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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

On Progress in Romania under the Cooperation and Verification Mechanism

1. INTRODUCTION

The Cooperation and Verification Mechanism (CVM) was established at the accession of Romania to the EU in 2007 as a transitional measure to facilitate Romania's continued efforts to reform its judiciary and step up the fight against corruption[1]. It represented a joint commitment of the Romanian State and of the EU. In line with the decision setting up the mechanism and as underlined by the Council and confirmed by the Court of Justice of the European Union (CJEU)[2], the CVM is brought to an end when all the benchmarks[3] defined for Romania are satisfactorily met.

Work under the CVM has been ongoing since 2007 to encourage and follow the reform process, based on the benchmarks. In January 2017, the Commission undertook a comprehensive assessment of progress over the ten years of the mechanism[4], which gave a clear picture of the significant progress made. The Commission set out twelve specific recommendations which, when met in an irreversible manner, would suffice to end the CVM process, providing however that there would be no developments such as to clearly reverse the course of progress.

Since then, the Commission has carried out four assessments of progress on the implementation of the recommendations. Reports from late 2017 to 2019 were characterised by a waning reform momentum. Steps taken by Romania re-opened issues that the January 2017 report had considered as closed, and additional recommendations were made[5]. Both the European Parliament and the Council shared these concerns[6]. However, the June 2021 report was able to mark substantial progress, with many recommendations on the path to being fulfilled if progress remained steady[7].

In recent years, the EU has considerably developed its toolbox to uphold the rule of law across the EU[8]. Some of the tools put in place are of direct relevance to EU efforts to support Romania in the reform process. As a result, there are a number of monitoring tracks now in place looking at issues covered by the CVM benchmarks.

The justice system in general, including judicial reform, as well as anti-corruption frameworks, are two of the areas covered for all Member States under the annual Rule of Law Reports[9]. This ongoing process of coordination and monitoring goes beyond the specific context of post-accession which triggered the CVM. The scope of the Rule of Law Reports extends to issues with an important bearing on reform capacity and sustainability, such as the

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1 Following the conclusions of the Council of Ministers, 17 October 2006 (13339/06), the Mechanism was established by Commission Decision of 13 December 2006 (C(2006) 6569).

2 Judgment of the Court of Justice of 18 May 2021 in Joined Cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19 Asociaţia 'Forumul Judecătorilor Din România' and Others, para 164.

3 The benchmarks for Romania deal with the effectiveness and transparency of the judicial system, key institutions in areas like integrity and the fight against corruption at all levels, and corruption prevention.

4 COM(2017) 44.

5 COM(2017) 751; COM(2018) 851; COM(2019) 499.

6 European Parliament non-legislative resolution on the rule of law in Romania of 13 November 2018, P8_TA-PROV(2018)0446. Council Conclusions of 12 December 2018 https://ec.europa.eu/info/sites/info/files/2018-st15187_en.pdf

7 COM(2021) 370.

8 Another instrument that has been put in place since the 2018 CVM Report is the rule of law conditionality regime Regulation for the protection of the EU budget (Regulation 2020/2092, OJ L 433I, 22.12.2020, p.1-10).

9 The Commission has adopted three Rule of Law reports so far: COM(2020) 580; COM(2021) 700; and COM(2022) 500. They included specific chapters on Romania: SWD(2020) 322; SWD(2021) 724; SWD(2022) 523.

quality of legislation and the legislative process, the role of independent institutions in ensuring checks and balances, the enabling environment for civil society, as well as media freedom and pluralism. The 2022 Rule of Law report included for the first time recommendations to all Member States, to support them in their reforms in the four reporting areas, including for Romania[10]. The Romanian authorities have cooperated actively and constructively with the Commission in the Rule of Law Report cycle.

A number of rule of law-related issues – notably the effectiveness of justice systems, the fight against corruption and the quality and inclusiveness of the law-making process – are also part of the European Semester, given their impact on the business environment, investment, economic growth and jobs. In addition, the Romanian Recovery and Resilience Plan, positively assessed by the Commission and adopted by Council on 3 November 2021[11], includes concrete milestones touching upon issues covered by the CVM which are central to the reform process, such as judicial reform and anti-corruption frameworks[12].

This report takes stock of the progress made by Romania to implement the pending CVM recommendations and the fulfilment of the CVM benchmarks since June 2021. As in previous years, this report is the result of a careful process of analysis by the Commission, drawing on close cooperation with Romanian institutions, civil society, and other stakeholders[13].

2. ASSESSMENT OF PROGRESS ON THE FULFILMENT OF THE RECOMMENDATIONS

This section assesses progress on the recommendations of the Commission in past CVM reports, and specifically the 12 recommendations of January 2017 and the eight additional recommendations of November 2018. The fulfilment of all remaining recommendations would allow the CVM to be completed. They represent the essential steps needed to cement the reform process on a sustainable path for the future, where the focus of cooperation with Romania will be on the continued implementation of reforms, as part of the Rule of Law Report.

2.1. Benchmark One: Judicial independence and Judicial reform[14]

Justice laws and legal guarantees for judicial independence

2018 Recommendations

- *Suspend immediately the implementation of the Justice laws and subsequent Emergency Ordinances.*
- *Revise the Justice laws taking fully into account the recommendations under the CVM and issued by the Venice Commission and GRECO.*

[10] COM(2022) 500, Annex and Country Chapter on the rule of law situation in Romania.

[11] Council Implementing Decision 12319/21, of 3 November 2021. Specific milestones are referenced in the text.

[12] The fulfilment of these milestones will be assessed under the dedicated procedure in the light of the criteria foreseen in Romania's Recovery and Resilience Plan.

[13] The Commission services organised a fact-finding mission in November 2022. Online meetings included the Minister of Justice, Members of the Romanian Parliament, the Superior Council of Magistracy, the High Court of Cassation and Justice, the Prosecutor General, the National Anti-Corruption Directorate, the National Integrity Agency, the national Agency for the Management of seized assets (ANABI), civil society organisations and judicial associations.

[14] The full benchmarks of the original CVM Decision can be found in Annex.

Three justice laws[15] define the status of magistrates and organise the judicial system and the Superior Council of Magistracy. They are therefore central to ensuring the independence of magistrates and the good functioning of the judiciary. In 2018 and 2019, amendments to these justice laws had a serious impact on the independence, quality, and efficiency of the justice system. Major issues identified included the creation of a dedicated section for investigating criminal offences within the judiciary (SIIJ), the system of civil liability of judges and prosecutors, early retirement schemes, the entry into the profession, and the status and appointment of high-ranking prosecutors. The implementation of the amended laws soon confirmed concerns, and the emergence of other issues in the intervening years, clearly showed the need for an overall revision of the laws[16].

Reflections on how to amend the three laws started in September 2020 and gained momentum in spring 2022[17], with a new consultation launched by the Ministry of Justice in June 2022. The consultation led to revised drafts submitted for an opinion to the Superior Council of Magistracy (SCM). Its opinion in August 2022 led to the tabling of a further revised version of the laws in Parliament, and the parliamentary process was concluded in October 2022[18]. Several provisions of the adopted laws were challenged before the Romanian Constitutional Court, which rejected all challenges. The laws were promulgated by the President of Romania on 15 November[19]. The revision of the justice laws is also a milestone under Romania's Recovery and Resilience Plan[20].

The government considered that previous opinions of the Venice Commission had made clear its positions and had been taken into account in the revised laws, even if the final drafts had not been specifically sent for consultation prior to their submission to Parliament. Nevertheless, the Parliamentary Assembly of the Council of Europe seized the Venice Commission. Following a request from the Romanian authorities to deal with the opinion in an urgent procedure, the Venice Commission prepared an urgent opinion on the three justice laws, published on 18 November[21]. This opinion will be presented for endorsement to the Venice Commission at the plenary session of December 2022.

The adopted revisions to the laws constitute an important overhaul of the legislative framework. Previous reports flagged issues of structures and procedures, such as the dismantling of the SIIJ, the disciplinary, civil and criminal liability regimes for judges and prosecutors, the accountability and appointment of the Judicial Inspection management, and the appointment and dismissal procedures for senior prosecutors, as well as the role of the

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[15] Law 207/2018 amending Law 304/2004 on the judicial organisation; Law 234/2018 for amending Law no. 317/2004 on the Superior Council of Magistracy; Law 242/2018 amending Law no. 303/2004 on the statute of judges and prosecutors. The laws were further modified through Government Emergency Ordinances in 2018 and 2019.

[16] For example, appointment rules for the High Court of Cassation and Justice and the Judicial Inspection. See details in the 2019 CVM Report COM(2019) 499.

[17] For details of the developments between September 2020 and June 2022, see the 2021 CVM Report and the country chapter on Romania in the 2022 Rule of Law report.

[18] A special joint parliamentary Committee of the two Chambers examined the laws under an urgent parliamentary procedure starting on 12 September. The parliamentary process concluded on 17 October after a positive vote in the Senate.

[19] The laws were published in the Official Journal on 16 November.

[20] Milestone 423 of Romania's RRP, entitled 'Entry into force of the 'Justice laws' (laws on the status of magistrates, judicial organisation, Superior Council of Magistracy).'

[21] Venice Commission opinion CDL-PI(2022)047.

High Court of Cassation and Justice and the SCM. Also important is the impact of the reforms on the independence and career organisation of magistrates.

The revised justice laws reformed the civil liability regime for judges and prosecutors, addressing a long-standing issue identified in the CVM reports[22], Rule of Law Reports as well as in the case-law of the European Court of Justice[23]. The new law on the status of magistrates provides that, when a plaintiff lodges a claim for compensation for a miscarriage of justice, the Ministry of Finance immediately notifies the magistrate concerned, who may apply to intervene in the first set of proceedings against the State. Moreover, the Ministry of Finance may lodge a recourse action against the magistrate only if the relevant section of the SCM finds the existence of bad faith or grave negligence in the miscarriage of justice, on the basis of a report drawn up by the Judicial Inspection. Previously, the Ministry could lodge the action regardless of the conclusions of the report of the Judicial Inspection.

More safeguards were also put in place as regards the disciplinary liability of magistrates. On substance, the disciplinary offences which generated concerns for judicial independence[24] and the primacy of EU law[25] were abolished. At the same time, the extension of another disciplinary offence to cover the expression of political opinions not only in the exercise of duties, but also more generally the expression of such views in public, will need to be monitored to ensure it does not restrict unduly the magistrates' freedom of speech. On procedural aspects, the decisions of the SCM sections in disciplinary matters must now be reasoned and notified without delay to the magistrate concerned. The law also provides for the deletion of disciplinary sanctions from the magistrate's record three years from their date of enforcement if the magistrate is not subject to a new disciplinary sanction during this period.

As regards the disciplinary procedure itself, stricter deadlines are also introduced for the SCM to reason its disciplinary decisions[26]. One remaining concern is the possibility for the Judicial Inspection to challenge a decision of the SCM disciplinary section[27].

