

## New justice laws: reform or the return of old habits from the pre-accession period?



Beyond the procedural issues and the lack of transparency of decision-making process, which are addressed in the final section of this analysis, EFOR will presents below the most problematic provisions introduced in the draft justice laws approved by the government. To better understand the impact of these provisions on the functioning of the Romanian judiciary they need to be interpreted taking into the national context and the correlation with the other legal norms.

Not only that the proposed amendments do not solve the some of the problems generated by the legal amendments passed between 2017 and 2019, particular provisions contained in the current draft bring the Romanian judiciary back to pre-accession standards. We include here, by way of example, the return to the old practice of reserving management positions for members of the Superior Council of Magistracy (SCM) and the elimination of competitive procedures for occupying management positions in courts and prosecutor's offices (with the

exception of the head of the respective structure). These mechanisms were removed from the legislation as early as 2005 precisely in the context of EU accession negotiations.

We show below what standards already exist in various areas because it is vital that Romania does not walk away from already implemented reforms and does not return to lower standards of the pre-accession period, while claiming that these amendments are made in an attempt to eliminate the detrimental provisions passed in the past in order for the Cooperation and Verification Mechanism (CVM) to be lifted. Many of the provisions introduced in 2017-2019 remain unchanged in the current drafts so it is unclear why the Government believes that these legislative proposals achieve the milestones included in the Resilience and Recovery Plan. Unfortunately, in the absence of a clear reasoning in the explanatory memorandum, it is unclear why certain problematic amendments have been introduced.

## Main problematic provisions

### 1. The capacity of prosecutors to effectively investigate crimes is diminished - the Prosecutor General is removed from the procedure for appointing and dismissing judicial police officers

The provisions introduced in 2016 related to the appointment and dismissal of judicial police officers by order of the Prosecutor General, as well as all provisions related to the secondment of a number of judicial police officers to prosecutors' offices at the request of the Prosecutor General, **are abolished**<sup>1</sup>. Only a general provision remains stating that the judicial police exists and that the details regarding its operation and organization will be included in a separate law<sup>2</sup>. In fact, **by removing the articles on the judicial police from the justice laws, the Ministry of the Interior regains full control over the judicial police and the Prosecutor General loses all her or his influence over the appointment and dismissal of judicial police officers**. The legal basis which today allows the judicial police to operate within the ordinary prosecutorial structures is also abolished.

<sup>1</sup> Art. 66\*1, 120\*1-120\*4 of Law No 304/2004 are eliminated.

## Current legal framework

Now, judicial police officers are seconded to the Public Prosecutor's Office and placed under the direct supervision and control of the prosecutors. Judicial police officers are seconded by the Minister of the Interior to public prosecutor's offices on the basis of a nominal proposal made by the General Prosecutor, for a maximum period of 6 years, with the possibility of extension every 3 years. The law in effect today expressly states that during the period of secondment, judicial police officers may not receive any assignment from the higher hierarchical police bodies and that the instructions of the prosecutors are binding for them. The draft laws abolishes these provisions and provides that the judicial police will be regulated by a special law. But what will be the legal framework for the judicial police until then?

Although there are express provisions for judicial police officers working with DNA and DIICOT in the special laws applicable to them, we note that art. 66<sup>1</sup> para. (11) of Law no. 304/2004 which allows for special provisions on the judicial police to be included in special laws is also on the list of abolished articles. This creates a risk of these articles in the special laws being also abolished in Parliament.

The battle for control of the judicial police has been going on for many years in Romania. Lately the balance has tipped in favour of the prosecution, but the current proposals will reverse that by giving the Interior Minister the upper hand.

<sup>2</sup> Art. 70 para. 5 of the draft law on judicial organisation.

## Disputes over the judicial police, covered by Radio Free Europe, April 2021<sup>3</sup>

Justice Minister Cătălin Predoiu declared in a press conference that the current regulation was the compromise solution for the moment after lengthy discussions on the topic of judicial police between the Ministry of Interior, the Ministry of Justice and the Public Ministry. His statements at the press conference that the proposed solution is to keep the existing regulatory framework and only include a provision referring to a future special law show in fact the real compromise: the transfer of any competence regarding the judicial police to the Ministry of Interior, as desired by the Minister of Interior, Lucian Bode. Moreover, the statements are incorrect, because the current provisions are not being kept, but eliminated entirely.

