

# JUSTICE AT THE CROSSROADS: BETWEEN THE MAINTENANCE OF THE COOPERATION AND VERIFICATION MECHANISM AND ITS RAISINGS

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## Abstract

*Although it is a highly debated topic, Report of the Cooperation and Verification Mechanism for the judiciary (CVM) is a taboo subject, stirring both political forces and judicial institutions in Romania. Even though progress over time are notable we have to analyze how useful is this instrument for judicial independence and our system has achieved the necessary maturity. Romanian judicial reform can continue or not with the Cooperation and Verification Mechanism, is the biggest topic of debate.*

**Keywords:** Report, Judicial institution, Political forces, Reform, organization, progress

## 1. Introduction

During the ten years since the establishment of the Cooperation and Verification Mechanism (CVM) of justice, Romania has made notable progress in reforming the judiciary and fighting corruption, which allowed a better, even acid alignment with European legislation, policies and programs.

In its most recent report of the European Commission, submitted to CVM for Romania on January 27, 2017, the results of the work of authorities is mentioned again, referring to both the executive system and also to the legislative and judiciary systems. Although compared with previous years', report identified progress in various areas, the judiciary and fight against corruption remain a problem for Romania, that would give rise to rather justified or not so justified major movements of civil society.

The last report<sup>1</sup> published can be considered as a positive one, as noted also by the Romanian authorities. Although this would broadly be the third positive report, all of these might have a common point, which would be that lawmakers are being criticized especially when it comes to protecting a colleague's legal problem. Several problems persist, but have reduced acuity, compared to the debut of this monitoring. The report highlights internal affairs issues from multiple points of view.

Under this mechanism, the European Commission has committed to assist Romania to remedy the shortcomings in the judiciary system, and to periodically check progress compared to the four benchmarks set for judiciary reform and the fight against corruption. For CVM to accomplish the purpose of establishing or monitoring the progress level of Justice and Home Affairs, European Commission prepares annual reports, which analyze developments and make recommendations to improve the four chapters.

The Commission also pointed out that CVM continue to play an important role in Romania, being a driver of reforms and encouraging to maintain the consistency of results. But also, internal voices continue to question whether the level of growth and progress could continue without this instrument of coercion to be started.

In the Maturity of the Romanian society, the reorganized institutions could not continue its journey without CVM analyzing their activity. Thus, in our study we will go through the last report and through the noted progress so that we make a comparative analysis of the reform in justice dating back to the first established reports to present times. Also, this study comes to enlighten the dispute between the supporters and the contesters of these reports.

## 2. Content

Even though Romania became a full member of the European Union, with effect from 1 January 2007, at the same time, the European Commission established, the monitoring of the judiciary system and Home Affairs Chapter. The justification for this monitoring would be that at that time in Romania there could be identified certain shortcomings in the area of justice reform and in the fight against corruption. The reasoning WHY was that, these deficiencies could hinder the effective application of legislation, policies and programmes of the European Community. Such a Mechanism is set up for cooperation and verification by decision No.2006/928/EC of 13 December 2006.

Reference objectives have been established under the same legislation, both for Romania and Bulgaria<sup>2</sup>. These are being tracked by the European Commission and after its fulfilment this would lead to the removal of the monitoring process.

4 reference targets were instituted for Romania: the strengthening of the capacity and the liability of the Superior Council of Magistracy, by ensuring greater

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<sup>1</sup> <http://europa.eu/>.

<sup>2</sup> Decision no. 2006/928 / EC of December 13, 2006.

transparency and enhanced efficiency of Justice (1); the establishment of an integrity agency with responsibilities relating to the verifying of wealth, potential incompatibilities and conflicts of interest, leading to the application of dissuasive sanctions (2); removal of high-level corruption (3); Elimination of corruption at the level of local administrations (4). The Commission shall produce annual reports through which it examines, monitors and makes recommendations for the four goals.