The justice laws introduce some important modifications regarding the career organisation of magistrates. The duration of the training at the National Institute of Magistracy (NIM) has

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[22] See notably 2018 Technical report (SWD(2018) 551 final), and 2021 Rule of Law report - country chapter on the rule of law situation in Romania. The rules previously in place raised concerns due to the power assigned to the Ministry of Finance, which could assess whether a judicial error was committed in bad faith or by gross negligence and, subsequently, to initiate recovery actions against judges for the damage caused.

[23] In its Judgment of 18 May 2021, Asociaţia 'Forumul Judecătorilor Din România' and Others, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, paras 233-241, the CJEU ruled that the rights of defense of judges should be fully respected, that a court should rule on the personal liability of judges and that the law must provide clearly and precisely the necessary guarantees ensuring that neither the investigation nor the action for indemnity may be converted into an instrument of pressure on judicial activity.

[24] This offence concerns "actions affecting the honour, professional rectitude, or the prestige of justice, committed during the performance or outside the performance of work duties."

[25] The offence of "non-compliance with the decisions of the Constitutional Court or the decisions issued by the High Court of Cassation and Justice in resolving appeals in the interest of the law", which would expose judges to disciplinary liability when disapplying rulings of the Constitutional Court prohibiting them from examining the conformity with EU law of provisions of domestic law, see the judgment of the CJEU of 22 February 2022, RS, in case C-430/21, paras 79 to 93.

[26] These now have to be reasoned without delay, instead of the previous 20 days deadline, which was often ignored.

[27] "Once the disciplinary panel of the Supreme Judicial Council has found in favour of the judge, this decision should be final" (CDL-AD (2002) 015, Venice Commission Opinion on the Draft Law on Amendments to the Bulgarian Judicial System Act).

been increased from two to three years. While this may have a longer-term effect on the size of the pool of available new magistrates[28], it also allows more time for their practical training. Other modified provisions concern the seniority requirement for promotions to higher courts and prosecutor offices, which have overall been increased[29]. For appointments to the specialised prosecution services, the National Anti-Corruption Department (DNA) and the Directorate for Investigating Organized Crime and Terrorism (DIICOT), the seniority requirements have been maintained at ten years, with a temporary transitional period to mitigate possible impact on human resources. The concrete impact of the new seniority requirements on human resources once the temporary measure is phased out remains to be seen. The law maintains the two existing types of promotion at courts of appeal, tribunals and prosecutors' offices attached to them, but puts on hold the provisions related to competitive on-the-spot promotions until December 2025, allowing only for effective promotions during this period[30]. New rules have been introduced for the promotion of judges to the High Court of Cassation and Justice (HCCJ), where promotions on the basis of a competitive written test have been replaced by a selection based on an evaluation of the judicial decisions taken by candidates during their entire activity at the Court of Appeal and an interview before the section for judges of the SCM[31]. Once promoted to the HCCJ, judges are also excluded from further professional evaluations. Other significant changes relate to the appointments of second-line managers in district courts, tribunals, specialised tribunals, courts of appeal and the prosecutors' offices attached thereto, which are no longer done by competitive examinations, but simply on a proposal from the president of the court or the head of the prosecutor's office.

The Venice Commission urgent opinion focuses on a limited number of topics, concerning the civil and disciplinary liability of magistrates and competitions for admissions in the judiciary, as well as the appointment and removal of specialised and high-ranking prosecutors. The opinion concludes that on the whole the laws seem to be heading in the right direction, although the Venice Commission did voice regret that the Romanian government did not send the laws for consultation as announced. Positive elements are noted on the appointment and dismissal of high-ranking prosecutors (see also below). Furthermore, the opinion notes that there are safeguards against political interference in the work of the DNA as well as a clear limitation of powers of the Prosecutor General with respect to the DNA and the DIICOT, as well as of the control of the Minister of Justice (limited to managerial questions). Nevertheless, the Venice Commission issued several recommendations which may imply further targeted changes to the laws such as extending the duration of the

[28] The SCM opinion on the draft laws highlighted a risk that this increase would have a significant impact on the human resources and workload of courts and prosecutors' offices, with potential consequences for the quality of justice. The application of these provisions and their practical impact on workload and the efficient handling of cases will continue to be monitored under the Rule of Law reports.

[29] These are now 7 years for tribunals, 9 years for Courts of Appeal, 10 years for the Prosecutor Office attached to the HCCJ.

[30] These are the "on-the-spot" promotions, which are based on results obtained in promotion competitions, and the effective promotion, which are based on the evaluation of the magistrates' activity over the past years. As of 2025, on-the-spot promotions are foreseen to be capped to 20% of the total number of vacant positions. These restrictions on what is seen to be a more objective and meritocratic promotion procedure have been criticised by some magistrates' associations in Romania.

[31] This modification has also been criticised by some magistrates' associations and civil society organisations, who argue that the meritocratic and competitive character of the procedure has been reduced. On the other hand, the SCM has argued that the current system was not performing efficiently and that, at that level of seniority, knowledge-based tests for judges are less relevant than an analysis of their performance on the bench.

mandates of high-ranking prosecutors from the current three years and eliminating the possibility of mandate renewals, as well as reinforcing the safeguards if the General Prosecutor overrules the decisions of regular prosecutors. Other proposed changes include a competitive selection for deputy managers in courts and prosecutor's offices and setting out clearly that judicial police officers seconded to prosecution offices cannot report to the Minister of Interior.

As regards the SIIJ, an initial draft law to dismantle this body was tabled in Parliament in February 2021. Despite adoption in the Chamber of Deputies – and a favourable Venice Commission opinion – the draft was not adopted in the Senate. The new government relaunched the process in January 2022 and after a shortened ten-day public consultation on a new draft and a positive opinion of the SCM, Parliament adopted a law on 28 February 2022[32], while an upcoming Venice Commission was pending. The SIIJ was dismantled in March 2022.

The SIIJ had shown itself unable to function effectively: in its three years of existence, it only sent seven cases to court, and it accumulated a large backlog of cases[33]. With the dismantling of the SIIJ, competence to investigate offences committed by magistrates has been transferred to 'designated prosecutors' within the Prosecutor's Offices attached to the High Court of Cassation and Justice[34] and the Courts of Appeal[35]. The 2022 Rule of Law report noted that while the new system was an improvement in terms of the number of prosecutors allocated to the new structure and its territorial distribution[36], concerns were raised about its impact on judicial independence[37]. For example, the opportunity had not been taken to address by law the concern about unfounded allegations ('vexatious complaints') being used as a means of pressure against magistrates. The competence *ratione personae* in place under the previous system has been maintained, without it being clear how the system would meet the test of being justified by objective and verifiable requirements relating to the sound administration of justice, as set out by the CJEU[38]. Moreover, a lack of new specific safeguards in the structure put in place had led to concern, in the light of the CJEU ruling[39]. In its opinion of

[32] Law No 49 of 11 March 2022 on the abolition of the Section for the Investigation of Offences in the Judiciary, as well as for the amendment of Law no. 135/2010 on the Code of Criminal Procedure, published in the Official Gazette No 244 of 11 March 2022. The law was challenged before the Constitutional Court, which declared it constitutional by Decision No. 88, of 9 March 2022.

[33] The SIIJ had a total of 9 651 cases to solve. Between 2018 and 2022, it solved a total of 2 000 cases. From these cases, the SIIJ issued 7 indictments and sued 9 defendants, leaving the number of open cases at 7002 in March 2022.

[34] For offences committed by members of the SCM, judges and prosecutors attached to the HCCJ, judges and prosecutors attached to the courts of appeal and the military court of appeal, as well as the judges of the Constitutional Court.

[35] For offences committed by judges and prosecutors attached to courts of first instance, tribunals and military tribunals.

[36] Under the new structure, the Prosecutor General may designate up to 14 prosecutors within the Prosecutor's Office attached to the HCCJ and up to three in each Prosecutor's Offices attached to the Courts of Appeal. The prosecutors are designated for a period of four years upon recommendation of the plenum of the SCM. They return to their initial position at the end of that term or upon decision of the Prosecutor General to end the designation.

[37] Statement by the Romanian Judges Forum Association, the Movement for the Defence of the Statute of Prosecutors Association and the 'Initiative for Justice' Association, of 24 January 2022.

[38] Judgment of the Court of Justice of 18 May 2021, *Asociaţia 'Forumul Judecătorilor Din România' and Others*, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, ECLI:EU:C:2021:393, para. 223.

[39] The new structure should be 'accompanied by specific guarantees such as, first, to prevent any risk of that section being used as an instrument of political control over the activity of those judges and prosecutors

March 2022, the Venice Commission held that any dismantlement of the SIIJ should ensure more efficacy in investigating allegations of corruptions by judges and prosecutors[40]. Other concerns centred on the appointment process for the 'designated prosecutors'[41]. The decentralised approach taken puts the onus on a need to monitor the track record of the new system. So far, no procedural incidents have been raised, with work focusing on processing the transferred cases[42] and priority given to closing cases based on unsubstantiated allegations. Over 95% of the transferred files processed so far appear to have been based on vexatious complaints. The Prosecutor General has also developed a methodology for the prioritisation of cases. The 2022 Rule of Law report included two specific recommendations on the new regime[43], on the implementation of which the Commission will report in the 2023 Rule of Law report.

The legislative processes of revising the three justice laws and the provisions regarding the investigation of offences in the judiciary are now completed. The Romanian government has committed to take the utmost account of the upcoming Venice Commission opinion on the justice laws, which may imply further targeted changes to the legislation. Follow-up on this commitment and the practical implementation of the new legislative framework fall within the scope of Commission monitoring under the Rule of Law Report. The new justice laws will also be assessed under the dedicated procedure in Romania's Recovery and Resilience Plan.

Appointments to leadership posts in the prosecution services

- *2017 Recommendation: Put in place a robust and independent system of appointing top prosecutors, based on clear and transparent criteria, drawing on the support of the Venice Commission.*
- *2018 Recommendation: Respect negative opinions from the Superior Council on appointments or dismissals of prosecutors at managerial posts, until such time as a new legislative framework is in place in accordance with recommendation 1 from January 2017.*

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likely to undermine their independence and, secondly, to ensure that exclusive competence may be exercised in respect of those judges and prosecutors in full compliance with the requirements arising from Articles 47 and 48 of the Charter', Judgment of the Court of Justice of 18 May 2021, *Asociaţia 'Forumul Judecătorilor Din România' and Others*, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, ECLI:EU:C:2021:393, para. 223.

[40] Venice Commission, Opinion on the draft law dismantling the section for investigating criminal offences committed within the judiciary (CDL-AD(2022)003), point 37.

