

**1500 Romanian Magistrates:
Memorandum for the Rejection of the Amendments to the "Laws of Justice" (Law
303/2004, Law 304/2004 AND Law 317 / 2004)**

To the Government of Romania,

To MrMihai Tudose,
Prime Minister of the Government

To Professor Tudorel Toader,
Minister of Justice

Your Excellencies,

On 23 August 2017, in a PowerPoint paper presented at a press conference, the Justice Minister proposed a set of amendments to the "laws of justice" (Law 303/2004, Law 304/2004 and Law 317 / 2004), without impact studies and without prior consultation on key legislative issues, in order to ensure decisional transparency vis-à-vis magistrates (judges and prosecutors) and civil society.

The draft was communicated to the Superior Council of Magistracy.

In its meeting of 28 September 2017 the Plenum of the Superior Council of Magistracy issued a negative opinion on the whole project, taking into account the votes casted in numerous General Assemblies of judges and prosecutors, held in numerous courts and prosecutor's offices, where they were rejected, in overwhelming proportion.

Among other things, the negative votes referred to:

- all substantive changes to the draft legislation,
- the reorganization of the Judicial Inspection, as a legal personality structure within the Ministry of Justice,
- the appointments at the top of the judiciary (the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice - HCCJ, first deputy and his deputy, the chief prosecutor of the National Anti-Corruption Department - DNA, his deputies, the chief prosecutors of the Prosecutor's Office attached to HCCJ and the DNA, as well as the chief prosecutor of DIICOT and their deputies)
- the proposed amendments regarding the magistrates' liability regime, susceptible of violating the independence of the judiciary;
- the change of the magistracy recruiting system - the changes are regarding the promotion to a higher court / higher prosecutor's Office;
- the maintenance of the actual status quo regarding the budget of the courts of justice which is administrated by the Ministry of Justice;
- the establishment within the Prosecutor's Office attached to HCCJ, of a specialized directorate with exclusive jurisdiction to carry out criminal prosecution for the acts committed by judges and prosecutors, regardless of their nature and gravity (jurisdiction *per personam*, aiming to a professional category instead of illegal deeds).

In 2017, Romania is still being subject to the Cooperation and Verification Mechanism (MCV) [European Commission Decision 2006/928/CE of December 13, 2006], 10 years after its accession to the European Union, precisely in order to align its justice system with those of the states with historical democratic traditions. Thus, it is no longer acceptable the return in time to legislative regulations existing before 1989, it is no longer acceptable the restoration of placing the judiciary under political control, and it is no longer acceptable the unjustified extension of the duties of the Minister of Justice.

All these substantive changes proposed by the Minister of Justice flagrantly violate the Cooperation and Verification Mechanism, its constant reports and the foundations of a normal magistracy in a democratic state. These proposals, once enacted, will influence the career and professional activity of magistrates for a long time and will create imbalances in the judiciary, aspects that have been repeatedly condemned by the European Commission.

By Decision no. 2 of January 11, 2012, the Constitutional Court of Romania considered that, by being a member of the European Union, the Romanian state has the obligation to apply this mechanism and follow the recommendations established in this framework, according to the provisions of Article 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".

Thus, although the opinion of the Superior Council of Magistracy is not mandatory, according to the law, it also cannot be ignored, as the recent jurisprudence of the Constitutional Court of Romania develops and emphasizes in particular a new dimension of the provisions of Article 1 para. 5) of the Constitution ("In Romania, observance of the Constitution, of its supremacy and of the laws is mandatory"), in the sense of attaching its normative content to the principle of loyal cooperation between state's institutions and authorities [2]. Therefore, the legislative norms which ask for the opinion of the Superior Council of Magistracy must be interpreted in the spirit of loyalty to the Fundamental Law and in the spirit of an obligation for the public authorities to apply the Cooperation and Verification Mechanism and to follow the recommendations established in this framework.

Even though the draft issued for consultation by the Ministry of Justice partially contains proposals formulated over time by the Superior Council of Magistracy, Magistrates or Professional Associations, these proposals are simple corrections of the current system. The unrealistic preparation of a genuine "judicial experiment", in the absence of any impact studies and forecasts, may lead to very difficult or even impossible to remedy consequences.

Therefore, in view of the will of the overwhelming majority of magistrates, we ask you, in order to remove any doubts about the misappropriation of this project to the detriment of the magistracy, to dispose its withdrawal (rejection at the Government level, as the case may be, avoiding its advancement to the Parliament), and to initiate and develop a concrete and effective dialogue with magistrates, the Superior Council of Magistracy, professional associations of judges and prosecutors, in order to improve the legislative framework, after carrying out appropriate impact studies and after presenting serious and credible motives regarding the proposed changes, in the purpose of modernizing the magistracy and the justice system, in line with the Cooperation and Verification Mechanism.

Please receive, Your Excellencies, the expression of our highest consideration,