

JUSTICE



REFORM

2017

ROMANIA

Executive summary	5
Securing independence of judges	11
Independence of prosecutors when investigating cases	13
Hierarchical control over the prosecutors	15
De-politicization of justice	17
Prevention against the interference of intelligence services in justice	19
Objective criteria for career progression in the judiciary	21
Liability of magistrates	23
Autonomy of Judicial Inspection	25
Reform of the Superior Council of Magistracy	27
Respect for the presumption of innocence	29
Conclusions	30

Executive summary

At the end 2017, Romanian Parliament has amended the three laws governing the justice system in Romania: Law 303/2004 on the statute of judges and prosecutors, Law 304/2004 on the organization of the judiciary and Law 317/2004 on the Superior Council of Magistracy.

Adopted in 2004, these three laws have been extensively amended directly by engaging the Government's responsibility in 2005, without any public or parliamentary debate.

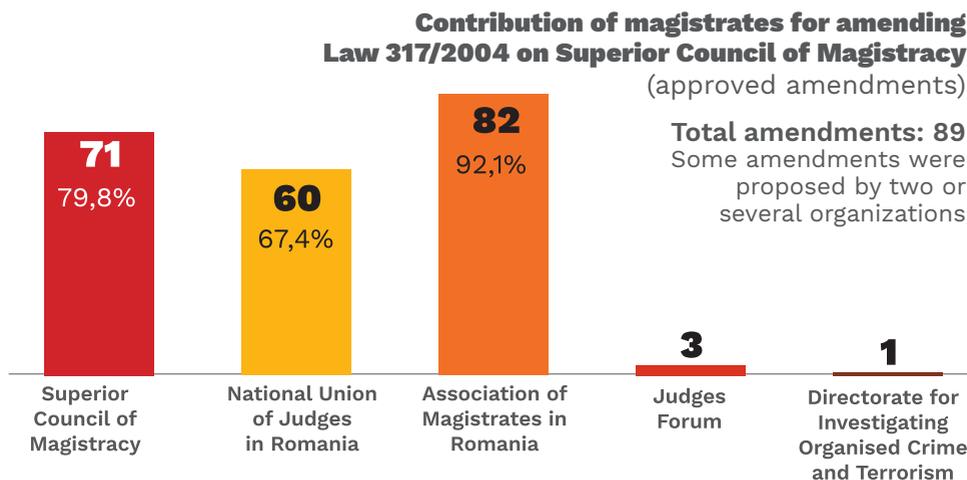
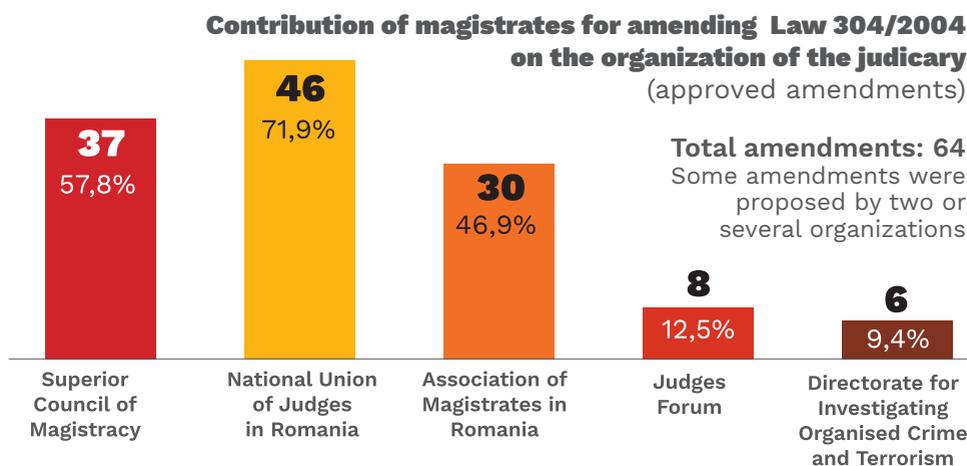
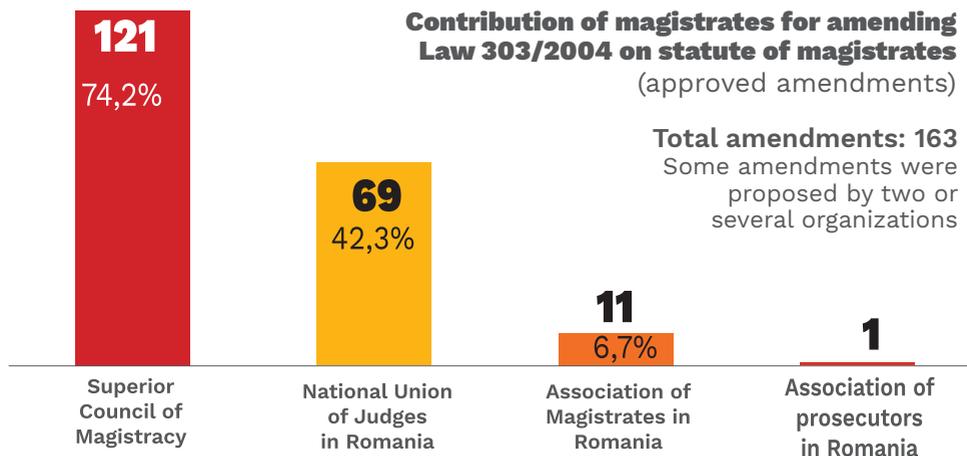
The three laws have shown their limitations over time. For instance, this legislation allowed too much interference between the judges' career and that of the prosecutors, and this turned into a concern when it was reflected in the manner in which the judges answered to the prosecutors' requests. A recent study revealed that, from 2010 until 2015, the **Romanian courts overwhelmingly accepted wiretapping requests from prosecutors, with six Courts of Appeal even accepting 100 per cent of them.**