[41] Concerns included the lack of a dedicated competitive procedure and of a specific role for the Prosecutors' Section of the SCM. The Venice Commission has underlined the importance of 'giving the prosecutorial section of the SCM a stronger involvement in the initial selection of prosecutors' (Venice Commission Opinion (CDL-AD(2022)003), para. 28). These concerns were reinforced by the initial decisions of the SCM, which seemed to favour continuity with the previous staff of the SIIJ. So far out of the total 59 posts, 37 have been filled and another 9 proposals are pending. The Prosecutor General flagged some difficulties in having prosecutors appointed by the Superior Council of Magistracy to some offices, leading to discrepancy in the distribution of workload.

[42] Since the SIIJ was dismantled, 1 237 files have been solved by the new structure by the end of September 2022 (786 at central and 451 at local level) and 2 960 cases are still pending at the central level, while the prosecutor offices throughout the country have 4 208 cases pending.

[43] The two recommendations are to "take measures to address remaining concerns about the investigation and prosecution of criminal offences in the judiciary, taking into account European standards and relevant Venice Commission opinions"; and to "closely monitor the impact of the new system on investigating and prosecuting corruption offences in the judiciary". See also under Benchmark Three.

- *2018 Recommendation: Relaunch a process to appoint a Chief prosecutor of the DNA with proven experience in the prosecution of corruption crimes and with a clear mandate for the DNA to continue to conduct professional, independent and non-partisan investigations of corruption.*

A system of transparent and merit-based appointments of the most senior prosecutors, able to provide sufficient safeguards against politicisation, has been a long-standing CVM recommendation. Successive CVM reports had highlighted the need for sufficient checks and balances in the procedure to appoint top prosecutors, as well as a reflection on the extent to which the same appointment and dismissal procedure would apply at lower management levels within the prosecution[44]. The Commission has also consistently underlined that consultation of the Venice Commission on the envisaged procedure is an important way to bring sustainability to the solution chosen and to ensure a balance which will stand the test of time between the respective role of the different institutions involved, the President of Romania, the Minister of Justice and the SCM[45], in the process.

The Venice Commission has acknowledged that there are different models with regard to the appointment to the position of Prosecutor General (or similar top prosecution posts). However, it has underlined that public confidence calls for an adequate balance between the requirement of democratic legitimacy of such appointments, and the requirement of depoliticisation[46].

The procedure for appointing top prosecutors is part of the revised law on the statute of magistrates adopted by the Parliament in October 2022. The procedure foresees that the chief prosecutors (Prosecutor General, Chief Prosecutor of DNA and Chief Prosecutor of DIICOT), as well as their deputies, are to be appointed by the President of Romania upon a reasoned nomination submitted by the Minister of Justice, following a selection process launched and organised by the Ministry of Justice and an opinion of SCM. Key issues in the past have included the consistency and transparency of the selection process, which have been accommodated in the law with new rules detailing the organisation of the selection and nomination process, the eligibility of the candidates, the evaluation criteria and the composition of the selection committee. Of particular importance has been the respective role and the weight of the SCM (particularly the prosecutorial section) and of the President in the procedure, as counterweights to the influence exercised by the Minister of Justice and safeguards against politicisation. The procedure now provides for the involvement of the Section for prosecutors of the SCM both in the selection process, where two representatives of the Section now take part in interviews, and in the nomination process, where the Minister of Justice must seek the opinion of this section. Though the opinion of the SCM is not

[44] The recommendation dates from 2016 and its relevance has been emphasized by subsequent developments. Whereas nominations have continued to be characterised by a consensual approach, controversies linked in particular to the arbitrariness allowed by law in the process of dismissals showed the need to ensure clarity and introduce safeguards. The 2016 CVM report also recommended that a procedure which involves a political element should not be applied to lower management posts, deputies and heads of section (which would be left to the SCM and leadership of the organisations concerned).

[45] See Venice Commission concern on the lack of counterbalance to the influence of the Minister of Justice opinion 950/2019 CDL-AD(2019)014.

[46] CDL-AD(2015)039, Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, § 19; CDL-AD(2017)028, Poland - Opinion on the Act on the Public Prosecutor's office, § 33. See also CDL-PI(2022)023, Compilation of Venice Commission Opinions and Reports Concerning Prosecutors.

binding on the Minister, the procedure foresees that in case of a negative opinion, a new interview with the proposed candidate would need to take place, which should take into account the arguments laid out in the SCM opinion. Following the new interview, the Minister can either send the nomination proposal to the President or withdraw the nomination and organise a new selection process. The President can either accept the Minister's nomination proposal and proceed with the appointment, or can refuse this proposal, giving reasons.

The revised law has therefore introduced a more transparent and robust selection and nomination process at the level of the Ministry of Justice, also ensuring more stability through the use of legislation rather than ministerial orders. This has been appreciated positively by the Venice Commission in its urgent opinion. The specified involvement of the Section of Prosecutors of the SCM will also help to ensure support of the magistracy for the nominated candidates. While the solution chosen does not prevent the Minister from proceeding with a nomination in the face of a negative opinion from the SCM, nor after a refusal by the President, the additional safeguards introduced help to ensure that the arguments raised in such a SCM opinion are adequately examined and taken into account in the nomination process.

In its urgent opinion, the Venice Commission found that, while the appointment procedure continues to give the Minister of Justice a decisive role, the political responsibility for the appointment is shared with the President of Romania and the role of the SCM is strengthened. According to the Venice Commission, the involvement of several institutional actors in the procedure ensures a good degree of transparency and the amendment represents an improvement in terms of guarding against the risk of partisan appointments.

The dismissal procedure of senior prosecutors is similar to the appointment process. In the revised law, the procedure is initiated by a request from the Minister of Justice for an opinion to the Section for Prosecutors of the SCM. The opinion is not binding, and after it is issued, the Minister may propose a dismissal to the President of Romania, who can only refuse the proposal on grounds of legality. One change follows a ruling of the European Court of Human Rights (ECtHR),[47] which drew attention to the growing importance of involving an authority independent of the executive and the legislative branch in decisions affecting the appointment and dismissal of prosecutors, and the risk that the dismissal could have a chilling effect on the willingness of magistrates to participate in public debate on issues concerning the judiciary. A review procedure before an administrative court has been added to the procedure for dismissal of prosecutors from leadership functions, giving the dismissed prosecutor 15 days to challenge the dismissal, with the Court being therefore able (but not required) to examine the legality and soundness of the proposed dismissal[48].

As regards the 2018 recommendation on the appointment of the DNA Chief Prosecutor, the 2021 CVM report concluded that it had been addressed.

The revised justice laws introduce a more transparent and robust process of selection for appointments to leadership posts in the prosecution, with additional safeguards to enhance the accountability of the Minister of Justice in putting forward nominations. The procedure for appointments and dismissals of leadership posts in the prosecution services has been under discussion since the start of the CVM, and consultation of the Venice Commission is an

[47] Judgment of the European Court of Human Rights of 5 May 2020, Kövesi v. Romania, 3594/19.

[48] Unlike in the previous law, a legal challenge of the President's decree to dismiss a top prosecutor does not have a suspensive effect on the dismissal.

important way to bring sustainability to the solution chosen. The Romanian government has committed to take the utmost account of the upcoming Venice Commission opinion on the justice laws. The Commission will continue to monitor the follow-up on this commitment and the practical implementation of the new legislation in the framework of the Rule of Law Report.

Codes of conduct

2017 Recommendation: Ensure that the Code of Conduct for parliamentarians now being developed in Parliament includes clear provisions on mutual respect between institutions and making clear that parliamentarians and the parliamentary process should respect the independence of the judiciary. A similar Code of Conduct could be adopted for Ministers.

As reported in 2021, a Code of Conduct for parliamentarians is in place since the end of 2017[49]. Though it does not include explicit provisions on the respect for the independence of the judiciary[50], it may have contributed to increased awareness and therefore a reduction in the number of incidents of disregard of judicial independence in the parliamentary process and criticism of the judicial system and of individual magistrates from some Members of Parliament as noted in the 2021 CVM report[51]. The ministerial code of conduct, amended in 2020, includes the obligation to respect judicial independence[52].

Since the 2021 CVM report there has been a reduction in significant public criticism from parliamentarians likely to undermine the independence of the judiciary, and there were no instances to test the effectiveness of the Code in case of breaches. During 2021-2022, the SCM admitted eight requests for defending the professional reputation, independence and impartiality of judges, and 18 such requests for prosecutors[53]. The SCM has noted that, unlike in the past when campaigns denigrating magistrates were launched by politicians in national media outlets, most requests are now linked to statements issued in local media.

This improved situation may offer an opportunity to guard against any future return to a more conflictual atmosphere and a greater risk of attacks from politicians towards members of the judiciary. The Codes of Conduct could for instance be accompanied by guidance, examples and awareness-raising on how to deal with concrete situations. A possible way forward which the Romanian authorities could consider would be to follow-up to ensure that when the SCM condemns statements of a Member of Parliament or of the government in relation to an individual magistrate or the judicial system, a prompt assessment of whether the Code has been breached is carried out. Such developments can be monitored in the Rule of Law reports.

Codes of Conduct for parliamentarians and ministers are in place and can contribute to increased awareness and a significant reduction in the number of incidents of disregard of judicial independence and criticism of the judicial system and of individual magistrates.

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[49] Parliament decision 77/2017: https://www.juridice.ro/wp-content/uploads/2017/10/Codul-de-conduită.pdf.

[50] The Code of Conduct does not specifically mention respect for the independence of the judiciary but includes a general provision on the respect of separation of powers: Article 1 paragraph (3) provides: "Deputies and senators have the obligation to act with honour and discipline, taking into account the principles of separation and balance of powers in the state, transparency, moral probity, responsibility and respect for Parliament's reputation."

[51] Superior Council of Magistracy website – statements and decisions regarding judicial independence.

[52] Article 3(1) of the Code.

[53] The total number of decisions taken by the SCM in cases of requests to defend the professional reputation and impartiality of magistrates were 36 in 2021 (23 requests admitted, 10 rejected, the rest annulled or withdrawn) and 18 in 2022 (8 admitted, 9 rejected, 1 annulled).

Civil procedure code

2017 Recommendation: The Minister of Justice, the Superior Council of the Magistracy and the High Court of Cassation and Justice should finalise an action plan to ensure that the new deadline for the implementation of the remaining provisions of the Code of Civil Procedures can be respected.

This Recommendation covered the finalisation of the reform of the Code of Civil Procedures, which in particular set up a council chamber stage in the civil procedure and procedures for appeals in certain cases. In 2018, this reform was abandoned[54]. The 2021 CVM report maintained the conclusion reached in 2019 that this should provide an opportunity for a period of stability in this branch of the judicial system, and considered the recommendation fulfilled.

No further developments were noted since the last CVM report and the recommendation remains fulfilled. Assessments of the efficiency and quality of the judicial proceedings are being examined in the context of the Rule of Law Report.