The first report was issued in June, 6 months after the completion of the procedures for integration emphasizing that: "Romania has amplified its efforts, at the highest levels, in the fight against corruption. Even if these efforts are recognized, there is still a lot left to be done. The progress realized in this short period of time from the beginning of the cooperation and verification mechanism is still insufficient<sup>3</sup>". Thus, starting with the first reports, experts stressed on the need of stronger institutions for fighting against corruption and the deeply rooted problems of the system.

The experts recommended a clearer legislation in the field of anticorruption and respect of the separation of powers, leaving aside the political implications in the judiciary. Therefore, the first report's conclusion was that "overall, Romania has made some progress in the reform of the judiciary", but "the progress made in the field of treatment of high-level corruption is still insufficient<sup>4</sup>."

Second report of the European Commission, published in 2008, examines the first year of accession, and concludes that Romania has continued to make efforts to remedy deficiencies but these are pretty insignificant especially in key areas, such as in the fight against high-level corruption, compelling results have not yet been made. The General Directorate against Corruption started to have positive results, but still weak in relation to the seriousness of the problems.

Within this report, the concern that lawmakers change the law in favour of the defendants was noted for the first time. Thus, we do so by reference to the law which provided the changes in investigation and prosecution of criminal trials. This bill of law which stipulated, inter alia, the limitation of prosecution to 6 months, the authorization of the search, registration or interception of communications only by previously informing the suspect, and fraud with prejudice of up to 9 million euro would have been considered a minor offence, with a maximum penalty of five years in prison. In conclusion this report points out the danger which Romania would be subject to and the effects that these changes would have in relation to foreign

partners, especially in the case of joint investigations, with the Member States, the fight against terrorism and the prosecution of cross-border crime<sup>5</sup>".

The 2009 report represents the moment that CVM gave the solution of accelerating the process of criminal trials.

By the time of the 2009 report, one of the greatest problems was the length of the criminal trials, many of them culminating after the prescription has passed, and the main cause was the discontinuation of the criminal process led by exceptions of unconstitutionality. So until the resolution of the Constitutional Court, the trial would stagnate, and the frequency of these exceptions was quite high. It became an excess of a procedural nature, and European experts recommended the legislature to amend the law of the functioning of the Constitutional Court, in order to eliminate these situations. But not only these excesses were the cause of the delay in the criminal procedure, thus, the experts also identified excesses of a procedural nature which involved invoking the exception of illegality.

The recommendations in this case involved the limitations of such situations by modifying the law<sup>6</sup>.

The first totally negative report was from 2010<sup>7</sup>. However, the only positive outcome was the work of DNA.

Although there were no huge performances, DNA held the best record of the supervised institutions. The performance of this institution consists of a growing number of high-level corruption cases, arraignments and the number of court final judgments.

In what concerned the rest of the established targets, the European Commission stated massive deficiencies. Experts stressed on the lack of political commitment in supporting the reform process and the lack of cooperation between the parties in the judiciary system.

The report published in 2011, can be briefly described as a negative one, especially from the point of view of confiscating the proceeds of crime. Thus, experts stressed on the fact that "the effectiveness of the fight against corruption is affected by the existence of serious problems in the system of recovery of the proceeds of crime. In Romania, assets obtained illegally are seized to a very small extent, mainly because of the limited possibilities for confiscation as provided by law, judicial restrictive practices and lack of proactive behaviour of the criminal investigation body<sup>8</sup>". In the same report there were also outlined notable positive results about the efficiency of court proceedings.

<sup>3</sup> Final Report 27.6.2007 COM (2007) 378 from the Commission to the European Parliament and the Council on progress on accompanying measures in Romania after accession page 7.

<sup>4</sup> Ibidem 4 page 6.

<sup>5</sup> Progress report Romania July 2008 [COM(2008)494], Technical update Romania July 2008 [SEC(2008)2349] pag5.

<sup>6</sup> Progress report Romania July 2009 [COM(2009)401], pag 3.

<sup>7</sup> Progress report Romania July 2010 [COM(2010)401], Technical update Romania July 2010 [SEC(2010)949], pag 11.

