

## OPEN LETTER OF ROMANIAN MAGISTRATES FOR SUSTAINING THE INDEPENDENCE OF THE JUDICIARY

**We, the undersigned, judges and prosecutors,**

**In view of the latest public debates, that seriously undermine the independence of the judiciary and the progress of the Romanian State within the European Union, we hereby convey the following message:**

**An independent and effective judiciary represents the foundation of any rule-of-law state.** The independence of the judiciary has two components, namely **the institutional component (which does not include solely judges, but also the judiciary as a whole)**, as well as an individual component - the independence of judges.<sup>1</sup>

**The Public Ministry** was created, under art. 131 and 132 of the Constitution of Romania, as a **magistracy part of the judicial authority**, having as main purpose to represent, within the judicial activity, the general interests of the society, and defend legal order, as well as the citizens' rights and freedoms. Taking into account all specific differences between the two professions, judges, as well as prosecutors, both act having a common interest, representing the society and its citizens who wish to see all their fundamental rights and freedoms guaranteed. Therefore, the independence of the Public Ministry is an indispensable corollary of the independence of the judiciary. The prosecutors' role within the rule-of-law state can be secured solely if they are independent in their decision-making both from the executive power, as well as from the legislative power.

**All judges and prosecutors, including those in charge of investigating, prosecuting and adjudicating corruption offenses, should enjoy the independence and autonomy appropriate to their functions and should be free from improper influence.** This also applies to disciplinary mechanisms, whilst judges and prosecutors are expected to comply with the highest standards of integrity.<sup>2</sup>

Corruption is a major threat for development and stability, it is inimical at all levels of governance and undermines public trust and confidence in democracy. European Commission has repeatedly made clear that weakening or shrinking the scope of corruption as an offence, or major challenges to the independence and effectiveness of the National Anti-Corruption Directorate would be constitute backtracking for the Romanian State within the European Union: *"Overall, a positive assessment of progress (...) relies on an independent National Anti-Corruption Directorate to be in a position to perform its activities with all the tools at its disposal and maintain its track record. In previous reports, the fact that the National Anti-Corruption Directorate had maintained its track record in the face of intense pressure*

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<sup>1</sup> See the Decision of the Constitutional Court of Romania no.924 of November, 1<sup>st</sup>, 2012, published in the Official Gazette of Romania, Part I, no.787 of November, 22<sup>nd</sup>, 2012.

<sup>2</sup> See GRECO - <https://www.coe.int/fr/web/portal/-/council-of-europe-anti-corruption-body-visits-romania>. Group of states against corruption (GRECO) was created in 1999 by the Council of Europe to monitor States' compliance with the organization's anti-corruption standards.

was noted as a sign of sustainability. (...) Were that pressure to start to harm the fight against corruption, the Commission may have to reassess this conclusion.”<sup>3</sup>

Currently, in a country that is suffering from endemic corruption, in addition to the inconsistent messages coming from the political arena, there are also a large number of actions aimed at manipulating the public opinion and unprecedented attacks directed at various judges and prosecutors who deal also with high-level corruption cases, as well as at the major state institutions playing a major role in public defence and safety, especially at the National Anti-Corruption Directorate.

Moreover, it is the Minister of Justice himself who publicly attacks all prosecutors within the National Anti-Corruption Directorate, speculating that they unlawfully administer evidence and that the chief prosecutor publicly expresses, in the European press, his concerns about the evolution of the rule-of-law in Romania, thus disregarding the fact the freedom of expression concerning the good functioning of the judiciary, a matter of public concern, is protected by the European Human Rights Court, and the ”discouraging effect is detrimental to the society as a whole.” (CEDO, case of *Baka v. Hungary*).

In addition, the Minister of Justice ignores the fact that there are ongoing procedures within the Judicial Inspection, the Superior Council of Magistracy or the High Court of Cassation and Justice and thus induces to the public opinion a feeling of mistrust concerning judges and prosecutors that are part of those authorities.

Magistrates are not afraid of criticism made in good faith. However, professional reputation is a fundamental value for exercising the magistrate function and is represented by the perception created in the collective consciousness on the manner in which professional duties are carried out. When, for various reasons, the function and the role of the judiciary are diminished, the rule-of-law is impaired and there are ensuing consequences.

Also, conveying, in an indirect manner, the idea of the incorrect and abnormal functioning of the judiciary, in what regards the manner in which judges and prosecutors carry out their professional duties, which are all part of the justice mechanism, in the sense that there are certain cases involving persons occupying major state functions instrumented solely for personal professional gratification and not based on legal evidence has the main consequence of distorting, first and foremost, the public opinion regarding the competence, the correctness and the probity that any persons legitimately expects from magistrates whom they trust to defend their rights.

The Superior Council of Magistracy is the only state authority managing the magistrates’ career and it lies between its constitutional duties to defend their independence, the interest to protect the reputation and to ensure the magistrates’ authority exceeding the interest to allow a free discussion on their impartiality, even if it is initiated by a minister of justice.

The CVM reports constantly underline the fact that there should be additional measures implemented in order to provide an adequate support to magistrates facing criticisms undermining the independence of justice, and do not contain any recommendation concerning any attacks from the Justice Minister (who, in addition, is a rightful member of the Superior Council of Magistracy,

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<sup>3</sup> See the Report from the Commission to the European Parliament and the Council on progress in Romania under the Co-operation and Verification Mechanism, Brussels, 15.11.2017.

the constitutional guarantor of the independence of justice) **addressed to judges and prosecutors of Romania, in particular to their colleagues working within the National Anti-Corruption Directorate, thus taking over the role of other judicial authorities having constitutional duties in that matter.**

**THE LIST OF JUGES AND PROSECUTORS SIGNATORIES:**