Criminal code and criminal procedure code

- *2018 Recommendation: Freeze the entry into force of the changes to the Criminal Code and Criminal Procedure Code.*
- *2018 Recommendation: Reopen the revision of the Criminal Code and Criminal Procedure Code taking fully into account the need for compatibility with EU law and international anti-corruption instruments, as well as the recommendations under the CVM and the Venice Commission opinion.*
- *2017 Recommendation: The current phase in the reform of Romania's Criminal Codes should be concluded, with Parliament taking forward its plans to adopt the amendments presented by the government in 2016 after consultation with the judicial authorities.*

CVM reports have consistently returned to the need to conclude the reform of Romania's 2014 Criminal Codes. A key driver for this reform has been the need to adapt to Constitutional Court decisions, as well as to transpose EU Directives. Since 2014, the Constitutional Court adopted 80 decisions declaring various provisions of the Codes unconstitutional[55]. Responding swiftly and consistently to the need to adapt the legislation to reflect these decisions proved to be a challenge[56]. In previous years, the Commission reported in detail on developments around the revisions of the Codes, reiterating the need to conclude the reforms as a matter of priority.

A number of far-reaching decisions of the Constitutional Court made since 2014 annulled provisions of both codes, with a particular impact on the fight against corruption and organised crime[57]. The absence of policy and legislative solutions led to increased obstacles and legal uncertainty regarding the investigation, prosecution and sanctioning of high-level corruption cases, with cases failing in court, legal uncertainty on the admissibility of

[54] The amended laws entered into force in December 2018.

[55] 66 decisions relate to the Criminal Procedure Code and 14 decisions to the Criminal Code.

[56] As the Romanian government noted, although some of the unconstitutionality deficiencies have already been remedied by the adoption of legislative amendments, there are still 32 CCR decisions on the Code of Criminal Procedure and 13 decisions on the Criminal Code which have not been followed by legislative interventions.

[57] Examples include the definition of the crime of abuse in office, the conditions for using technical surveillance methods (wiretapping) or the special statute of limitation for crimes. In this respect, see also Benchmark Three.

evidence, and the restart of investigations or trial. In certain cases, the lack of legislative action has led to a succession of Constitutional Court decisions on the same topic, and to the need for the High Court of Cassation and Justice (HCCJ) to interpret them in order for the courts to apply them in a consistent manner.

A recent example is likely to have a particularly damaging impact on important ongoing criminal cases. In 2018, the Constitutional Court declared unconstitutional a provision related to the interruption of the limitation period of the criminal liability for all offences for which a statute of limitation applies. The majority of the courts took account of this decision by interpreting in a more restrictive manner the situations in which a procedural act could lead to the interruption of the statute of limitation. However, the failure to remedy the situation by enacting new provisions in law was noted in a second decision of the Constitutional Court on the same article in May 2022. This decision considered that as from the first decision, and until the conditions for interruption of the limitation period are set out by the legislature, there is no basis for the interruption of the limitation period for the criminal liability. Whilst a Government Emergency Ordinance in 2022 was issued to clarify the conditions under which the interruption of the limitation period would apply for the future, this would not have retrospective effect. In addition, challenges to the Ordinance are currently also pending before the Constitutional Court. On 25 October 2022, the HCCJ held that, according to the principle of the most favourable law in the period 2014-2022, no procedural acts of the prosecution may be considered to interrupt the limitation period for criminal liability[58]. This sequence of events could have serious consequences. The Prosecutors' Section of the SCM warned that it would lead to the termination of criminal proceedings and the removal of criminal liability in a substantial number of cases[59].

Since the 2021 report, concrete steps have been taken to take forward the revision of the two codes. The interinstitutional working group that had been set up in 2019 continued its work, and revised drafts were published for consultation on the Ministry of Justice's website in summer 2021. One year later, on 2 June 2022, the Ministry of Justice sent a revised version of the draft laws to the Government for approval[60]. The revision is also part of the milestones of a reform in the national Recovery and Resilience Plan of Romania.[61]

The legislative process of revising the Criminal Code and Criminal Procedure Code to align provisions with the relevant decisions of the Constitutional Court of Romania is still ongoing. This alignment will also need to take into account the need for compatibility with EU law and international anti-corruption instruments, as well as the recommendations of the CVM and

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58 Decision 67/2022 of the High Court of Cassation and Justice, referring to Decision no. 297/2018 and Decision no. 358/2022 of the Constitutional Court.

59 https://www.csm1909.ro/PageDetails.aspx?Type=Title&FolderId=9880. See also Benchmark 3.

60 See the 2022 Rule of Law report for more details. In particular, the current draft proposes to amend the offence of abuse of power in the Criminal Code to specify that a 'violation of a duty' should follow from a law, a Government Ordinance, a Government Emergency Ordinance, or another normative act which, at the date of its adoption, was assimilated to a law. Lack of clarity on this offence had inhibited its prosecution and it is expected that the amendment will facilitate the effective prosecution of this offence. It is also proposed, following a Constitutional Court judgment and a 2018 Opinion of the Venice Commission, to adopt strengthened safeguards for the use of evidence obtained from electronic recordings.

61 Milestone 424 of Romania's RRP, entitled 'Amendment of the Criminal Code and Criminal Procedure Code' requires Romania to 'bring the provisions of the Criminal Code and the Criminal Procedure Code that entered into force in 2014 in line with the Constitutional provisions, in accordance with the relevant national Constitutional Court decisions on the constitutionality aspects of the recent changes made to the Criminal Code and Criminal procedure.' Romania's agreed target to complete this reform in its RRP is December 2022.

the Venice Commission opinion. Recent developments in jurisprudence related to the statute of limitation of criminal liability and their substantial impact on ongoing pre-trial and court proceedings demonstrate the need for such alignment. Completing the revision of the two Codes is also part of the commitments undertaken by Romania in its Recovery and Resilience Plan and the Commission will assess closely the revised codes in accordance with the specific procedures envisaged in that context.

The legislative process in the CVM area

2017 CVM Recommendation: In order to improve further the transparency and predictability of the legislative process, and strengthen internal safeguards in the interest of irreversibility, the Government and Parliament should ensure full transparency and take proper account of consultations with the relevant authorities and stakeholders in decision-making and legislative activity on the Criminal Code and Code for Criminal Procedures, on corruption laws, on integrity laws (incompatibilities, conflicts of interest, unjustified wealth), on the laws of justice (pertaining to the organisation of the justice system) and on the Civil Code and Code for Civil Procedures, taking inspiration from the transparency in decision-making put in place by the Government in 2016.

This recommendation was an acknowledgement that an open and robust legislative process is the best way to ensure that reforms are sustainable as well as effective[62]. The 2021 CVM report concluded that the legislative process for the various proposals for reform – on the SIIJ, the Justice Laws, and later the Criminal Code and Criminal Procedure Code – provided an opportunity to show that the approach of the recommendation is being followed.

A balance between the need to inject urgency in priority commitments and to ensure a transparent and inclusive process has not always been found. The swift process of adopting the law that dismantled the SIIJ led to concerns that there had been little opportunity for stakeholders to comment on the new arrangements, a concern echoed by the Venice Commission itself[63]. The justice laws have also been subject to the urgency procedure of the Parliament[64] and expedited public consultation on the final versions tabled in Parliament. Stakeholders have also pointed out that the parliamentary debates were rushed, without sufficient time to discuss amendments in substance[65].

The 2022 Rule of Law report has commented more generally on the law-making process in Romania, noting that frequent changes of legislation and the regular use of emergency ordinances continue to raise concerns regarding the stability and predictability of legislation. In this framework, the Commission issued a recommendation to Romania to ensure effective public consultation before the adoption of draft legislation[66]. The 2023 Rule of Law report will follow up on the implementation of this recommendation. Issues related to the quality of law-making are also addressed by Romania's Recovery and Resilience Plan, including a specialised structure to oversee the quality of legislation and the systematic re-publication of

[62] The 2022 Rule of law report - Country Chapter on the rule of law situation in Romania and the European Semester Country Specific Recommendations have underlined concerns regarding the predictability and quality of the legislative process in general.

[63] Venice Commission, Opinion on the draft law dismantling the section for investigating criminal offences committed within the judiciary (CDL-AD(2022)003).

[64] 15 days for each Chamber for the emergency legislative procedure instead of the normal legislative procedure of 45 days per Chamber.

[65] Observations from NGOs present at the debates, and media reports.

[66] 2022 Rule of law report - Country Chapter on the rule of law situation in Romania, p. 2.

consolidated versions of laws whenever they are amended, as well as developing a methodology on the use of government emergency ordinances.

While the calendar for reforms has not always allowed for extended consultations, the Romanian Government has nevertheless taken steps in line with the recommendation and sought to ensure transparency and that relevant actors have had the opportunity to express views on the reforms proposed. The more general approach to effective public consultation before the adoption of draft legislation will continue to be monitored in the Rule of Law Report.

Implementation of court decisions by public administration

2017 CVM Recommendation: The Government should put in place an appropriate Action Plan to address the issue of implementation of court decisions and application of jurisprudence of the courts by public administration, including a mechanism to provide accurate statistics to enable future monitoring. It should also develop a system of internal monitoring involving the Superior Council of the Magistracy and Court of Auditors in order to ensure proper implementation of the Action Plan.

Respect and implementation of court decisions is an integral part of the effectiveness of any judicial system[67]. To respond to challenges in this area, Romania proposed to the Council of Europe's Committee of Ministers an action plan to address the structural problems of non-enforcement or delayed enforcement of court decisions against the State[68] identified by the European Court of Human Rights[69]. A list of measures to implement the action plan, including amendments to the legal framework to guarantee timely execution and a mechanism to supervise and prevent late execution of judgments for which the State is a debtor, were approved in 2019[70]. In its March 2022 assessment of progress of the implementation of the action plan, the Council of Europe's Committee of Ministers reiterated their call upon the authorities to step up efforts and demonstrate commitment to complete necessary reforms[71]. Following this, a new structure was set up in October 2022 within the Secretariat General of the Government to monitor and control the enforcement of judgments delivered by the ECtHR following the non-enforcement of judgments delivered against public debtors in Romania[72].

The Rule of Law Report now includes an overview of systematic indicators on the implementation of ECtHR leading judgments in all Member States[73]. In January 2022, Romania's rate of implementing leading judgments from the past ten years was at 57% –

[67] See Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb): http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf.

[68] See Council of Europe reference CM/Notes/1280/H46-21.

[69] Romania was sanctioned by the European Court of Human Rights in 2005 on the grounds of failure or significant delay by the State or by legal entities under the responsibility of the State to abide by final domestic court decisions.

[70] Memorandum nr. L1/1814/26.02.2019 on 'Measures to Ensure the Execution of Judgments against a Public Debtor, in accordance with the case law of the European Court of Human Rights regarding non-execution or execution with delay of the judgments handed down against a public debtor.'

[71] Interim Resolution CM/ResDH(2022)58.