<sup>8</sup> Progress report Romania July 2011 [COM(2011)460], pag 7.

Maybe the toughest report yet, was the report published in the year 2012, which highlighted the acute political crisis in Romania that affected the rule of law. In this report, Romania is criticized in extremely tough terms. Thus, the Commission emphasized: "... Challenging the judicial decisions on a political level, undermining the Constitutional Court, overturning established procedures and removing the key mechanisms by which the powers of the State control other subsequent powers, question the Government's commitment to respect the rule of law and independence of the judicial system"<sup>9</sup>.

This report mentions for the first time the press and its role in shaping public opinion, but also high pressures laid against judicial institutions.

The conclusions of this report note that "in some important areas, the changes occurred primarily as a result of external pressure. The fact that it takes an external pressure raises questions about the sustainability and irreversible state of the reform, emphasised in the context of recent events"<sup>10</sup>.

The report also criticises the opposition from political actors to give the consent for DNA to commence the criminal proceedings of politicians<sup>11</sup>.

The report given in 2013 is also a report of media harassment campaigns and pressure on justice. Such political chaos generated in 2012, have prompted the issuance of a report after 6 months, not after one year as it used to be. This report is characterized by hardness, in terms of criticism brought to political people and the media, which could be accused of partisanship or even manipulation. The work of the National Council of the Audiovisual sector has been the subject of analysis and criticism. European experts have delivered this report on the basis of numerous complaints from the people affected by such slippage.

European experts note the media pressures on the justice system and looked concerned by the effectiveness of the surveillance activity carried out by the National Audiovisual Council. Among the recommendations issued by the European experts was the need to review existing rules in order to ensure that press freedom is accompanied by adequate protection of institutions and fundamental rights of persons, and to provide effective remedies.

Also of great concern was the report from 2014, by which events from 2013 were analyzed. European experts had in mind two important subjects: the one where the Government, at that time, suddenly changed people with others in key positions from DNA without any transparent procedure for selecting and the episode dubbed "Black Tuesday".

Thus in the context of the report, the experts note: "on the basis of the CVM reports published so far it can be seen that progress was not easily obtained, and

something obtained in an area may be restricted or denied by the setbacks in another area. In December 2013, Parliament's actions have demonstrated that the principles and objectives of the reform continue to be put to the test, for those principles to be reiterated, the intervention of the Constitutional Court was necessary"<sup>12</sup>.

One of the actions that led to this harsh analysis was the problem of temporary appointments of Deputy at DNA, which were revoked, and the appointments made by the Minister of justice were lacking in transparency. The report examined procedures including those proposed in the second wave of appointments and linked DNA's decisions with the criticism invoked by the politicians.

Experts have made a broad analysis of the events of December 2013, known as "Black Tuesday", when there changes brought to the penal code by the Parliament without a debate or public consultation. The purpose of these changes was clear, namely removing MP's from the scope of the legislation applicable to the offences of corruption, as taking bribes, trafficking influence and abuse of Office. In other words the activity of the institutions fighting against corruption were eluded.

After the many negative reports in the year 2014, the first positive report was published. Obviously, it contains exceptions, namely those relating to Parliament's decisions.

The year of 2014 culminated with the entry into force of the New Codes<sup>13</sup> (criminal law and criminal procedure), and the European Commission welcomed the manner by which the jurisdictional system "adopted" rapidly the two institutions namely the judge of preliminary room and judge of rights and freedoms. This represents the success of major institutions: Ministry of Justice, the High Court of Cassation and justice (HCCJ), CSM, the Public Ministry and the National Institute of Magistracy (NIM).

However, these positive results, as the Commission stated, have been overshadowed by Parliament, through the rejection of requests from DNA to investigate and arrest various members of the Parliament. European experts noted the answer of the Parliament as arbitrary and without any objective criteria.

The Commission noted positively the rejection of the draft law on amnesty that would have protected from lawsuits or investigations, the corrupt politicians, but also drew attention to the danger that this situation would lead.