Another issue was represented by the regulations on liability of judges and prosecutors for judicial errors. In recent years, Romania has been ranked among the first in the EU with the worst track record of ECHR convictions for breaching the Article 6 of the Convention. Despite this, **no magistrate has suffered financial or disciplinary sanctions for serious violations of fundamental rights** which had led to judicial errors. The lack of an efficient system for liability of judges and prosecutors has prompted more than 80% of Romanians to ask for **effective magistrates' accountability**, according to several opinion polls.

Last, but not the least, some extremely important provisions of the law, such as the procedure for dismissal of members from the Superior Council of Magistracy or some disciplinary proceedings, **were deemed unconstitutional by the Constitutional Court of Romania (CCR), a situation that called for an immediate intervention of the law-making body.**

All these changes, along with other ones equally important for the modernization of the justice system in Romania, are briefly presented below.

Note should be taken that **this is the first time when amendments have been brought to this legislation through a transparent parliamentary debate**, involving all stakeholders, with the broad involvement of the Superior Council of Magistracy and of the professional associations.



The procedure for appointment of chief prosecutors, in relationship to which an endorsement from the Venice Commission would have been required, was not changed (as recommended by the European Commission in the latest Cooperation and Verification Mechanism report issued on November 15th 2015). The only limitation is related to the discretionary rejection exercised based on political criteria by the Romanian President. In line with the CCR decisions, the President may only reject once and he/she must provide reasonable grounds for such a refusal.

It should be noted that in many EU countries, chief prosecutors are appointed directly by the Government/President/minister of Justice /Parliament – that is to say by politicians without any endorsement from magistrates (Denmark, Finland, Germany, France, Slovenia, Lithuania etc.) Moreover, in many EU countries (for instance Denmark, the Netherlands, France, Finland, Ireland, the Netherlands etc.), the minister of Justice may intervene in the prosecutor’s activities and may order or demand a decision to initiate or end criminal prosecution. **Only in Italy and Bulgaria do prosecutors enjoy the independence that they enjoy now in Romania according to the new laws passed by the Parliament.**

There is no political interference in the appointment or dismissal of the Chief Prosecutor of the newly-established Division for Investigation of Offences in the Justice System. This position may be occupied after an examination organized by judges and prosecutors within the CSM (Superior Council of Magistracy). No one could argue that this new section would be a political instrument applying pressure over the magistrates. On the contrary, it should eliminate this pressure.

The Judicial Inspection stayed within the CSM, however with an increased autonomy. The Chief Inspector decides on the disciplinary investigation objectives; the Judicial Inspection (IJ) can bring proceedings on its own motion (by default) regardless of the holder of disciplinary action. There is no political interference in the appointment of the IJ leadership, as it is appointed through objective procedures organized by the CSM. Therefore, no one can claim that this institution is used for controlling the judiciary or as a form of pressure over the magistrates.

Concrete measures are taken to ensure the independence of judges, both against the pressure from prosecutors’ offices (through a genuine separation of judicial professions) and also against the

influence of intelligence services. The minister of Justice may no longer exercise a disciplinary action against judges, as this was the case with the previous legislation.

