

To: Michel Servoz

Deputy Secretary General, European Commission

Highly esteemed European Commission representatives,

The journalists from the online website **lumeajustitiei.ro**, edited by S.C JURINDEX MEDIA SRL, wish to bring to the high European Forum's knowledge that is currently handling the Romanian monitoring on the Justice area within the Cooperation and Verification Mechanism (CVM) the real problems related to the Justice condition and the flaws of the judicial system. So, we consider that the perception will not be deteriorated by incomplete, biased or false information, meant to distort the truth about the condition of the Justice system in Romania. Therefore, we point out these deficiencies that we, as specialized on the field, have noticed, requiring the European representatives to analyze them and take measures that will be included within the following CVM Report at the end of this year.

The Superior Council of Magistracy

- The leadership of the Superior Council of Magistracy was taken by a prosecutor, starting at the beginning of 2013, following elections contested by the majority of the members (judges), even if the Romanian Constitution states clearly and without any other interpretation that the act of justice is done throughout the High Court of Cassation and Justice and the other courts. This prosecutor – head of the Superior Council of Magistracy is under constant war with journalists that are pointing out the slippages in decision making within this institution and, without precedent, the respective war is also carried out in court, even if the purpose of this institution is to be the warrant of magistrates independence, to promote magistrates and to assure disciplinary measures against those magistrates who commit a serious of deviations from their statute. For this reason, at the parliamentary commission which was created for the revision of the Romanian Constitution, arose the problem that the new fundamental law should stipulate clearly that the Superior Council of Magistracy cannot be led by a prosecutor subject to hierarchical control, but by a representative from the judges.
- At the level of this institution, including the Judicial Inspection, a lack of transparency on many subjects of public interest can be seen.

The Public Ministry

- By appointing the general prosecutor, the deputies, head of sections, chief prosecutors within the National Anticorruption Directorate (DNA) and the Direction for Terrorism and Organized Crime Investigation (DIICOT) and the head of sections by the Romanian President, even by the President's discretionary possibility to refuse the appointments, creates an exclusive dependence of the leaders from the Public Ministry towards the presidential institution. This leads to

the enrollment of the whole prosecution to the political and personal interest of the President, because the chief prosecutors are the ones that decide, mostly against the law, who should be prosecuted, breaking the presumption of innocence, accusing different political or personal opponents of the President, and correlative, favoring presidential persons and interests. In practice, 90% of the DNA files were based on challenges and set ups. The technique of excessive usage of phone or ambient records, the lack of corroboration with other evidence (materials or testimonials) is one of the biggest flaws of these files, the prosecuted persons being refused from the beginning the right to a fair trial. For this reason, Romania suffered many convictions at ECHR. We also point out that ECHR has severely criticized this year the way European Court judge, Corneliu Birsan's immunity was violated by the DNA prosecutors, when they searched his house in Romania without being charged and without ECHR's approval.

-The over generalized policy of delegation based on positions, throughout this "policy" persons being appointed intermediary on different positions, most often, without professionalism and competence or persons that have answered positively to the interests of those in power.

- Directing prosecution (also the courts decisions) through the presidential speech, followed by an automatic trigger of prosecuting those nominated.

- The legitimate guess that secret services undercover officers/agents are in the system, recruiting magistrates from the system being made without having the possibility of exposing them, even if this belonging is against the magistrate's statute.

Flaws at court level

- Promoting a high number of prosecutors as judges to the High Court (High Court of Cassation and Justice), without having the minimum experience in judging causes, prosecutors that have instrumented files regarding political opponents of the current presidential power. These kinds of promotions are against nature, given that a career judge reaches The High Court after a long road at inferior courts.
- Appointing by the President of the country, the president, vice president and head of sections within the High Court of Cassation and Justice, with the discretionary possibility of rejecting unsupported proposals and creating, thus, an instrument for full servitude of the Supreme Court. The current appointments at the leadership level within the High Court are susceptible of the political factor interference, under the conditions that the High Court of Cassation and Justice President, Livia Stanciu and vice-president Ionut Matei were part of the panel of judges who decided the conviction of former chief of Government Adrian Nastase (known

