the plan aim to prepare this review on the basis of internal analyses by the reform coordinator and proposals from civil society and stakeholders.

The proposed strategy will consider two directions to be followed respectively 2 pillars:

- „one will include policies to strengthen the independence of the judiciary and the rule of law. The results of policies to strengthen the rule of law will be objectively assessed through specific performance indicators to be developed as part of the strategy. Measures and indicators will be prepared taking into account the findings

⁴ GEO no. 124/2021 on the establishment of the institutional and financial framework for the management of European funds allocated to Romania through the Recovery and Resilience Mechanism, as well as on the modification and completion of GEO no. 155/2020 on some measures for the elaboration of the National Recovery and Resilience Plan necessary for Romania to access reimbursable and non-reimbursable external funds within the framework of the Recovery and Resilience Mechanism, with subsequent amendments and additions.

⁵ NRRP, p. 28, published at <https://mfe.gov.ro/pnrr/>.

⁶ Commission Decision 2006/928/EC of 13.12.2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the area of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

⁷ Council Implementing Decision approving the assessment of the Recovery and Resilience Plan of Romania of 03.11.2021, published at <https://mfe.gov.ro/pnrr/>.

⁸ NRRP, p. 29.

⁹ <https://www.just.ro/pnrr/>.

of the Rule of Law Report”;¹⁰

- the second will consider the implementation of „institutional capacity building policies in terms of resources, processes and management, as well as policies on quality and efficiency of services in the judicial system, such as:

- efficient use of human resources (e.g., workload);
- the policy of optimising the infrastructure of the courts, including the physical infrastructure;
- digital transformation - through the following measures:
 - the digital interaction of citizens and any interested entity with the judicial system;
 - electronic signature and electronic seal;
 - availability of improved data communication for the electronic file (which is an option for litigants to have electronic access to court records).¹¹

The Reform Coordinator will have to develop a justice sector-wide strategy for the digitisation of the physical archive.

Another milestone for which the Ministry of Justice needs to make the necessary efforts is Milestone 422 - it aims to stabilize and clarify the powers of the National Agency for the Administration of Seized Assets, i.e., the finalization of the regulatory act providing the legislative framework for its operation.

The act is intended to transpose Directive (EU) 2019/1153 and will contain „many changes related to the extension of the institutional mandate, targeting issues such as: administration and recovery of seized assets and collaboration with other relevant bodies in the recovery process”¹².

*Perhaps the most controversial and most important milestone is milestone 423 - the one that implies the completion of a long process of reforming the Romanian state, i.e., «Entry into force of the „justice laws” (laws on the status of magistrates, judicial organization, Superior Council of Magistracy) (implementation deadline: end of the second quarter of 2023)».*¹³

Romania and has proposed through this reform package to ensure compliance and follow-up of all the commitments made under the Coordination and Verification Mechanism¹⁴. Thus, in order to avoid the criticisms made by the EC in the Report on the Rule of Law¹⁵ the legislative act on the status of magistrates

The legislative framework must take into account ensuring and completing the independence of judges and prosecutors. Moreover, the amendments must promote a way of promoting magistrates' careers by following meritocratic and objective principles.

In view of the high court load capacity, the High Council of the Judiciary and the Public Prosecutor's Office need to operate more efficiently.

Moreover, it is necessary to seek to make magistrates more accountable but also to find a way to protect them against abuses.

In order to ensure a balanced process, it is necessary to make judicial inspection more efficient and to ensure greater guarantees of independence and impartiality.

Equally subject to the attention of civil society is also the 424th milestone - Amendment of the Criminal Code and the Code of Criminal Procedure. *This milestone should be implemented by aligning the provisions of the Criminal Code and the Code of Criminal Procedure that entered into force in 2014 with the provisions of the Basic Law, the Constitution, but above all it should not ignore the relevant decisions of the national Constitutional Court on the constitutionality of recent amendments to the Criminal Code and the Code of Criminal Procedure.*

Target 425 - „At least 6,000 justice sector staff (judges, prosecutors and court clerks) trained to improve the quality and efficiency of the justice system” is included in the plan. This measure is aimed at the continuous training of magistrates and court clerks and the aim is to increase the quality and efficiency of the judicial system.

¹⁰ Pillar V. Health, and economic, social and institutional resilience, Component C14. Detailed good governance, NRRP, p. 81.

¹¹ Pillar V. Health, and economic, social and institutional resilience, Component C14. Good governance, NRRP, p. 82.