The independence of prosecutors when investigating cases is explicitly guaranteed. Hierarchical subordination applies only from the perspective of administrative organization. Unlike many other democratic states that allow the intervention of politicians (Government, Parliament, President or minister of Justice), even during the prosecution of criminal cases, the new laws on justice guarantee the independence of prosecutors. Even the disciplinary verification, which in most EU countries is exercised by the Ministry of Justice, is exercised by an institution completely independent of any political influence, in Romania.

Significant steps have been taken to prevent the interference of intelligence services with the justice system. Magistrates and police officers are forbidden to collaborate or be part of the intelligence services. None of the CSM members are allowed to work or have worked for intelligence services. The verification of compliance with these provisions can be performed both by the Supreme Council of National Defence and by the parliamentary committees.

The financial accountability of magistrates is clearly regulated, but cannot rule out criminal liability when offences have been committed. The rules on accountability of magistrates are strictly linked to the provisions of Art. 52 para. 3 of the Romanian Constitution, stipulating that: “The State shall be liable for the damages caused by judicial errors. Liability of the State is established under the law and does not rule out the liability of magistrates that have performed their duties in bad faith or gross negligence”. Moreover, financial accountability is regulated just as explained in the Venice Commission’s opinion issued to the Republic of Moldova on a similar change in legislation.

The quality of the delivery of justice, especially in higher courts and prosecutor’s offices, is considerably improved. Criteria of experience and professional conduct are introduced for the career advancement of prosecutors and judges to both higher courts and prosecutor’s offices and to senior management positions. Also, the training period, including traineeship, is extended for those who are to become magistrates. Career advancement is done exclusively through a competition, organized based on objective criteria,

under the supervision of the CSM, including also the DNA (National Anticorruption Directorate), where career advancements have been done so far strictly depending on the will of the chief prosecutor of DNA.

The obligation to observe the presumption of innocence in the criminal investigation both upon documenting evidence and in public communication is further established.

Equality of arms is ensured between the prosecutor and the lawyer, both at symbolic level, through the positions occupied in the courtroom, as well as in the criminal investigation.

CONCLUSIONS

- 1. There is no amendment restraining independence of justice against political influences.** On the contrary, the existing control mechanisms exercised from the political side were significantly restrained.
- 2. There is no amendment establishing any degree of dependence for the justice system on political decision makers, which might be higher than the ones existing in most EU member states.** On the contrary, magistrates and prosecutors enjoy the highest degree of independence in Romania, Bulgaria and Italy.
- 3. Significant measures were taken to ensure independence of justice not only towards political factors, but also towards intelligence services.** Those criticizing the amendments to the laws on justice, including European officials, make no reference to the extremely serious flaws of the laws on justice in this regard, which have now been corrected.

Securing independence of judges

Excluding the political interference from the appointment process for senior judges. The previous legislation allowed the President of Romania to deny the appointment of a judge in office, which was the equivalent of a political interference in the selection process. According to the European standards, the role of the president is a solemn one.

Venice Commission: "An appropriate method for guaranteeing judicial independence is the establishment of a judicial council, which should be endowed with constitutional guarantees for its composition, powers and autonomy. Such a Council should have a decisive influence on the appointment and promotion of judges and disciplinary measures against them." (Judicial Appointments, 2007)

Separation of judge and prosecutor careers within the Superior Council of Magistracy (CSM): thus, prosecutors can no longer make decisions in terms of judges' careers (or vice versa).

The establishment of the Division for Investigation of Offences in the Justice System, dealing with the criminal investigation of magistrates. Prosecutors in this division shall not plead in other cases. Therefore, judges can no longer be threatened with prosecution if they pass an unfavourable decision to a prosecutor or to a certain prosecutor's office. The appointment of the chief prosecutor of this division is free from any political interference. Such appointment shall be made by the Plenary of the CSM based on a competition organized by a board made up from 3 judges in the CSM, 1 prosecutor in the CSM. The prosecutors working in this division must have a minimum of 18 years of seniority in prosecutor's offices attached to Courts of Appeal and must have not been subject to any disciplinary sanctions over the past 3 years. Interviews will be broadcasted live on the CSM web page. Prosecutors working in this division shall not be able to attend court sessions in the cases processed by these divisions, this duty will be assigned to the prosecutors in the Judicial Division attached to the ICCJ Prosecutor's office or in the prosecutor's office attached to the court vested with the judgment of the case.

Venice Commission: “Judicial decisions should not be subject to any revision outside the appeals process, in particular not through a protest of the prosecutor outside the time limit for an appeal.” (Report on the Independence of the Judicial System Part I: the Independence of Judges, 2010)

The judge cannot be suspended if proceedings are brought against him/her for a crime, unless the preliminary chamber judge provides a confirmation in this respect. On the other hand, the judge is suspended when any of the pre-trial measures were ordered against him/her (not only pre-trial arrest but also legal restrictions pending trial-judicial review).