The best report on Romania is the one published in January 2016. It is considered to be most appreciative report addressing justice in Romania. The character of the work is appreciative of the structures in

<sup>9</sup> Progress report Romania July 2012 [COM(2012)410], pag 6.

<sup>10</sup> Ibidem 11, pag 8.

<sup>11</sup> Progress report Romania 2013 [COM(2013)47], pag 3.

<sup>12</sup> Progress report Romania 2014 [COM(2014)37], pag 5.

<sup>13</sup> Progress report Romania 2015 [COM(2015)35], pag 3.

the field of judiciary which is regarded as "a sign that the underlying trend regarding the independence of the judiciary is positive and that any person who commits an offence is not situated above the law"<sup>14</sup>.

As in my previous article<sup>15</sup>, the European Commission has noted both positive and negative results, but it has thus been made reference to the fact that in 2015 there were more and more critical voices against the Magistrates "expressed by politicians and in the media, and the lack of respect for judicial decisions", these have included high-ranking officials. In 2015 one-third of the applications made by DNA to waiver immunity of some MPs in order to allow the initiation of investigations or enforcement measures of preventive detention, were dispelled by the Parliament.

So if in the Commission's MCV Reports on 2014, 2015 and 2016 we could highlight a trend and a positive balance sheet that indicates significant progress and increasingly irreversible nature of reforms implemented in the framework of CVM, in the year 2017 report notes that a number of key elements cannot be considered as being fulfilled. This positive trend was reconfirmed also in 2016, by analyzing the institutions of the judiciary which are in interdependence with the political changes. Therefore, during the 10-year follow-up, if you should compare the institutions and the judiciary since its debut in 2007, this year, we find an impressive evolution, even if in different periods the progress has been hindered, the reference objectives appear to be achieved.

## **2.2. The Analysis of the 4 goals of CVM report, achieved through the prism of the last report.**

As mentioned above, even if they are amazing improvements in the 10-year follow-up, the European experts identified a number of key issues, whose evolution has been quite slow, and that according to the previous reports remained unresolved. Thus, the present report cannot conclude that the reference objectives are, at this stage, to be fulfilled in a satisfactory manner. The number of referrals is very limited, which is why their fulfillment will result in closure of the provisional reference individual goals and, subsequently, the CVM.

Thus, these key recommendations refer to the concentration of responsibilities and accountability required by the Romanian authorities and internal guarantees which are necessary to ensure the irreversible character of the results. Irreversibility will be supported through the development of mechanisms of reporting and accountability after the completion of the CVM.

European experts have the opinion that the objectives can be met through monitoring CVM recommendations in the report and after picking up this tool, through the development of other procedures. However the speed of the process will depend on how quickly Romania will be able to accomplish them irreversibly and to avoid negative developments that put into question the progress that has been already made. Thus, even the small influence on low deficiencies can lead not only to progress of the mechanism but also to its transforming into a simple monitoring of the results. Though, to go beyond this step Romania must act to implement the recommendations contained in the final report.

As the Council repeatedly note<sup>16</sup>, CVM can be removed when all four reference targets that apply to Romania can be considered as fulfilled in a satisfactory manner. The reference objectives pursued are those defined at the time of accession and those that cover essential aspects for the operation of a Member State- the independence and effectiveness of the judiciary, the integrity and the fight against corruption.

Although the reference objectives are independent, there are also important interconnections, which have an impact on their fulfilment. Benchmarking involves the analysis of structural conditions (such as laws, institutions and resources), of the results and their balance sheet with the possibility to consider that the advances are irreversible.

### **2.2.1. The judicial process**

As the prime objective of reference we can identify as being the judiciary. This goal was meant from the beginning, to be an independent system, impartial and efficient, based on strengthening the consistency of the judicial process, as well as improving transparency and accountability. Thus, experts note substantial institutional and normative progress. The Superior Council of Magistracy (SCM) has established itself as a manager of the judiciary and has demonstrated its ability to fulfil its constitutional role, particularly in regard to defending the independence of the judiciary, an essential role.