¹² Pillar V. Health, and economic, social and institutional resilience, Component C14. Good governance, NRRP, p. 85.

¹³ Pillar V. Health, and economic, social and institutional resilience, Component C14. Good governance, NRRP, p. 18.

¹⁴ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Romania's progress under the Cooperation and Verification Mechanism, Brussels, 08.06.2021, COM(2021) 370 final, available at https://ec.europa.eu/info/sites/default/files/com2021370_ro.pdf.

¹⁵ 2020 Rule of Law Report, Accompanying chapter on the state of the rule of law in Romania, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, 2020 Rule of Law Report, Situation of the rule of law in the European Union, Brussels, 30.09.2020 SWD(2020) 322 final, available at <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52020SC0322&from=EN>.

Continuous training involves a unification of practice and jurisprudence on the new codes, unification of practice and development of skills in the field of public procurement, administrative law, tax procedure. The continuous training of actors in the judiciary will also take into account international judicial cooperation in civil and criminal matters, the ECtHR case law.

Another key reform is Reform 6. „Stepping up the fight against corruption“.

*Thus, the 426th milestone has in view the „Entry into force of the legislative act approving the new National Anti-Corruption Strategy“.*¹⁶

Always under the EC's scrutiny, the new Anti-Corruption Strategy will take into account the principles assumed by Romania since 2007¹⁷: reducing the effects of corruption at the citizen level, strengthening mechanisms to prevent and fight corruption, focusing on the improvement of integrity in priority areas; legislative changes both criminal and administrative to fight corruption, increasing the degree of implementation of anti-corruption measures.

The new strategy will bring new areas to the fore: the environment, the link between corruption and organised crime, integrity in the protection of cultural goods.

The strategy also involves amending the legislation on integrity and requires harmonisation and increasing the quality of the regulatory acts it covers:

- „conflicts of interest¹⁸, incompatibilities;
- the declaration of assets;
- revolving doors (pantouflage);
- the Ethics Adviser;
- the general standard for ex officio publication of information of public interest at central and local government level (to ensure consistency of application).“¹⁹

Also at the level of Reform 6, the Romanian authorities have set Target 427 which aims to increase the efficiency of the National Agency for the Administration of Seized Assets, i.e., to increase the value of seized assets. This target will also be achieved through the envisaged legislative amendments but also through measures that address the specific activity of the Agency.

The next Target 428 - assumes a continuation of milestone 426, i.e.: „Completion by 2025 of at least 70% of the measures foreseen in the new anti-corruption strategy.“²⁰

A comprehensive monitoring mechanism, similar to the one used successfully in the 2016-2020 cycle, is foreseen in the strategy, including regular reporting, compliance assessment missions to public institutions, annual evaluation reports.

This mechanism involves evaluation missions by independent experts, mid-term and final external audits on the state of implementation.

All of these mechanisms are designed to analyse the objectives of the strategy, its impact on society and institutions, the efficiency and effectiveness of implementation measures and the sustainability of its results.

Other targets set at the NRRP level include:

Target 429 - increase the occupancy rate of 85% of prosecutor positions in the National Anticorruption Directorate by the end of 2023.

The last benchmark measure foreseen in the plan and assumed by the Romanian State is the one foreseen in Milestone 430 - which aims at preparing the legislative framework, namely the law on whistleblowers. This reform measure will transpose Directive (EU) 2019/1937 on the protection of persons reporting breaches of Union law and will contain additional provisions, tailored to the national context, integrity policy issues being influenced by the socio-economic context. to address effectively.

¹⁶ Pillar V. Health, and economic, social and institutional resilience, Component C14. Good governance, NPRR, p. 83.

¹⁷ COMMISSION DECISION of 13.12.2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the area of judicial reform and the fight against corruption [notified under document number C(2006) 6569], (2006/928/EC, <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32006D0928&from=RO>).

¹⁸ On conflict of interest, see E.E. Ștefan, *Conflict of interest in administrative law*, in CKS e-Book 2017, http://cks.univnt.ro/cks_2017_archive/cks_2017_articles.html, accessed 10.04.2023, pp. 589-593.

¹⁹ Pillar V. Health, and economic, social and institutional resilience, Component C14. Good governance, NPRR, p. 83.

²⁰ *Idem*, p. 17.