[72] The implementation will be analysed by the Committee of Ministers of the Council of Europe in March 2023.

[73] The adoption of necessary execution measures for a judgment by the ECtHR is supervised by the Committee of Ministers of the Council of Europe.

compared to the overall Member State average of 40% – and the average time that the judgments had been pending implementation was over four years and two months[74]. This issue will continue to be followed in the framework of the Rule of Law Report, including as regards steps taken by Romania to develop a mechanism of accurate statistics and a system of internal monitoring that involves the Supreme Council of the Magistracy and Court of Auditors to ensure the proper implementation of its Action Plan.

New steps to implement this recommendation have recently been taken, which are expected to address the persistent issues identified. The Commission will continue to follow closely the monitoring process set up at the level of the Council of Europe and report as relevant in the framework of the Rule of Law Reports, as it does for all Member States[75].

Strategic Judicial Management and Action Plan for the judiciary

2017 CVM Recommendation: The Strategic Judicial Management, i.e., the Minister of Justice, the Superior Council of the Magistracy, the High Court of Cassation and Justice and the Prosecutor-General should ensure the implementation of the Action Plan as adopted and put in place regular common public reporting on its implementation, including solutions to the issues of shortages of court clerks, excessive workload and delays in motivation of decisions.

CVM reports identified the Strategic Judicial Management as an important opportunity to build a consensual and sustainable way forward for the justice system. The 2022 Rule of Law report assessed that the new Strategy for the Development of the Judiciary 2022-2025 and its related Action Plan, adopted on 30 March 2022, set clear objectives and a monitoring mechanism. The adoption and entry into force of the new Strategy is a milestone under Romania's Recovery and Resilience Plan[76]. The Strategy focuses on both the independence, quality and efficiency of justice, and on access to justice. It includes the elimination of inequities in the magistrates' salaries and pensions, and the modernisation of the status of judicial staff and related legal professions, as well as the reform of the justice laws. The Strategy envisages a number of measures to remedy the issue of staff shortages in the judiciary, including modernising the status of judicial and auxiliary staff to allow judges and prosecutors to concentrate on judicial work. It also sets the quantitative objective to ensure an occupancy rate of 95% of the judge positions and 80-85% of the prosecutor positions by 2025[77].

The strategy will be an important tool for addressing remaining challenges in the judiciary in a sustainable manner. Close monitoring and public reporting will also serve to foster public trust that issues related to excessive workload and related delays in the treatment of Court

[74] 2022 Rule of law report - Country Chapter on the rule of law situation in Romania, p. 28.

[75] See 2022 Rule of Law report, COM(2022) 500 final, p.24.

[76] Milestone 421 on "Entry into force of the law approving the strategy for the development of the judiciary 2022-2025".

[77] The issue of staff shortages in the judiciary has gained public prominence in November, where a wave of retirement requests were registered, notably among judges. Magistrate associations pointed to the need for a clear strategy to address shortages and excessive workload. In order to reduce the rate of retirements of judges, as well as to ensure an adequate selection range for recruitment competitions in the profession, both the presidents of the courts of last instance – the High Court and the courts of appeal – and the general assemblies of judges of the courts have called on the other branches of government to take measures to strengthen the status of judges and improve working conditions in the courts in a Resolution adopted on 28 October. Shortages within the judiciary are also being followed in the Rule of Law Reports. The 2022 report noted that the number of retirements continues to exceed the number of new recruitments.

cases are being adequately prioritised. Proactive and regular communication and consultations with the judiciary and the legal professions could also be useful to reassure magistrates that issues related to staff shortages and the resulting disproportionate workload are being addressed.

The transparency and accountability of the Superior Council of the Magistracy

2017 CVM Recommendation: The new Superior Council of the Magistracy should prepare a collective programme for its mandate, including measures to promote transparency and accountability. It should include a strategy on outreach, with regular open meetings with assemblies of judges and prosecutors at all levels, as well as with civil society and professional organisations, and set up annual reporting to be discussed in courts' and prosecutors' general assemblies.

Successive CVM reports have consistently underlined the need for the Superior Council of the Magistracy (SCM) to contribute to the momentum of reform, articulating clear collective positions and securing confidence through transparency and accountability. The 2021 report noted important concerns related to the capacity of the SCM to build consensus in the judiciary and play a constructive role in key decisions for the organisation and the functioning of the judiciary, but also pointed to instances where the SCM was able to surmount its internal divisions and obtain results[78].

Despite efforts to reach compromises, divisions within the SCM since 2021 have continued to beset issues such as appointments for the new structure replacing the SIIJ, the organisation of elections for the new SCM, or public disagreements between SCM members on the justice laws. The current SCM term expires at the end of 2022, and the process to elect new members was launched in February 2022. The elections for the new Council also attracted criticism[79]. The designation as interim President of the Council for 2022 of its sitting President gave rise to further reactions within the SCM[80].

The revised legislative provisions concerning the functioning of the SCM include a number of obligations that can contribute to the transparency and accountability of the Council. The law maintains the possibility to recuse SCM members when judging disciplinary cases on grounds extended to conflicts of interest and impartiality. A clear deadline for replacing SCM members when their term expires is introduced. Finally, the assemblies maintain the possibility to recuse members of the SCM on grounds of non-fulfillment of duties.

In contrast to 2020 – when the SCM did not engage constructively on the draft justice laws published by the Ministry of Justice and did not issue an official opinion – in 2022 the Council has been able to adopt formal positions on key legislative projects. Although marred

[78] See 2021 CVM report for details.

[79] Elections were organised in early July 2022, during summer recess. The results were challenged and on 19 July SCM admitted challenges from two judges but rejected those of prosecutors, which led to public controversies. See for instance https://ziare.com/alegeri-csm/alegeri-turul-2-procurori-csm-1753710; https://spotmedia.ro/stiri/opinii-si-analize/apel-catre-comisia-europeana-csm-dovedeste-ca-romania-are-nevoie-sa-ramana-cu-mcv; https://romania.europalibera.org/a/alegeri-csm-contestatii/31950487.html; VIDEO Procurorul Bogdan Pîrlog despre votul din CSM: „O încălcare a legii care ridică probleme penale" - PRESShub.

[80] Several members of the SCM deemed that this interim nomination has circumvented constitutional provisions whereby the President of the Council can be elected for a non-renewable one year mandate, calling into question the legitimacy of several important proceedings initiated in 2022 such as the elections for the Council, the nomination of the new Chief Judicial Inspector and the selection of a new President of the High Court of Cassation and Justice.

by controversy within the Council, with some members deploring the lack of consultation of the Courts and prosecution services, the plenum issued a positive opinion on the draft law for the dismantling of the Special Section for the Investigation of Offences in February 2022[81]. The Council also issued a positive opinion on the draft justice laws in August 2022[82], while presenting suggestions for some amendments, and participated in the ensuing parliamentary debates with further proposals for amendments.

Since the last report, the activity of the SCM in defending the independence of the judiciary has continued to rely on the sections rather than the plenum[83]. Some members of the SCM have questioned the processes as unnecessarily lengthy and inconsistent in their conclusions.

As regards transparency and access to information, the Council has continued to publish relevant information on its website, and its plenary and sections meetings are broadcast. Information about disciplinary decisions is also available online.

The newly elected SCM starting its mandate in 2023 would need to ensure hat it takes forward transparency and accountability as key objectives in its programme. Holding regular open meetings and discussing the annual reports[84] with the assemblies of judges and prosecutors at all levels, as well as with civil society and professional organisations will be key to ensure the implementation of these objectives. The civil society forum in the area of justice established in December 2021 can make a major contribution in this respect.

Successive CVM reports have consistently underlined the need for the Superior Council of Magistracy to contribute to the momentum of reform, articulating clear collective positions and securing confidence through transparency and accountability. The importance of these objectives has been recognised by the Romanian government. The election of a new Council to start its mandate in 2023 provides an opportunity to ensure transparency and accountability, which could be demonstrated by the new Council in the form, for instance, of a public statement of governing principles, as well as in the sustained collective endorsement of key positions by the Council.

The Judicial Inspection

2018 CVM Recommendation: The Superior Council of Magistracy to appoint immediately an interim team for the management of the Judicial Inspection and within three months to appoint through a competition a new management team in the Inspection.

The 2021 CVM report concluded that structural concerns related to the Judicial Inspection remained to be addressed, including in the light of the May 2021 judgement of the European

[81] Superior Council of Magistracy, Decision 1 of 11 February 2022. The controversy was linked to the fact that the Council's draft amendments to the law were taken up by the Ministry of Justice in a revised draft law, which led to the Council issuing a positive opinion without comments. In a letter to the Commission, several Members of the Council argued that this created a false public perception of a full agreement of the judicial system towards this law, despite a lack of consultation of courts and prosecution offices on the draft provisions.

[82] Decision 115 of 12 August 2022.

[83] The plenum issued no decisions during 2022, and 7 in 2021. In 2021, one of the requests admitted concerned public televised statements made by one SCM member himself related to the prosecution. The prosecutors' section concluded in December 2021 that the statements had seriously affected the independence and impartiality of prosecutors, in particular those charged to investigate corruption offences.

[84] The SCM has not yet published the 2021 Report on the Judiciary, although its mandate will end in December 2022.

Court of Justice[85]. The 2022 Rule of Law report reiterated the concerns about the extensive powers and lack of accountability of the Chief Judicial Inspector. These concerns included the concentration of power in the hands of the Chief Inspector and his deputy, the high proportion of cases brought by the Inspection and eventually rejected in court, as well as the limits to the oversight by the SCM[86]. Questions were raised on whether the provisions in the justice laws for appointing the management of the Judicial Inspection and its accountability offer sufficient guarantees and achieve the right balance between judges, prosecutors and the SCM. A request for a preliminary ruling is pending before the CJEU on the question whether the extensive powers vested in the Chief Inspector are in line with the requirements of judicial independence[87].

The law on the Superior Council of Magistracy adopted in October 2022 amended substantially the legislative framework related to the Judicial Inspection. It includes several provisions to remedy the lack of accountability of the Judicial Inspection and the concentration of power in the hands of the Chief Inspector. The powers of the Chief Inspector are balanced by a newly introduced Board, with a series of powers to ensure an adequate counterweight. Its role will cover decisions on the organisation and operation of the Judicial Inspection, the performance of inspection works and appointment competitions. The appointment of the deputy Chief Inspector passes from the hands of the Chief Inspector to the SCM plenum, based on more objective criteria. Similarly, the judicial inspectors will be appointed by the Chief Inspector on the basis of a competition organised by the relevant SCM section with the support of the National Institute of Magistracy. This competition was previously run by the Judicial Inspection itself. The rules on the organisation of the competitions were clarified, including as regards the selection criteria and the composition of the selection panels. New rules have been introduced to regulate any situations of conflict of interests faced by a Chief Inspector, who will also now be required to propose the composition of the monitoring teams to the management board (instead of the Chief Inspector deciding directly). A remaining concern relates to the possibility for the Chief Inspector to overrule a decision to dismiss a case, or any decision taken by an inspector following a preliminary investigation. The application of this rule in practice and the effectiveness of the existing safeguards[88] will need to be monitored.

