

Considerations Regarding the Independence of Justice in the Current Romanian Society

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ABSTRACT: The impact of the Reports of the Cooperation and Verification Mechanism in Justice (CVM) on the general public opinion but also on the professionals from the Romanian justice created divergences of opinion regarding the independence of the Romanian justice. Also, the abolition of the Section for Investigation of Crimes in Justice (SICJ) generated intense and legitimate discussions both between Romanian magistrates and especially between Romanian politicians, thus forming a phenomenon of confusion in the perception of public opinion regarding the existence and prerogatives of SICJ. In the present approach, we want to expose the belligerent points of view of the supporters of keeping the SICJ but also of its dissolution as well as the impact of CVM on the public opinion. Thus, we will present potential reactions at the level of the general perception regarding the topics under discussion.

KEYWORDS: Justice, public opinion, magistrates, reform, trust in justice, judiciary

Introduction

We note with regret that there is a negative ednemic period for justice regarding the citizens' perception of this institution, inside which, backstage games, internal and hegemonic conflicts have become a priority, and opacity on the decisions and activity of justice has oriented it towards a line unhealthy decadence as a whole.

Regarding the development strategy of the judiciary 2015-2020, presented by the Ministry of Justice and approved by the Government on December 23, 2014, was largely based on the recommendations of the CVM report, as well as studies developed in collaboration with the World Bank, in particular the study Functional Analysis of the Romanian Judiciary (www.just.ro) (the project submitted for public consultation is based on: Functional Judicial review – “Analysis of the functioning of the judiciary”; CVM reports and EC recommendations; the Court Optimization Study; the contributions of the specialized departments within the Ministry of Justice, the contributions of the Superior Council of Magistracy, of the Public Ministry, of the High Court of Cassation and Justice, of the National Office of the Trade Register and of the National Administration of Penitentiaries).

Based on a set of fundamental principles based on the rule of law, the strategy defines the objectives for further reforms in 2015-2020, in order to make the judiciary more efficient and accountable and to ensure its better quality, strategy and plan action plan should also be the basis for defining EU funding priorities in the field of justice (Report from the Commission to the European Parliament and the Council on Romania's progress under the Cooperation and Verification Mechanism/ *COM/2015/035 final*).

The national judiciary, together with the other components of the national system of control and balance, such as constitutional courts and “People's Advocate” institutions, are the first lines of defence against attacks on the rule of law by any branch of the state (<https://eur-lex.europa.eu>).

A Eurobarometer survey conducted in autumn 2014 indicated a strong consensus in Romanian society that the reform of the judiciary and the fight against corruption are important issues for Romania. Although the results of the survey showed a substantial increase in the number of people who say they have seen an improvement in recent years and are confident that this process will continue, the political factor and endemic interference of “parallel state” services

in conducting justice, by pronouncing judicial solutions that have often provoked public disapproval, especially from journalists specializing in the field of justice, entitle us to express our concern about the potential subversiveness that can be created in this area.

The Cooperation and Verification Mechanism (CVM) was set up at the time of Romania's accession to the European Union in 2007 and created major hopes among the population, considering that Francisco de Quevedo's apophthegm said that "Where Justice does not work, it is dangerous to be right", will no longer find its applicability in the Romanian justice.

Referring to the supreme court of justice, namely the Superior Council of Magistracy (SCM), we express our opinion that it is not allowed to be influenced by the political factor or to be in collusion with it, as, unfortunately, the public image was created that some people would have tried to use politics to resolve power interests within the system.

There is clear support for the EU's involvement in resolving these issues and for continuing EU action until Romania reaches a level comparable to that of other Member States.

We strongly recommend that the SCM defend its place and constitutional role, to correctly identify those solutions that do better justice for the people, as a public service. For a good reputation among citizens, it is necessary for the magistrates themselves to want both a functional justice and the full trust of the people, but this trust is obtained only if the system is not affected by dysfunctions. The way in which the SCM will interact on the debate on the laws of justice *"should no longer allow the perception that justice would be divided according to different currents of political opinion. This proved to be detrimental to the image of the place and role of magistrates in society, but also detrimental to the justice system and its stability"* (Angelescu-Stancu, 2020, gandul.ro).

The independence of the judiciary creates trust among the population

Democracy cannot exist without independent courts that guarantee the protection of fundamental rights and civil liberties, nor without an active civil society and without independent media to ensure pluralism. The rule of law is a well-established principle, the central elements of which are properly defined (Communication from the Commission to the European Parliament, the European Council and the Council - Further strengthening the rule of law in the Union - Current situation and possible next steps (COM 2019, 163 final).

Romanian civil society is active and expresses itself freely and independently and thus, the opinion was created that the endemic existence of a mechanism for verifying the activity of justice of a state cannot entitle someone to consider that the state is independent in terms of decision-making in the field of justice. Romania is subject to such a verification mechanism called CVM which makes many recommendations to reach a level comparable to that of other EU member states, from which we logically deduce that our country still has important steps to take to reach the level of other EU member states.

The November 2018 Report states that: *"The amended justice laws, which entered into force in July and October 2018, could lead to pressure on judges and prosecutors, which could ultimately undermine independence, efficiency and quality of judicial system. Instead of addressing the issues highlighted in previous CVM reports, the laws had introduced new risks, in particular through the creation of the Special Section for the Investigation of Magistrates and the regime on disciplinary sanctions and disciplinary liability of magistrates. Accordingly, the Commission concluded that the laws were an involution in relation to the January 2017 assessment and proposed a respite to reconsider the situation by freezing the entry into force of the changes"*. The November 2018 Report recommended:

- Immediate suspension of the implementation of justice laws and subsequent emergency ordinances.