Although the **Government's programme explicitly stipulated that "in its activity as a criminal investigation body, the (judicial) police officer must have only one line of subordination, namely subordination to the prosecutor"**, we recall that Lucian Bode opposed in 2021 the initiative of Justice Minister Ion Stelian to transfer the judicial police to the Public Ministry and insisted that it remain under the coordination of the Ministry of Interior.

Disputes over the judicial police have been constant over the past two decades, with various politicians admitting that the **real issue at stake is maintaining hierarchical control over the investigative work of judicial police officers.**

Ludovic Orban: "The judicial police, as part of the police, must act within the hierarchical institutional framework, within the police. Any other form that may create a perception that they are losing their chains of command may affect their functioning."

Raluca Prună: "If I am a police officer who has dual command, what guarantee do I have that my superior in the police does not ask me what is in a file, or does not promote me because I do not say what is in a file. The Ministry of Interior would lose an extraordinarily important lever, but we need to take a step forward and have a coherent criminal policy where the Ministry of Interior no longer controls what the prosecutors should control."

Cosmin Andreica, leader of the Europol trade union: "This aspect exists, there has been pressure, thematic controls and with a lot of nerve the boss told the subordinate: show me the files you are working on so I can see if you have respected the deadline given by the prosecutor and in fact he was looking to see what was in the file, who he had interviewed, what that person had declared".

## 2. The philosophy of regulating the disciplinary liability of magistrates is changing

While until now the owner of the disciplinary action has been the Judicial Inspection, the draft laws add two new owners: the Prosecutor General and the President of the HCCJ. In the case of disciplinary actions initiated by the latter two, the role of the Judicial Inspection becomes a formal as the Prosecutor General and the President of the HCCJ can decide to start a preliminary disciplinary investigation even if the Judicial Inspection proposes the opposite, i.e. to close the case. Notwithstanding the proposal of the Judicial Inspection, the Prosecutor General or the President of the HCCJ may refer the matter to the Judges' Section or the Prosecutors' Section of the SCM asking them to apply a disciplinary sanction. All the owners of the disciplinary action - the Judicial Inspection, the Prosecutor General and the President of the HCCJ - have the right to appeal the decisions of the SCM sections to the High Court of Cassation and Justice. When the President of the HCCJ is the initiating the disciplinary action, this mechanism calls into question the equality of forces between the parties, tipping the balance, at least apparently, in favour of the President of the HCCJ.

The Venice Commission has pointed out<sup>4</sup> that **the plaintiff** in a disciplinary action **should abstain** from participating in the decision-making process if he/she is a

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<https://romania.europalibera.org/a/disput%C4%83-politic%C4%83-pe-poli%C8%9Bia-judiciar%C4%83-cu-dubl%C4%83-comand%C4%83-sau-merge-la-parchete-/31193594.html>

4 Opinion of the Venice Commission on the draft law on amendments to the Bulgarian Judicial System Act (CDL-AD(2002) 15)

member of the Judicial Council. In the draft law on the SCM, the recusal of SCM members is prohibited. Members of the SCM are only prohibited to take part in proceedings regarding their close relatives. All the more we note that there is a potential conflict of interest when the plaintiff is not only a member of the judicial council deciding as the first instance in disciplinary matters, but is the head of the court which makes the final

“Procedural rules for disciplinary proceedings should guarantee a **due process**. In particular, a member of the Supreme Judicial Council, who calls for disciplinary action against of a magistrate (or the lifting of immunity) should not be entitled to vote on his or her own proposal. Once the disciplinary panel of the Supreme Judicial Council has found in favour of the judge, this decision should be final”.

(Opinion of the Venice Commission on the draft law on amendments to the Bulgarian Judicial System Act (CDL-AD(2002) 15)

decision.

The Venice Commission has pointed out<sup>5</sup> that **the plaintiff** in a disciplinary action **should abstain** from participating in the decision-making process if he/she is a member of the Judicial Council. In the draft law on the SCM, the recusal of SCM members is prohibited. Members of the SCM are only prohibited to take part in proceedings regarding their close relatives. All the more we note that there is a potential conflict of interest when the plaintiff is not only a member of the judicial council deciding as the first instance in disciplinary matters, but is the head of the court which makes the final decision.