In the past, the selection and appointment of the Chief Inspector raised controversy, as detailed by the 2021 CVM report. The appointment of the new head of the Judicial Inspection in July 2022 appears to have been more straightforward, even though only one candidate applied. The new legislation also covers the appointment of the Chief and Deputy Chief Inspectors, giving stronger oversight powers to the SCM and involving the National Institute of Magistracy in the competitions for entering the Judicial Inspection. The revocation procedure for the Chief Inspector has also been altered, from a requirement for a decision

[85] Judgment of the Court of Justice of 18 May 2021, Asociaţia 'Forumul Judecătorilor Din România' and Others, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, ECLI:EU:C:2021:393, para. 207.

[86] The latest progress report for Romania under the CVM, (COM(2021) 370 final), notes that there remain cases where disciplinary investigations and heavy sanctions on magistrates critical of the efficiency and independence of the judiciary have raised concerns. More recently, the disciplinary proceedings initiated by the Judiciary Inspection against a judge of the Piteşti Court of Appeal generated such concerns, in substance because he decided to disapply the legislation establishing the SIIJ in light of the judgment of the ECJ from May 2021. The SCM eventually rejected the disciplinary action by decision of 14 April 2022.

[87] C-817/21, R.I. v Inspecția Judiciară, N.L.

[88] The Chief Inspector can overule such decisions only once and with an obligation to provide reasoned grounds.

from the full SCM plenary to initiation by five SCM members or by the General Assembly of the Judicial Inspection. The resulting balance between considerations of independence, accountability and stability in the leadership of the Judicial Inspection will need to continue to be monitored in practice.

In 2021 and 2022 the number of disciplinary actions registered by the Superior Council of Magistracy has remained broadly stable[89]. However, there remain cases where disciplinary investigations and resulting sanctions imposed on magistrates appear to have been linked to the voicing of critical opinions on rule of law issues. Such investigations have been opened by the Judicial Inspection either *ex officio* or at the request of the SCM[90]. The CJEU has made clear that judicial independence could be undermined if the disciplinary regime is diverted from its legitimate purposes and used to exert political control over judicial decisions or pressure on judges[91]. In addition to the cases mentioned in the Rule of Law report 2022, other disciplinary investigations against judges were perceived as a form of pressure and retaliation for sentences given, notably in high-level corruption-related cases[92].

Although public information regarding disciplinary cases at the Judicial Inspection was lacking for the past three years[93], predictability and transparency has been increased through the decision of the SCM to publish, in anonymised format, disciplinary decisions that have become final and breaches of the code of ethics on a portal accessible to magistrates only.

This 2018 recommendation has become obsolete. The new leadership of the Judicial Inspection has now the opportunity to ensure disciplinary investigations are no longer used as an instrument to exert pressure on the activity of judges and prosecutors, in line with the case-law of the CJEU. The Commission will continue to look at the operation in practice in the framework of the Rule of Law Reports.

On the basis of the analysis of Benchmark One, overall the recommendations can be considered satisfactorily fulfilled, and monitoring can continue under the annual Rule of Law Report cycle. The Commission welcomes the Romanian government's commitments to continue the path of reform by taking the utmost account of Venice Commission recommendations and completing the process of adopting new criminal codes. Romania has been fully committed to working together with the Commission on the annual Rule of Law Report cycle. This monitoring framework has already started to follow in detail many of the issues explored under the CVM, such as the regime succeeding the Section for the Investigation of Offences in the Judiciary and the functioning of the Judicial Inspection, as well as the broader legislative framework of the Justice Laws and the Criminal Codes and the work of the Superior Council of Magistracy. Commitments under the Recovery and Resilience Facility and further opportunities for assistance under other relevant EU

[89] 24 actions concerning judges and 13 concerning prosecutors in 2021, 26 actions concerning judges and 6 concerning prosecutors in 2022. The sanctions issued on judges included warnings, suspension from office, reduction of monthly employment allowances, demotion in rank and exclusions from magistracy as regards judges. For prosecutors, only warnings were issued.

[90] See Rule of Law report 2022, Country chapter on Romania for details.

[91] Judgments of the Court of Justice of 15 July 2021, Commission v. Poland (Disciplinary regime for judges), C-791/19, ECLI:EU:C:2021:596, para. 138, and of 21 December 2021, Euro Box Promotion e.a., in joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, ECLI:EU:C:2021:1034, para. 239.

[92] Two judges were concerned by the opening of five disciplinary investigations in past months, who claimed that the cases were opened at the request of the defendants, with a view to challenging the substance of the judgment, or *ex officio* by the Judicial Inspection.

[93] https://www.inspectiajudiciara.ro/ro-ro/page/comunicate-de-presa.

programmes, in particular the Technical Support Instrument, can help with continuing the implementation of relevant reforms.

2.2 Benchmark Two: Integrity framework and the National Integrity Agency

The 2021 CVM report concluded that the risk of backtracking identified in 2019, linked to modifications to the rules on integrity, had been mitigated and that there were encouraging signs that the new legislature could set a clear path towards the sustainability of the National Integrity Agency (ANI) and the legislative framework on integrity.

ANI continues to investigate incompatibilities, conflicts of interest and unjustified wealth, maintaining a steady track record[94]. As set out in the 2022 Rule of Law Report, ANI has seen a number of positive developments. After more than one year and a half without a President, at the proposal of the National Integrity Council, a new ANI President was appointed in 2021[95].

The fact that asset and interest declarations must be filled electronically and are publicly available online since 2022 increased transparency and facilitated ANI's work[96]. As well as training sessions, ANI launched "e-DAI Assistant" in May 2022, a chatbot helping people to use the platform effectively. ANI has also been developing its own tools to identify by itself suspicious declarations of assets and interests, on the basis of risk indicators, and intends to work more closely with the National Agency for the Management of Seized Assets (ANABI)[97].

CVM reports have noted that the effectiveness of ANI has been constrained by the need to modernise and further improve the clarity of the legal framework for integrity, putting it on a stable and sustainable basis. In its national Recovery and Resilience Plan, Romania committed to have a consolidated law on integrity in force by 2024[98]. ANI is working with the Ministry of Justice and other partners to carry this work forward, expecting to finalise it by mid-2023[99]. A consolidation of the laws on integrity, incompatibilities and conflicts of interest would allow case-law and corruption prevention policies to be taken into account and provide a stable basis for the future.

ANI continues to work effectively and to take steps to improve its governance, tools and methods. Work is well under way to prepare a comprehensive legislative framework on

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[94] Between 1 June 2021 and 30 September 2022, ANI analysed over 1 700 files and found 218 integrity incidents: 120 cases of incompatibility, 81 cases of administrative conflict of interest and 17 cases of unjustified wealth. Integrity inspectors identified 68 cases involving possible criminal offences and referred them to the competent bodies for further investigation.

[95] The new President had been Vice-President since 2017. The selection procedure for a Vice-President was launched in September 2022 (after a first unsuccessful round earlier this year) and should be finalised by the end of the year. The President of ANI flagged that there was little interest from qualified candidates (only one candidate applied), also due to the remuneration conditions of the post.

[96] By 30 September 2022, some 10.7 million assets and interests disclosures had been published on the e-DAI portal (http://declaratii.integritate.eu/).

[97] Information received from ANI in the context of the country visit to Romania for the purposes of the 2022 Rule of Law report.

[98] Milestone no. 431 of Romania's RRP states: 'Consolidated laws on integrity shall enter into force. The update of the integrity legislation shall be realized based on a prior evaluation and analysis of the integrity laws, together with an initial clustering of the normative acts. Within the second phase of the project, the existing laws shall either be unified and updated, or new normative acts shall be proposed.'

[99] ANI is currently carrying out a comprehensive mapping of existing integrity rules, of international standards and of best practice in other Member States. This will be finalised by the end of 2022 and will inform work on the new consolidated law.

integrity to be adopted in 2023 and this is an opportunity to further support ANI's work and bring the clarity and stability needed to effectively detect and address incompatibilities, conflicts of interest and unjustified wealth. The new legislation falls under Romania's Recovery and Resilience Plan and its practical implementation is within the scope of Commission monitoring under the Rule of Law Reports.

The PREVENT system

2017 Recommendation: Ensure the entry into operation of the PREVENT system. The National Integrity Agency and the National Public Procurement Agency should put in place reporting on the ex-ante checks of public procurement procedures and their follow-up, including ex post checks, as well as on cases of conflicts of interest or corruption discovered, and the organisation of public debates so that the government, local authorities, the judiciary and civil society are invited to respond.

Since 2017, the PREVENT system has been working to avert conflicts of interests in public procurement procedures by setting up an ex-ante verification mechanism. This helps contracting authorities to remedy possible problems before the contract is awarded.

The 2021 CVM report confirmed PREVENT's positive results, and its continued effectiveness has been confirmed by ANI. Between 1 June 2021 and end-September 2022, almost 20 000 procurement procedures were reviewed by the PREVENT system with a view to identifying possible conflicts of interest, including over 3 700 dealing with EU funds. These involved over 2 600 contracting authorities, and almost 16 000 companies. Integrity inspectors issued 24 integrity warnings, covering procedures equating €97 million. In all cases notified by the system, the contracting authorities removed the causes that generated potential conflicts of interest: there were two cases where the National Agency for Public Procurement was notified of a potential irregularity. This track record confirms the conclusion of the 2021 CVM report that this recommendation is fulfilled.

The recommendation on the PREVENT system was already fulfilled in 2018 and its continued positive results illustrates its sustainability.

Follow-up of court decisions concerning Members of the Parliament

2017 Recommendation: The Parliament should be transparent in its decision-making with regard to the follow-up to final and irrevocable decisions on incompatibilities, conflicts of interests and unjustified wealth against its members.

Previous CVM reports pointed at delays and apparent inconsistencies in the application of sanctions against Members of Parliament found by a final court decision to hold incompatible functions or to have a conflict of interest following a report from ANI. They highlighted a possible divergent interpretation of the rules, in particular when the integrity incident occurred in a previous mandate or position, and suggested more clarity. In 2020 and 2021, the High Court of Cassation and Justice clarified the interpretation of the laws. The Court ruled that the sanction applies even if the incompatibility concerns a previous mandate, and that a limitation period of three years should refer to the need for ANI to finalise an investigation within three years of the facts that determine the existence of a state of conflict of interest or incompatibility (rather than the sanction not applying after three years)[100].

[100] HCCJ Decision of 16 November 2020 and HCCJ Decision 1/2021 of 19 March 2021.