3. Amendments to the justice package

As the European authorities pointed out in the 2021 CVM Report, the setback in achieving the benchmarks to which Romania had committed itself in 2021 was outweighed by the measures taken in 2021. The European Commission's expectations were that the Romanian authorities would implement the measures and changes to which they had committed in order to fully meet the remaining targets. At the time of 2022 the EC underlined that : „*The Court of Justice ruling of 18 May 2021 provides a clear framework and direction for ongoing reforms with a view to satisfactorily meeting the CVM benchmarks in full compliance with the rule of law and EU law in general*”²¹.

At the time, the directions that the new legislation should follow had at their core the rule of law and the removal of any doubt about the rights of citizens and the legal professions.

In what follows we will look at the 3 key laws that have been under the scrutiny of the European Commission since 2007:

- law on judicial organisation²²;
- law on the status of judges and prosecutors²³;
- law on the Superior Council of Magistracy²⁴.

3.1. Law on judicial organisation

As I pointed out above, this law is a milestone in the biggest reform package Romania has ever committed itself to, namely the NRRP.

In the previous attempt to amend the law, 2018-2019, „*through Law no. 207/2018, as well as through several emergency ordinances, Law no. 304/2004 was subject to major amendments and additions, some of which have been criticized by magistrates' associations and civil society, as well as by European bodies, on the grounds that they seriously undermine the efficiency of the work of the institutions of the judiciary and the independence of justice.*”²⁵ Therefore, the new direction that the new law had to take is to resolve all the inconveniences that led to the setback of the efforts made by the Romanian state in the field of justice reform and ensuring the rule of law.

In amending and finalising this legislation, the following directions were considered:

- the integration and legislative transposition of the recommendations issued by the European institutions;
- implementation of Constitutional Court decisions²⁶;
- resolving issues of dysfunction in practice.

Main changes

This enshrines the principle that the Ministry of Justice, together with the Superior Council of Magistracy, contributes to the proper organisation and administration of justice as a public service, thus relieving the pressure that was on the Ministry of Justice.

Hearing of the system of random assignment of cases to panels every 2 years. This establishes that the external audit covers technical aspects and aims at identifying and remedying vulnerabilities in the system, even verifying the possibility of bias in random allocation. This audit process is organised and conducted by the Ministry of Justice, with the involvement of civil society and professional associations of magistrates.

The law details the process of setting up the five-judge panels of the High Court of Cassation and Justice and the specific jurisdiction of these panels.

Another important point is to ensure adequate representation of the management of the courts and prosecutors' offices in the management colleges, so that managerial decisions are the responsibility of the heads of judicial institutions, who must ensure the proper functioning of the court or prosecutor's office. The reason

²¹ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Romania's progress under the Cooperation and Verification Mechanism, Brussels, 08.06.2021, COM(2021) 370 final, available at https://ec.europa.eu/info/sites/default/files/com2021370_ro.pdf.

²² Law no. 304/2022 on the organisation of the judiciary, published in the Official Gazette of Romania no. 1104/16.11.2022.

²³ Law no. 303/2022 on the status of judges and prosecutors, effective from 16.12.2022.

²⁴ Law no. 305/2022 on the Superior Council of Magistracy, published in the Official Gazette of Romania no. 1105/16.11.2022.

²⁵ Explanatory memorandum amending Law no. 304/2003, <https://www.just.ro/proiect-de-lege-privind-statutul-magistratilor/>.

²⁶ For example: CCR dec. no. 172/24.03.2016, published in the Official Gazette of Romania, Part I, no. 315/25.04.2016, para. 19); CCR dec. no. 384/2020, published in the Official Gazette of Romania no. 657/24.07.2020 etc.

for this amendment is to harmonise with the CCJE's advisory opinion: „The presidents of the courts are responsible for ensuring the proper functioning of the court, including the management of its staff, material resources and infrastructure. It is essential that they have the necessary skills and resources to carry out this duty effectively". „The presidents of the courts should also have the power to set up organisational units or divisions, as well as individual posts or positions, within the courts to meet the various needs related to the work of the courts. When court presidents intend to make significant changes in the organisation of the court, judges should be consulted."²⁷

Another provision aimed at ensuring the efficiency of the Supreme Court, namely the resolution of cases within a reasonable time, is the possibility that in the event of a high volume of activity of some chambers of the High Court of Cassation and Justice which resolve cases in matters other than criminal matters, the governing bodies may order the temporary assignment of some judges from chambers other than the criminal chamber in order to unblock the activity.