### 3. **Management positions in courts and prosecutors' offices will be filled on a non-competitive basis (except for the position of head of court or prosecutor's office)**

<sup>5</sup> Opinion of the Venice Commission on the draft law on amendments to the Bulgarian Judicial System Act (CDL-AD(2002) 15)

**The magistrates who will occupy these other managerial positions will be chosen by the head of the court or prosecutor's office and appointed by the relevant section of the SCM.** There are no provisions in the draft laws on the criteria to be considered by presidents of courts or general prosecutors for these nominations. Under these conditions there is a real risk of over-concentration of all decision-making power in the hands of one person: the head of the court or prosecutor's office. **Since 2005, the management positions in courts and prosecutors' offices have been filled through competitive procedures, and today's proposed changes would return the judiciary to lower standards than in the pre-accession period.**

### 4. **Practice of reserving leadership positions for SCM members is reinstated**

“Whenever management positions in courts and prosecutors' offices become vacant in the future, competitive examinations will be held to fill them.” (European Commission, Romania 2005 Comprehensive Monitoring Report)

“Concerning appointments in leadership positions of the key judicial institutions – the High Court of Cassation, the Public Ministry and the National Anti-Corruption Directorate, and the Superior Council of the Magistracy-, CVM reports have repeatedly emphasised the importance of transparent and merit-based selection procedures as a way to provide robust leadership, avoid political interference in senior appointments and support judicial independence”. (CVM Report 2017)

Judges and prosecutors in management positions elected as members to the SCM will no longer have to resign from

their management position, as currently provided for by law. The draft laws provide that the leadership position is reserved for them until the end of their term of office in the SCM (art. 23 of the draft SCM law). **Again, Romania is returning to a lower standard than in the pre-accession period. In 2005 the justice laws were amended to remove the possibility of reserving leadership positions for SCM members.** At that time, the judiciary was facing serious problems in the area of judicial management due to the practice of reserving of managerial positions for a long period of time due because the magistrates in question were elected in the SCM (the term of office of the SCM is 6 years). Moreover, this practice generated an excessive grip of the SCM members over the functioning of the courts and prosecutors' offices that they continued to de facto lead.

“Elected members with dual mandates must now decide if it is in the best interest of the magistrates, they represent to perform their crucial duties in the CSM only on a part-time basis. If dual mandates as court presidents or heads of prosecutor's offices are kept it may not only be detrimental to the quality of the CSM's work but it is also possible that conflict of interests will arise, especially in disciplinary matters.”

(European Commission, Romania 2005 Comprehensive Monitoring Report)

## 5. The SCM's control of the Judicial Inspection is tightening

**The Judicial Inspection loses its role as principal budget holder and becomes a tertiary budget holder.** While the budget of the Judicial Inspection is an intrinsic part of its independence, the drafts propose that it is included in the SCM budget, and the

Chief Inspector becomes a tertiary budget holder.

**The competition** to appoint the directors of the two directorates within the Judicial Inspection, as well as for selecting the judicial inspectors **will no longer be organised by the Judicial Inspection but by the SCM Sections with the support of the National Institute for Magistracy (NIM).**

**Now the chief inspector** may only be **dismissed** if the procedure is initiated by the **Plenary of the SCM**. According to the draft laws the standard is lowered: the revocation procedure will be initiated at the motivated request of at least **5 members of the SCM** or at the motivated request of **the general assembly of judicial inspectors.**

## 6. The budgets for personnel expenses and "other categories of expenses intrinsically linked to personnel expenses" are transferred from the Ministry of Justice to the HCCJ

Apart from the short-term capacity problem that can be overcome, it is unclear what is meant by the phrase **"other categories of expenses intrinsically linked to personnel expenses"**. If this includes salary-related entitlements obtained through court decisions, it is necessary to provide for a phasing of their payment, as is currently the case when the budget is administered by the Ministry of Justice. Otherwise, there is a risk of a budgetary collapse.

Following the SCM advisory opinion on the draft laws in August 2022, a new provision has been introduced in the draft laws adopted by the Government announcing a full transfer of all other categories of court expenses to the HCCJ at a later date, by special law.