Venice Commission: “Judges should enjoy functional – but only functional – immunity.” (Report on European Standards as Regards the Independence of the Judicial System: Part I - The Independence of Judges)

CSM Members can no longer exercise office as judges or prosecutors while being in this position. Those exempted are the de jure members, namely the General Prosecutor and the ICCJ chairperson.

Venice Commission: “Judges should not put themselves into a position where their independence or impartiality may be questioned.” (Report on the Independence of the Judicial System Part I: the Independence of Judges)

The CSM chairperson can only originate from among the judges. On the other hand, the CSM President is elected by prosecutors and thus becomes president of the prosecutors division with the CSM.

The division for judges within the CSM has the right and obligation to act on its own motion for the defence of judges against any interference with the professional activity or action which might affect their independence and impartiality. Also, the Division for judges in the CSM defends the professional reputation of judges. The Judicial Inspection will be notified in this regard in order to perform the verifications.

Judges may express their vote of no confidence in their representatives within the CSM. Withdrawal of confidence may be requested by any general assembly at court level.

The Minister of Justice can no longer exercise disciplinary action in case of offences committed by judges.

Independence of prosecutors when investigating cases

Clarifications on the notion of prosecutor’s independence and harmonization with the provisions of the Constitution and the recommendation of the Venice Commission. The previous provision provided that “prosecutors are independent, according to the law”. However, pursuant to the Constitution “prosecutors operate in accordance with the principle of legality, impartiality and hierarchical control, under the authority of Minister of Justice”. As a result, there was at least an apparent contradiction between the legal and constitutional text and an ambiguity as regards the statute of the prosecutor. Through the proposed amendments, the notion of prosecutor’s independence was defined more accurately: “The prosecutors are independent in ordering the solution, under the conditions stipulated by the Law 303/2004, on the organization of the judiciary”.

Venice Commission: “There is an essential difference as to how the concept of independence or autonomy is perceived when applied to judges as opposed to the prosecutor’s office. Even when it is part of the judicial system, the prosecutor’s office is not a court. (...) However, the independence or autonomy of the prosecutor’s office is not as categorical in nature as that of the courts. Even where the prosecutor’s office as an institution is independent there may be a hierarchical control of the decisions and activities of prosecutors other than the prosecutor general.” (Report on European Standards as Regards the Independence of the Judicial System: Part II - The Prosecution Service).

Prosecutors are independent in rendering decisions. The hierarchical principle is only implemented in terms of administrative organization, as provided by the Romanian Constitution.

Venice Commission: “Non-interference means ensuring that the prosecutor’s activities in trial procedures are free of external pressure as well as from undue or illegal internal pressures from within the prosecution system.” (Report on European Standards as Regards the Independence of the Judicial System: Part II - The Prosecution Service).

Comparison with other EU Member States: The independence of prosecutors in Romania according to the new regulation is similar with that in other EU Member States, such as Sweden, Ireland, Italy, Portugal, Estonia, Slovenia, Slovakia, Hungary, Bulgaria.

However in other EU States, the independence of the prosecutors is much more limited than in Romania. Political decision makers, such as ministry of justice, the president, the parliament, may intervene in the prosecutor's activities and may order or demand the commencement or termination of criminal prosecution - Denmark, Finland, Belgium, Germany, Greece, France, Slovenia, Lithuania, Czech Republic, Poland

The proposals for the positions of the General Prosecutor and his/her first deputy, the chief Prosecutor of DNA, the division heads of the DNA, the chief Prosecutor of the DIICOT and his/her deputies are submitted by the minister of Justice, endorsed by the CSM and confirmed by the President of Romania through appointment, who can only reject such an appointment once and based on reasonable grounds - in accordance with the decisions of the CCR. Until now, the President could have rejected such appointments, based on reasonable grounds, as many times as possible, without any limitation.

The chief Prosecutor of the new Division for Investigation of Offences in the Justice System is appointed by the Plenary of the Superior Council of Magistracy, without any political interference. The chief prosecutor of this division is appointed by exam/competition.

DIICOT and DNA prosecutors who are in office when these new laws enter in force shall remain in office within these structures.

The prosecutors' section within the CSM has the right and the obligation to act on its own motion for the defence of prosecutors against any interference in the professional activity which may affect their impartiality or independence in rendering decisions. Also, the prosecutors' section within the CSM defends the professional reputation of prosecutors. The Judicial Inspection will be notified in this regard in order to perform the verifications.