Since 2021, there has been one case, where ANI found that one Senator held incompatible functions. This led to the prompt resignation of the person concerned from public function, despite a challenge to ANI's decision being brought before the Court. There were no cases which would have tested the Parliament's transparency in its decision-making with regard to final court decisions.

The positive assessment in the 2021 CVM report based on the proactive cooperation seen at the start of the new Parliament is confirmed and this recommendation can therefore be considered fulfilled. The Commission will continue to monitor the follow-up given by the Parliament to irrevocable decisions on incompatibilities, conflicts of interests and unjustified wealth against its members, under the Rule of Law Reports.

On the basis of the analysis of Benchmark Two, all recommendations can be considered satisfactorily fulfilled. The Commission will continue to look at developments related to the integrity framework and its implementation in the Rule of Law reports. The consolidation of the legal framework for integrity is also a milestone in Romania's Recovery and Resilience Plan[101].

2.3 Benchmark Three: Tackling High-level Corruption

The National Anti-Corruption Directorate and the fight against high-level corruption

Corruption was a primary area of concern that the positive assessment reached in respect of Benchmark Three in January 2017 had been put into question by Romania. However, the 2021 report was able to mark an improvement, with a new impetus and institutional stability at the National Anti-Corruption Directorate (DNA). The positive trend in the effectiveness of the investigation and sanctioning of corruption was confirmed in the 2022 Rule of Law report.

Since the last CVM report and until the end of October 2022, the DNA sent 451 cases of high-level corruption to trial, concerning a total of 1 067 defendants. These included sitting or former ministers, deputies, senators, or persons holding high-level political or public office in the local administration. In the same period, the Courts decided on the final conviction of 564 defendants in cases prosecuted by the DNA and ordered the confiscation of assets amounting to a value of almost €24 million. State entities became entitled to recover over €43 million in prejudice in DNA cases following final court decisions. These results confirm the positive trend noted in 2021.

Nevertheless, operational challenges remain for the work against high-level corruption. Recruitment has proved challenging, although some improvement is noted on the DNA's occupancy rate of prosecutors that has now reached 78%, according to the data provided to the Commission. The high seniority requirement had been identified as a major reason for the limited number of applications to fill in the existing vacancies[102]. However, since the Constitutional Court declared unconstitutional a law decreasing the seniority requirement to seven years[103], the seniority requirement for appointment in DNA has not been changed in

[101] Milestone 431 on the 'Evaluation and update of legislation on the integrity framework'.

[102] As acknowledged in the input from Romania for the Rule of Law report, p. 27 and National Anti-Corruption Directorate (DNA), 2021 Activity Report, p. 8.

[103] Constitutional Court, Decision No. 514, of 14 July 2021, The Court argued that, as the DNA is a specialised department within the Prosecutor's Office attached to the HCCJ, its prosecutors should have the same

the revised justice laws, and a ten-year requirement is in place, as well as three years of mandatory training in the National Institute of Magistracy[104]. Given the shortage of prosecutors in the DNA, delegation, secondment and transfer remain important tools[105]. The modifications brought about by the new justice laws regarding the recruitment procedure of regular prosecutors at the DNA, which has been transferred from the Superior Council of Magistracy to the DNA, are also seen to be helping to reach this objective. Addressing the operational challenges of the DNA, including as regards recruitment of prosecutors, is a recommendation in the 2022 Rule of Law Report and Romania's Recovery and Resilience Plan includes a commitment to increase the occupancy rate of the DNA to 85% by 30 June 2023[106].

The dismantling of the SIIJ (see also Benchmark One) is of particular relevance to the work to combat high-level corruption. The CJEU noted that in the case of the SIIJ, the lack of expertise to conduct investigations into complex corruption cases, insufficient human resources and heavy workload could all risk delays and reduced effectiveness in dealing with cases[107]. The DNA has not regained the competence to investigate corruption in the judiciary, although the Venice Commission[108] and the Prosecutor General[109] have both expressed the view that it is unlikely that the new structure would be better placed to conduct investigations into allegations of corruption by judges and prosecutors than a specialised prosecution service like the DNA. With only a few months since the SIIJ was dismantled, it is too early to assess whether the new structure can effectively prosecute corruption offences in the judiciary[110]. One other important concern with the SIIJ was the lack of clarity in the attribution of cases between DNA and the SIIJ, and in particular the transfer of entire corruption files away from DNA, as soon as a judge or prosecutor was involved. The new law aims to limit joined cases to only those where "for reasons of good conduct of the prosecution, the case cannot be disjoined"[111]. If properly implemented, this could help to prevent the disruption to anti-

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seniority as prosecutors at the Prosecutor's Office attached to the HCCJ (12 years). DNA and DIICOT had argued that the seniority required for the operation within a prosecutor's office structure is not provided for in constitutional law, and cited the practical reasons behind a reduction to 7 years of seniority.

104 A transitional provision delays until 2026 the inclusion of the three-year training period in the calculation of seniority. In the short term, this could help increase the occupancy rate in the DNA.

105 In Spring 2022, DNA operated with 14 delegated prosecutors out of 145 filled positions (10% of staff). The new law on the statute of magistrates foresees no delegation from the DNA/DIICOT; but secondments are possible to the DNA/DIICOT from other prosecution offices (once, for a maximum of 1 year).

106 Milestone 429 of Romania's RRP.

107 As noted in the judgment of the Court of Justice of 18 May 2021, Asociaţia 'Forumul Judecătorilor Din România' and Others, in joined cases C-83/19, C-127/19, C-195/19, C-294/19, C-355/19 and C-379/19, EU:C:2021:393, para. 221-222.

108 In its opinion of 2022, the Venice Commission recommended restoring the competences of the specialised prosecution services (DNA and DIICOT) to also investigate and prosecute offences within their remit committed by judges and prosecutors, noting that "[t]he objective of dismantling [SIIJ] should be to ensure more efficacy in investigating and prosecuting offences – most importantly corruption – committed by judges and prosecutors. It is implausible that a structure of non-specialised prosecutors at the level of the prosecutor's offices attached to the HCCJ and those attached to the courts of appeal will be better placed to conduct investigations into allegations of corruption by judges and prosecutors than the existing specialised prosecution service DNA." (see Venice Commission, Opinion on the draft law dismantling the section for investigating criminal offences committed within the judiciary (CDL-AD(2022)003, point 37).

109 Written submission received from the Prosecutor-General in the context of the country visit for the 2022 Rule of law report.

110 See also under Benchmark One on the current focus of work to process the backlog and prioritise cases.

111 Article 3(5) of the new Law. In case of disagreement between two prosecutorial offices, the Prosecutor General decides if the cases remain joined.

corruption investigations seen in the past[112]. So far, no incidents have been reported and no cases were registered where the arbitration on competence with the DNA was needed. The 2022 Rule of Law Report included a recommendation highlighting the impact of the new system on investigating and prosecuting corruption offences in the judiciary.

The protracted revision process of the criminal codes (see Benchmark One) has impacted on the fight against corruption. Two Constitutional Court decisions had the consequence of terminating criminal procedures in corruption cases against national politicians, by rendering null and void court judgments based on the question of the composition of the court panels[113]. At the same time, following a CJEU judgment[114], in April 2022 the HCCJ upheld prison sentences in a high-profile case from 2018, which had been suspended on the grounds of unlawful court composition[115]. In May 2022, the HCCJ ruled in another high-profile case, implementing the abovementioned CJEU judgement to disregard the case-law of the Constitutional Court on the legality of the composition of judges' panels, and sentenced the main defendant to imprisonment for bribery[116].

As set out above, the lack of a legislative response to the Constitutional Court ruling on the statute of limitation has had a major impact on ongoing cases. This is particularly true in the case of corruption cases[117]. According to an estimate published by the DNA, a total of 557 criminal cases under criminal prosecution or pending before the courts could consequently be terminated [118]. While the exact prejudice would need to be assessed case by case, the DNA estimates damage in these cases to around €1.2 billion and the total amount of bribery and influence peddling at around €150 million. Although civil law avenues for recovering some of the prejudice remain, the discontinuation of criminal proceedings in such a high number of corruption cases may have a significant impact on efforts to combat high-level corruption and its actual consequences and possible mitigating actions will be monitored closely by the Commission, also in the light of the CJEU's ruling that EU law precludes the application of national rules or a national practice similar to the case-law of the Constitutional Court if it is capable of giving rise to a systemic risk of impunity for corruption offences or acts of fraud affecting the financial interests of the Union[119]. The risk that thousands of defendants would not face criminal liability has triggered major criticism in Romania.

Recurring changes on the composition of panels seating in criminal cases have been reported since the last CVM report of 2021. Consequently, where an appeal panel is composed of two judges and a judge is replaced, the entire panel is dismissed and the whole process of

[112] So far the DNA reported no incidents related to this issue.

[113] Constitutional Court of Romania, Decisions no. 685/2018 and no. 417/2019. The Constitutional Court ruled that the practice of appointing de jure members in the composition of the five-judge panels of the HCCJ was contrary to the rule that required that all members be drawn by lot. It also ruled that the HCCJ had failed to establish specialist three-judge panels to deal at first instance with corruption offences. For more details, see 2020 Rule of Law report, Country Chapter on the rule of law situation in Romania, p. 10.

[114] Judgment of the Court of Justice of 21 December 2021, Euro Box Promotion e.a., in joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19.

[115] Decision of the High Court of Cassation and Justice of 7 April 2022.

[116] Decision of the High Court of Cassation and Justice of 10 May 2022 in case 105/1/2019.

[117] Beyond corruption cases, according to an estimate provided by the specialised prosecution office handling terrorism and organised crime, a total of 605 ongoing cases, with a total estimated financial damage of over €1 billion, would be affected in the area handled by DIICOT. Estimates from the General Prosecutor's office on other crimes were not available.

[118] DNA, press release of 28 October 2022, https://www.pna.ro/comunicat.xhtml?id=11549.

[119] Judgment of the Court of Justice of 21 December 2021, Euro Box Promotion e.a., in joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19. For more details, see 2022 Rule of Law report, Country Chapter on the rule of law situation in Romania, p.14.

administrating evidence must restart. This creates a critical situation for cases that will become time-barred early 2023. The Prosecutor General has advanced the idea to reserve judges in order to prevent the dissolution of the panel.

The positive track record in the effectiveness of the investigation and sanctioning of high-level corruption has continued through 2021 and 2022. It will be important to ensure that this effectiveness can be maintained sustainably (see also Benchmark One), including through the stabilisation of an appropriate criminal legal framework and of the relevant provisions in the justice laws. The overall framework, and how Romania will continue to address the operational challenges facing the National Anti-Corruption Directorate, essential for maintaining the sustainability of continued progress, will be followed closely within the scope of Commission monitoring under the Rule of Law report.