**Statements made by the Minister of Justice, Cătălin Predoiu, at the Government meeting of 24 August 2022, when the draft justice laws were adopted<sup>6</sup>**

"Another principle we have pursued has been to make justice accountable for its own results, for its own functionality, because here there are still unmet expectations from citizens, from companies and even from the system itself. (...) And I would give just a few examples of provisions that tend to make this system accountable. I would perhaps start with a surprising one, namely a provision that anticipates the transfer of the management and responsibility of justice budgets to the High Court of Cassation and Justice, an objective constantly requested by judges and prosecutors as an element of strengthening their independence, but, without a doubt, it is also an element of accountability in relation to the spending of public funds allocated to justice. Of course, according to the same rules, in coordination with the Ministry of Finance, but with a greater role in the allocation of resources to the judiciary".

**7. Magistrates who have served for a full term in a managerial position will be entitled even higher pensions**

If a judge or a prosecutor has held a managerial position **for a full term**, he or she may request that the basis for calculating his or her pension be the gross monthly salary corresponding to the managerial position at the time of retirement<sup>7</sup>. In other words, **a judge who served as President of the tribunal 5 years ago will receive a pension calculated on the basis of the gross monthly salary that a president of the tribunal receives today**. Moreover, following the opinion of the SCM, this provision will also apply to judges of the CCR, assistant judges and assimilated personnel.

<sup>6</sup> <https://gov.ro/ro/stiri/sedinta-de-guvern-din-24-august>

**8. Removal of NIM from the promotion procedure for judges at the HCCJ, introduction of an unclear procedure for integrity checks, and elimination of the periodic evaluation of HCCJ judges**

According to the draft laws, in order to be promoted to the HCCJ, judges who meet the conditions set by law will participate in a competition organized by the Section for Judges of the SCM. Among the conditions for promotion, the length of seniority required is increased from the current 3 years to 5 years in which he/she must have effectively served as a judge at the court of appeal. The **competition** is held whenever necessary and **consists in interview** with the SCM Judges' Section and an **assessment** of the candidate's **documents** drawn up in their professional activity. Compared to other promotion procedures, promotion to the HCCJ does not include a written test. **The written examination was a distinct phase in the promotion to the HCCJ until 2018 when it was eliminated.**

<sup>7</sup> Art. 212 para. 8 of the draft law on the status of judges and prosecutors

“In particular, in 2011 the Government proposed legislative amendments which brought substantial improvements to the selection procedure for High Court judge. (...) The new law – Law 300/2011 – introduced a three-stage selection procedure, involving an assessment of the candidate’s documentation, including court decisions prepared by the candidate during their career, an interview and a written examination. From the first two stages, a candidate must obtain a mark of 80 or above to be able to sit the written exam. The assessment of the candidate’s documentation is worth a maximum of 75 points and the interview is worth a maximum of 25 points. In addition to creating the basis for a more objective and thorough assessment of candidates, the new procedure also brings greater transparency, with candidates’ applications subject to public scrutiny.” (CVM Technical Report 2012)

“31. The intended amendments still contain a proportion of subjectivity in the selection and decision process concerning promotions, which contemplates a two-phased promotion procedure, the latter phase consisting of an assessment of one’s past work and conduct<sup>26</sup>. The amendments also provide for the CSM to develop and adopt rules on the procedure for organising such assessments including appointments to the responsible commission and the particular aspects to be assessed. The GET heard fears that this new system would leave more room for personal or political influences in career decisions, which could impact the neutrality and integrity of the justice system and it would thus be essential that the CSM develops appropriate rules to guard against such risks, including clear and objective criteria to guide the future decisions of the selection commission.

32. Because of the risks and uncertainties referred to above, GRECO recommends that i) the impact of the changes on the future staff structure of the courts and prosecution services be properly assessed so that the necessary transitional measures be taken and ii) the implementing rules to be adopted by the CSM for the future decisions on appointments of judges and prosecutors to a higher position provide for adequate, objective and clear criteria taking into account the actual merit and qualifications.” (GRECO Ad Hoc report on Romania, 2019)

“(...) This concern is heightened due to the potential cumulative impact with other new provisions such as the introduction of larger panels of judges and weakened criteria for promotion to the High Court of Cassation and Justice.” (2019 CVM Technical report)

“The principle that all decisions concerning appointment and the professional career of judges should be based on merit, applying objective criteria within the framework of the law is indisputable.” (Venice Commission, Report on the independence of the judicial system. Part I: the independence of judges)