The enshrinement and re-dimensioning of the principle of hierarchical control in the activity of the Public Prosecutor's Office, as the Constitutional Court has established in the past: „by applying the principle of hierarchical control, it is ensured that all prosecutors in the Public Prosecutor's Office perform their function of representing the interests of society as a whole, in other words, that they exercise their powers of public authority without discrimination²⁸ and without bias. By virtue of this principle, the Public Prosecutor's Office is conceived as a pyramidal system in which the law enforcement measures adopted by the senior prosecutor are binding on subordinate prosecutors, which gives substance to the principle of the hierarchical exercise of control within this public authority"²⁹.

The new rules also establish criteria for the appointment procedure, as well as the grounds and procedure for the dismissal of prosecutors appointed to DNA and DIICOT, and objective criteria for verifying the improper exercise of the specific duties of the office³⁰.

The law also brings clear regulations on the establishment of working procedures at court level, namely the way of establishing the Rules of Procedure of the courts, but also clarifies other areas such as the way of establishing and managing court budgets.

3.2. Law on the status of judges and prosecutors

Amended with many controversial provisions, this law has created many dysfunctions in the judicial system. These mainly concerned the status and career of magistrates, and the provisions in force in 2022 have been criticised by stakeholders in the field, magistrates' associations and civil society, as well as by European bodies. The main cause for controversy concerned the independence of the judiciary and failure to respect the principles of transparency in the adoption of legislation or insufficient time for analysis.

In the drafting of this legislation, it was taken into account that: „The amendment or supplement of a normative act is only allowed if it does not affect the general concept or the unitary character of that act or if it does not concern the whole or the major part of the regulation in question; otherwise the act shall be replaced by a new regulation and shall be repealed in its entirety"³¹.

The main elements enshrined in the law took into account the aspects „concerning the career of magistrates in accordance with the decisions of the Constitutional Court on the subject: admission to the judiciary, the probationary period and the examination of competence, the appointment of magistrates, their promotion, whether effective or on the spot, evaluation and professional training, appointment to managerial positions, removal from these positions, delegation, secondment, transfer, the appointment of judges as prosecutors and prosecutors as judges. To this end, all the subsequent regulations contained in the regulations of the Plenary or of the Sections of the Superior Council of Magistracy concerning the above-mentioned aspects,

²⁷ Opinion no. 19 (2016) - The role of presidents of courts - of the Consultative Council of European Judges (CCJE).

²⁸ From another perspective, see E.E. Ștefan, *Opinions on the right to nondiscrimination*, in CKS e-Book 2015, pp. 540-544, available online at http://cks.univnt.ro/cks_2015/CKS_2015_Articles.html, Public law section, accessed on 10.04.2023.

²⁹ CCR dec. no. 345/2006 on the exception of unconstitutionality of the provisions of art. 64 para. (3) of Law no. 304/2004 on the organisation of the judiciary, published in the Official Gazette of Romania no. 415/15.05.2006.

³⁰ According to the Venice Commission Opinion no. 924/2018.

³¹ Law no. 24/2000 on the rules of legislative technique for the drafting of normative acts, republished, art. 61.

including the corresponding procedures, have been taken over at the level of law, adapted and systematised in terms of their normative content³².

The law clearly spells out the procedure for the professional evaluation of magistrates but also establishes the professionalism of the selection of magistrates.

The most important change is to bring the legislative solutions into line with all the criticisms and recommendations of the European institutions:

- „Regulate by law the selection procedure and objective and transparent criteria for the selection of senior prosecutors; in line with the recommendation to strengthen the role of the Superior Council of Magistracy in the procedure, the interview committee set up by the Minister of Justice includes two prosecutors appointed by the Prosecutors' Section of the Superior Council of Magistracy;
- Explicitly regulating the possibility for a prosecutor removed from a senior management position to appeal the decree of the President of Romania removing him/her from office to the competent administrative court, under the law, without going through the prior procedure. In the proceedings, which are being heard as a matter of urgency, the court will be able to verify the legality³³ and the merits of the Minister of Justice's proposal for removal from office; taking into account the case law of the Constitutional Court on this matter, it has been provided that the President of Romania may refuse, solely on grounds of legality, to remove a person from a senior management position, informing the public of the reasons for the refusal;
- Eliminate the current role of the Ministry of Finance, an institution outside the judicial authority, in the procedure of material liability of magistrates for judicial errors committed in bad faith or gross negligence and give a central role in this procedure to the appropriate sections of the Superior Council of Magistracy as guarantor of the independence of justice (and not to the Judicial Inspectorate, as it is at present, which only has the power to carry out the necessary checks, at the request of the Council).³⁴

Moreover, the legislative act aims at modifying the competence of probationary judges, in order to widen the scope of disputes they can judge.