Prosecutors may express their vote of no confidence in their representatives within the CSM. Withdrawal of confidence may be requested by any general assembly at prosecutor's offices level.

Hierarchical control over prosecutors

Controlling actions exercised by the immediate superior prosecutor over the validity of documents submitted by the prosecutor. According to the amendment adopted by Parliament, "The decision taken by the prosecutor can be invalidated by the immediate superior prosecutor with justifications, when they are considered illegal or unreliable".

The amendment was submitted at the proposal of the CSM, as well. Highly criticized by the Chief Prosecutor of the DNA and by the Prosecutor General, this amendment only ensures that the provisions of the law on judicial organization are compatible with those of the Criminal Proceedings Code, which explicitly provides for the indictment to be endorsed by the immediate superior prosecutor from both perspectives of legality and validity.

According to the Constitution, the Romanian system of prosecution service is based on hierarchic subordination.

Constitution of Romania, Article 132 - Statute of Public Prosecutors, paragraph (1): "Public prosecutors shall carry out their activity in accordance with the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice."

Venice Commission: "In a system of hierarchic subordination, prosecutors are bound by the directives, guidelines and instructions issued by their superiors". "Even where the prosecutor's office as an institution is independent there may be a hierarchical control of the decisions and activities of the prosecutors other than the prosecutor general." (Report on European Standards as Regards the Independence of the Judicial System: Part II - The Prosecution Service).

Comparison with other EU Member States: Similar provisions as the new legislation in Romania on the internal hierarchical control are in Sweden, Czech Republic, Denmark, Spain etc.

The National Anticorruption Directorate can no longer establish territorial services, offices or other units without the relevant endorsement from the prosecutors' section within the CSM. However, there is no political influence in this procedure.

The appointment of prosecutors within the DNA shall be made upon proposals from the prosecutors section of the CSM, based on an examination. The Chief Prosecutor of the DNA can no longer unilaterally decide, through own decision, the prosecutors' positions within the DNA, only based on an endorsement from CSM.

De-politicization of Justice

Venice Commission: "What matters most is the extent to which the head of state is free in deciding on the appointment. It should be ensured that the main role in the process is given to an independent body – the judicial council. The proposals from this council may be rejected only exceptionally, and the President would not be allowed to appoint a candidate not included on the list submitted by it." (Judicial Appointments, 2007)

The President of Romania cannot reject the proposal of the CSM for the ICCJ President. The minister of Justice has no role in this procedure. The judges' section within the CSM sends the proposal for president and vice-president of the ICCJ and the president appoints these persons, without being able to reject the proposal from the CSM. The same persons may be revoked by the President, upon proposal of the CSM. Until now, the President could reject the appointment, by providing reasonable grounds, as many times as he/she deemed necessary.

There is no political decision involved anymore in the appointment of high ranking judges. The judges' section within the CSM appoints the division presidents from the ICCJ. The President is no longer involved in this procedure. Dismissal is also made by the CSM. Until now, the president could reject, stating reasonable grounds, the appointment or dismissal for these positions, according to his/her will.

The President of Romania can reject only once the proposals of the CSM for the chief prosecutors. The General Prosecutor and his/her first deputy, the chief Prosecutor of the DNA, the heads of division of the DNA, the chief Prosecutor of the DIICOT and his/her deputies are proposed by the minister of Justice, endorsed by the CSM and appointed by the President of Romania, who can only reject such an appointment once and only based on reasonable grounds. Until now, the president could reject such appointments, based on reasonable grounds, according to his/her will.

Comparison with other EU Member States. The involvement of political decision in appointing chief prosecutor is much lower in Romania compared with other EU Member States where the president/parliament/minister of justice has the decisive role in such appointments: Denmark, Finland, Sweden, Germany, Ireland, Spain, Portugal, France, Poland, Czech Republic, Estonia, Slovenia, Lithuania, Latvia, Slovakia, Hungary.

Dismissal of the chief Prosecutor mentioned above can only be performed by the President of Romania, upon proposal of the minister of Justice but only following the endorsement of the Prosecutors' division within the CSM. Until now, the endorsement from CSM was not provided in the dismissal procedure.

The minister of Justice can no longer exercise disciplinary action in case of offenses committed by judges. The minister may exercise such action only in case of prosecutors who, according to the Constitution and to the law, are hierarchically subordinated.

The terms of office for chief prosecutors are 3 years long and can only be renewed once, upon proposal of the CSM.

The decision regarding the localities assigned to court jurisdictions no longer belongs to the Government, but to the plenary of the CSM, following the endorsement from the Ministry of Justice.