**A procedure is introduced to check the integrity of eligible candidates** by the Judicial Inspection. The Judicial Inspection draws up a report which then taken into account in the assessment made by the evaluation committee on the basis of the interview. The Judicial Inspection is obliged to communicate this report to the examination board 10 days before the interview and to the candidate, but this latter obligation does not have a clear deadline. As this report is part of the evaluation of the candidate, its content is very important and can

considerably influence the decision of the evaluation committee. It should therefore be specified which elements are considered by the Judicial Inspectorate in assessing the integrity of the candidate. Is it possible to appeal against the assessment report? The procedure as regulated in the draft laws is **unclear and unpredictable**. Under these circumstances, there is a risk that the procedure is not an objective assessment tool, **but a highly subjective one that could be used precisely to eliminate certain candidates**. From the point of

view of the case law of the Constitutional Court, these shortcomings may lead to the provisions being declared **unconstitutional**.

In addition to **the elimination of the periodic evaluation for judges of the HCCJ**, we note that the SCM opinion on the draft laws proposes the complete elimination of the periodic evaluation of magistrate on the grounds that this procedure is inefficient and time-consuming. As the justice system is a public service, an evaluation of its efficiency is necessary. The evaluation of magistrates should be a predictable tool, applicable to all magistrates without exception. The current evaluation system is indeed open to criticism in terms of its efficiency and relevance. However, eliminating the periodic evaluation and making evaluations a tool at the disposal of the president of the court or the public prosecutor's office does not resolve these shortcomings, but risks turning them into instruments of pressure.

“With regard to the professional evaluation of judges and prosecutors, the Plenary took into account the shortcomings revealed by the current evaluation procedure, which, if carried out regularly, has proved ineffective, as it does not represent a real assessment of the performance of the system, but rather a formal, time-consuming analysis. Consequently, it was considered necessary that, in order to be truly effective, it should be carried out only when required by law for participation in competitions, examinations or other procedures or when deemed necessary by the President of the Court or the Head of the Public Prosecutor's Office or by the appropriate section of the Council.”

Excerpt from the favourable advisory opinion of the SCM on the draft justice laws (SCM Plenary Decision No. 115 of 12 August 2022)

**9. In the event of vacancies of the positions of Prosecutor General of the Prosecutor's Office of the High Court of Cassation and Justice, Chief Prosecutor of DNA and DIICOT, they cannot be filled through secondment<sup>8</sup>**

The Minister of Justice is obliged to initiate the procedure for occupying the positions in question no later than 60 days after the vacancy occurs. **The past practice has shown that the procedures for appointing magistrates to these positions take a long time and that there is a real risk that the structures in question will be left without leaders. It is unclear why the secondment to these positions is eliminated. Nothing prevents Minister of Justice to start the selection procedures earlier.**

However, the draft law on the organisation of the judiciary stipulates that in the event of a vacancy of the position of chief prosecutor of DNA or DIICOT, one of the deputy chief prosecutors shall automatically replace him/her in the exercise of his/her duties as chief prosecutor until a new chief prosecutor is appointed. **The appointment of the deputy chief prosecutor to take over during the vacancy shall be made by the Prosecutor General of the PICCJ<sup>9</sup>.**

**10. The public profile of the two specialised structures, DNA and DIICOT, is reduced**

The draft law on judicial organisation provides that the annual reports of DNA and DIICOT will be sent to the Prosecutor General for approval. The specialised structures will no longer send a stand-alone report to the Minister of Justice and the Prosecutors' Section of the SCM. This change will affect the visibility of the

<sup>8</sup> Art. 176 (3) of the draft Law on the status of judges and prosecutors.

<sup>9</sup> Art. 85 of the Draft Law on Judicial Organisation.

two structures, whose profile will be reduced in relation to public opinion.

### **11. The mechanisms for holding SCM members accountable by the general assemblies of judges/prosecutors are abolished**

Members of the SCM will no longer be able to be revoked by the general assemblies of the courts or prosecutors' offices that elected them for not having performed their duties or for having performed them inadequately (art. 55 letter c) of Law no. 317/2004) as the mechanism has been completely removed from the draft law on the Superior Council of Magistracy.