So during the year 2016, public perception of judicial independence and confidence in the judicial system has gained credibility<sup>17</sup>. Just as in other reports it was found there were shadows cast from this trend: attacks from politicians and the media, and directed against the magistrates and judicial institutions. In 2016 the attacks against the National Anticorruption Directorate were quite virulent.

<sup>14</sup> Progress report Romania 2016 [COM(2016)41], pag 7.

<sup>15</sup> Florin Stoica, Phd Candidate „The evolution of Romanian Judicial System seen through the last monitoring report” în Proceedings-ul Conferinței Internaționale Challenges of the Knowledge Society-CKS 2016, 10th Edition, May 20th -21st, e-book, “Nicolae Titulescu” University Publishing House, Bucuresti, ISSN 259-927, ISSN-L 2068-779, pag.497-502.

<sup>16</sup> Conclusions of the Council of Ministers, October 17, 2006 (13339/06); Commission Decision establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in certain areas of judicial reform and the fight against corruption, December 13, 2006 [C (2006) 6569 final].

<sup>17</sup> Scoreboard EU justice in 2016 COM (2016) 199 final, graphs 48, 44 and 46. The survey in April 2016 showed a 60% confidence very high and high DNA. <http://www.inscop.ro/wp-content/uploads/2016/04/INSCOP-raport-martie-2016-INCREDERE-INSTITUTII.pdf>.

Even if we note the performance of the system, European, experts identified some negative aspects such as balancing the workload of different Courts and sections within the same Court, such as the method of finding solutions regarding the discrepancies between the workload of the big courts and of the smaller ones, and the distribution of tasks between judges and clerks. Legislation in this area has not progressed in 2016, and simple management actions could not provide a solution to solve these problems.

A major breakthrough in this chapter may be established by the fact that at present all the tools are available for monitoring the functioning of the courts and of the human resources situation and the fact that there is a comprehensive strategy for the development of the judicial system by 2015-2020.

Regarding the appointment of magistrates, especially for the highest roles, the year 2016 was a key one. Although the appointments made did not register issues of professionalism or integrity, the process used did not allow the introduction of clear procedures, that are open and transparent to select all candidates, to strengthen in a fixed and permanent system<sup>18</sup>.

With regard to reforming the administration of the judiciary, the SCM(CSM) is responsible for professional and disciplinary punishment of deviations of the magistrates, and the Commission notes that the decision-making chain seems to have become more predictable and consistent.

Another point in the analysis is the one relating to legislative reform, so Romania has adopted and implemented the new civil code and the new penal code, and the related codes of procedure, in order to modernize the material right and improve the effectiveness and consistency of the judicial process. These major reforms may be considered to be almost completed. However, the completion of these reforms, as foreseen in the report's recommendations on 2016, has shown a degree of difficulty, and presents a number of deficiencies. On the civil side, the civil code and the code of civil procedure, the provisions of which have necessitated new infrastructure have been deferred successively, suggesting deficiencies at the level of planning.

For the criminal side, respectively for the criminal code and the criminal procedure code, the inward processing procedure by decisions of the Constitutional Court has proved difficult, and developed a surprising approach from the Parliament. The Constitutional Court through its decisions has imposed a number of changes to both the penal code and the code of criminal procedure by the Government, but unoperated changes by the end of the year 2016. The proposals put on the table seemed that weaken the anticorruption struggle, even though they were not adopted.

The role of the Constitutional Court continued to be important and to maintain the independence of the judiciary and through its decisions, sought to provide solutions to problems linked to the balance of powers and respect for fundamental rights which could not be resolved solely by the judiciary. Of the 12 decisions in 2016, most were common criminal provisions that have been taken to comply with the European Convention on human rights.

At the time of accession a major problem constituted in the absence of recurrence of such judgments, MCV's 2016 report found signs of shifting cultural paradigm in terms of consistency within the judicial system. The Commission has adopted successive recommendations in 2014, 2015 and 2016 on the subject, which was recognised as a structural deficiency also by the ECHR<sup>19</sup>. Such a trend observed during the year 2016, is setting up the new National Agency of managing Preserved Property.