Prevention against the interference of intelligence services in justice

Ensuring the „checks and balances” principle when verifying compliance with such interdictions: verification is performed by the Supreme Council for National Defence (CSAT) and also by parliamentary commissions for verification of SRI (the Romanian Intelligence Service) and SIE (the Foreign Intelligence Service).

Judges and prosecutors who were part of the intelligence services or collaborated with such services cannot take management positions.

Judges and prosecutors who were part of the intelligence services or collaborated with such services cannot be part of the CSM. So far, the ban was only aimed at those who had been part of intelligence services prior to 1990.

The appointment in the CSM of judges and prosecutors elected by judicial structures shall only take place after verification by the CSAT and by the parliamentary commissions for verification of SRI and SIE whether these persons have been members of the operational staff, whistle blowers or collaborators of intelligence services.

Any breach in the provisions regarding the random distribution of cases becomes a disciplinary offence and does not rule out criminal liability, if applicable. The random distribution system of panels of judges is verified once every two years by external auditing, under the management of the minister of Justice and participation of the civil society and of magistrates organizations. The conclusions of the audit are made public. Until now, there were suspicions that intelligence services in Romania were involved in selecting judges for some cases. For instance, a former intelligence officer who disclosed the involvement of intelligence services in the judiciary, was prosecuted by DNA and the same judge was selected six times in different stages of the trial.

The report regarding the verification of compliance with the law in terms of wiretapping and technical surveillance shall be made public and displayed on the website of the High Court of Cassation and Justice. So far, there was no obligation in terms of publishing this report; this deprived from any meaning the concept of public accountability for the people in charge with such verifications.

Judges or prosecutors seconded to authorities other than courts or prosecutor' offices cannot be part of the CSM.

Objective criteria for career progression in the judiciary

The reform introduces the medical and psychological verifications prior to the acceptance in the ranks of the magistracy. Also, psychological evaluation for magistrates will be organized on a regular basis.

Regular assessment reports for magistrates regarding their activity, efficiency, integrity and continuous professional improvement.

Extensive training period is required for candidates who are training to become magistrates. Trainee magistrates are not entitled to order measures depriving or restricting freedom.

Magistrates can graduate only after an examination. Graduates can only become those candidates that have not been subject to disciplinary offenses for at least 3 years and obtained a “very good” rating at the previous assessment. Graduation with the DNA is no longer based on an interview with the DNA board, but based on an exam organized by the Superior Council of Magistracy.

The professional experience requirements for career advancement to higher courts or prosecutor's offices: minimum 7 years for County Court, minimum 10 years for the Court of Appeal, minimum 18 years for the ICCJ (same for prosecutors with the relevant prosecutor's offices). In order to be promoted as prosecutor with the DNA, minimum 8 years of seniority shall become mandatory (as compared to 6 years seniority, the rule currently applicable).

Venice Commission: “The principle that all decisions concerning appointment and the professional career of judges should be based on merit, applying objective criteria within the framework of the law is indisputable.” (Report on European Standards as Regards the Independence of the Judicial System: Part I - The Independence of Judges)

The professional experience requirements for career advancement to court or prosecutor's office president or vice-president positions: minimum 6 years for Court, minimum 8 years for County Court, minimum 12 years for the Court of Appeal, minimum 18 years for the High Court of Cassation and Justice.

Prosecutors from higher prosecutor's offices can only be appointed as judges at court level. Same as in the case of judges from higher courts who can only be appointed prosecutors with the prosecutor's offices attached to courts.

Venice commission: "In some countries, the career of the prosecutors is regulated by the law, which provides for the progression of the promotions and for the appointment to new offices in the frame of the carrier. In this case, prosecutors have rights and interests which are covered by the law and should be guaranteed through the possibility of challenging before a court decisions which do not comply with the law's provisions." (Report on European Standards as Regards the Independence of the Judicial System: Part I - The Independence of Judges)

The 7 years minimum experience criteria without disciplinary offences during the past 3 years becomes mandatory in order to become a member of the CSM.

Venice Commission: "In order to prepare the appointment of qualified prosecutors expert input will be useful. This can be done ideally in the framework of an independent body like a democratically legitimized Prosecutorial Council or a board of senior prosecutors, whose experience will allow them to propose appropriate candidates for appointment." (Report on European Standards as Regards the Independence of the Judicial System: Part I - The Independence of Judges)

Liability of magistrates

Judicial error automatically triggers liability of magistrates in case of bad faith or gross negligence, in the line with the constitutional provisions.