The new law also sets out new competition procedures for the promotion of magistrates and prosecutors and limits the possibilities for secondment and delegation.

The act also clarifies how magistrates and prosecutors can be sanctioned. Some disciplinary offences are eliminated, such as those related to: „*failure to comply with the decisions of the Constitutional Court or decisions handed down by the High Court of Cassation and Justice in the resolution of appeals in the interest of the law*”³⁵.

The present law also regulates the career management of the auxiliary staff of the Supreme Court and the disciplinary liability of legal staff assimilated to magistrates, given that the CCR case law has found that such regulations are necessary.

3.3. Law on the Superior Council of Magistracy

According to art. 133 para. (1) of the Constitution, the Superior Council of Magistracy has the fundamental role of guarantor of the independence of justice³⁶. Thus, from an organisational point of view, the Superior Council of Magistracy is composed of 19 members who make up the Plenary of the Superior Council of Magistracy. Fourteen members are elected by the general assemblies of magistrates from courts and public prosecutors' offices - 9 judges and 5 prosecutors. Civil society is represented by 2 members, elected by the Romanian Senate. The Minister of Justice, the President of the High Court of Cassation and Justice and the Prosecutor General of the Prosecutor's Office of the High Court of Cassation and Justice are ex officio members. Therefore, all 14 elected judges and prosecutors make up the Judges Section and the Prosecutors Section respectively.

Building on the findings of the European bodies: „*Concerns were expressed in the November 2018 report both about the work of the Judicial Inspectorate and the appointment of an interim management team. Since the*

³² Explanatory memorandum Law on the status of judges and prosecutors, <https://www.just.ro/proiect-de-lege-privind-statutul-magistratilor/>.

³³ Another approach to the activity of public authorities, in E.E. Ștefan, *Legality and morality in the activity of public authorities*, in *Revista de Drept Public* no. 4/2017, Universul Juridic Publishing House, Bucharest, pp. 95-105.

³⁴ Ibid 29.

³⁵ Ibid 29.

³⁶ For further details on the independence of justice, see E.E. Ștefan, *Legal responsibility. A special look at liability in administrative law*, Pro Universitaria Publishing House, Bucharest, 2013, pp. 191-196.

last report, the work of the Judicial Inspection has continued to raise concerns for similar reasons. Criticism focused on the correlation between disciplinary proceedings against magistrates and against directors of judicial institutions and the fact that the persons concerned had often taken public positions against changes to justice laws (...) The government's decision to resolve the situation by adopting an emergency ordinance on the appointment of the current interim team - instead of leaving this to the Superior Council of Magistracy - only further fuelled the concerns. The November 2018 report therefore recommended the immediate appointment by the Superior Council of Magistracy of the interim leadership team of the Judicial Inspection and the appointment, within three months, of a new leadership of the Judicial Inspection through a competition (...) More generally, the procedure raises questions as to whether the new provisions of the justice laws on the appointment of the leadership of the Judicial Inspection provide sufficient guarantees and ensure the right balance between judges, prosecutors and the Plenary of the SCM.”³⁷

The following changes have been made. As a first sentence, the solution of separating the decision on the careers of judges and prosecutors is considered. Thus, the main idea of this law is to define the role of the Superior Council of the Magistracy, in its plenary composition, to defend the independence of the judicial authority as a whole. The law provides for the Plenum of the Superior Council of Magistracy to exercise the powers established by law in the field of recruitment, more specifically in relation to the entrance examination to the National Institute of Magistracy and the entrance examination to the magistracy. Another attribute is the approval of the continuous training plan for judges and prosecutors, on the proposal of the National Institute of Magistracy.

The Plenary of the Superior Council of Magistracy also adopts the Code of Ethics of Judges and Prosecutors, the Regulation on the organisation and functioning of the Superior Council of Magistracy, the Regulation on the procedure for the election of members of the Superior Council of Magistracy, as well as other regulations and decisions provided for by law, and appoints and dismisses, under the conditions provided for by law, the Chief Inspector and Deputy Chief Inspector of the Judicial Inspection.

Another amendment aims to simplify the process of electing judges and prosecutors as members of the Superior Council of Magistracy. But also the way in which the electoral process is carried out, thus measures are foreseen to ensure their representativeness among the electoral body of magistrates, given the rule that general assemblies are legally constituted in the presence of the majority of judges or, where appropriate, of prosecutors in office.