As a conclusion concerning the objective number 1, Romania recorded substantial progress with respect to the objective reference no. 1, but nevertheless insufficient to be able to consider this task completed. More such efforts are needed to demonstrate a positive balance in certain areas, such as respect for the independence of the judiciary in Romania's public life, completing the reform of the criminal code and civil code, and ensuring efficiency in the execution of judgments by all those concerned.

### **2.2.2. The integrity and the National Agency for Integrity**

The second goal of reference set up by the mechanism of verification and cooperation, refers to the establishment of an integrity agency with responsibilities in the field of verification of assets, incompatibilities and potential conflicts of interest, and with the power to adopt binding decisions which may lead to the application of dissuasive sanctions. Romania currently has a comprehensive legal framework in the field of integrity for public officials, and the National Agency for integrity is recognized as an independent institution which implements those rules. The upcoming changes regarding ANI, include a new tool, the system PREVENT ex ante checks of public procurement, whose legislation was completed in 2016. That legislation will have to include all conflicts of interest as defined by the new law.

As an overview, it can be said clearly that Romania has made progress in terms of reference objective No. 2 and it can be considered that the National Integrity Agency is an institution essential to the system. This was demonstrated by the fact that in 2016 it has been entrusted with the development of the system PREVENT, a system that will deal with ex ante

<sup>18</sup> Technical Report, Section 2.2.

<sup>19</sup> Săcăleanu (joined cases) 73970/01: Failure to perform or delay by the administration or by the legal person under the responsibility of the state to the judgments of national courts. In December 2016, the Romanian authorities submitted to the Council of Europe Action Plan. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016806d8adb](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806d8adb).

checks on conflicts of interests in the public procurement, whose functioning will have to be demonstrated in 2017. Also, the Agency has a key role in the national Anticorruption Strategy 2016-2020 in preventing corruption.

### 2.2.3. Combating corruption at high level

The objective reference number 3 refers to the objectivity and professionalism with which the case of accusations of high-level corruption are being treated.

The Commission considers that the phenomenon of corruption is a deeply rooted problem in society, with consequences for both the system and the economy. This issue is identified as a major problem in Romania both in polls<sup>20</sup> and in Euro barometer concerning CVM<sup>21</sup>.

CVM reports along monitoring have remarked a positive character, the steady growth in terms of investigation and prosecution in cases of high-level corruption, and delivery of judgment in such cases with a clear acceleration after 2011. The Commission noted the solidity with which institutions involved in investigating and prosecuting cases of corruption at high levels and in the delivery of the judgment in such cases. Thus the completion of such cases have led to these positive results.

National Anticorruption Directorate's activity is broad and involves investigating a large number of cases and thus submitting each year to sue hundreds of people accused of corruption in the medium and high level. The activity is then transferred to the High Court of Cassation and justice and the courts of appeal, who judge final convictions in a huge number of corruption cases at high and middle level. Later on, a positive activity is recorded in the purpose of confiscation of the goods to recover the damage caused by the offences of corruption. The Balance sheet of activity is steady and 2016 and proves their professionalism and independence. However, the repetition of some similar offences demonstrates that corruption prevention measures have not been effective.

During the monitoring, the Commission stressed on the link between the effectiveness of anticorruption activity and reaction of media and the political class. In 2016, the political class continued to bring public criticism towards some magistrates and to the justice system in general.

Another recurring problem noted by the report of CVM is the absence systematic approach which could explain denials to lift parliamentary immunity to allow investigations or preventative measures. As in the case of the other targets although they were recognised by the Commission for substantial progress, the third objective reference cannot be removed.

### 2.2.4. Combating corruption at all levels

The fourth benchmark considered in our analysis is considering additional measures to prevent and fight corruption, in particular within the local administration.