Constitution of Romania: Art. 52, paragraph (3): "The State shall bear patrimony liability for any prejudice caused as a result of judicial errors. The State liability shall be assessed according to the law and shall not eliminate the liability of the magistrates having exercised their mandate in bad faith or gross negligence."

"Bad faith" and "Gross negligence" have clear definitions. Bad faith occurs when the magistrate wilfully and knowingly breaches human rights or judicial norms. Gross negligence occurs when the judicial norms are mistakenly breached. Exercise of office in bad faith or gross negligence shall be deemed disciplinary offence and any such offence hinders the possibility to advance to higher courts or to management positions. The enforcement of the disciplinary sanction for magistrates that committed judicial errors in bad faith or gross negligence does not rule out criminal liability for offences such as unjust repression.

Venice Commission: "Important as the freedom of judges in the exercise of their judicial function may be, this does not mean that judges are not accountable. A balance must be struck between their immunity as a means to protect them against undue pressure and abuse from other state powers or individuals (functional immunity) and the fact that a judge is not above the law (accountability);

While judges may be subject to criminal liability for the interpretation of a law, the ascertainment of facts or the assessment of evidence, such liability should only be possible in cases of malice and, arguably, gross negligence;

Judges should not be held liable for judicial mistakes that do not involve bad faith and for differences in the interpretation of the law. The principal remedy for such mistakes is the appellate procedure; (...)

In conclusion: only failures performed intentionally, with deliberate abuse or, arguably, with repeated, serious or gross negligence should give rise to disciplinary actions and penalties, criminal responsibility or civil liability." (Republic of Moldova - Amicus Curiae Brief for the Constitutional Court on the Criminal Liability of Judges, 2017)

The Ministry of Finance shall mandatory bring proceedings against the magistrate who was the author of the judicial error immediately after payment of the damages caused to the victim. However the Superior Council of Magistracy may regulate conditions regarding the mandatory professional insurance for magistrates, in case of judicial errors.

The right to claim against the magistrate is no longer time barred 1 year after the judicial error (thus initiation of proceedings had been basically impossible), but 1 year after full payment of the prejudice by the Ministry of Finances. The judicial error committed in bad faith or gross negligence by the judge or prosecutor is found during a trial, in front of judges, in compliance to the right to a fair trial.

European Network of Councils for the Judiciary (ENCJ): "The independence of the Judiciary as a whole and that of individual judges lie at the heart of the rule of law. Without it the Judiciary cannot fulfill its functions. But independence does not stand on its own. It must be recognized that independence is directly linked to accountability. A Judiciary that claims independence but which refuses to be accountable to society will not enjoy the trust of society and will not achieve the independence for which it strives." (Independence and Accountability of the Judiciary - ENCJ Report 2013-2014)

Comparison with other EU Member States, as regards the magistrates liability: Similar provisions about magistrates liability in the case of bad faith or gross negligence are in force in following Member States: Sweden, Germany, Portugal, Italy, France, Austria.

Autonomy of Judicial Inspection

The Judicial Inspection operates according to the principle of operational independence towards the Superior Council of Magistracy, courts, prosecutor's offices or other public authorities. The chief Inspector is the main credit release authority. The CSM no longer approves the regulations for conducting the judicial inspection work. These are directly approved by the chief Inspector.

The chief inspector is appointed by the Superior Council of Magistracy following an examination, with no political involvement. The examination board is made from 3 judges in the CSM, 1 prosecutor of the CSM, 1 representative of civil society of the CSM, 1 psychologist appointed from the plenary of the CSM. Until now, the selection of the chief Inspector was directly performed by the plenary of the CSM.

Dismissal of the chief inspector can be performed by the Superior Council of Magistracy, but only based on a report drafted by a board which is similar to the one organized during the examination for the appointment, except for the psychologist. Until now, the majority of the CSM plenary could order at any time the dismissal of the chief inspector, as attempted during the period in which control was exercised at the DNA, after 10 years in which such institution was not subject to any type of control.

The Chief Inspector appoints its deputy from among the other judicial inspectors. Until now, this position was appointed by the CSM.

The Judicial Inspection may initiate proceedings on its own motion or by any interested party in terms of any disciplinary offences of prosecutors and judges, in disregard of the holder of the disciplinary action. If, during the prior verification stage, findings of a disciplinary offence are made, the inspector may directly order, by a resolution, the initiation of the disciplinary investigation. The preliminary disciplinary investigation stage is no longer applicable (only the prior verification remains applicable).

The person who files a notification may also file a complaint with the chief inspector against the decision to terminate the case taken by the judicial inspector following the prior investigation. In case the chief inspector dismisses the complaint, the individual in question may challenge such a decision in front of the administrative law division of the Bucharest Court of Appeal. Also, the decision of this court can be challenged by an appeal on a point of law with the Administrative Law Division of the High Court of Cassation and Justice.