The legislative act also proposes to ensure the management of the Superior Council of Magistracy by holding elections three months before the expiry of the term of office for the posts of President and Vice-President.

The law proposes to extend the scope of the holders of disciplinary action in the area of disciplinary liability of judges and prosecutors, by partially returning to the system that existed prior to the legislative interventions made in 2018. Disciplinary action for misconduct by a judge is therefore exercised by the Judicial Inspectorate, through the judicial inspector, or by the President of the High Court of Cassation and Justice. This introduces a number of procedural provisions on the possibility of disciplinary actions³⁸ being decided by the sections of the Superior Council of Magistracy.

The act introduces a number of additional legal safeguards for judges and prosecutors by providing that the decision ordering the suspension from office must be drawn up at the time of the decision and immediately communicated in writing to the judge or prosecutor concerned, and that until the date of communication of the decision to the judge or prosecutor concerned it shall have no effect on his or her career and rights.

The same incompatibilities as for judges and prosecutors are introduced for civil society representatives in the Superior Council of Magistracy.

The new regulations also bring new rights and obligations for judicial inspectors, who require the same guarantees of independence and impartiality as magistrates.

At the organisational level, the provisions on the organisation of the judicial inspectorate are revised, in close connection with the powers of the Plenary of the Superior Council of Magistracy, which approved the rules of organisation and functioning of the Judicial Inspectorate. For the avoidance of doubt, both the Chief Inspector

³⁷ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on Romania's progress under the Cooperation and Verification Mechanism {COM(2019) 499 final}.

³⁸ Explanatory memorandum to the draft law on the Judicial Council, <https://www.just.ro/proiect-de-lege-privind-statutul-magistratilor/>.

and the Deputy Chief Inspector are appointed by the Plenary of the Superior Council of Magistracy, following a competition organised by the Superior Council of Magistracy.

The new legislative provisions concern the modalities for appointing, dismissing and ensuring the interim of the chief inspector, the deputy chief inspector and the two directors of the Judicial Inspection, which are the responsibility of the Plenary of the Superior Council of Magistracy.

4. Conclusions

A constant preoccupation of doctrine, looking at the concept of the judiciary we see that it is an essential piece in the puzzle that defines the progress of society and the social and economic mechanism. Thus, the organisation of the judicial system is not only a concern but also a necessity in order to fully understand the implementation of justice.³⁹

A comprehensive analysis of the progress of a judicial system and a functional analysis requires comparisons, explanations and concepts.

From the point of view of many scholars the independence of justice is the characteristic that determines its degree of functionality, thus the evolution of a judicial system is strictly linked to independence. When analysing legal systems and the progress they have made, we see that independence is at the root of their development. However, it seems rather difficult to determine the degree of independence of a judicial system.

At the basis of the dispensation of justice lies jurisdiction, which determines the totality of the organs through which the state distributes justice at territorial level.

Starting from the Romanian Constitution, which states in art. 1 para. (4) that „*The State is organised according to the principle of the separation and balance of legislative, executive and judicial powers, within the framework of constitutional democracy.*”⁴⁰ We note that judicial power in Romania is constituted through its specially constituted bodies, namely the courts.

The reform of the system and of the whole public policy related to justice and the delivery of justice must lead to the building of the rule of law in Romania. This will have a direct impact on the development of the quality of justice and, moreover, will ensure a fair trial for citizens.

Following all the measures proposed by all the spheres involved, the aim is to shape a modern justice system, in line with the trend towards digitisation, but with a competent, independent and responsible human resource at the forefront.

In an ideal system of law, reformed in line with European principles and values, the public institutions involved will work coherently, will shape a procedural framework that will give substance to effective judicial organisation, will finalise and enshrine the rule of law.

The inclusion of justice reform measures in Romania's National Recovery and Resilience Plan has only accelerated the implementation of a legislative package whose social impact has not been analysed at length to note the effects and implications for the citizen.

In the context of the reform and resilience mechanism, the package of reforms to which the Romanian state has committed itself is primarily aimed at institutional development in the Romanian legal system, professionalisation at all levels, and ensuring the necessary resources for proper functioning.

Therefore, the constant modification of the regulatory framework in relation to social needs will ensure that the state ensures, through its institutions, a functional public service that will help maintain democratic order.

On the other hand, the opinions of the European institutions have created an appearance of stability for the reforms, so it remains to be seen what the practical effects will be on society and especially on the act of justice.

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³⁹ I. Leș, *Comparative Judicial Systems*, All Beck Publishing House, Bucharest, 2002, p. 1.

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