- Revision of justice laws, taking full account of the recommendations made in the CVM, as well as the recommendations of the Venice Commission and GRECO.

Although the Romanian authorities also invoked the argument that the laws of justice produced legal effects that could not be stopped, there are opinions that claim that these recommendations no longer have the dimension of guidance but of imposing measures as it appears from the way they are expressed, using imperative terms such as “immediate suspension” or “revision of the laws of justice, taking full account of the recommendations (...)”.

Opinions have been expressed about the latest CVM report calling for the urgent abolition of the Special Section for the Investigation of Magistrates (SICJ) and we make the respectful recommendation to understand the purpose for which this Special Section was established and which was and it is the impact of the existence of the SICJ on the perception of public opinion.

Some specialists in the legal field see that the existence of the SICJ is an additional guarantee for Romanian magistrates (prosecutors and judges) to deliberate impartially, independently and without any political or systemic influence in pronouncing legal and sound decisions. SICJ is the correspondent of the College of Physicians in the field of justice. The Romanian magistrate does not have to identify with the law itself, its purpose is to apply it completely and correctly. Part of the public opinion considers that there is a higher control forum for all professional categories and does not understand the major concern of the Brussels Commission regarding the existence of such a forum for magistrates as well.

Even some magistrates considered that the existence of the SICJ is not meant to put pressure on judges and prosecutors and that this special section cannot undermine the independence, efficiency and quality of the judiciary but on the contrary, creates a responsibility of magistrates to the act of justice, trust of litigants. Justice must not be selective, it must not be considered good only for some and bad for others.

There are disciplinary sanctions and disciplinary liability for all professional categories and it was rightly considered that it should also exist for magistrates. The abolition of the SICJ can generate legitimate questions such as: are magistrates above the law?: Do magistrates represent a higher category of doctors or teachers or other social categories?

Such recommendations found in the latest CVM Report, such as the one on the abolition of the SICJ and the nominal references in some dispositions of prosecutors or judges in certain criminal cases concerning magistrates who subsequently elected high-ranking positions are not likely to create trust and impartiality CVM.

Recommendations of the European Commission for Romania from the CVM Report

We will stop for analysis on some of the recommendations made by the European Commission for Romania in the latest CVM report.

Thus, one of the recommendations is made *“in order to further improve the transparency and predictability of the legislative process, as well as to strengthen internal guarantees on irreversibility, the government and parliament should ensure full transparency and take due account of consultations with relevant authorities and stakeholders in the decision-making process and in the legislative activity related to the Criminal Code and the Criminal Procedure Code, anti-corruption laws, integrity laws (incompatibilities, conflicts of interest, unjustified assets), laws of justice (regarding the organization of the justice system), as well as the Civil Code and the Civil Procedure Code, inspired by the transparency of the decision-making process put into practice by the government in 2016”* (Digi24 2019).

We make the necessary clarifications regarding this recommendation, stating that the representatives of the Romanian Government are already creating a framework for dialogue between the Government and associations and foundations, on public policy priorities, coordinating government strategies on associative forms in civil society, increasing its capacity to contribute with ideas and expertise to the public policy process transparency and consultations with the competent authorities, contributing to the continuous communication with citizens, including for the synchronization at European level of cooperation policies and strategies with

organized civil society and with citizens, also supports and support in carrying out programs or activities initiated by legally constituted organizations, associations or foundations.

Another recommendation refers to “members of the Strategic Management Council of the Judiciary, namely the Minister of Justice, the President of the Superior Council of Magistracy, the President of the High Court of Justice and Cassation and the Prosecutor General, should ensure the implementation of the action plan how it has been adopted and to implement regular public reporting on its implementation, including solutions to the problems posed by the low number of clerks, excessive workload and delays in drafting the reasons for judgments” (Digi24 2019).

In order to achieve the desideratum deduced from this recommendation, we reveal that there is no unitary position of the representatives of the forums listed in the above mentioned recommendation and the hegemonic struggles for power and interest to access the leadership of these forums for justice have never stopped in Romania. As long as appointments are made for the management of the General Prosecutor’s Office and there is no real, transparent competition that has as its only measure of value, professional competence and not political influences, nor will it be possible to achieve the general validity of independence in the Romanian judiciary.

Regarding the recommendation that “the new Superior Council of Magistracy should develop a collective program for its mandate, including measures to promote transparency and accountability”. This program should include an outward-looking strategy, with regular open meetings with assemblies of judges and prosecutors at all levels, as well as with civil society and professional organizations, and the organization of discussions on annual reports at general meetings of courts and prosecutor’s offices” (Digi24 2019).

We regret to say that the members of the Superior Council of Magistracy are divided in diametrically opposed opinions magistrates judges and prosecutors, members of this forum for justice in Romania, being in a perpetual conflict and thus being impossible to achieve a unitary strategy a collective, coherent program to promote transparency and accountability. The Superior Council of Magistracy has not been able to act as an effective factor of control and balance to defend the independence of judicial institutions under pressure. The divisions in the Superior Council of Magistracy, evident in its meetings with the Commission services, have made it increasingly difficult for the Superior Council of Magistracy to be effective as a spokesperson for the judiciary - especially when consulted on legislation - and as an administrator of the judicial system, as it results from the last CVM report for Romania.

Also, even some members of the current Superior Council of Magistracy said that within this forum there is a lot of inertia, lack of involvement, lack of awareness of the place and role of each, harmful compromises and overturned values.

Conclusion

The reform of the Romanian judicial system is a nebula with negative effects on public opinion and justice specialists. We tend to believe that this reform is a utopia and there are few who still believe that it will ever be achieved based, legitimately, on an empirical reality that has generated the shattering of many ruined hopes.

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