Lifting of immunity of Members of Parliament

2017 CVM Recommendation: Adopt objective criteria for deciding on and motivating lifting of immunity of Members of Parliament to help ensure that immunity is not used to avoid investigation and prosecution of corruption crimes. The government could also consider modifying the law to limit immunity of ministers to time in office. These steps could be assisted by the Venice Commission and GRECO. The Parliament should set up a system to report regularly on decisions taken by its Chambers on requests for lifting immunities and could organise a public debate so that the Superior Council of Magistracy and civil society can respond.

This recommendation concerns the accountability of the Parliament in its decisions on requests from the prosecution to authorise preventive measures, such as searches or arrests, and on requests to authorise the investigation of a Member of Parliament when he/she is or has also been a Minister. In the past, the lack of reasoning of decisions taken by the Parliament – as well as the number of occasions when Parliament did not allow investigation to proceed – led to concerns about the objectivity of these decisions.

The 2021 CVM report concluded that the approach in Parliament has evolved in a positive direction[120] and this has continued. There have been only two cases of demands for lifting of immunity by DNA since the last CVM report, both swiftly approved by Parliament[121]. In addition, on 7 November 2022, the Senate modified its rules of procedure to introduce defined objective criteria to decide on requests for lifting parliamentary immunities, on the lines already in place in the Chamber of Deputies[122]. Abiding by the rules in place will be important for ensuring that the current approach is maintained.

The accountability of Parliament in its decisions on requests from the prosecution to authorise preventive measures and on requests to authorise the investigation of Members of Parliament has also been an important area of monitoring under the CVM. The 2021 CVM Report concluded that the approach in Parliament had evolved positively, and the recent

[120] The Chamber of Deputies amended its rules of procedure in 2019 to introduce specific reference to the criteria set out in the Venice Commission's report on the purpose and waiver of parliamentary immunity. In its report of March 2021, GRECO notes that an informal requirement for prosecutorial bodies to submit the whole file when prosecuting a minister or a former minister who is also a member of Parliament has apparently been lifted by a letter. Greco RC4(2021).

[121] One request concerned the approval for search in the case of a Member of the Chamber of Deputies, the other concerned the approval of a criminal investigation regarding a sitting Minister. Both requests were addressed to the Chamber of Deputies.

[122] https://www.monitoruloficial.ro/Monitorul-Oficial--PI--1074--2022.html.

decision of the Senate to introduce defined objective criteria to decide on requests for lifting parliamentary immunities mean that both chambers have important transparency safeguards in place on a permanent footing. The Commission will continue to follow the developments in the context of the monitoring under the annual Rule of Law Report.

The situation in respect of Benchmark Three has maintained a positive momentum since 2021. On the basis of the analysis, the recommendations can be considered satisfactorily fulfilled. It will be important to maintain this positive track record. As for other Member States, the Rule of Law report monitors the way Romania continues to address remaining and new challenges in the fight against high-level corruption and the implementation of its recommendations.

2.4. Benchmark Four: Tackling corruption at all levels

Since the June 2021 CVM report, the General Prosecution Office has continued the effective prosecution of corruption and corruption-assimilated offences[123]. However, the shortage of human resources in the judiciary[124] and limited technical means for special investigation techniques available to the Public Ministry impact the investigations in its competence. The General Anti-Corruption Directorate (DGA) inside the Ministry of Interior continued to carry out its work in good cooperation with the Prosecution.

National Anti-Corruption Strategy

2017 Recommendation: Continue to implement the National Anti-corruption Strategy, respecting the deadlines set by the government in August 2016. The Minister of Justice should put in place a reporting system on the effective implementation of the National Anti-corruption Strategy (including statistics on integrity incidents in public administration, details of disciplinary procedures and sanctions and information on the structural measures applied in vulnerable areas).

The 2021 CVM report concluded that further work was needed on the national Anti-Corruption Strategy to ensure an effective implementation and step up the prevention and fighting of corruption in vulnerable areas and at local level.

A new National Anti-Corruption Strategy for 2021-2025 was approved by the Government in December 2021[125]. Its preparation was informed by an internal evaluation and an external audit performed by the OECD. The OECD evaluation acknowledged the significant steps that Romania took towards strengthening its anti-corruption and integrity policies, while also noting that the lack of political support to implement important legislative reforms was an important challenge[126].

The implementation of the 2021-2025 strategy is on track. Work focuses on the defined priority areas and a peer review process of the participating institutions will kick off in

[123] Since the 2021 CVM report less prosecution cases concerned bribery compared to 2020 and 2021, while the focus in investigating corruption allegations concerning public administration officials continued.

[124] In July 2022, the scheme of the Public Ministry staff was filled only at 55% and the situation further deteriorated.

[125] This is also set out in Romania's RRP, whose Milestone 426 required the 'Entry into force of the Government Decision approving new National Anti-Corruption Strategy'.

[126] OECD, Evaluation of the Romanian Anti-Corruption Strategy 2016-2020.

December. A mid-term report on the implementation of the strategy is foreseen in the first trimester of 2023.

Efforts are under way to ensure the effective implementation of the 2021-2025 anti-corruption strategy. Evaluation and reporting mechanisms are being set-up. This recommendation can be considered fulfilled. The Commission will continue to monitor the implementation of the strategy under the Rule of Law Report.

National Agency for the Management of Seized Assets

2017 Recommendation: Ensure that the National Agency for the Management of Seized Assets is fully and effectively operational so that it can issue a first annual report with reliable statistical information on confiscation of criminal assets. The Agency should put in place a system to report regularly on development of administrative capacity, results in confiscation and managing criminal assets.

The mission of the National Agency for the Management of Seized Assets (ANABI) is to ensure an effective execution rate of the confiscation orders issued in criminal matters through an efficient management of seized assets that are distributed to the Agency by prosecutors and judges.

In 2022 ANABI entered its sixth year of activity, and it is functioning effectively, implementing a National Strategy for Strengthening the Asset Recovery System for 2021-2025. ANABI's mandate has been extended in July[127] and the Agency is working on increasing the capacity to trace assets both nationally and internationally, enhance cooperation mechanisms, and provide new tools for financial investigations by police and prosecutors. The implementation of the new legislative framework is ongoing, including as regards additional funds allocated to the Agency. The new law also provides for a fund for crime prevention and victim protection, a point repeatedly flagged by civil society. ANABI seized over €60 million in 2022 compared to almost €57 million in 2021. It manages over 140 mobile assets with a total value of almost €5.5 million[128].

The 2021 CVM report concluded that this recommendation was fulfilled. This can be confirmed.

On the basis of the analysis of Benchmark Four, all recommendations can be considered fulfilled. The Commission will continue to monitor the fight against corruption at all levels in the Rule of Law Reports.

3. CONCLUSION

The Decision to establish the CVM in 2006 was an inherent part of Romania's accession process. It offered a way to address remaining issues where further progress was still necessary to ensure the capacity of the judicial system and law enforcement bodies to implement and apply the measures adopted to establish the internal market and the area of freedom, security, and justice[129].

[127] This has also been subject to Milestone no. 422 of Romania's RRP requires the 'Entry into force of the law amending the powers of the National Agency for the Management of Seized Assets.'

[128] Figures on 31 October 2022, provided by ANABI for the purposes of the progress report sent to the Commission in November 2022.

[129] Commission Decision of 13 December 2006 (C(2006) 6569)

Since then, the CVM has offered a framework for cooperation and monitoring to accompany the reform process set out under the benchmarks. This entered a final phase when the positive stocktaking of January 2017 led to the twelve key recommendations. Though this phase was prolonged by the need to address the eight additional recommendations of November 2018, more recently Romania has worked consistently on the implementation of these recommendations, as acknowledged in the June 2021 report. The conclusions of this report have been able to mark major progress in the legal and institutional framework to address long-standing CVM recommendations.

The evolution of the EU's rule of law landscape has given a new context for the Commission's cooperation with Romania. In particular, the annual Rule of Law Report cycle now provides an ongoing framework which allows a long-term perspective to accompany sustainable reform, with Romania as with other Member States.

The annual Rule of Law Report cycle will enable the implementation phase of many of the agreed reforms to continue to be monitored in practice. Issues such as the new regime following the dismantling of the Section for the Investigation of Offences in the Judiciary, the functioning of the Judicial Inspection, human resources in the judiciary, the implementation of court decisions by public administration, the impact of the upcoming revision of criminal legislation on the effectiveness of the fight against corruption, and the evolution of the integrity framework and its application, including by Parliament, can continue to be followed-up in this way. This will be part of the monitoring of the justice system and anti-corruption as two of the core pillars of the reports. This is in line with the Romanian government's commitment to consolidate, in an irreversible manner, the progress achieved so far in guaranteeing the independence of justice and its efficiency, as well as the track record in combatting corruption.

The Romanian authorities have also made clear that a number of immediate issues will be followed up as required in the coming months. Romania has committed to further analyse and take the utmost account of the opinions of the Venice Commission, on the justice laws and more generally if further actions are necessary. It has also committed to complete the revision of the Criminal Code and Criminal Procedure Code, to ensure alignment with the decisions that the Constitutional Court of Romania has taken since 2016. Completing the revision of the two Codes is also part of the commitments undertaken by Romania in its Recovery and Resilience Plan to be adopted by the end of 2022, and the Commission will assess closely the revised codes in accordance with the specific procedures envisaged in that context. A final immediate issue will be the ability of the incoming Superior Council of the Magistracy to contribute to the momentum of the reform, and the Romanian government expressed its confidence in the ability of this Council to give a new impetus to transparency and accountability.

Romania has already shown its strong commitment to work under the annual Rule of Law Report cycle and it continues to cooperate constructively in that framework. In parallel, Romania's Recovery and Resilience Plan has also allowed the setting of specific milestones for progress.

The Commission is confident that now with the key final steps being in place, the cooperation and monitoring of the justice system and anti-corruption policies in Romania can be taken forward under the Rule of Law Report and other established parts of the rule of law toolbox applying to all Member States. Recommendations under the Rule of Law Reports are already in place to that effect, as well as programmes under the Technical Support Instrument to support the process of reform.

The Commission considers that the progress made by Romania under the CVM is sufficient to meet Romania's commitments made at the time of its accession to the EU.

It is important that Romania continues to work consistently on translating the remaining commitments specified in this report into concrete legislation and on continued implementation, within the annual Rule of Law Report cycle and with the support of other parts of the EU rule of law toolbox.

The Commission will take duly into account the observations of the Council, as well as of the European Parliament[130] before taking a final decision on Romania in accordance with the CVM decision.

[130] Terminating the CVM for Romania would take the form of a Commission decision revoking Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (C(2006) 6569).

Annex: Benchmarks under the CVM Decision

Benchmarks to be addressed by Romania pursuant to Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption:

Benchmark 1: Ensure a more transparent and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes

Benchmark 2: Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken

Benchmark 3: Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high- level corruption

Benchmark 4: Take further measures to prevent and fight against corruption, in particular within the local government