- opponent of Traian Basescu) to jail by eluding evidence in defense, which pointed out the inexistence of prejudice, only on the basis of indirect evidence, an unprecedented act in the European justice. Of course, at the High Court of Cassation and Justice level, there are fair and professional magistrates, but they are trapped within the system and couldn't even express their intention of running for the leadership positions, as there was the feeling that their chances would have been minimum facing their colleagues approved and supported by the system.
- Modifying the organizing law of the High Court of Cassation and Justice and introducing 5 Judges Panels, by means of a law promoted especially by the President of Romania in 2012, the purpose was to create an obedient and subordinated pseudo court to his interests. These panels consist of judges from the same section and are led by the president and vice-president of the High Court of Cassation and Justice. The contrariety with the Constitution, European Convention and the Universal Declarations of Human Rights stipulations lies in the fact that these are not courts, but panels of the same section (e.g. The criminal section within High Court of Cassation and Justice), judges being in the same subordination and in mutual collegial relations – in the end being in a tautology (since, the judges that announce the decision in the first court are controlled by their colleagues and the other way around, a mixed dependence situation is created, judges being either controlled and controllers in the same time for their colleagues).
 - The inexistence in practice of random allocation, which was mentioned in the Court of Auditors report this year, but also by the evidentiary in a corruption file that has judges from the Bucharest Courthouse as culprits.

Common Problems

- The construction of files and the grounding of sentences on interceptions and inauthentic and unoriginal and undoubtedly fabricated recordings (fakes) by the National Anticorruption Directorate(DNA), the clearest proof being the memoirs sent to the authorities by the expert Catalin Grigoras, (currently the director of the National Center for Media Forensics from Colorado-Denver) who proved even the complicity of the National Institute for Criminal Expertise on hiding the fact that the recordings were fabricated.
- The generalization of approval and starting the interceptions in the phase of preliminary papers, when there was no obligation to register the interceptions and to inform the people who were listened to. In this case, their acts are clandestine and above all, sine die.
- The circumvention of DNA of the Unique System of interception and recording managed by SRI, by imposing that the intercepted signals to be transmitted directly to the DNA through optic fiber, where there is a technical office. All this happened without the existence of certified equipment against interventions (editing/ forgery) on recordings.
- The circumvention of electronic signature, of the temporal trade mark and the low of electronic archive with regards to the interceptions and recordings that are used

as evidence, having as end result the generalization of building the accusations on likely forged evidence.

- Appointing in leadership positions of some persons with career “problems”, persons willing to give in to blackmail. This type of blackmail is determined by the existence of a possibility that the prosecutors open a criminal file, in order to intimidate any judge that doesn’t respond to political interests. Therefore, the respective judge is afraid that his suspension from office may occur anytime, and his career might be ruined through a damaged image throughout the trial, even though at the end of the trial he/she might turn out to be innocent. Given these circumstances, one cannot talk about a real tenure of the judges in the judicial Romanian system.
- The participation of INESC at the forgery of the criminal probative by attesting valuable evidence as pseudo evidence (lacking originality and even authenticity), obviously fabricated, given the voluntary and hidden subordination to the interests of the President. All the problems relating to the criminal expertise persist because Romania doesn’t have independent experts.
- The artificial assignment of the prosecutorial competency to DNA for some files that concern political opponents of the President of Romania
- The use of the President of Romania of DNA prosecutors in order to verify the judicial situation of some agricultural land (300ha) which he recently bought. The legal cover was the fact that the analysis were about a larger file regarding possible illegal restitutions. Of course, these aspects are related to the professional morality of some of the prosecutors who have been used as political instrument for the last 8 years.
- The use of DNA, CSM and ICCJ and also the use of the secret services as tools for the political fight in order to appoint Daniel Morar as the judge of The Constitutional Court. This situation was unparalleled, The Association of Romanian Magistrates have conducted a judicial action through which they currently challenge the Presidential decree of appointing the ex-leader of DNA as the judge of the Constitutional Court.
- Making up a presidential immunity, at the level of the leadership of DNA and of the PICCI. This led to the suspension or settlements, meaning not starting the prosecution of some files that were related to some of the possible offenses committed by the President of Romania himself, given the fact that the basic principle of the Constitution of Romania states that “no one is above the law”.

Finally, we kindly ask you to consider that the aspects reported by us, journalists with over 20 years of experience, specialized in the judiciary domain and investigations of judiciary system problems, so that the MCV Report (Mechanism for Cooperation and Verification Report) to contain the necessary measures to realize a real reform of Justice in Romania. A real reform is made, in our opinion, through the straightening out this deficiency. Your recommendations are highly useful at this point.

Kind regards,

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