### **12. Increased influence of the SCM over the National Institute of Magistracy (NIM)**

The Scientific Council of the NIM, its current governing body, is given an advisory role and the management of the NIM is entirely taken over by the director of the institution, appointed and dismissed by the Plenary of the SCM.

"In March 2005 the Superior Council confirmed the appointment of the reform-orientated management team of the National Institute of the Magistracy for a 3-year period. A new supervisory board of the National Institute was established at the end of 2004" (Romania 2005 Comprehensive Monitoring Report, European Commission)

Although in the version published by the Ministry of Justice at the end of July 2022, the governing body of the NIM was the 13-member Scientific Council, with the Director and the Institute providing day-to-day management of its work, the version adopted by the Government fundamentally changes the role of the Scientific Council into an advisory one<sup>10</sup>.

<sup>10</sup> Art. 115 of the Draft Law on Judicial Organisation.

The Director of the NIM, appointed by the Plenary of the SCM on the basis of an interview, will ensure the management of the Institute and will be accountable to the Plenary of the SCM for its entire activity. This change was most likely introduced following the SCM opinion proposing this change, without giving any reasons beyond the need to "optimise the efficiency of decision-making at the level of the National Institute of Magistracy".

"In view of the comments made with reference to the draft law on judicial organisation, in order to the National Institute of the Magistracy, it is necessary to extend the powers of the Director, in conjunction with the modification of those of the Statutory Council, which should have the following powers consultative".

Excerpt from the favourable advisory opinion of the SCM on the draft justice laws (SCM Plenary Decision No. 115 of 12 August 2022)

## Procedural issues in the adoption of draft laws

The Romanian government adopted the draft justice laws on 24 August 2022 and is in a hurry to push them through Parliament at the start of the autumn parliamentary session, in a joint committee and, possibly, under an emergency procedure.

The adoption of the justice laws is a commitment made by the Romanian Government through the National Resilience and Recovery Plan (NRRP), the milestone description being as follows: "The new justice laws will provide for the following:

- (1) **strengthening the independence** of judges and prosecutors;
- (2) **recruitment and promotion** on merit-based principles, while the role of the National Institute of Magistracy in the organisation and conduct of examinations and competitions is strengthened;
- (3) **efficient functioning** of the courts, of the Superior Council of Magistracy and of the Prosecutor's Office;
- (4) the effective accountability of magistrates and their protection against any interference and abuse;
- (5) **making judicial inspection more efficient, ensuring greater guarantees of independence and impartiality.**"

This implies that not all legislative changes will be considered sufficient to meet the milestone, but only those that respond to the **commitments made** in the NRRP. This was also the position of the European Commission. European Commissioner Vera Jourova expressed her support for Romania in its efforts to lift the Cooperation and Verification Mechanism (CVM) if the justice laws are

<sup>11</sup> <https://www.g4media.ro/exclusiv-comisia-europeana-despre-controversatele-legi-ale-justitiei-adoptate-de-quvern-urmarim-indeaproape-procesul-e-important-ca-legile-finale-sa-abordeze-preocuparile-de-lunga-durata-ridicate.html>

adopted. After the adoption of the drafts by the Government on 24 August, the European Commission stressed that the lifting of the CVM is directly linked to the fulfilment of the commitments undertaken by Romania<sup>11</sup>.

Moreover, in successive reports, the European Commission has asked Romania to reverse the legislative provisions adopted in 2017-2019. **The current Government programme expressly states that the draft justice laws will be submitted to the Venice Commission for an opinion before being adopted by Parliament**<sup>12</sup>. The analysis made by the Venice Commission's experts would be an objective guarantee that the proposed texts really meet the objectives that have been set. **Unfortunately, we note that neither the Minister of Justice nor the Prime Minister have announced that they intend to take this step.**

"The Government of Romania is committed to ensuring the harmonization of the legislation on the organization and functioning of the judiciary in accordance with the principles of the international instruments ratified by Romania, as well as taking into account all the recommendations formulated in the framework of the European mechanisms (CVM, GRECO, Venice Commission, EC report on the rule of law) and the decisions of the CCR.

