

Yours Excellency,
Mr Klaus Werner Johannis,
President of Romania

Dear Mr. President Klaus Werner Johannis,

"The Romanian Judges' Forum" Professional Association urges you hereby that, as President of Romania, under the provisions of Art. 146 lit. a) of the Romanian Constitution, and of Art. 15 and the subsequent ones of Law no. 47/1992 on the organization and functioning of the Court Constitutional, to initiate an

APPLICATION FOR REFERAL TO THE CONSTITUTIONAL COURT

on the exercise of the constitutionality control prior to promulgation, of the laws amending the Law no.303/2004 on the status of judges and prosecutors, of Law no. 304/2004 regarding the judicial organization and Law no. 317/2004 on the Superior Council of Magistracy.

The latest Report of the Cooperation and Verification Mechanism (2017)¹ expressly recommends, in the case of Romania, "in order to further improve the transparency and predictability of the legislative process, and to strengthen internal guarantees of irreversibility", "The Government and the Parliament (...) should ensure full transparency and take due account of consultations with relevant authorities and stakeholders in decision-making and legislative work related to the Criminal Code and the Criminal Procedure Code, (incompatibilities, conflicts of interest, illicit wealth), the laws of justice (relating to the organization of the justice system) and the Civil Code and the Civil Procedure Code".

On the same issue, the European Commission noted that the attitude of ignoring the opinions of the Superior Council of Magistracy and the firm stance of the magistrates' body must be immediately abandoned, raising questions about the need for the European Commission to review all the progress made in relation to the independence of the judiciary.

By Decision no. 2 of January 11th 2012, the Constitutional Court of Romania considered that, by being a member of the European Union, Romania has the obligation to apply this mechanism and follow the recommendations established in this framework, according to the provisions of art. 148 paragraph (4) of the Constitution, according to which "the Parliament, the President of Romania, the Government and the judicial authority shall guarantee the fulfilment of the obligations resulting from the acts of accession and from the provisions of paragraph 2".

The parliamentary debate on the bills in question, assumed by 10 deputies and senators, by misappropriation of a project promoted by the Minister of Justice on a PowerPoint file on 23 August 2017, ignored the overwhelming majority view of the magistracy and the negative opinions issued by the Plenum of the Superior Council of Magistracy and

¹ https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf [last viewed on 20th of December 2017].

therefore it is incompatible with the fundamental law. Also, the legislative norms which impose the necessity of the opinion of the Superior Council of Magistracy should be interpreted in the spirit of loyalty to the Fundamental Law and the obligation of the public authorities to apply the Cooperation and Verification Mechanism and to follow the recommendations established in this framework.

In October 2017, approximately 4,000 Romanian judges and prosecutors (ie more than half of their total), signed the Memorandum for the withdrawal of the draft law amending the "laws of justice" addressed to the Government of Romania, and in November 2017, over 90 % of the general assemblies of the Romanian courts and prosecutor's offices opposed the current projects under parliamentary debate.

Therefore, even thou over 6000 Romanian judges and prosecutors opposed those bills, their will was not taken into account, and a dialogue with them was avoided.

At the same time, the silent protests of thousands of Romanian magistrates, starting with 18 December 2017, in front of the courts' offices are notorious, being taken over by the press all over the world².

The drafts have been severely criticized by dozens of Western embassies in Romania, the State Department of the United States of America, numerous non-governmental organizations in Romania and other states, the entire civil society and hundreds of thousands of ordinary citizens in street demonstrations.

Even if the recently passed bills contain proposals of the Superior Council of the Magistracy, of the Magistrates or of the Professional Associations that have been formulated over time, these proposals are just corrections of the current system, as opposite to other provisions passed which embody an untrustworthy preparation of a genuine "judicial experiment" in the absence of any impact studies and forecasts that may have bad consequences that will be very difficult or even impossible to remedy. The legislative initiative includes many changes that will influence the career and professional activity of the magistrates and will cause imbalances of the judiciary.

Participation in the debates of the Special Commission of the Chamber of Deputies and the Senate took place only on the basis of special invitations issued by Mr. Florin Iordache, the chairman of the commission and the selection was not made on request but on discretionary criteria, at the will of the coordinator of the above mentioned commission.

The adoption of these laws therefore flagrantly violates the provisions of Article 148 (4) of the Constitution, article that has not been explicitly and thoroughly invoked in the complaints to the Constitutional Court already made by the Liberal MPs and the High Court of Cassation and Justice, the latter containing only individual issues regarding numerous punctual articles in the Constitution violated by the draft laws passed by Parliament that you have received for promulgation.

Your Excellency, as the President of Romania, you have the constitutional obligation to guarantee the fulfilment of the obligations resulting from the acts of accession to the European Union, including the Reports under the Cooperation and Verification Mechanism, according to Article 148 (4) of the Constitution.

² <http://www.euronews.com/2017/12/18/romanian-judges-protest-over-government-backed-legal-reforms> ; https://www.washingtonpost.com/world/europe/romanian-judges-say-new-laws-will-stymie-prosecutions/2017/12/18/63c43882-e3fa-11e7-927a-e72eac1e73b6_story.html?utm_term=.4b1d6ed7b3a4; <https://www.cnbc.com/2017/12/18/the-associated-press-romania-judges-hold-protests-over-legal-system-changes.html>; https://www.voanews.com/a/romania-judges-hold-protests-voer-legal-system-changes-/4169052.html?utm_source=dlvr.it&utm_medium=twitter [last viewed on 20th of December 2017].

Your Excellency, you also have at your disposal the option of a referral of the matter to the Venice Commission in order to give an opinion on the key issues or any other action that you may find appropriate in order to ensure respect for the status of the magistrate and to guarantee the independence and impartiality of justice, as stated also by the Secretary General of the Council of Europe in the previous week, steps that would provide clarity as to the compatibility of these texts with the fundamental standards of the rule of law.

judge Dragoş Călin, Bucharest Court of Appeal, co-president
judge Ionuţ Militaru, Bucharest Court of Appeal, co-president