Although aperent harmless corruption on a small or medium level, is also on the table analysis of European experts. This type of corruption is a real flaw in the public system, because it can have consequences for the economic and social development of Romania. Such an area where the emergence of this phenomenon is particularly destructive for investments, is procurement. Another area where corruption has serious consequences is health. The solutions identified in this case are prevention and proactive approach of the government to block opportunities for corruption.

Commission recommends accelerating progress in asset recovery, which will be certified by the National new agency to administer seized property (ANABI), which began operating in January 2017.

Experts welcome the habit of prioritizing the prosecution of corruption at lower level that became part of the prosecution activity and remains a priority for them. Also recommended, are additional measures to remedy this problem. In order to simplify this procedure the national anti-corruption strategy was developed, which is the central tool for preventing corruption in the public administration at national and local level.

Although previous anti-corruption strategies have generated slow progress, the Government adopted a new anti-corruption strategy 2016-2020 in August 2016, seeking, in particular, specific measures to address identified deficiencies. However what characterizes this strategy is the possibility that it will implement the measures effectively in all sectors, especially at the local level, where many observers see the risk of corruption as particularly high.

Although anticorruption measures, were introduced by successive executives and there have been made intensive efforts, noted by experts of the European Commission towards achieving the fourth benchmark, even this objective can not be regarded as fulfilled. Impediments consist of the implementation of preventive policies defined recently.

### 2.2.5. Main recommendations

European experts believe that the reform should continue following same process, and internal safeguards must be further strengthened in order to ensure the irreversibility necessary for meeting the benchmarks satisfactorily.

The Commission makes recommendations on appointments, thus it shapes the implementation of a clear, objective and independent system of appointing senior prosecutors, based on clear and transparent criteria, with appeal to support the Venice Commission.

<sup>20</sup> Flash Eurobarometer 428: Business and corruption, [http://ec.europa.eu/ COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2084](http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKy/2084) available.

<sup>21</sup> Flash Eurobarometer 445: "Cooperation and Verification Mechanism for Bulgaria and Romania", published on January 25, 2017.

As a persistent problem throughout the 10 years of monitoring referring to respect for the judges and compliance to judges and the judicial process, the Commission's recommendation for a code of conduct for parliamentarians to provide clear provisions on mutual respect between institutions and to specify clear that parliamentarians and parliamentary process must respect the independence of the judiciary. Such a Code of Conduct similar could be adopted for ministers.

Recommendations on judicial reform at the end of the present phase of reforming the penal code and establishing an action plan to complete the remaining provisions of the civil code, involving all the actors leading the judiciary. At the same time, experts recommend to further improve the transparency and predictability of the legislative process. Thus, the decision-making process, the Government and Parliament should ensure full transparency and take due account of consultations with the relevant authorities. Consultations will be conducted also with other interested parties in related legislative activity codes, anticorruption laws, laws on integrity (incompatibilities, conflicts of interest, illicit wealth), the laws of justice (on the organization of justice). Institutional transparency for the year 2016 is given as an example of good practice<sup>22</sup>.

Regarding the issues of consistency of judgments, the Commission recommends the further use of appeals in the interests of the law and the preliminary questions.

As shown in the reference number 1 objective, observance and enforcement of judgments is part and parcel of judicial efficiency<sup>23</sup>. The Commission's recommendations relating to the implementation of an appropriate action plan to remedy the dispute over the execution of judgments and the application by the Government of the case law generated by the courts, as well as the establishment of an internal mechanism for monitoring aimed at fulfilling this plan. Experts stress the importance of the implementation of the plan as well as the development of the role of judicial institutions.

European experts also stress on the importance of the implementation of the PREVENT system, and on the introduction of a practice of drawing up reports of ex-ante verification for checks carried out by the National Agency for integrity and National Agency for public procurement.

For benchmarks 3 and 4, on Fighting corruption, commission issued recommendations on the adoption of objective criteria for taking decisions and reasons for these decisions in order to waive the immunity of parliamentarians, to ensure that immunity is not used to avoid investigation and criminal prosecution offenses of corruption.