In this respect, the Government undertakes to finalise the draft laws on the organisation and functioning of the judiciary, generically referred to as "Justice Laws", and to submit them to Parliament for adoption, **accompanied by the opinion of the Venice Commission, consulted for this purpose.**"

<sup>12</sup> See Government Programme for 2021-2024, Chapter on Ministry of Justice, Justice and Rule of Law, Vision and Principles ([https://gov.ro/fisiere/programe\\_fisiere/Program\\_de\\_Guvernare\\_2021%E2%80%942024.pdf](https://gov.ro/fisiere/programe_fisiere/Program_de_Guvernare_2021%E2%80%942024.pdf))

Additionally, although the deadline for the NRRP milestone on amending the justice laws is the second quarter of 2023, the actions of Romanian officials indicate a rush in the process, sacrificing transparency and public debates. Although the Minister of Justice claims that public debates took place in 2020 and the first part of 2022, we point out that the drafts promoted in 2022 have changed significantly by comparison to the drafts presented for public debates in September 2020 and March 2021. This fact was confirmed by the Minister of Justice himself<sup>13</sup>. The new drafts were published only on the 22<sup>nd</sup> of June 2022 and then republished in a new version on 21<sup>st</sup> of July 2022<sup>14</sup>. In these circumstances, **we note that the debates did not include a component involving civil society.**

"From September 2020 to date, the projects have undergone numerous amendments following successive proposals received mainly from the judiciary." (Ministry of Justice press release of 28 July 2022)

Three magistrates' associations have drawn attention to the differences between the form published on 21 July 2022 and the version presented and accepted by the European Commission<sup>15</sup>. The Minister of Justice replied that *"the specific differences between the content of the drafts at the time of the conclusion of the consultation with the European Commission and that at the time of the referral to the SCM for an opinion are the logical consequence of the receipt of subsequent amendments in the last round of public debate"*<sup>16</sup>.

At the end of August, the drafts were sent to the Economic and Social Council for its opinion in yet another form that differs from the previously published ones. Many of the differences most likely resulted from the advisory opinion of the SCM of 12 August 2022 which includes numerous comments. Some of these have been incorporated by the Ministry in the form sent to the Economic and Social Council.

<sup>13</sup> In the press release published by the Ministry of Justice on 28 July 2022 in response to criticism of the draft laws by professional associations of magistrates <https://www.just.ro/comunicat/>

<sup>14</sup> <https://www.just.ro/proiect-de-lege-privind-statutul-magistratilor/>

<sup>15</sup> <https://www.g4media.ro/breaking-rechizitoriu-dur-la-adresa-legilor-justitiei-intr-o-scrisoare-deschisa-trimisa-comisiei-europene-de-trei-asociatii-de-magistrati-sistemul-judiciar-cunoaste-un-regres-inacceptabil-independe.html>

<sup>16</sup> <https://www.just.ro/comunicat/>

## The saga of the attempts to remedy the derailments of 2017-2019 (in brief)

- Reforming the justice system and removing the heavily criticised amendments to the three justice laws adopted in 2018 was one of the main commitments made by the PNL government after the dismissal of the Dăncilă government in 2019. The package of laws was initially published in September 2020 by the justice minister at the time, Cătălin Predoiu, and opened to public debate until 31 March 2021 .
- After the parliamentary elections held at the end of 2020, a new Government is appointed which places the adoption of the new package of laws on its list of priorities. Ion Stelian, Minister of Justice in the new government, takes on the task of continuing the legislative procedure with the drafts left by Cătălin Predoiu.
- Minister Ion publishes a new form of the draft laws in March 2021. The publication generates a conflict within the coalition the PNL partners claiming not to have been consulted on the content of the drafts. A committee is announced within the governing coalition to discuss the draft laws before they are sent to the government for approval. However, Ion Stelian is dismissed in August 2021 and the coalition breaks up in early September 2021.
- Two months later, in November 2021, the government led by Nicolae Ciucă is appointed Prime Minister and Cătălin Predoiu returns to the Ministry of Justice.
- The justice laws remain a priority for the new government, which undertakes in its government programme to continue and improve the reforms, **"taking into account the reports of the European bodies - Venice Commission, GRECO, CVM and the EC Rule of Law Report" and "to submit them to Parliament for adoption, accompanied by the opinion of the Venice Commission, consulted for this purpose"**.
- Moreover, the Justice Laws are also included as an objective in the NRRP which enters into force in December 2021. The adoption of the new package of justice laws is a measure included in the "Good Governance" component, with a deadline of the second quarter of 2023.

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