The decision of a judicial inspector can be annulled once by the chief inspector, in writing and based on reasonable grounds.

The initiation of disciplinary investigations may be also ordered by the minister of Justice, the president of ICCJ or the general prosecutor.

The magistrate subject to the disciplinary investigation can no longer escape the disciplinary procedure by resigning from his/her position.

Resignation in such conditions does not hinder the continuation of the procedure.

Reform of the Superior Council of Magistracy

Separating judges career and prosecutors career.

On 29 May 2017, judges from all courts in the country, through their chairpersons, signed a resolution requesting that the legislative power, as well as the other decision-making authorities, promptly take all steps in order to lead to the recognition and assurance of the necessary assurances for an independent justice.

The same resolution requested for the statute of judges to be strengthened by immediately separating the powers of the Superior Council of Magistrates regarding the career of judges and prosecutors, as well as on the organization and functioning of the courts and prosecutors' offices in the sense that they belong separately to the two sections of the Council, respectively the Section for Judges in respect of judges and courts, and the Prosecutors' Section regarding the prosecutors and prosecutors' offices.

Recognition of this assurance would lead to strengthening the independence of judges, the only ones who deliver justice, and this is not entirely possible as long as the judges' career is decided through mechanisms other than those of the judiciary power.

The resolution was immediately adopted on 30 May, 2017 by the courts of appeal and subsequently by the professional associations.

The amendments to Law 317/2004 are strictly delineating in this respect, the competencies of the judges' section from those of prosecutors for the careers of these two professions.

Venice Commission: "If prosecutorial and judicial councils are a single body, it should be ensured that judges and prosecutors cannot outvote the other group in each others' appointment and disciplinary proceedings because due to their daily 'prosecution work' prosecutors may have a different attitude from judges on judicial independence and especially on disciplinary proceedings. In such a case, the Council could be split in two chambers, like in France, where the Conseil supérieur de la magistrature sits in two chambers, which are competent for judges and prosecutors respectively." (Report on European Standards as Regards the Independence of the Judicial System: Part II - The Prosecution Service).

Procedure for dismissal of CSM members and transparency in its activity

By Decision no. 196/2013 of the CCR the provisions of Law no. 317/2004 establishing the procedure for the revocation of CSM members at the initiative of the judges or prosecutors who elected them were deemed unconstitutional.

Although four years have passed since then, the law was not in line with the decision of CCR, so there was no mechanism in place to regulate CSM members' accountability, despite repeated requests from judges and prosecutors to do so.

The new legislation regulates a smooth and effective procedure to withdraw the confidence expressed towards the CSM members, but which also ensures the assurances required by the CCR in terms of observing the right to defence for the member concerned and the institutional stability of the Council.

One element of novelty is the regulation on questions for CSM members, a procedure that ensures the transparency and responsibility of CSM members, absolutely necessary for its proper operation.

New rules have also been introduced in terms of the publicity of plenary sessions and sections, as well as the publication of the agenda for the Council's decisions, in order to ensure the same goal, the transparency of the work of the Council and its members.

Respect for the presumption of innocence

The new legislation clearly sets forth that prosecutors must respect the presumption of innocence, both when documenting the case and in public communications.

The prosecutor must observe the equality of arms principle and the right to a fair trial of the individual who is subject to criminal prosecution.

The prosecutors will no longer stand at a higher level than the lawyer in the courtroom.

Conclusions:

All amendments to the three laws of Justice were brought in order to provide answers to the current problems and needs of the Romanian judiciary, and in line with the European standards on this matter.

Most of the amendments were submitted by the Superior Council of Magistracy and by Romanian magistrates' professional associations.

These amendments to the laws on the justice system are the first to be carried out in a transparent parliamentary procedure, with the involvement of all stakeholders.

Currently, the new legislation is undergoing the constitutionality review by the Constitutional Court, as that has been the case with the previous legislation, as all the filters required in order to ensure the independence of justice are being used.

List of abbreviations

CCR	Constitutional Court of Romania
CSAT	Superior Council of Country Defense
DIICOT	Directorate for Investigating Organized Crime and Terrorism
DNA	National Anticorruption Directorate
ECHR	European Court of Human Rights
ENCJ	European Network of Councils for the Judiciary
ICCJ	High Court of Cassation and Justice
IJ	Judicial Inspection
CSM	Superior Council of Magistracy
SIE	The Foreign Intelligence Service
SRI	The Romanian Intelligence Service