In developing such measures the executive will ask for help from the Venice Commission and GRECO<sup>24</sup>. It also recommends the establishment of a reporting mechanism decision on immunity. It is also recommended that the implementation of the National Anticorruption Strategy, remains within the deadlines set by the Government in August 2016, but also making the of the National Agency of Seized Goods fully operational.

#### 2.2.6. Criticism of Annual CVM Report

Referring to the last report, there is a lot of criticism coming from socio-professional categories directly involved in the judiciary. Thus, Magistrates Association in Romania noticed that the system's evolution is analyzed only in terms of fighting corruption, the involved few institutions are the only ones which have such an activity assigned. Similarly, when referring progress in fighting high-level corruption, report covers only the DNA and I.C.C.J. (High Court of Justice) (In that order!), With a focus on "independence or effectiveness of DNA", forgetting the role of appeal courts and other courts. The report could also be criticized that "excessive workload of the courts", which continues to 'strike the consistency of judgments "and" additional obstacles related to more general aspects of the legislative process "are not so comprehensive so that they shape a clear picture of the realities of the judiciary or deepen the problems of this system<sup>25</sup>. The Association criticizes the lack of realism about the role of SCM, which is, as emphasized in the report, disconnected from the profession. One of the arguments is the lack of references to protests of the magistrates. The Magistrates Association press release indicates infrastructure problems that prevent real efficiency of the judicial system. But also the lack of transparency in data collection for processing the monitoring reports. In other words, magistrates do not dispute the evolution of the Romanian judicial system but they deny only the embellished results.

In the light of developments in the system, presented above, but also taking account of the critical positions of professionals in the field, we could ask ourselves if this tool has been useful, if it is still useful and whether developments in the Romanian judicial system would also be recorded without a coercive tool. The alignment of policies, legislation and programmes of the European Community would have been possible without the establishment of a mechanism for cooperation and verification of the internal affairs and justice. Those problems that were monitored could have put at risk the economic development, but a package of measures and a series of internal institutions could successfully replace the terror of this instrument.

<sup>22</sup> Progress report Romania 2017 [COM(2017)44], pag 9.

<sup>23</sup> Guidelines on Article 6 of the European Convention on Human Rights - Right to a fair trial (civil size) [http://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf).

<sup>24</sup> Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor compliance with the organization's anti-corruption standards.

<sup>25</sup> Press release of the Association of Magistrates of Romania no. 10 / 01.28.2017

However, the notable results obtained and the remaining of small issues to be rectified, might justify a lifting of this monitoring. Also, the latest report underlines this. The evolution of the Romanian judicial system is consistent with national and international legislation, and it follows its course, benefiting from technical and logistical means of the present times.

#### 4. Conclusions

Latest reports of CVM Commission, namely in the years 2014, 2015 and 2016 are characterized by a tendency to positivity as indicated by the notable progress achieved by reforms implemented under the CVM. The result of successive monitoring, acquires irreversibility through active involvement of judicial institutions. Although during the 10 years of developments in the CVM there were periods when the reform had reduced speed, Romania recorded major progress towards meeting the benchmarks contained in the CVM.

Amid these major advances, a number of key issues identified in previous reports remain unresolved

and this is the reason that we can not conclude that the benchmarks are, at this stage, carried out in a satisfactory manner, in order to remove this instrument. The latest report can identify a small number of key recommendations to reach provisional closure of individual benchmarks and subsequently MCV process. Most of the key recommendations relate to ensuring the irreversibility of the results, which is reached by imposing responsibility and accountability imposed by the Romanian authorities. This will be supported also by further development of the reporting mechanisms and the mechanisms to ensure accountability after closing CVM. So meeting these key recommendations will result in lifting after the next monitoring this instrument for monitoring and verification, but the speed at which the tasks will be carried through will depend on making these results permanent. Besides that, the negative developments should be avoided in order not to be left questioning the progress. However, the report for 2017 will have to contain entries reported by magistrates, in order to ensure transparency and objectivity.

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